

ADJUDICATION ORDER NO. AO/JS/VRP/11 /2018

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:

Mr. Manmohan Damani

PAN No. AEAPD3263M

In the matter of Le Waterina Resort and Hotels Limited

BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) observed that during the period of October 01, 2010 to March 05, 2012 (**investigation period**) the entity viz. Mr. Manmohan Damani (**Noticee**) had allegedly violated Reg. 7(1) r/w Reg 7(2) of SEBI (SAST) Reg, 1997 r/w Reg.35 of SAST Reg, 2011 and Reg 13(1) of SEBI (PIT) Reg, 1992 r/w Reg. 12(2) of SEBI (PIT) Reg, 2015.
2. SEBI observed that, the Noticee Manmohan Damani, a non-promoter entity had acquired shares during the Investigation period. Following is the transaction where Manmohan Damani had failed to comply with disclosure requirement under SAST Regulations, 1997 and PIT Regulations, 1992:

Date	No of shares held - pre Acquisition/ disposal	% of shares held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shares held - post Acquisition/ disposal	Mode of transfer	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
										SAST	PIT
24/11/10	3,12,902	4.70	3,50,000	6,62,902	9.95	On market	Not made	Not made	NA	7(1)	13(1)

SEBI observed from the above, that by virtue of acquisition of shares, Manmohan Damani was required to make disclosures u/r 7(1) r/w 7(2) of SAST Regulations, 1997 to the company and to the stock exchange and u/r 13(1) of PIT Regulations, 1992 to the company. SEBI observed that the Noticee Manmohan Damani had not made disclosures under SAST Regulations, 1997 to the company and to the stock exchange and to company under PIT Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. An Adjudicating Officer was appointed vide order dated February 07, 2017 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (**SEBI Act, 1992**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**Adjudication Rules**), to inquire into and adjudge under Section 15A(b) of SEBI Act, 1992. Consequent to transfer, the proceedings are now proceeded with in terms of Order dated May 18, 2017 to inquire into and adjudge under Sections 15A (b) the alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (**SCN**) in terms of the provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on September 28, 2017 to the Noticee calling upon the Noticee to show cause as to why an inquiry should not be held against them under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation. The SCN was duly delivered to the Noticee.
5. Mr. Rajesh Kumar Damani son of the Noticee Manmohan Damani vide letter dated October 09, 2017 submitted that his father had expired on July 29, 2016 and enclosed the copy of the death certificate bearing Registration No. HG013/2016/000973. Further, the Mr. Rajesh Damani submitted that his father had intimated (disclosed) to the company and the exchange vide letter dated July 08, 2016 and submitted the copy of the disclosure made vide letter dated July 08, 2016.

FINDINGS

6. After perusal of the documents available on record and before proceeding in the matter on its merit, it would be in the fitness of things to first decide the preliminary issue as to whether in view of the demise of the Noticee Manmohan Damani, the present Adjudication Proceedings against him can be continued.
7. In *Girijanandini Vs Bijendra Narain* (AIR 1967 SC 2110), the Hon'ble Supreme Court observed that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply.
8. It is also relevant to refer to the decision of Hon'ble Securities Appellate Tribunal (SAT) in *Chandravadan J Dalal vs. SEBI* (Appeal No. 35/2004 decided on June 15, 2005). The Hon'ble SAT in this case held that:

"The appeal abates since the appellant during the pendency of the appeal died on 29th November 2004. The appeal accordingly abates. The penalty imposed on the original appellant being personal in nature also abates."

9. The violations alleged to have been committed by Manmohan Damani relates to the period November 24, 2010. The SCN was issued to the Noticee on September 28, 2017, whereas Noticee Manmohan Damani expired on July 29, 2016. While it is noted that allegedly there is delay of almost 6 years in making the disclosure for the transaction dated November 24, 2010 by the Noticee, however, the present proceeding cannot be proceeded in terms of the legal pronouncements mentioned above.

ORDER

10. In view of the foregoing, the proceedings against the Noticee are liable to be abated without going into the merits of the case. The matter is disposed of accordingly.
11. In terms of rule 6 of the Rules, copy of this order are sent to the son of the Noticee and also to the Securities and Exchange Board of India.

Date: June 15, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer