

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-206/2014]

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH
RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY
ADJUDICATING OFFICER) RULES, 1995**

In respect of

M/s Rajlaxmi Industries Limited
(PAN: AAACR0419F)

In the matter of

M/s Rajlaxmi Industries Limited

FACTS OF THE CASE

1. A letter of offer in compliance with Regulation 3 (1) and 4 of the Takeover Regulations, 2011 was made by M/s. Caren Trading Private Limited (Acquirer) to acquire 2,60,000 fully paid equity shares of Rs. 10/- each (representing 26% of the paid up and voting equity share capital) of M/s. Rajlaxmi Industries Limited (hereinafter referred to as the **Noticee/the Company**) at an offer price of Rs. 30/-. The Public Announcement of the same was made on August 23, 2012 and the shares of the company are listed on Bombay Stock Exchange Ltd (hereinafter referred to as **BSE**).
2. While examining the letter of offer document of the Acquirer to acquire the shares of the Noticee, it was observed that the Noticee had failed to comply with Regulations 7(3) and 8(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **Takeover Regulations**) within the stipulated time. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of SEBI Act, 1992 (hereinafter referred to as

Act) were initiated against the Noticee under Section 15 A(b) of SEBI Act, 1992 to inquire into and adjudicate the alleged violation of the provision of Regulation 7(3) and 8(3) of the Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer on August 16, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **SEBI Rules**) to inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation of Regulation 7(3) and 8(3) of the Takeover Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (hereinafter referred to as **SCN**) Ref. No. EAD-6/AK/RSL/31911/2013 dated December 10, 2013 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations as detailed below. A copy of status of compliance document as submitted by the Manager to the Offer and as given below was also sent along with the SCN.

Sl. No.	Regulations	Due date for compliance	Actual date for compliance	Delay in disclosures made (Number of days)
1.	8 (3)	30.04.2001	07.03.2003	676
2.	8 (3)	30.04.2002	07.03.2003	311
3.	8 (3)	30.04.2004	05.01.2007	980
4.	8 (3)	30.04.2006	05.01.2007	250
5.	8 (3)	30.04.2007	03.05.2007	3
6.	7 (3)	05.10.2001	24.07.2002	292

5. The Noticee was called upon to show cause within 14 days from date of receipt of the SCN as to why an inquiry should not be initiated against them and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations of the Takeover Regulations.
6. The SCN was delivered to the Noticee at the address - G30, MIDC Industrial Area, Tarapur, Boisar (W), Thane, Maharashtra - 401506 by registered speed post and an acknowledgement card of the same was received with company stamp of the Noticee. However, no reply was received from the Noticee.
7. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticee was granted an opportunity of hearing on February 05, 2014 vide hearing notice dated January 16, 2014 and was advised to make the submissions by January 27, 2014. The Noticee was further informed that no extension of time to reply to the SCN shall be granted in the matter. The said notice was sent by speed post and the acknowledgement card was duly stamped by the Noticee company. The Noticee, however, failed to appear for the hearing and no submission/reply to the SCN was received from the Noticee. Another opportunity of hearing was provided to the Noticee on March 14, 2014, vide hearing notice dated March 03, 2014 which was acknowledged by the Noticee, but, again the Noticee failed to appear for the hearing.
8. However, since the aforesaid communications were sent through Speed Post Acknowledgement Due, following the judgment of the Hon'ble Securities Appellate Tribunal in the matter of Vilas Valunji vs. SEBI, vide email dated September 17, 2014, BSE was requested to provide the latest address and the email id of the Noticee as mentioned in the latest filings (as per the Listing Agreement) made by the Noticee to the Exchange (BSE). BSE vide email dated September 22, 2014 provided a scanned copy of company's letter dated September 18, 2014 providing their contact details and the compliance

