

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 Ms. Nirmala Goenka -PAN ACUPG6884H in the matter of Goenka Diamond and Jewels Ltd.

BACKGROUND

1. Securities and Exchange Board of India ('SEBI') during the examination in the scrip of Goenka Diamond and Jewels Ltd ('Goenka/Company'), a company listed at The Bombay Stock ('BSE') and National Stock Exchange ('NSE'), observed that Ms. Nirmala Goenka ('Ms.Nirmala/Noticee'), Promoter of Goenka, through off-market has received 4,09,76,250 shares (12.93% of the share capital of Goenka) from Mr. Nitin Goenka, Managing Director of Goenka ('Nitin'), son of Ms. Nirmala. Pursuant to which, the shareholding of Ms. Nirmala changed from 1,03,50,000 shares (3.26%) to 5,13,26,250 shares (16.19% of the Share Capital of Goenka). It was alleged that Ms. Nirmala failed to disclose the change in the shareholding to the Company/Stock Exchanges and thus have violated Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeovers Regulations') and Regulation 13(1) and Regulation 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations').
2. In view of the above, SEBI initiated adjudication proceedings against Ms. Nirmala to inquire and adjudge under section 15A(b) of SEBI Act, 1992 ('SEBI Act') for the alleged non-disclosure of transfer of shares of 4,09,76,250 shares.

APPOINTMENT OF ADJUDICATING OFFICER

3. Adjudicating Officer was appointed vide order dated May 18, 2017, under Section 15-I read with Section 19 of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 ('Adjudicating Rules'), to inquire into and adjudge under Section 15A(b) of SEBI Act for the aforesaid alleged violation against Ms. Nirmala.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Vide letter dated September 11, 2017, a notice was sent to Ms. Nirmala informing the appointment of the Adjudicating Officer in the matter.
5. A Show Cause Notice ('SCN') in terms of provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act was issued on September 11, 2017 (Ref No:

SEBI/HO/EAD-8/JS/NS/OW/P/21819/1/2017) to Ms. Nirmala calling upon the Noticee to show cause as to why an inquiry should not be held against it under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation, which was duly delivered on September 14, 2017. Also, a copy of the SCN was emailed to nitin@goenkadiamonds.com the address available on records.

6. In this regard, Ms. Nirmala through her representative requested inspection of documents. Accordingly, vide letter dated December 06, 2017, Ms. Nirmala was informed to carry out the inspection of documents on December 22, 2017, which was conducted.
7. Vide letter dated February 07, 2018, Ms. Nirmala was once again called upon to file reply to the SCN latest by February 14, 2018. Also, an opportunity of hearing was granted to Ms. Nirmala in the matter on February 23, 2018.
8. Vide email (cs@goenkadiamonds.com) dated February 21, 2018, informed that the noticee will appear for the hearing and the written submissions will be made after the hearing. In this regard, vide email dated February 22, 2018, Ms. Nirmala was reminded to file reply to the SCN.
9. On the date of hearing, Ms. Nirmala along with her representative appeared and made submissions. Further, they informed that written submissions shall be made by February 26, 2018.
10. Vide email dated February 23, 2018, Ms. Nirmala filed reply to the SCN, which are as follows:
 - a. *The present submissions are being filed post the submissions made during the personal hearing in the matter held on February 23, 2018 to summarize the key submissions made during the personal hearing.*
 - b. *The Noticee admits that there was no disclosures made by the Noticee under Regulation 29(1) of the Takeover Regulations, 2011 and Regulation 13(1), 13(4A) and 13(5) of the SEBI Insider Trading Regulations, 1992. Before any disclosures as required could be made, there were internal disputes between the family which resulted in the transferor Mr. Nitin Goenka file a case against his mother, who is the Noticee alleging fraudulent transfer of the subject shares. The entire shares therefore was subjected to a freeze order by the Investigation Department, Crime Branch where an FIR was registered. The Noticee had to obtain Anticipatory Bail from the Hon'ble High Court in this regard. Copy of the directions issued by the Police to the depository participant of the Noticee is attached herewith. There is no voting rights which were exercised by the Noticee till date further to the freeze and the shares too are frozen in the demat account. However, the Noticee appreciates that there is a default in the present matter for which the Noticee requests the learned Adjudicating Officer to take a lenient view in the matter.*
 - c. *The disclosure which was required was a onetime disclosure which was omitted by the Noticee on account of the circumstances explained above. Further, there was no advisors or full time Company Secretary at the time of the dispute who were all under investigation because of the allegations in the Complaint. There is no loss caused to any investor in this regard as the said transfer is within the promoter group. The Noticee has not gained any advantage out of the same but has been victimised and is subjected to huge restraints and loss because of the said transfer of shares.*
 - d. *We draw your kind attention to the other order of the learned Adjudication Officer where a view as framed by the Hon'ble Securities Appellate Tribunal in Vitro Commodities Private Limited V SEBI was taken. In other words, the learned Adjudicating Officer is humbly requested to consider taking the same position in*

the present matter where no separate penalties under the Takeover Regulations and Insider Trading Regulations be imposed.

- e. *This is our submission on the quantum of penalty without prejudice to our submission that the delay in the disclosures may not be viewed seriously to warrant any penalty and a lenient view be taken. The Noticee has been compliant with all the regulations and will be more diligent in future. The spirit underlying any regulatory intervention by SEBI is to make the Noticee realize the mistakes and to adopt a corrective path in future dealings. While this has been a single on off event of non-disclosure, yet the Noticee undertakes to be more diligent and careful in nature.*

CONSIDERATION OF ISSUES AND FINDINGS:-

11. Charges levelled against Ms. Nirmala as per SCN, submissions of Ms. Nirmala in reply to SCN, and the documents available on record have been perused. The issues that arise for consideration are :
- a) Whether, Ms. Nirmala had violated the respective provisions as alleged in the SCN?
 - b) If yes, does the violation, on the part of Ms. Nirmala attract monetary penalty under section 15A(b) of SEBI Act?
 - c) If yes, what quantum of monetary penalty should be imposed on the Ms. Nirmala taking into consideration the factors mentioned in Section 15J of the SEBI Act?

Issue a) Whether, Noticee have violated the respective provisions as alleged in the SCN?

12. Ms. Nirmala, Promoter of Goenka, held 1,03,50,000 shares (3.19% of the share capital of Goenka). On November 11, 2013, Ms. Nirmala received 4,09,76,250 shares (12.93% of the share capital of Goenka), which resulted in change in holdings of Ms. Nirmala in Goenka to 16.19% (5,13,26,250 shares).
13. It is pertinent to take note of the submissions made by Nitin, the other noticee in the matter, in which he had contested that the disclosure would arise only in case of change in the shareholding. It has been contested that the very transfer of the shares out of his account itself is being agitated in the court of law as the same has been alleged to have been fraudulently done. Given the same, it has been mentioned that the competent authority has applied a freeze on the holding and thus neither Mr. Nitin nor Ms. Nirmala are able to exercise any rights arising out the disputed holding.
14. Before proceeding further, the conduct of the Noticee to be placed on record. The Noticee in her reply has failed to submit the correct and complete facts of the matter. It is pertinent to mention that the Ld. Session Court of Greater Mumbai vide order (dt: January 10, 2014) has rejected the application of the Noticee for anticipatory bail on the ground that:
- a. *The evidence collected by the investigating agency as pointed out above clear in terms prima facto pointing out that the gift deed and release deed are forged and fabricated. So also, on the basis of the forged signature of the informant on TIFD slip the shares are transferred from the demat account to the account of the applicant.*
 - b. *The papers of investigation further indicates that the accused and the co accused Navneet Goenka signed the documents and the forged and fabricated documents are tendered by the co*

accused Navneet Goenka and managed to get transferred huge shares of the informant to the account of the applicant. She is beneficiary of the crime. In absence of the informant all these acts are committed therefore she is part of conspiracy.

- c. The offence charged against the applicant (Nirmala) is certainly serious in nature. She has direct nexus with the alleged crime. In order to unearth the conspiracy her custodial interrogation is essential. She has not come before the Court with clean hands. Therefore, according to me, the applicant failed to make out the case for grant of anticipatory bail.*

15. Also, during the pendency of the anticipatory bail proceedings of others, in the mediation proceedings before an Additional Sessional Judge, a Settlement Agreement dated March 18, 2014 in mediation proceedings was arrived. Such facts were not before the Adjudicating Officer, which are pertinent to come to arrive a conclusion on the matter pending before the Adjudicating Officer. It is observed that the conduct of the Noticee as observed by the honorable Court continues even in these proceedings, as full facts were not brought out.
16. Given the specific observations of the competent authority on the veracity as well as the legality of the transaction leading to the change in the holding of Ms. Nirmala, it would not be appropriate to adjudge this matter at this stage until the Competent Authority decides the matter.

Issue b) If yes, does the violation, on the part of Ms. Nirmala attract monetary penalty under section 15A(b) of SEBI Act?

Issue c) If yes, what quantum of monetary penalty should be imposed on the Ms. Nirmala taking into consideration the factors mentioned in Section 15J of the SEBI Act?

17. As the violations are not established against Ms. Nirmala, consequent issues b and c requires no further examination.

ORDER

18. For the aforesaid reasons, Show Cause Notice SEBI/HO/EAD-8/JS/NS/OW/P/21819/1/2017 dated September 11, 2017, alleging violations of provisions of Regulation 29(1) read with Regulation 29(3) of Takeover Regulations and Regulation 13(1) and 13(4A) read with Regulation 13(5) of PIT Regulations, is disposed of without imposition of any penalty.
19. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Ms. Nirmala Goenka and also to the SEBI.

Date: March 27, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer