

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-3/ 111-115 /2018)

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.

In respect of:

Ms. Jayasree Anumolu
Mr. Bharat Anumolu
Ms. P Lalithamba
Mr. Amrith A
Gunnam Subba Rao Insulation Pvt. Ltd.

(PAN: ACDPA8286F)
(PAN: AHMPA2608P)
(PAN: AEJPP6104R)
(PAN: AIUPA0184B)
(PAN: AABCG3676N)

In the matter of
M/s Beardsell Limited
No.47, Greams Road
Chennai 600 006

FACTS OF THE CASE

1. An open offer was made by Ms. Jayasree Anumolu, Mr. Bharat Anumolu , Ms P Lalithamba, Mr. Amrith A and M/s. Gunnam Subba Rao Insulation Pvt. Ltd. (hereinafter individually referred to by their name and collectively referred as '**Noticees**') in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to the existing shareholders of Beardsell Limited (hereinafter referred to as '**Company**'/'**BSL**') through a public announcement dated March 28, 2012 for acquisition of 12,17,624 equity shares of the Company, representing 26% of the total paid up capital of the Company at a price of Rs 58/- per share. As per the filings made by BSL to the stock exchanges, the

Noticees were mentioned under the category of promoters/promoter group of BSL.

2. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), examined the letter of offer dated May 25, 2012 pertaining to the aforementioned open offer and observed that the Noticees have failed to comply with various provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations 1997**') and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**'). Therefore, adjudication proceedings were initiated against the Noticees under the provisions of sections 15 A (b) and 15H (ii) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'). During the aforementioned period of the open offer, the shares of the Company were listed on the Madras Stock Exchange (hereinafter referred to as '**MSE**') and permitted to trade on the National Stock Exchange ('**NSE**'). BSL is presently listed on the BSE and NSE.
3. It was observed by SEBI that the Noticees had allegedly failed to make a public announcement under Regulation 11(1) r/w Regulation 14(1) of the SAST Regulations, 1997 w.r.t increase in their total shareholding in the company by 7.76% i.e. from 38.08% to 45.84% as on September 30, 2004. It was also alleged that Noticees have failed to make the necessary disclosures to the Company under the provisions of Regulation 8(1) and Regulation 8(2) of the SAST Regulations, 1997 during the year 2007. Further, it was alleged that the two promoters' of BSL viz. Ms Jayasree Anumolu and Shri Bharat Anumolu had failed to make the disclosures to MSE under the provisions of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, 2011 w.r.t their acquisition of the shares of the company as a result of conversion of warrants to equity shares.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri D Ravikumar was appointed as Adjudicating Officer vide order dated April 26, 2013 under Section 15-I of the SEBI Act read with Rule 3 of the Securities

and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Sections 15A (b) and 15H (ii) of the SEBI Act, the alleged violation of the provisions of Regulation 11(1) r/w Regulation 14(1) of the SAST Regulations, 1997, Regulation 8(1) and Regulation 8(2) of the SAST Regulations, 1997 by the Noticees and also the alleged violation of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, 2011 by Ms Jayasree Anumolu and Shri Bharat Anumolu. Consequent upon the transfer of Shri D Ravikumar, I have been appointed as the Adjudicating Officer in the matter, vide order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

5. Show Cause Notice ref. A&E/DRK/DS/31854/2014 dated November 10, 2014 (hereinafter referred to as '**SCN**') was issued to the Noticees under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty, if any, be not imposed under Sections 15A (b) and 15H (ii) of the SEBI Act for the alleged violations committed by the Noticees, as specified in the SCN. In the SCN it was alleged that Noticees have failed to make public announcement under the provisions of Regulation 11(1) read with Regulation 14(1) of the SAST Regulations, 1997 during the year 2004 and also failed to make the required disclosures to the Company as mandated under Regulations 8(1) and 8(2) of the SAST Regulations, 1997 during the year 2007. Further, it was alleged that the two Noticees viz. Ms Jayasree Anumolu and Shri Bharat Anumolu have failed to make the necessary disclosures required to be made under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, 2011 w.r.t their acquisition of shares of the Company as a result of conversion of warrants to equity shares during the year 2011.
6. Vide letter dated November 27, 2014, Noticees filed a common reply to the SCN. Briefly, the submissions made by the Noticees are as under:

- a. *The acquirers did not have the information on the exact record date. The situation arose as the Noticees habitually consult with the Compliance Officer of the Company to get the full information for making their disclosure, under the said regulations. However, the Compliance officer had gone on personal leave. Noticees have always been extra-cautious in complying with Regulation 8(1) and 8(2) of SEBI (SAST) Regulations 1997 every other time before and after September 2007. This delay was exception and due to unavoidable circumstance only.*
- b. *BSL had issued 2,00,000 share warrants each to Ms. Jayashree Anumolu and Mr. Bharat Anumolu (Noticee 1 & 2) on October 27, 2010. Pursuant to the conversion of the warrants into equity shares, the Company allotted 4,00,000 equity shares to the said promoters on 31 October, 2011. The promoters then, routinely, made the required disclosures under the provisions of Regulation 7(1)/7(1A) of SAST, 1997 on November 02, 2011. They were unfortunately, not aware that the SAST 2011 had come into effect on September 23, 2011. The Company had responded to the wrong disclosure made under SAST, 1997. After realizing their mistake, the said promoters furnished a revised disclosure under Regulation 29(2) of SAST 2011 on November 03, 2011 to the Company. However, the promoters had failed to send the disclosures to the Stock Exchange. Since, under Regulation 7(2) of SAST 1997, the acquirers were only required to communicate the acquisition of shares to the Company. This oversight was noted only at the time of making the disclosure for the next allotment of 4,50,000 equity shares on March 29, 2012. Hence, the promoters sent a fresh intimation of the acquisition of the 4,00,000 equity shares on October 31, 2011 to the Stock Exchange on March 29, 2012 resulting in a delay of 148 days.*
- c. *The issue of 4,00,000 convertible equity warrants were approved by the shareholders at the General Meeting of the company held on September 28, 2010. In the resolution passed for the approval, the currency of the warrant, and the expected date for conversion was explicitly mentioned, along with*

pre and post-acquisition shareholding. Further, following the allotment of shares on October 31, 2011, the quarterly results for the quarter ended on September 30, 2011 was adopted and furnished to the stock exchange as per clause 41 of the listing agreement on November 14, 2011, where the revised promoter holding at 48.25% has been disclosed. Given all the above, it is evident that, the said unintentional delay, which is attributed to the Noticees, have not resulted in any material loss to the shareholders of the company.

- d. Noticee 5 i.e Gunnam Subbarao Insulation Pvt Ltd was included as a promoter of BSL on September 30, 2004. Pursuant to the inclusion of Gunnam Subbarao Insulation Pvt Ltd in the promoter group category of BSL, the total Promoter shareholding increased by 7.76% i.e. from 38.08% to 45.84%. Since the increase in shareholding was more than 5%, the promoter needs to give an open offer. The reason for inclusion of Noticee 5 in the promoter category was that, one of the promoters of BSL, already holding shares in Noticee 5, was allotted shares is Noticee 5, thereby increasing the person's shareholding beyond 50% of the paid-up share capital of Noticee 5.*
- e. At the time of classifying Gunnam Subbarao Insulation Pvt Ltd - Noticee 5 in the promoter category of BSL, the promoters of BSL had inadvertently violated the provisions of regulation 11(1) of SAST Regulations, 1997 without making the open offer. In order to rectify the same, the offer price to the shareholders of BSL, during the Open Offer as per offer letter dated May 25, 2012, was computed as on the date of the inclusion of Noticee 5 in the promoter category along with the interest from the date of triggering of the takeover code till the public announcement date i.e March 28, 2012.*
- f. The offer price was accordingly calculated, as aforesaid, for infrequently traded shares of BSL as per Regulation 20(5) of the SAST Regulations, 1997, in accordance with the HLL method, amounting to Rs. 55.15 (approx.), inclusive of interest @ 12% p.a. from the triggering date till the date of Public Announcement of open offer i.e March 28, 2012 in BSL, which is less than*

the open offer price of Rs. 58. The Noticees, once becoming aware of the situation have voluntarily tried to rectify the situation by offering adequate compensation in the Open offer price. Thus, the promoters have already accepted that they have committed a genuine mistake. Therefore, we request you to take the above on record and treat the matter as closed.

7. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, Noticees were granted an opportunity of personal hearing on May 25, 2017 vide notice dated April 28, 2017. Ms. Swetha Subramanian, appeared as Authorized Representative (AR) on behalf of the Noticees and reiterated the submissions made by the Noticees vide their letter dated November 27, 2014. Pursuant to the hearing, Noticees filed additional reply vide their letter dated June 24, 2017 and, inter alia, made the following additional submissions:

- a. *In the year 2007, BSL has declared dividend at its AGM held on August 27, 2007, and the record date for the same was on August 18, 2007. As per Regulation 8(2) of the SAST Regulations, the promoters were required to make disclosure to the Stock Exchange about the number and percentage of shares or voting rights held by them in the company within 21 days from the record date, i.e. on or before September 17, 2007, but the promoters filed the disclosure on September 19, 2007, with a delay of 2 days.*
- b. *It would also be pertinent to submit that the Company filed the disclosure under Regulation 8(3) on time for the year ended March 31, 2007, which contained the particulars of the shares held by the promoters of the Company and there were no changes in shareholding pattern of the promoters since the filing was made under Regulation 8(3) by the Company. Thus, the shareholders of the Company were not deprived of the information pertaining to the shareholding pattern of the promoters, during the period of delay in filing the disclosure under Regulation 8(2) of the SAST Regulations, 1997 due on September 17, 2007.*

- c. Further, we wish to highlight that, the cause of action as mentioned in the SCN would need to be amended to refer to only the delay in compliance with Regulation 8(2) and not the “ yearly disclosure required under Regulation 8(1) of SAST Regulations, 1997, as the provisions of Regulation 8(1) of SAST Regulations, 1997 are not applicable in the instant case given that it refers to “A person, including a person mentioned in regulation 6 who holds more than [fifteen] per cent shares or voting rights in the Company ...”. Accordingly, 8(2) is the appropriate provision of the takeover code applicable to in the instant case.
- d. The share warrants were converted into equity shares on October 31, 2011, and 2,00,000 fully paid up equity shares of Rs. 10 each of BSL were allotted to the two promoters (i.e. Jayashree Anumolu and Bharat Anumolu -Noticee 1 and 2). There was an increase in the promoter’s shareholding by 4.89% following the issue of equity shares to the promoters. Hence, the promoters were required to make the disclosure under Regulation 29(2), for increase in the shareholding over and above 2%, within 2 days from the date of allotment of shares i.e. on November 02, 2011. However, the said promoters made the required disclosure under Regulation 29(2) of the SAST Regulations, 2011 only on March 29, 2012 with a delay of 148 days.
- e. However, it is observed in the SCN that Noticee 1 and 2 i.e. Jayasree Anumolu and Bharat Anumolu had failed to make disclosure on time in accordance with Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, 2011, but not under Regulation 29(2) r/w Regulation 29(3), as the said promoters already held more than 5% shares in BSL prior to conversion of the warrants to equity shares.
- f. On September 30, 2004, Noticee 5 i.e. Gunnam Subbarao Insulations Pvt Ltd (GSRIPL) was re-categorized as a promoter of BSL from the public category. Pursuant to the inclusion of Noticee 5 in the promoter group category of BSL, the total promoter shareholding increased by 7.76% i.e. from 38.08% to 45.84%. Prior to inclusion of the Company in the promoter

category of BSL, Noticee 5 already held 7.76% of the paid-up share capital of BSL.

- g. The reason for inclusion of Noticee 5 in the promoter category was that, one of the promoters of BSL, i.e. Noticee 3 who was already holding shares in Noticee 5, was allotted further shares in that company on September 30, 2004, thereby increasing her shareholding beyond 50% of the total paid-up share capital of Noticee 5. In addition to the above, on September 30, 2004, Noticee 5 acquired 4.43% share capital of BSL through an inter-se transfer of shares from another promoter shareholder, Nava Bharat Ferro Alloys Ltd. Hence, there was a change in the total promoter's shareholding by 7.76% during the Fiscal Year 2004-2005. Since the increase was more than 5%, the promoters were required to make an open offer to acquire shares under Regulation 11(1) of SAST Regulations, 1997. However, the promoters of BSL inadvertently violated the provisions of Regulation 11(1) of SAST Regulations, 1997 and proceeded to reclassify GSRIPL's shares from public to promoter without making an open offer, as the promoters believed that increase in their shareholding by 7.76% over and above their existing holding of 38.08% on account of reclassification was not going to materially affect the management and control.
- h. In order to rectify the situation, and to compensate the shareholders, the offer price as per letter of offer dated May 25, 2012, was computed to be higher than the price at which the promoters would have offered the shareholders as on the date of inclusion of Noticee 5 in the promoter group category in 2004, including interest for the period commencing from the date of triggering of the open offer obligation under SAST Regulations 1997 on September 30, 2004 till the date of public announcement was issued on March 28, 2012. The price to be offered to the shareholders of BSL, if an offer was made in 2004 on inclusion of Noticee 5 to the promoter category was calculated at rate applicable for infrequently traded shares of BSL as per Regulation 20(5) of the SAST Regulations, 1997, in accordance with the HLL method. The price so arrived at from the triggering date i.e. September

30, 2004 till the date of actual Public Announcement of Open Offer was made on March 28, 2012.

- i. *From the above, it is clear that the shareholders of BSL have benefited far more from the voluntary public offer made by the Company in 2012 than they would have benefited had the Company been directed by SEBI to make a public offer in 2004 and thus, safeguarding the interests of the minority shareholders, which is the main objective of the SAST Regulations, 1997. Given that the promoters of BSL have voluntarily tried to rectify the mistake and have suffered monetarily through payment of a fair price to the shareholders, we submit that, the promoters should not be penalized again for the same offence. In support of this submission, we rely on the decision of SAT, in the case of Sterling Investment Corporation ... “if a person voluntarily complies with the show cause notice and has paid interest on the delayed payments....he should be spared the ordeal of the wasteful expenditure of going through a trial before the adjudicating Officer”. Hence, we request to consider the above factors and treat the interest amount that were already paid to the shareholders as adequate compensation and condone the promoters by not levying any penalty under section 15H of SEBI Act, 1992.*
 - j. *Based on the submissions above, Noticees requested for an opportunity of a personal hearing to be provided to them through their authorized representative.*
8. In view of the specific request made by the Noticees for an opportunity of hearing, Noticees were provided with another opportunity of personal hearing on July 06, 2017. Ms. Swetha Subramanian, the AR on behalf of the Noticees appeared for the hearing on the stipulated date and reiterated the submissions made by the Noticees in their earlier letters dated November 27, 2014 and June 24, 2017. Subsequently, vide letter dated July 14, 2017, Noticees, inter alia, made the following submissions:

- a. *A copy of the disclosure made under Regulation 8(2) by Noticee 1, 2, 3 and 5 following the record date set for the purpose of declaration of dividend on August 18, 2007, in accordance with the SAST Regulations, 1997 is enclosed. Since Noticee 4 i.e Amrith A was not a shareholder of BSL on that date, there was no obligation for a disclosure under SAST Regulations, 1997 on Noticee 4.*
- b. *We request to consider the case of Contact Consultancy Services Pvt. Ltd. vs. SEBI; VLS Finance Ltd.; Sterling Investment Corporation vs. SEBI , and treat the interest amount already paid by the promoters to the shareholders as adequate compensation and condone the promoters by not levying any penalty under Section 15H(ii) of the SEBI, Act.*
- c. *Minimum penalty may be levied for the alleged violation of regulation 8(2) of SEBI (SAST) Regulations, 1997 and Regulation 29(2) of SEBI (SAST) Regulations, 2011 under section 15A (b) of the SEBI Act, 1992 and no penalty may be levied for the alleged violation of Regulation 11(1) r/w Regulation 14(1) of the SAST Regulations, 1997 u/s. 15H (ii) of the SEBI Act.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:

9. I have carefully perused the oral and written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are:
 - a. Whether the Noticees have failed to make a public announcement under Regulation 11(1) r/w Regulation 14(1) of the SAST Regulations, 1997?
 - b. Whether the Noticees have violated the provisions of Regulations 8(1) & 8(2) of the SAST Regulations, 1997 for the year 2007?
 - c. Whether the two Noticees viz. Ms Jayasree Anumolu and Mr Bharat Anumolu have violated the provisions of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, 2011 for the year 2011?

- d. Does the violation, if any, attract monetary penalty under Sections 15A (b) and 15H (ii) of the SEBI Act, as applicable?
 - e. If so, what would be the monetary penalty that can be imposed on the Noticees taking into consideration the factors mentioned in Section 15 J of the SEBI Act?
10. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 1997 and SAST Regulations, 2011 allegedly violated by the Noticees, which reads as under:

SAST Regulations, 1997

Continual Disclosure

Reg.. 8(1) Every person, including a person mentioned in regulation 6 who holds more than fifteen per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the Company, in respect of his holdings as on 31st March.

(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company

(3)

(4)

Consolidation of holdings

Reg. 11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

Timing of the Public Announcement of Offer

Reg. 14. (1) The public announcement referred to in Regulation 10 or Regulation 11 shall be made by the merchant banker not later than four working days of

entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein.

SAST Regulations 2011

Disclosure of acquisition and disposal.

Reg. 29. (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

Reg.29 (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of the intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed;*
- and*
- (b) the target company at its registered office.*

11. I now proceed to record my observations/findings as under:-

a. Whether the Noticees have failed to make a public announcement under Regulation 11(1) r/w Regulation 14(1) of the SAST Regulations, 1997?

- (i) In the SCN, it has been alleged that the Noticees who were the promoters of BSL during the relevant period had failed to make a Public Announcement in accordance with the provisions of Regulation 11(1) r/w Regulation 14(1) of the SAST Regulations, 1997. I observe that M/s Gunnam Subba Rao Insulation Pvt Ltd (formerly known as Gunnam Subbarao Investments Private Limited) was included in the promoter group category of BSL on September 30, 2004. I also observe that M/s Gunnam Subba Rao Insulation Pvt Ltd had acquired 4.43% shares of BSL from other promoter shareholders of the company by way of inter-se transfer on September 30, 2004. Consequently, the total shareholding of the promoters/promoter group of BSL increased from 38.08% to 45.84%

i.e the collective shareholding of the promoters/promoter group of BSL increased by 7.76% of the total share capital of the company. In view of the above, Noticees were required to make a Public Announcement of open offer in terms of Regulation 11 (1) r/w Regulation 14(1) of the SAST Regulations, 1997. However, it was observed that Noticees had failed to comply with the aforementioned provisions of law.

