

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SM/AO/2019-20/5825/136]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of
BGIL Films & Technologies Limited
(Address: 1301, 13th Floor, Vijaya Building, 17 Barakhamba Road
Connaught Place, New Delhi – 110001)
(PAN No: AAACN0124D)
(CIN: L65993DL1989PLC035572)

In the matter of BGIL Films & Technologies Limited

BACKGROUND

1. A department (in short “**OD**”) of Securities and Exchange Board of India (in short “**SEBI**”) initiated investigation and appointed an Investigating Authority (in short “**IA**”) for trading in the scrip of BGIL Films & Technologies Ltd. (in short “**BFTL/Company/Noticee**”) for a period from June 19, 2008 to Mar 20, 2009 (in short the “**Investigation Period/IP**”) on receiving information that the share price of the scrip shot up on account of the merger announcements. The company was listed on Bombay Stock Exchange (in short “**BSE/Stock Exchange**”) during the investigation period. Pursuant to investigation, IA observed that BFTL made wrong disclosures of promoter shareholding pattern for the quarters ending March 2008 to March 2009 allegedly violated section 21 of Securities Contracts (Regulation) Act, 1956 (in short “**SCRA,1956**”) read with (r/w) clause 35 of the listing agreement with BSE. Further, IA observed that BFTL, did not disclose to the Stock Exchange the price sensitive information regarding its decision to cancel a proposed merger, which was taken during BFTL’s board meeting held on February 23, 2010. IA observed that 1) the Noticee, 2) the (then) chairman and managing director of Noticee and 3) the (then) compliance officer of Noticee were required to disclose price sensitive information to the Stock Exchange and were responsible for ensuring that BFTL complies with continuous disclosure requirements and for overseeing and co-ordinating disclosure

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of price sensitive information to the stock exchange and that the said disclosures were not made thereby violating provisions of regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (in short **"PIT Regulations, 1992"**). IA also observed other violations by other entities, related to trading in the scrip of BFTL. As regards certain findings of the IA regarding Noticee, the OD alleged that Noticee had failed to file requisite disclosures with the stock exchange, thereby violating section 21 of SCRA, 1956 r/w clause 35 of the listing agreement with BSE, regulation 12(2) of PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of Schedule II of the Code of Corporate Disclosure Practices for Prevention of Insider Trading (in short **"Schedule II of CCDP for PIT"**).

APPOINTMENT OF ADJUDICATING OFFICER

2. In light of above findings of IA regarding the Noticee, OD initiated Adjudication Proceedings and an Adjudicating Officer(**"AO"**) was appointed under section 19 of the Securities and Exchange Board of India Act, 1992 (in short **"the SEBI Act, 1992"**) r/w section 15-I(1) of the SEBI Act, 1992 and rule 3 of the Securities and Exchange Board of India (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer), 1995 (in short **"SEBI AO Rules"**) and section 23-I(1) of the SCRA, 1956 and rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer), 2005 (in short **"SCRA AO Rules"**). Shri Nagendraa Parakh was appointed AO to inquire into and adjudge under section 23A(a) of the SCRA, 1956 and section 15A(b) of the SEBI Act, 1992, for the alleged violations of provisions under section 21 of SCRA, 1956 r/w clause 35 of the listing agreement and regulation 12(2) of SEBI PIT Regulations, 1992 r/w clause 2.1 and Clause 7(ii) of Schedule II of CCDP for PIT by the Noticee. The said appointment was conveyed vide a communication dated July 26, 2016. Later on, the instant matter was reassigned and Ms. Sangeeta Rathod (undersigned) was appointed AO vide order dated July 10, 2017. Vide communique dated May 07, 2019, a change in penal provisions was made from section 23A(a) to section 23H of the SCRA, 1956.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. The previous AO issued to the Noticee a Show Cause Notice dated February 02, 2017 no. EAD/NP/AS/OW/2640/2017 through speed post with acknowledgement due (in short

“SPAD”)/registered AD, in terms of the rule 4 of the SCRA AO Rules and SEBI AO Rules requiring the Noticee to show cause as to why an inquiry should not be held against it and penalty be not imposed under section 23A(a) of the SCRA 1956 and section 15A(b) of the SEBI Act, 1992 for the alleged violations of provisions of section 21 of SCRA 1956 r/w clause 35 of the listing agreement and regulation 12(2) of SEBI PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of Schedule II of CCDP for PIT by the Noticee (in short “SCN”). As seen from letter dated February 20, 2017, the said SCN was delivered to the Noticee. SCN issued to the Noticee read as follows:

- *BFTL was promoted by Shri Rakesh Bhatia who was the Chairman and Managing Director of BFTL. Ms. Pooja Mahna was the compliance officer of BFTL during the investigation period. During the Investigation period, the summary of the consolidated shareholding pattern filed with BSE by the Noticee for the quarters ended Mar '08 to Mar '09 was observed which is given under as Table-1 and the Promoters group shareholding pattern filed with BSE was observed which is given under as Table-2 :*

Table 1- Summary of the consolidated shareholding pattern filed with BSE

Category	No. of share holders	No. of Shares	% Shareholding	No. of share holders	No. of Shares	% Share Holding	No. of share holders	No. of Shares	% Shareholding	No. of share holders	No. of Shares	% Share Holding	No. of share holders	No. of Shares	% Share Holding
Quarter ending	31-Mar-08			30-Jun-08			30-Sep-08			31-Dec-08			31-Mar-09		
Promoter Group	26	36,15,630	56.43	26	36,15,630	56.43	26	36,15,630	56.43	27	35,80,630	55.89	27	35,51,830	55.44
Non-Promoter	6,165	27,91,200	43.57	6,181	27,91,200	43.57	6,130	27,91,200	43.57	6,004	28,26,200	44.11	5819	28,55,000	44.56
Total	6,19	64,06,83	100	6,20	64,06,8	100	6,15	64,06,8	100	6,03	64,06,8	100	5846	64,06,8	100

Table 2- Summary of the Promoters group shareholding pattern filed with BSE

Sl. No.	Name of the Shareholder	Mar'08		Jun'08		Sep'08		Dec'08		Mar'09	
		No. of Shares	% to Total	No. of Shares	% to Total	No. of Shares	% to Total	No. of Shares	% to Total	No. of Shares	% to Total
1	Rakesh Bhatia	7,65,381	11.95	7,65,38	11.95	7,65,381	11.95	8,90,381	13.9	9,75,481	15.23
2	Kriti Communications Pvt	4,96,261	7.75	4,96,26	7.75	4,96,261	7.75	4,96,261	7.75	4,96,261	7.75
3	Hawk Fincap & Lease Pvt	4,62,934	7.23	4,62,93	7.23	4,62,934	7.23	4,62,934	7.23	0	0.00
4	Number One Finsec Pvt Ltd.	3,02,800	4.73	3,02,80	4.73	3,02,800	4.73	3,02,800	4.73	3,02,800	4.73
5	Basant Marketing Pvt Ltd.	3,00,000	4.68	3,00,00	4.68	3,00,000	4.68	3,00,000	4.68	0	0.00
6	Number One Finvest Pvt Ltd.	2,98,991	4.67	2,98,99	4.67	2,98,991	4.67	2,98,991	4.67	2,98,991	4.67
7	Exxin Securities & Credits	2,85,100	4.45	2,85,10	4.45	2,85,100	4.45	2,85,100	4.45	0	0.00
8	Arti Bhatia	2,52,653	3.94	2,52,65	3.94	2,52,653	3.94	1,27,653	1.99	5,27,653	8.24
9	Rakesh Bhatia – HUF	1,04,900	1.64	1,04,90	1.64	1,04,900	1.64	1,04,900	1.64	1,04,900	1.64
10	Grindley Finman Pvt Ltd.	1,00,000	1.56	1,00,00	1.56	1,00,000	1.56	1,00,000	1.56	1,00,000	1.56
11	Bhhatia Investment & Fin.	59,300	0.93	59,300	0.93	59,300	0.93	59,300	0.93	88,500	1.38
12	Bharti Singh	45,300	0.71	45,300	0.71	45,300	0.71	45,300	0.71	14,300	0.22
13	Santoshi Devi	45,300	0.71	45,300	0.71	45,300	0.71	10,300	0.16	10,300	0.16

Sl. No.	Name of the Shareholder	Mar'08		Jun'08		Sep'08		Dec'08		Mar'09	
		No. of Shares	% to Total	No. of Shares	% to Total	No. of Shares	% to Total	No. of Shares	% to Total	No. of Shares	% to Total
14	Tanuja Singh	39,700	0.62	39,700	0.62	39,700	0.62	39,700	0.62	12,700	0.2
15	J K Bhatia	38,900	0.61	38,900	0.61	38,900	0.61	38,900	0.61	38,900	0.61
16	Bhartatya Global Infomedia	9,100	0.14	9,100	0.14	9,100	0.14	9,100	0.14	5,72,034	8.93
17	B K Bhatia	3,010	0.05	3,010	0.05	3,010	0.05	3,010	0.05	3,010	0.05
18	Akansha Singh	2,000	0.03	2,000	0.03	2,000	0.03	2,000	0.03	2,000	0.03
19	Abhilasha Singh	2,000	0.03	2,000	0.03	2,000	0.03	2,000	0.03	2,000	0.03
20	Abhishek Singh	1,000	0.02	1,000	0.02	1,000	0.02	1,000	0.02	1,000	0.02
21	Aneeta Chauhan	1,000	0.02	1,000	0.02	1,000	0.02	1,000	0.02	1,000	0.02
	Total	36,15,630	56.43	36,15,6	56.43	36,15,63	56.43	35,80,63	55.89	35,51,830	55.44

As per the consolidated shareholding pattern filed with BSE, by the company, the number of promoter group entities was shown as 26 for the quarters ended March 2008, June 2008 and September 2008 and 27 for the quarters ended December 2008 and March 2009. However, it was observed from the details of the Promoter's group shareholding pattern for the same quarters, disclosed at BSE, that the number of promoter entities was 21 for the quarters ended Mar'08 to Dec'08 and 18 for the quarter ended Mar'09. On enquiry, BFTL vide its letter dated January 22, 2014 stated that due to clerical error, wrong number of promoter group entities were mentioned in the shareholding pattern. Further, it was observed from the Promoter's shareholding pattern for the quarters ended March 2008 to December 2008 that three entities viz., Hawk Fincap & Lease Pvt Ltd. (Hawk), Basant Marketing Pvt Ltd. (Basant) and Exxin Securities & Credits Pvt Ltd. (Exxin) were shown as part of Promoter and Promoter group entities. However, the name of these three entities was not appearing in the promoters' shareholding pattern for the quarter ended March 2009. On enquiry, BFTL vide its letter dated January 22, 2014 stated that in the quarter ending March 2008 to December 2008 shares of these three entities were separately mentioned in the promoter and promoter shareholding. However, in the quarter ended March 2009, it had clubbed these three entities' shareholding with Rakesh Bhatia, Arti Bhatia and BGIL and note regarding the same was given in the aforesaid shareholding pattern. BFTL further vide its letter dated January 29, 2014 stated that Hawk, Basant and Exxin had never been the part of promoters. BFTL vide its letter dated January 29, 2014 and January 31, 2014 had stated that Promoters group entities had given shares of 10,48,034 against loan to three entities. The three promoters, viz., Arti Bhatia (gave 4,00,000 shares), Rakesh Bhatia (gave 85,100 shares) and BGIL (gave 5,62,934 shares) against a loan with Hawk (4,62,934 shares), Basant (3,00,000 shares) and Exxin (2,85,100 shares). It was therefore alleged that BFTL had made wrong disclosures of promoter shareholding pattern for the quarters ended March 2008 to December 2008 by including non-promoter entities as part of the promoter group entities.

- BFTL also made wrong disclosures of promoter shareholding pattern for the quarters ended March 2009 by clubbing shareholding of non-promoters viz., Hawk, Basant and Exxin with promoters' viz., Rakesh Bhatia, Arti Bhatia and BGIL. In view of the above, the promoters' viz., Rakesh Bhatia, Arti Bhatia and BGIL shareholding were shown excessively by 85,100 shares, 4 lakh shares and 4,62,934 shares respectively in the quarter ended March 2009. As per the provisions of the clause 35 of the Listing Agreement, a listed company has to file the statement showing the shareholding pattern and as per the Section 21 of SCRA, the company has to comply with the conditions of the Listing Agreement. It was, therefore, alleged that you, being a

company listed on BSE, failed to comply with the requirements of the Listing Agreement as stipulated in clause 35 of the Listing Agreement, hence, you are also in violation of Section 21 of the SCRA.

- It is noted that during the Investigation period BFTL made three corporate announcements on February 04, February 12 & February 24, 2009 on proposal of the merger of certain divisions of BGIL with BFTL. Subsequently, BFTL had cancelled the said proposed merger in its board meeting held on February 23, 2010. The extract of the minutes of the said meeting stated that "the proposed merger was cancelled due to the disagreement on the pricing and equity ratio". However, it was observed from the corporate announcements made by BFTL that the said cancellation was not disclosed to the Stock Exchange. This non-disclosure of price sensitive information was in violation of Regulation 12(2) of PIT Regulations, 1992 r/w Clause 2.1 and Clause 7(ii) of Schedule II of the Code of Corporate Disclosure Practices for Prevention of Insider Trading. It was, therefore, alleged that you failed to comply with the provisions of Regulation 12(2) of SEBI PIT Regulations, 1992 r/w Clause 2.1 and Clause 7(ii) of Schedule II of the CCDP for PIT.

4. The Noticee replied to the SCN vide letter dated February 20, 2017, stating that it is in the process of filing a reply and requested for further time of 45 days i.e time till March 31, 2017 to submit its reply. Subsequently, the Noticee vide letter March 31, 2017 sought yet more time of 30 days to submit its reply. Further, the Noticee vide letter May 20, 2017 sought further time of till June 08, 2017 to submit their reply. The Noticee vide its letter dated June 06, 2017 submitted its reply as given below:

- The Noticee stated that as per data received from RTA dated 31st March 2009, there are total 27 Promoters but while perusing the name and details of the Promoters as per the RTA data, there are 5 (five) promoters who were holding shares in two different folios. Hence, while submitting the Share Holding pattern w.r.t. promoter's holdings, the repetitive name of the promoters had been merged, taken and counted as one Promoter. That is why the name of the Promoters has been reduced from 27 to 21 while disclosing the promoter's shareholding in detail.
- The Noticee stated that the three entities namely Exxin, Hawk Fincap and Basant were never part of Promoters as the shares has been transferred in terms of pledge to secure a loan. Further, Mr. Rakesh Bhatia obtained the secured loan of Rs.1,00,00,000/- in the best interest of the Company and in lieu transferred shares (considering as pledge against loan) as below mentioned:-
 - Mrs. Arti Bhatia for transfer (300,000 shares to Basant Marketing Pvt. Ltd and 100,000 shares to Exxin Securities & Infomedia Ltd.),
 - Mr. Rakesh Bhatia (85100 shares to Exxin Securities and credit Pvt. Ltd and
 - Bharatiya Global Infomedia Ltd. (4,62,934 shares to Hawk Fincap & lease Pvt. Ltd. and 100,000 shares to Exxin Securities and credit Pvt. Ltd.)
- The Noticee stated that the company made such disclosures to BSE dated 12th, 25th & 29th October, 2007 since the above mentioned shares were transferred from Promoters to these entities. Therefore, company showed them as a Promoter. Later on, Delhi High Court through its order dated 21.04.2009 passed the order that these three entities will not sell the shares of BFTL. That is why BFTL showed those share on the name of actual Promoters since the Basant, Exxin and Hawk had lost their rights of ownership.

- The Noticee stated that the intention of the company was to ensure compliance and give proper disclosure. Technically may be not in terms of law but we have ensured the compliance of law in its spirit without having any mala fide intention of the company w.r.t promoter's shareholding pattern and the clubbing of shareholding of non-promoters. The discrepancies was neither intentional nor with any malafide intention. The company has not made any undue gain or unfair advantage out of the lapse and also not caused any loss to any investor or group of investors rather ensured to comply the order of Hon'ble High Court.
- The Noticee stated that non-disclosure was nowhere connected to any intentional act or to mislead the investors. There was no intention of manipulation with regard to the movement of the share price. During the period of the Board Meetings i.e. from 02.02.2009 to 28.02.2009, shares were traded with volume remaining in both the directions, owing to the volatile nature of the market. There was no particular noted and fixed movement in the price of the shares. Hence, there was no direct relation to the price of the share during that period because of the cancellation of proposed merger. Neither we were involved in any profit making activities during the time nor would any investor have been suffered loss due to this non-disclosure. Investors are well versed and informed that a mere meeting of a merger which is neither confirmed commencement of any ongoing process can affect the prices of the shares.
- The Noticee stated that price sensitive information includes "merger" but there was no further steps taken that would confirm the event of merger. Hence, the promoters were of view that the cancellation of a proposed merger, with no further steps, do not fall within the criteria of being a price sensitive information. Corporate Announcement was made by the company to BSE, stating the reason for cancellation of merger on 06.09.2011, as the disclosure was not made earlier by reason of ignorance of required compliance by us. Also it was duly disclosed in its Annual report for the year 2009-10. SEBI PIT Regulations, 1992 came into force with the primary aim of prevention of abuse by trading when in possession of unpublished price sensitive information. The proposal of merger was taken up in the Board meeting and was not further carried on. The Board however is not the appropriate and whole sole authority to conclude the process of merger. It was purely a business judgment call of the Board and taken to the best judgment of Board. It was a pure commercial dealing which allowed all the investors to take part in the trade. Transaction during this period was not restricted to trading done by members only.
- The Noticee stated that our company, being a listed company general public was involved in the trading as well and we always follow a best practice to comply with the provisions and clauses as agreed with exchange. Further we have made all required compliances within the light of Listing Agreement and thus we be a law abiding and law compliant company.
- The Noticee prayed that their above said submission be considered in the best interest of Company, its Directors, Shareholders and overall business of the company who are very much committed to Compliance to its best. Business judgment in the given economic scenario should be regarded since the Board has always been taking its decision in the best interest of the Company. The Noticee prayed that it may please be considered and disposed off in material terms with examination of its intent and ground reality thereby having any benefits to the company.

5. Subsequently, upon my appointment as AO, I granted an opportunity of personal hearing to the Noticee vide Hearing Notice no. SEBI/HO/A&E/EAD/SR/31883/1 dated December 15, 2017, for hearing scheduled on January 22, 2018, sent by SPAD. Said Hearing Notice returned undelivered with the comment 'no such company'. Noticee was given another opportunity of personal hearing vide Hearing Notice no. SEBI/HO/A&E/EAD/SR/VV/

2248/1 dated January 22, 2018 for hearing scheduled on January 31, 2018, sent by SPAD. The Hearing Notice was delivered to the Noticee as seen from the material available on record. The Noticee replied vide email and letter dated January 29, 2018 and requested for 30 days' time. Noticee was given yet another opportunity of personal hearing vide Hearing Notice no. SEBI/HO/A&E/EAD/SR/VV/11234/2 dated April 11, 2018 for hearing scheduled on April 18, 2018, sent by SPAD. Said Hearing Notice was delivered to the Noticee as seen from the material available on record. However, no reply was received from Noticee to the Hearing Notice issued. Noticee was given yet another opportunity of personal hearing vide Hearing Notice no. SEBI/HO/A&E/EAD/SR/VV/3242/2 dated May 03, 2018 for hearing scheduled on May 16, 2018, sent by SPAD. The Noticee replied to the Hearing Notice vide its letter dated May 14, 2018 (SEBI inward no 41084) and submitted that it had authorised one K.K.Singh to appear for the hearing as its authorised representative (AR) and that its authorised representative has sought time to prepare the representation to appear for the hearing. Noticee was given yet another opportunity of personal hearing vide Hearing Notice SEBI/HO/A&E/EAD/SR/VV/14683/1 dated May 17, 2018 for hearing scheduled on May 30, 2018, sent by SPAD. The Noticee vide their AR (sender email id: kamalk@kksinghassocaites.com) sent an email dated May 30, 2018 stating that he was unable to reach Mumbai for the hearing due to travel constraints and requested for adjournment of hearing to third week of June or 1st week of July 2018, which was acceded to. One final opportunity of hearing was granted to the Noticee email dated June 06, 2018, scheduled on June 21, 2018. AR confirmed attendance. The AR attended the hearing on behalf of the Noticee as scheduled on June 21, 2018, hearing minutes are on record. The AR of the Noticee requested for further time, request was acceded to and time was granted till August 06, 2018. The Noticee vide letters dated August 04, 2018 reiterated earlier reply dated June 06, 2017.

6. OD was referred to in the matter vide office note dated September 20, 2018, and OD reverted on May 08, 2019 with revision of penal provisions mentioned in the AO communique from section 23A(a) to section 23H of the SCRA, 1956. Accordingly, corrigendum to SCN mentioning the same was issued to the Noticee vide letter no SEBI/HO/EAD/E&AO/SR/SM/OW/15635/ 1/2019 dated June 21, 2019 through SPAD, all other contents of the SCN remaining the same. The said corrigendum is delivered as seen from the proof of delivery by India Post available on record. The Noticee was

provided time stipulated as per AO Rules, 2005 for submitting a reply to corrigendum. Noticee replied through AR that it has received the said corrigendum and needs 30 days to respond. AO acceded to the request and sent a hearing notice vide letter dated August 20, 2019 no. ...21214/1/2019 for a hearing scheduled on September 18, 2019. Noticee was also informed that if it fails to avail of this opportunity of hearing, the matter will be proceeded upon based on material available on record. The said hearing notice was sent by SPAD and also by email. However, Noticee has not replied to the corrigendum nor availed of the opportunity of hearing provided post issuance of corrigendum. I believe sufficient time and opportunity was provided to the Noticee after the issuance of corrigendum, thus after taking into account, the allegations levelled in the SCN, the replies of the Noticee to the SCN, submissions made with regard to the Hearing Notices and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES

7. I have carefully perused the material available on record and issues that merit consideration in the instant case are:
- (a) **Whether the Noticee has violated section 21 of SCRA, 1956 r/w clause 35 of the listing agreement by failing to make correct disclosures?**
 - (b) **Whether the Noticee has violated regulation 12(2) of PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of Schedule II of the CCDP for PIT, by failing to make requisite disclosures within stipulated time to the stock exchanges?**
 - (c) **If yes to a and/or b above, whether the Noticee is liable for a penalty under section 23H of the SCRA, 1956 and/or section 15A(b) of the SEBI Act, 1992?**
 - (d) **If the Noticee is liable for monetary penalty, then what should be the quantum of such monetary penalty?**
8. Before proceeding further, I would like to refer to the texts of relevant provisions ie. section 21 of SCRA, 1956, clause 35 of the listing agreement, regulation 12(2) of PIT Regulations, 1992, clause 2.1 and clause 7(ii) of Schedule II of the CCDP for PIT, which read as follows:-

SCRA 1956

Conditions for listing.

21. *Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

Listing Agreement

Clause 35

35. *The company agrees to file with the exchange the following details, separately for each class of equity shares/ security in the formats specified in this clause, in compliance with the following timelines, namely:-*

- a. One day prior to listing of its securities on the stock exchanges.*
- b. On a quarterly basis, within 21 days from the end of each quarter.*
- c. Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital”*

PIT Regulations, 1992

Code of internal procedures and conduct for listed companies and other entities.

12(2): *The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

Schedule II Code Of Corporate Disclosure Practices For Prevention Of Insider Trading

“2.1 *Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis”.*

7.0 Medium of disclosure/dissemination

“(ii) *Corporates shall ensure that disclosure to stock exchanges is made promptly.”*

9. On perusal of the material available on record and after giving regard to the facts and circumstances of the case, I record my findings for every issue under consideration as follows:

EVIDENCES AND FINDINGS

10. Issue (a): Whether the Noticee has violated section 21 of SCRA, 1956 r/w clause 35 of the listing agreement by failing to make correct disclosures?

(a) I note that the Noticee is charged with alleged violation of section 21 of the SCRA, 1956 r/w clause 35 of the listing agreement of BSE. Section 21 of the SCRA requires listed companies to comply with listing conditions and clause 35 of the listing agreement requires listed companies to disclose shareholding pattern of the company. Alleged violations on part of the Noticee are owing to filing of wrong disclosures of promoter shareholding pattern for the quarters ended March 2008 to March 2009 under consolidated shareholding pattern filed with BSE and wrong disclosures owing to including non-promoter entities as part of the promoter group

entities. It is further alleged that shareholding pattern disclosed at BSE shows the number of promoter entities was 21 for the quarters ended March 2008 to December 2008 and 18 for the quarter ended March 2009, whereas Noticee has contended that the number of promoters for quarter ending March 2008 was 26 and for the quarters ending December 2008 to March 2009 it was 27. The Noticee has also contended that the reasons for such discrepancy were a) Data from RTA dated March 31st 2009 had repetitive names of the promoters so appearing owing to different demat accounts in which promoters had shares and same were merged and counted as one promoter, therefore the number went down from 27 to 21. Noticee has attached letter from RTA. and b) Promoter of the company had raised a loan and transferred shares to lender considering it as a pledge against the said loan, thus those entities were shown as promoters, however, later on owing to an order of Hon'ble Delhi High Court, these three entities lost their right to sell said shares transferred by the promoter of BFTL and therefore three such names were removed from the promoter and promoter group shareholding disclosed on BSE website.

- (b) Both of the aforementioned contentions of the Noticee are not acceptable to me for following reasons: as regards, veracity of data sent by RTA, the responsibility lies solely on the company (BFTL), the principal for actions of the agent, in this matter. Thus, Noticee claiming umbrage that data was so provided by RTA and uploaded as it is, is not acceptable to me. Also, Noticee showed three shareholders as promoters by the mere fact that they were transferred shares, as contended by Noticee, these shares were a pledge for loan taken. As seen from shareholding pattern, not every shareholder is named as promoter by Noticee by virtue of shareholding, it is not clear from record why the said entities were shown as promoters by the Noticee and also that later on, their names removed owing to the said Hon'ble High Court order, as having shareholding is not entitlement of being a promoter and being barred from selling cannot be reason for removal from being promoters. As regards the said allegations of incorrect shareholding pattern, I note that the same stand established, also it is admitted position that wrong disclosures were made by the Noticee.

11. Issue (b): Whether the Noticee has violated regulation 12(2) of PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of Schedule II of the CCDP for PIT, by failing to make requisite disclosures within stipulated time the stock exchanges?

- (a) The Noticee is also, alleged to have violated PIT Regulations, 1992 for failure to make requisite disclosures to the Stock Exchanges on the price sensitive information of the decision of the company to cancel the proposed merger which was taken during company's board meeting held on February 23, 2010. I note that the Noticee was required to file disclosures on continuous and immediate basis to the stock exchange with regard to the decision of the company to cancel the proposed merger, as required under regulation 12(2) of PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of CCDP of PIT.
- (b) In the reply to SCN, the Noticee stated that *non-disclosure was nowhere connected to any intentional act or to mislead the investors. There was no intention of manipulation with regard to the movement of the share price. During the period of the Board Meetings i.e. from 02.02.2009 to 28.02.2009, shares were traded with volume remaining in both the directions, owing to the volatile nature of the market. There was no particular noted and fixed movement in the price of the shares. Hence, there was no direct relation to the price of the share during that period because of the cancellation of proposed merger. Neither we were involved in any profit making activities during the time nor would any investor have been suffered loss due to this non-disclosure. Investors are well versed and informed that a mere meeting of a merger which is neither confirmed commencement of any ongoing process can affect the prices of the shares. The Noticee stated that price sensitive information includes "merger" but there was no further steps taken that would confirm the event of merger. Hence, the promoters were of view that the cancellation of a proposed merger, with no further steps, do not fall within the criteria of being a price sensitive information.*
- (c) Further, I note that the Noticee with regard to the non-filing of disclosure on the decision of the company to cancel the proposed merger which was taken during company's board meeting held on February 23, 2010, has admitted to non-filing of disclosure, however stated that it was unintentional. The Noticee has stated vide reply letters dated June 06, 2017 and August 04, 2018 that the promoters were of

view that the cancellation of a proposed merger, with no further steps, do not fall within the criteria of being a price sensitive information. However, the Noticee states that the it had filed disclosures to BSE, stating the reason for cancellation of proposed merger on September 6, 2011 and the Noticee has admitted that the disclosure was not made earlier by reason of ignorance of required compliance by Noticee.

- (d) I note from the observations made by IA, from the contentions of Noticee and email correspondence of BSE that while Noticee had made disclosures of announcing merger immediately after Board Meeting where possibility of a proposal of merger was discussed, the Noticee failed to show same alacrity with regard to the decision of cancellation of the proposal of merger. It is an admitted position that the Noticee had failed to disclose immediately after the Board Meeting where the decision of cancellation was taken and that Noticee finally disclosed about cancellation of the proposal of merger on September 6, 2011. I observe from the reply of the Noticee, that the issue to be considered is whether the proposal of merger or its cancellation would constitute to be a “price sensitive information”. I note that as per Regulation 2(ha) of SEBI (PIT) Regulations, 1992 “price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. Explanation.—The following shall be deemed to be price sensitive information :— (i) periodical financial results of the company; (ii) intended declaration of dividends (both interim and final); (iii) issue of securities or buy-back of securities; (iv) any major expansion plans or execution of new projects. (v) amalgamation, mergers or takeovers; (vi) disposal of the whole or substantial part of the undertaking; (vii) and significant changes in policies, plans or operations of the company; and “unpublished” means information which is not published by the company or its agents and is not specific in nature. I observe that the proposal for a merger and subsequent cancellation of the proposal of merger both constitute to be a ‘price sensitive information’. I note that as the cancellation of the proposal for merger constitutes to be a ‘price sensitive information’, there is a need to make requisite disclosures to the Stock Exchange on an immediate basis. However, I observe that BSE had not received disclosures from the Noticee on an immediate basis for the relevant price sensitive information.