officer details. From the same, it was gathered that the new address of the company was - H.No. 1836, Gala no. 8, 1st Floor, Building No. A/4, Gayatri Compound, Val Village, Post Kalher, Bhiwandi, Thane, Maharashtra – 421302. On receipt of the same, a hearing notice dated September 29, 2014 along with a copy of the SCN dated December 10, 2013 granting the Noticee an opportunity of personal hearing on October 10, 2014 was sent to the Noticee at the aforesaid address by hand delivery, Registered Post and e-mail. The same was delivered at the Noticees aforesaid new address. Subsequently, the Noticee vide email dated October 09, 2014 attached a scanned copy of the letter dated October 08, 2014 authorizing Mr. K.C. Jacob to represent the Noticee for the personal hearing scheduled on October 10, 2014.

9. During the personal hearing, Mr. K.C. Jacob, Authorized Representative (hereinafter referred to as **AR**), appeared on behalf of the Noticee and reiterated the submissions made in the reply dated October 09, 2014. Vide the said reply, it was inter alia submitted as follows:

1. *That the current promoters of the Company and its management came into picture only in 2012 and the alleged belated disclosure pertain to the period when the erstwhile promoters / management were running the day to day affairs and management of the Company. Further, that prior to 2012, the current management had no role in the affairs and the management of the Company;*
2. *That after a period of lapse of around 13 years to 8 years from the date of alleged violation (and after around 12 years to 7 years from the date of the belated compliances), the Noticees are severely incapacitated and handicapped to offer explanation for the delayed compliances of Regulation 7(3) and 8 (3) of Takeover Regulations by the erstwhile management / promoters since the employees / staff who were working at the relevant time have totally changed and no records of the relevant period are available;*

3. *That the inordinate delay in commencing the proceedings has also resulted in gross violation of principles of natural justice. In the matter of delay in initiating proceedings, the Noticees have referred Orders passed on November 5, 2008 by the Hon'ble Securities Appellate Tribunal in the matter of Shri Ashok K Chaudhary v/s SEBI and the Order passed on March 31, 2008 by the Hon'ble Securities Appellate Tribunal in the matter of Libord Finance Ltd. Vs. SEBI;*
4. *That without prejudice to the aforesaid submissions that the impugned proceedings cannot be continued against the Noticees, it has been submitted that it is not the case that the disclosures have not been made at all. Disclosures have been made albeit belatedly;*
5. *That during the relevant period the Company was in financial shambles and there was a complete suspension of the manufacturing operations from 2002 and the Company's manufacturing operations were not viable / profitable on the long terms basis. As a result of the financially weak and unviable position of the company, many employees of the company had left. Also, that the trading in the scrip of the company had remained suspended for almost 8 years from February 17, 2003 to December 08, 2010;*
6. *Further that the erstwhile promoters continued to remain the promoters throughout the relevant period and they also continued to remain in control of the Company and that there was no change in the promoters or persons in control of the Company;*
7. *That the alleged violations are at the highest a technical, procedural and venial breach;*
8. *That the alleged violations are not deliberate and intentional and in contumacious disregard of provisions of law. That admittedly, the disclosures had been made, albeit belatedly, much prior to issuance of the notice;*
9. *That the alleged violations pertain to a very old period and the same have not caused any loss to any investor and have also not adversely affected the shareholders of the*

Company or the securities market in any manner. Further, it that there are no shareholder / investor complaints in this regard;

10. That as result of alleged violations, they have not made any gain or gained any unfair advantage.

10. The Noticee vide letter dated October 17, 2014 have further submitted that they have not received any notice in the past for any non-compliances or delayed compliances with respect to the SEBI Act/ Regulations.

CONSIDERATION OF ISSUES

11. I have carefully examined the SCN and perused the documents available on record. It is observed that the allegation against the Noticee is that it failed to make the relevant disclosures under the provisions of Regulation 7(3) and 8(3) of the Takeover Regulations within the stipulated time.
12. The issues that arise for consideration in the present case are:
- a. Whether the Noticee has violated the provisions of Regulation 7(3) of the Takeover Regulations once in the year 2001 and Regulation 8(3) of the Takeover Regulations during the years 2001, 2002, 2004, 2006 and, 2007 respectively?
 - b. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
 - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

13. Before moving forward, it is pertinent to refer to the provisions of Regulation 7(3) and 8(3) of Takeover Regulations, which reads as under:

Acquisition of 5 per cent and more shares or voting rights of a company.

7 (3) Every company, whose shares are acquired in a manner referred to in ¹[sub regulations (1) and (1A)], shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under ²[sub-regulations (1) and (1A)].

Continual disclosure.

8 (3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

14. As per Regulation 7(3) of the Takeover Regulations, the company was required to disclose to the stock exchanges within seven days of receipt of information under Regulation 7(1) and/ or 7(1A) of the Takeover Regulations, the aggregate number of shares held by each of such persons who had acquired shares under Regulation 7(1) and/ or 7(1A). In the present matter, I find that with respect to compliance date 05.10.2001, the Noticee has made a belated disclosure on 24.07.2002 under Regulation 7(3) of the Takeover Regulations.
15. Another issue for consideration is whether the Noticee failed to make the relevant disclosures under Regulation 8(3) of the Takeover Regulations during the years 2001, 2002, 2004, 2006 and 2007. As per Regulation 8(3) of the Takeover Regulations, the Noticee was required to make yearly disclosure within 30 days from the financial year ending March 31, to the stock exchanges on which the shares of the company were listed, the changes, if any, in respect of the holdings of the persons referred to under sub

¹ Added by SEBI (SAST) (Third Amendment) Regulations, 2001, wef 24.10.2001

² Ibid.

regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March. With regard to the disclosures for the years 2001, 2002, 2004, 2006 and 2007, on perusal of the status of compliance document as submitted by the Manager to the Offer, I find that the Noticee has violated the provisions of Regulation 8(3) of the Takeover Regulations. The respective number of days of non-compliance in respect of each financial year has been enumerated in the table at Para (4) above.

16. I find that the Noticee in its submission dated October 09, 2014 have acknowledged the delayed compliance under Regulation 7(3) and 8(3) of the Takeover Regulations, but, have submitted that the alleged belated disclosure pertain to the period when erstwhile promoters / management were running the day to day affairs and management of the Company. Further that prior to 2012, the current management had not role in the affairs and the management of the Company. As regards the said argument, it becomes pertinent to mention here that when a company is incorporated, it becomes a legal personality which is separate from its promoters, directors and its shareholders. This separate legal personality has its own legal rights and obligations, just as individuals. Under Regulation 7(3) and 8(3) of the Takeover Regulations, it was the company which was required to make certain disclosures within the stipulated time, which it failed to make within the stipulated time. I find that the Noticee has not disputed the said fact.
17. As regards the Noticee's argument regarding inordinate delay in commencing the proceedings resulting in gross violation of principles of natural justice, it is noted that the proceedings against the Noticee were initiated pursuant to disclosure made in the letter of Offer dated November 06, 2012 of M/s. Caren Trading Private Limited (the Acquirer), regarding delay in compliance with Regulation 7(3) and 8(3) of the Takeover Regulations by the Noticee. Further, I find that under the SEBI Act there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. The provisions of Limitation Act apply only to proceeding in Courts and have no application to Quasi Judicial Bodies, notwithstanding the fact that such bodies may be

vested with certain specified powers conferred on Courts under the Civil or Criminal Procedure.

18. Further as regards the delayed disclosures made, I note that the Hon'ble Securities Appellate Tribunal in the matter of *Yogi Sungwon (India) Ltd. Vs SEBI* dated May 04, 2001 in the appeal No. 36 of 2000 has observed that: "*.....that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay.*" I further also note that the Hon'ble SAT in *Ashok Jain V. SEBI* (Appeal no. 79 of 2014 decided on June 09, 2014), had also observed that : "*..... Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non disclosure within the time stipulated under those regulations...*"
19. It is, thus, established that the Noticee has violated the provisions of Regulation 7(3) and 8(3) of the Takeover Regulations.
20. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*". Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "*Once it is established that the mandatory provisions of Takeover Code was violated the penalty must follow.*"
21. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

SEBI Act, 1992 prior to SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)

If any person, who is required under this Act or any rules or regulations made thereunder,--

To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues.