- (ii) I note from the shareholding pattern of the promoters/promoter group of BSL, which was filed by the Company with the stock exchanges for the financial years ended March 31, 2005, March 31, 2006, March 31, 2007 and March 31, 2008 that Mr Amrith A (who has been mentioned as one of the Noticees in the SCN) was not included/mentioned in the category of promoters/promoter group of BSL in the aforementioned shareholding filings made by the Company to stock exchanges. The Noticees, vide their letter dated July 14, 2017, have also confirmed the fact that Mr Amrith A was not a shareholder of the company during the above referred period. I observe from the material/records made available that Mr Amrith A was inducted as a director on the Board of BSL in the year 2010 and thereafter, he was mentioned under the category of promoters/promoter group of BSL and the same was also disclosed in the shareholding filings made by the company to the stock exchanges after 2010. Thus, in view of the above observations, it would not be possible to hold that Mr Amrith A has failed to comply with the provisions of Regulation 11(1) r/w Regulation 14 (1) of the SAST Regulations, 1997 as he was not included in the category of promoters/promoter group of BSL during the relevant period when the promoters of BSL were obligated to make a public announcement, as mentioned in para 11 (a) (i) above. Accordingly, it would be reasonable to conclude that the allegations made in the SCN that the Noticees have failed to make a public announcement and also failed

to comply with the requirements of Regulation 11(1) r/w Regulation 14(1) of the SAST Regulations, 1997 should be restricted to the other promoters of BSL namely, Ms Jayasree Anumolu, Mr Bharat Anumolu, Ms Lalithamba and M/s Gunnam Subba Rao Insulation Pvt Ltd.

- (iii) From the reply of the Noticees to the SCN, I find that they have admitted to the failure on their part to make the public announcement within the stipulated time period during the year 2004. The Noticees have mentioned that in view of their failure to make the public announcement during the year 2004, they have taken necessary steps to compensate the shareholders of the company by revising the open offer price in the letter of offer dated May 25, 2012 and by also factoring in the interest component i.e interest @12% p.a from the original trigger date for making the Public Announcement i.e September 30, 2004 till March 28, 2012 (which was the date of the Public Announcement mentioned in the letter of offer dated May 25, 2012). I observe that in page no. 12 of the letter of offer dated May 25, 2012, the Noticees (who were the acquirers in the open offer) have made the following disclosure:

“Further, the promoters of the Target Company inadvertently violated the provisions of Regulation 11(1) of the SAST Regulations, 1997 on account of increase in the total promoters’ shareholding by 7.76% during the fiscal year 2005 without making an open offer. However, the open offer price that should have been offered by the promoters in the fiscal year 2005 along with interest as per SEBI (SAST) Regulations, 1997 from the date of triggering of the Takeover code in 2005 till the date of the present public announcement is Rs 55.15 computed as per the method laid down by the Supreme Court in the case of Hindustan Lever Employees Union Vs Hindustan Lever

Limited , 1995 (83 Com. case 30), which is less than the current open offer price of Rs 58.00 per share”

- (iv) I also observe that in response to a clarification sought by the concerned Department of SEBI i.e CFD at the time of filing the open offer document, the Merchant Bankers to the Open Offer, vide its letter dated May 5, 2012, had specifically informed CFD about the fact that the violation had occurred due to acquisition of the shares of the target company (i.e BSL) by M/s Gunnam Subba Rao Insulations Pvt Ltd on September 30, 2004 and the open offer price has been calculated on the basis of the rules defined for infrequently traded shares as per Regulation 20(5) of the SAST Regulations, 1997, in pursuance of the HLL method, which comes to Rs 55.15 per share, which also includes the interest component @ 12% p.a from the original triggering date till the date of the public announcement of the current open offer in the target company. It was also mentioned by the Merchant Banker that the above open offer price that was arrived at (i.e Rs 55.15) was less than the current open offer price mentioned in the letter of offer dated May 25, 2012, which was offered to the shareholders at Rs 58/- per share.
- (v) Therefore, from the above observations, I have noted that the Noticees, while determining the open offer price in the year 2012, have also considered interest @12% p.a after taking into account the first trigger date i.e September 2004 as the base and the open offer to the shareholders of the company was finally made at Rs 58/-per share, which was actually more than the price calculated as per the SAST Regulations, 1997. I further observe that there was no change in control of the target company either because of the acquisition of shares made in 2004 or after the open offer was made by the Noticees in the year 2012. The material made available also does not indicate if any complaints were received from the investors against

the Company and/or its promoters as a result of the failure to make the open offer in the year 2004.

- (vi) In their reply, Noticees have cited various judgments of Hon'ble SAT in the matter viz. Sterling Investment Corporation Vs SEBI, Contact Consultancy Services Vs SEBI etc. in support of their argument that interest paid by the promoters to the shareholders of the company through open offer process should be reckoned as adequate compensation to the shareholders.
- (vii) Therefore, in view of the above observations, although there was default observed on the part of the Noticees in the year 2004, I am convinced that adequate steps were taken by the Noticees to rectify the lapses in the open offer made by them in the year 2012. Therefore, I am inclined to discharge the Noticees viz Ms Jayasree Anumolu, Mr Bharat Anumolu, Ms Lalithamba and M/s Gunnam Subba Rao Insulation Pvt Ltd w.r.t the allegations leveled against them in the SCN for violating the provisions of Regulation 11(1) r/w Regulation 14(1) of the SAST Regulations, 1997.

b. Whether the Noticees have violated the provisions of Regulations 8(1) & 8(2) of the SAST Regulations, 1997 for the year 2007?

- (i) It was alleged in the SCN that the Noticees who were coming under the promoter group of BSL during the relevant period had not complied with the provisions of Regulations 8(1) and 8(2) of the SAST Regulations, 1997 during the year 2007. As already brought out at para 11(a) (ii) above, one of the Noticees mentioned in the SCN i.e Mr Amrith A was not included/mentioned under the category of promoters/promoter group of BSL and the same was also evident from the shareholding filings made by BSL to the stock exchanges during the relevant period i.e FYs ended March 31, 2006, 2007 and 2008. Further, as per the confirmation received from the company, Mr Amrit A was not a shareholder of BSL during the relevant period.

Therefore, in view of the reasons stated at para 11(a) (ii) above, the allegations made in the SCN that the Noticees have violated the provisions of Regulations 8(1) & 8(2) of the SAST Regulations, 1997 is only restricted to the other Noticees viz., Ms Jayasree Anumolu, Mr Bharat Anumolu, Ms Lalithamba and M/s Gunnam Subba Rao Insulation Pvt Ltd.

- (ii) I note that Regulation 8(1) of the SAST Regulations, 1997 mandates every person holding more than 15% shares or voting rights in a company, to file disclosure of shareholding as on 31st March every year to the company within 21 days from the year ending 31st March. Thus, it is very clear that the periodicity of the disclosures mandated under Regulation 8(1) of the SAST Regulations, 1997 is annual and the due date for filing such disclosure is on or before April 21 every year.
- (iii) I observe that Regulation 8(1) of SAST Regulations, 1997 requires only such persons holding more than 15% shares or voting rights in the company to make disclosures of shareholding as on 31st March every year. In this context, I note from the materials made available, including the shareholding of the Noticees for the FYs ended March 31, 2006, March 31, 2007 and March 31, 2008 that the individual shareholding of the Noticees in BSL during the aforementioned FYs was less than the stipulated limit of 15% and therefore, the Noticees were under no obligation to make the disclosure under Regulation 8(1) of the SAST Regulations, 1997. I have also carefully perused the shareholding filings made by the company to the stock exchanges for the above referred FYs and find that none of the Noticees individually held more than 15% of the shares of BSL during the above referred period. Accordingly, the allegation of non-compliance on the part of the Noticees i.e Ms Jayasree Anumolu, Mr Bharat Anumolu, Ms Lalithamba and M/s Gunnam Subba Rao Insulation Pvt Ltd with the

provisions of Regulation 8(1) of the SAST Regulations, 1997, as mentioned in the SCN, does not stand established.

- (iv) As regards the compliance under Regulation 8(2) of the SAST Regulations, 1997, all the Noticees being part of the promoter group of BSL were under obligation to file disclosures regarding their shareholding to the company within 21 days from the record date declared by the company for the purpose of declaration of dividend. I find that in the Annual General Meeting of the shareholders of BSL, which was held during August 2007, BSL had declared Dividend to its shareholders and the record date for this purpose was fixed on August 18, 2007.
- (v) I find that in terms of Regulation 8(2) of the SAST Regulations, 1997, Noticees were obligated to make the necessary disclosures to the company within 21 days from the aforementioned record date i.e the disclosures were required to be made by the Noticees by September 9, 2007. However, from the records/material made available, I find that Noticees made the relevant disclosures on September 19, 2007 i.e there was a delay of about 10 days in making these disclosures. In their reply to the SCN, the Noticees have also admitted to the fact that the relevant disclosures were made by them on September 19, 2007. Therefore, I hold that Noticees viz. Ms Jayasree Anumolu, Mr Bharat Anumolu, Ms Lalithamba and M/s Gunnam Subba Rao Insulation Pvt Ltd have violated the provisions of Regulation 8(2) of the SAST Regulations, 1997 as they had made belated disclosures to the company in this regard.

c. Whether the Noticees viz Ms Jayasree Anumolu and Mr Bharat Anumolu have violated Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, 2011 during the year 2011?

- (i) It was alleged in the SCN that the two promoters of BSL viz. Ms Jayashree Anumolu and Mr Bharat Anumolu have failed to comply

with the provisions of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations in the year 2011 when they were allotted shares as a result of the conversion of warrants. From the records / material made available, I find that as on August 22, 2010, the total shareholding of Mr Bharat Anumolu in the company was 5,98,250 shares (which represented 15.61% of the total share capital of the Company) and the shareholding of Ms Jayashree Anumolu as on August 22, 2010 was 5,43,250 shares (which represented 14.17% of the total share capital of the company). I find that BSL had issued 2,00,000 fully convertible equity warrants each to the two promoters i.e. Ms Jayasree Anumolu and Mr Bharat Anumolu on August 23, 2010, entitling them to acquire one fully paid up equity share of the face value Rs 10 each. The details of the equity warrants allotted by BSL, the pre-issue and post-issue shareholding pattern of the said promoters, as submitted by the Noticees vide their letter dated June 24, 2017 are as under:-

Name of promoters	Number of warrants allotted	Pre-issue shareholding as on August 22, 2010		Post issue shareholding as on August 23, 2010 assuming that the equity share warrants are fully converted	
		Number of shares	% of shareholding	Number of shares	% of shareholding
Bharat Anumolu	200,000	5,98,250	15.61%	7,98,250	18.86%
A Jayasree	200,000	5,43,250	14.17%	7,43,250	17.56%
Total	400000		29.78%		36.42%

- (ii) I find that the above mentioned warrants were converted into equity shares on October 31, 2011 and 2,00,000 fully paid up equity shares

of Rs 10 each of BSL were allotted to the two promoters, as detailed below-

Name of promoters	Number of equity shares allotted	Pre-issue shareholding as on October 30, 2011		Post-issue shareholding as on October 31, 2011	
		Number of shares	% of shareholding	Number of shares	% of shareholding
Bharat Anumolu	2,00,000	605,877	15.81%	8,05,877	19.04%
A Jayasree	200000	546,714	14.26%	7,46,714	17.64%
Total	400000		29.78%		36.42%

Subsequent to the aforesaid conversion of warrants and the issuance of equity shares to the promoters, the change in the shareholding pattern of BSL is mentioned as under—

Category of shareholders	Pre-issue shareholding as on October 30, 2011		Post-issue shareholding on October 31, 2011	
	Number of shares	% of shareholding	Number of shares	% of shareholding
Promoters	18,49,351	48.25%	2219511	53.14%
Public	19,83,817	51.75%	1983817	46.86%
Total	38,33,168	100%	42,33,168	100%

- (iii) From the reply of the Noticees to the SCN, I note that upon the allotment of shares as a result of conversion of the warrants, the two Noticees viz Bharat Anumolu and Jayasree Anumolu had made disclosures to the company on November 2, 2011 u/r 7(1) r/w 7(1A) of the SAST Regulations, 1997. The Noticees have contended that they were not aware of the disclosure requirements to be made under the SEBI (SAST) Regulations, 2011 and therefore, it was mentioned that they made the disclosures under Regulations 7(1) and 7(1A) of the SAST Regulations, 1997 to the company.

(iv) I note that prior to the allotment of shares as a result of conversion of the warrants, both the Noticees viz. Bharat Anumolu and Jayasree Anumolu were individually holding more than 5% shares of BSL. I find from the records made available and also from the submissions made by the Noticees that the aggregate shareholding of the Noticees in BSL and also the individual shareholding of the two Noticees viz Bharat Anumolu and Jayasree Anumolu in BSL prior to the allotment of the warrants and also after the conversion of the warrants to equity shares were in excess of 5% of the total share capital of BSL. The details of the shareholding of the two Noticees prior to the allotment of warrants and also after the allotment of shares as a result of conversion of the warrants have been depicted in the Tables mentioned above. I observe that immediately prior to the conversion of warrants to equity shares i.e on October 30, 2011, Mr Bharat Anumolu was holding 6,05,877 shares of BIL, which represented 15.81% of the total share capital of the company and Ms Jayasree Anumolu was holding 5,46,714 shares, which represented 14.26% of the total capital of the company. I note that these details were also mentioned in the Annual Report of BSL for the FY 2010-11. In view of the fact that both the Noticees viz Bharat Anumolu and Jayasree Anumolu were individually holding shares of BSL in excess of 5% prior to the date of the conversion of warrants, they were not under any obligation to make the disclosures u/r 29(1) r/w 29(3) of the SAST Regulations, 2011. Therefore, the allegations levelled in the SCN that the Noticees viz . Mr Bharat Anumolu and Ms Jayasree Anumolu have violated the provisions of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations, 2011 does not stand established.

d. Does the non-compliance, if any, attract monetary penalty under Sections 15A (b) and 15H(ii) of the SEBI Act, 1992?

- (i) From the observations made above, it is established that Noticees viz. Ms Jayasree Anumolu, Mr Bharat Anumolu, Ms Lalithamba and M/s Gunnam Subba Rao Insulation Pvt Ltd have violated the provisions of Regulation 8(2) of the SAST Regulations, 1997. In this context, I would like to quote the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Milan Mahendra Securities Pvt. Ltd vs SEBI and the observations of Hon'ble Supreme Court in the matter of Shri Ram Mutual Fund Vs SEBI.
- (ii) In Appeal No 66 of 2003 - Milan Mahendra Securities Pvt Ltd Vs SEBI- Order dated April 15, 2005, the Hon'ble SAT has observed that *"the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violations was technical in nature."*
- (iii) Further, the Hon'ble Supreme Court of India in the matter of SEBI Vs Shri Ram Mutual Fund {2006} 68 SCL 216 (SC) held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

12. As the violation of the statutory obligation under Regulation 8(2) of the SAST Regulations, 1997 has been established, I hold that the Noticees viz. Ms Jayasree Anumolu, Mr Bharat Anumolu, Ms Lalithamba and M/s Gunnam Subba Rao Insulation Pvt Ltd are liable for monetary penalty under Section 15 A (b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return etc

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

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified thereof in the regulations, fails to file return or furnish the same within the time specified thereof 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.

(c)

e. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

13. While determining the quantum of penalty under section 15A (b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under :

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

While adjudging the 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”*

14. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default committed by the Noticees is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default by the Noticees, the details of the shareholding of the Noticees and timely disclosures thereof, were of significant importance from the point of view of the investors as that would have prompted them to buy or sell shares of the company. The disclosure obligation mandated under the SAST Regulations are critical and important component of the legal regime governing substantial acquisition of shares and takeovers. In the absence of these timely disclosures,

the investors will be deprived of the important information at the relevant point of time.

15. The contentions of the Noticees that the delay in making the disclosures were due to factors such as non-availability of the compliance officer, delay had occurred due to unavoidable circumstance and due to oversight, investors were not deprived as they were in a position to see the shareholding pattern of the company as a result of disclosure made by the company u/r 8(3) of the SAST Regulations etc are not valid reasons for not complying with the mandatory disclosure obligation under the SAST Regulations. In this regard, I note that Hon'ble SAT through various judgments have consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations prescribed under the SAST Regulations.
16. In the matter of E-Ally Consulting (India) Pvt. Ltd. & Ors. Vs SEBI (Appeal No 203 of 2014 dated August 15, 2014), Hon'ble SAT had observed that “.... We see no merit in the above contentions. Obligations to make disclosures under regulations 30 (1) and 30 (2) read with regulation 30 (3) of SAST Regulations, 2011 is mandatory and is independent of the obligation to make the disclosures under the listing agreement. Similarly, fact that proper advise was not there or that the delay was unintentional/without any fraudulent intention or there is no complaint from investors does not absolve appellants from their obligation to make the disclosures under the SAST Regulations, 2011” (Emphasis supplied).
17. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that “*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds*

the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under these regulations.” (Emphasis supplied)

18. In the matter of Virendrakumar Jayantilal Patel Vs SEBI (appeal no.299 of 2014 and Order dated October 14, 2014), Hon’ble SAT had observed that “..... obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make the disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make the disclosures” (Emphasis supplied).
19. In their reply to the SCN, I find that the Noticees have admitted to the fact that they made the disclosure u/r 29(2) of the SAST Regulations, 2011 with a delay. I find that the SCN issued to the Noticees had not alleged the specific violation of Regulation 29(2) of the SAST Regulations by the Noticees. As such, I do not think it necessary on my part to deal with the said belated disclosure made by the Noticees u/r 29(2) of SAST Regulations.

ORDER

20. After taking into consideration all the facts and circumstances of the case, material on record and the submissions of the Noticees, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a consolidated penalty of Rs 3,00,000/- (Rupees Three Lakh only) on the Noticees viz. Ms Jayasree Anumolu, Mr Bharat Anumolu, Ms Lalithamba and M/s Gunnam Subba Rao Insulation Pvt Ltd under the provisions of Section 15 A (b) of the SEBI Act for their failure to make timely disclosures u/r 8(2) of the SAST Regulations, 1997 read with Regulation 35 of the SEBI (Substantial acquisition of shares and Takeovers) Regulations, 2011. I am of the view that the said penalty is commensurate with the default committed by the Noticees.

21. The Noticees shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account , the details of which are given below-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

22. The Noticees shall forward the said Demand Draft or the details/ confirmation of penalty so paid through e-payment (in the format given in the table below) to “The Division Chief, Enforcement Department (EFD DRA-III), Securities and Exchange Board of India, SEBI Bhavan, Plot No C-4A,”G” Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051” .

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

23. In terms of Rule 6 of the Adjudication rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: 21.02.2018

SURESH B MENON
ADJUDICATING OFFICER