- (e) I note that the Noticee has stated that the company along with its promoters and promoter group *w.r.t the discrepancies in promoter's shareholding pattern and the clubbing of shareholding of non-promoters was neither intentional nor with any mala fide intention*. In this regard it is relevant to refer to the case, *Chairman, SEBI vs. Shriram Mutual Fund*, where the Hon'ble Supreme Court while interpreting the provisions of the SEBI Act has 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 Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention was made by the defaulter with guilty intention or not. We also further hold that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."*
- (f) In view of the wrong filing and non-filing of disclosures by the Noticee to the Stock exchange and in the light of the admitted position by the Noticee on the allegations made against the Noticee, I conclude the Noticee as alleged, has filed wrong disclosures on the number of promoter group entities under the consolidated shareholding pattern filed with stock exchange and the Noticee has failed to make requisite disclosures on the cancellation of proposed merger to the Stock Exchange within the stipulated time, thereby violating the provisions of section 21 of SCRA, 1956 r/w clause 35 of the listing agreement with BSE, regulation 12(2) of PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of Schedule II of CCDP for PIT respectively. The allegations against the Noticee thus stand established.

13. Issue c: If yes to issue a and/or issue b above, whether the Noticee is liable for a penalty under section 23H of the SCRA, 1956 and/or section 15A(b) of the SEBI Act, 1992?

Before proceeding further, I would like to refer to the text of the said penalty provisions:

The SCRA, 1956

Penalty for contravention where no separate penalty has been provided.

23H: Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

The SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

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

(b) 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."

From the material on record including the admitted position of the Noticee, it is established that Noticee is in violation of section 21 of SCRA, 1956 r/w clause 35 of the listing agreement with BSE as regards the wrong disclosure of shareholding pattern of the Noticee and is thereby liable for a penalty under section 23H of SCRA, 1956. I also find from the material on record including reply of Noticee that Noticee had failed to make disclosures regarding price sensitive information as stipulated under regulation 12(2) of PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of Schedule II of CCDP for PIT and is thereby liable for a penalty under section 15A(b) of the SEBI Act, 1992.

14. Issue d: If the Noticee is liable for monetary penalty, then what should be the quantum of such monetary penalty?

(a) While determining the quantum of penalty under section 23H of SCRA, 1956 and section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in section 23J of the SCRA, 1956 and section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, which reads as under:-

The SCRA, 1956

23J: Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under Section 23-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.*

SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

15J -: *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.”*

- (b) I observe that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made specifically by the Noticee and the loss, if any, suffered by the investors due to such non-compliance of disclosure requirements and that material on record does not show that the failure by the Noticee is repetitive, in nature. I find that the Noticee violated the provisions of section 21 of SCRA, 1956 r/w clause 35 of the listing agreement with BSE, regulation 12(2) of PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of Schedule II of CCDP for PIT.
- (c) The object of the Regulations, mandating disclosure of shareholding is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. 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 results in preventing investors from taking well informed decision.

(d) 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. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. Vs. SEBI–, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market.”*

(e) Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for a monetary penalty of Rs. 5,00,000/- (Rupees five lakhs only) for non-compliance of various disclosure requirements mentioned herein.

ORDER

15. In exercise of the powers conferred under section 23-I of the SCRA, 1956, section 15-I of the SEBI Act, 1992 and rule 5 of the SEBI AO Rules and SCRA AO Rules, I hereby impose a penalty of Rs. 5,00,000/- (Rupees five lakhs only) on the Noticee viz. BGIL Films & Technologies Ltd under section 23H of SCRA, 1956 and section 15A(b) of the SEBI Act, 1992 for the violation of the provision of section 21 of SCRA, 1956 r/w clause 35 of the listing agreement with BSE, regulation 12(2) of PIT Regulations, 1992 r/w clause 2.1 and clause 7(ii) of Schedule II of CCDP for PIT. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.
16. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:
 - a. By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai
17. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C-4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

- a) Case Name
- b) Name of the 'Payer/Noticee'
- c) Date of Payment
- d) Amount Paid
- e) Transaction No.
- f) Bank Details in which payment is made
- g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

18. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

19. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of SEBI AO Rules and SCRA AO Rules.

Date: November 29, 2019

SANGEETA RATHOD

Place: Mumbai

ADJUDICATING OFFICER