SEBI Act, 1992 after SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)

Penalty for failure to furnish information, return, etc.-

15.A(b) *If any person, who is required under this Act or any rules or regulations made thereunder,--*

To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

22. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:-

“15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

23. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so. Thus, the cornerstone of the Takeover regulations is investor protection.
24. As per the SEBI Act, prior to SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002), the Noticee is liable for a penalty not exceeding five thousand rupees for every day during which such failure continues. As per Section 15A(b) of the SEBI Act after SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002), the Noticee is liable for penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee.

25. I further note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014) has observed that:

“Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”

In view of the same, the argument put forth by the Noticee that the alleged violations have not caused any loss to any investor and have also not adversely affected the shareholders of the Company or the securities market in any manner and that there are no shareholder / investor complaints in this regard, is not relevant for the given case.

26. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's shares on the exchange, where the shares were listed during the relevant period; and c) the number of occasions in the instant proceeding that the Noticee has violated the relevant provisions of the Takeover Regulations.
27. The paid up capital of the company was 10,00,000 shares of Rs. 10/- each aggregating to Rs. 1,00,00,000/- during the entire period of non-disclosure. I further note that approx. 81% of the total paid-up capital of the company was held by the Promoter Group from the years 2003-2008, which was brought down to 72.58% in 2009 and continued as such upto 2012. I further note from the BSE website that there were about 206 shareholders in public shareholding category holding approx. 18.66% of total paid-up capital of the company during the years 2003-08, which increased to 212 shareholders holding 27.41% during 2009-2010 and subsequently reduced to about 150 shareholders holding 27.41% during 2011-2012. I also note from the letter of offer that the trading in equity shares of

the Noticee was suspended by BSE for almost 8 years from February 17, 2003 to December 08, 2010 for non compliance with the provisions of the listing agreement. The same has *inter alia* also been brought out by the Noticee in its submissions. I note from the same that it was due to delinquency on the part of the Noticee in complying with the provisions of the listing agreement that resulted in non-trading of the Company's shares on BSE, and thus, cannot support the Noticee's case for non-disclosure under Regulation 8(3) of the Takeover Regulations. I find that the Noticee had not made the disclosure to the exchange within the stipulated time for a total of five (5) occasions during the years 2001, 2002, 2004, 2006 and 2007 under Regulation 8(3) of the Takeover Regulations and once in 2001 under Regulation 7(3) of the Takeover Regulations.

28. I further find that the Noticee has *inter alia* claimed that the violation committed by it was at the highest technical, procedural in nature. However, any transaction which requires compliance of the Takeover Regulations, if not complied, is always a serious matter, and cannot be considered a mere 'technical' violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information.
29. Besides, as a listed company, the Noticee had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose of the Takeover Regulations. Non-compliance/ Delayed compliance with the disclosure requirements by a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

30. After taking into consideration all the facts and circumstances of the case, I impose the following penalty against the Noticee under Section 15 A(b) which will be commensurate with the violations committed by the Noticee.

Noticee	Regulation Violated	Penalty imposed in (Rs.)
M/s Rajlaxmi Industries Limited	Regulation 7 (3) of the Takeover Regulations, 1997	Rs. 2,00,000/- (Rupees Two lakh only)
	Regulation 8 (3) of the Takeover Regulations, 1997	Rs. 2,50,000/- (Rupees Two lakh fifty thousand only)
	TOTAL	Rs. 4,50,000/- (Rupees Four lakh fifty thousand only)

31. The Noticee shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
32. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: October 27, 2014
Place: Mumbai

Anita Kenkare
Adjudicating Officer