

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/147/2013]

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

Against

Ms. Priyadarshana Gothi

[PAN: ADYPG3096P]

In the matter of

Gothi Plascon (India) Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the alleged irregularity in the trading in the shares of Gothi Plascon (India) Ltd (hereinafter referred to as 'GPIL') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and various rules and regulations made there under.
2. The examination inter-alia revealed that the shares of GPIL are listed on Bombay Stock Exchange Limited. Ms. Priyadarshana Gothi (hereinafter referred to as 'Noticee') is one of the promoters of GPIL and she purchased large quantity of shares during the period from March 29 , 2011 to June 13, 2011 which resulted in crossing the threshold limit of 5% under the SEBI (Substantial Acquisition of Shares and Takeovers') Regulations, 1997 (hereinafter referred to as the 'SAST' Regulations). The Noticee did

not make necessary disclosures as required under SAST Regulations and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations').

3. SEBI has, therefore, initiated adjudication proceedings under the Act against the Noticee to inquire into and adjudge the alleged violations of the provisions of Regulations 7(1) read with 7(2) of the SAST Regulations and Regulations 13(1), 13(4A) read with Regulation 13(5) of PIT Regulations.

Appointment of Adjudicating Officer

4. SEBI vide order dated August 28, 2012, appointed me as the Adjudicating Officer under section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section under section 15 A(b) of the SEBI Act for the alleged violation of the abovementioned provisions of SAST Regulations and PIT Regulations by the Noticee.

Notice, Reply & Personal Hearing

5. A Notice dated September 13, 2012 (hereinafter referred to as 'SCN') was issued to the Noticee in terms of Rule 4 of the Adjudication Rules requiring to show cause as to why an inquiry should not be held against her for the alleged violations. The SCN was sent to the Noticee by Registered Post which was delivered and acknowledged by the Noticee. It was alleged in the SCN that the Noticee had failed to make disclosures as required under Regulation 7(1) read with 7(2) SAST Regulations and Regulation 13(1), 13(4A) and 13(5) of PIT Regulations.
6. The Noticee vide letter dated October 03, 2012 replied to the SCN and submitted that the information pertaining to acquisition was submitted to

BSE on regular basis and enclosed the postal records of the information sent.

7. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the Adjudication Rules the Noticee was granted an opportunity of personal hearing on November 27, 2012 vide notice dated November 06, 2012. The personal hearing notice was sent to the Noticee by Registered Post which was delivered and acknowledged by the Noticee. The Noticee neither appeared for the hearing nor sent any correspondence in this regard. Another opportunity of personal hearing was granted to the Noticee on February 22, 2013 vide notice dated February 12, 2013. The Noticee neither appeared for the hearing nor sent any correspondence in this regard.
8. From the foregoing, I am satisfied that adequate opportunity has been granted to the Noticee to meet the ends of natural justice. I am, therefore, proceeding with the inquiry taking into account the documents and material as available on record.

Consideration of Issues, Evidence and Findings

9. I have carefully perused the charges against the Noticee mentioned in the SCN, submissions made by the Noticee, the materials and documents as available on record. The issues that arise for consideration in the present case are:
 - a) Whether the Noticee has violated the provisions of Regulation 7(1) read with Regulation 7(2) of SAST Regulations, and Regulation 13(1) and Regulation 13(4A) read with Regulation 13(5) of PIT Regulations.***
 - b) Does the violation, if any, on the part of the Noticee attract any penalty under Sections 15A (b) of the SEBI Act?***
 - c) If yes, what should be the quantum of penalty?***

10. Before moving forward, it will be appropriate to refer to the relevant provisions of SAST and PIT Regulations which read as under:-

SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997

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

7(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent [or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within [2 working days] of:—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

11. I find from the material available on record that the Noticee is one of the promoters of GPIL and had purchased large quantity of shares during the period from February 28, 2011 to September 28, 2011. Consequent to the acquisition of shares of GPIL, the Noticee's shareholding changed as shown in the table below:

Date of Transaction	Buy	Sell	Total No. of shares	% of share capital
31/12/2010	-	-	236800	2.32
28/02/2011	33200	0	270000	2.65
29/03/2011	230000	0	500000	4.90
13/06/2011	199600	0	699600	6.86
14/07/2011	84500	0	784100	7.69
17/08/2011	57800	0	841900	8.25
28/09/2011	55000	0	896900	8.79

12. From the table, it is seen that the Noticee purchased 1,99,600 shares of GPIL on June 13, 2011 and accordingly the Noticee's shareholding increased from 4.9% to 6.86%. Since the Noticee has crossed the threshold limit of 5% of the share capital/voting rights of GPIL, she is required to make disclosures to the company and to the stock exchange as specified under regulation 7(1) of SAST Regulations. Such disclosures should have been done within two working days of the date of acquisition. It was alleged in the SCN that the Noticee did not make the said disclosures to the company and the stock exchange. I note that BSE vide e-mail dated March 30, 2012 confirmed that the exchange has not received any disclosures under Regulation 7(1), 7(1A), 7(3), 3(3) of the SAST Regulations and Regulation 13(4) and 13(6) of the PIT Regulations as per the exchange records for the scrip of GPIL during the period from December 31, 2010 to September 30, 2011.
13. In response to the SCN, the Noticee vide letter dated October 03, 2012 simply stated that they had submitted the acquisition information to BSE on regular basis and attached copies of postal dispatch slip dated August 17, 2011 and September 28, 2011. The Noticee had not submitted any

evidence with regard to the disclosures to the company under Regulation 7(1) of the SAST Regulations with regard to the acquisition of shares as mentioned above. Further, the Noticee also did not furnish any evidence with regard to the dispatch of disclosures to the stock exchange during the month of June 2011.

14. From the foregoing, it is established beyond doubt that the Noticee failed to make disclosures for her acquisition of 1,99,600 shares which resulted in crossing the threshold limit of 5% under the SAST Regulations and thereby violated Regulation 7(1) read with 7(2) of the SAST Regulations.

15. Further, the above acquisition also requires the Noticee to make disclosures under Regulation 13(1) of PIT Regulations. I find that the Noticee did not make the disclosures and thereby violated the aforesaid provisions of law.

16. I find that the PIT Regulations have been amended by insertion of Regulation 13(4A) on August 16, 2011. As per the Regulation 13(4A) of the PIT Regulations, *'any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.'*

17. Accordingly, the Noticee being the promoter of GPIL was required to make disclosures under Regulation 13(4A) of the PIT Regulations whenever her transactions in the scrip of GPIL attracted the said provision. I find from the above table that the Noticee purchased shares exceeding 25000 in number on August 17, 2011 and September 28, 2011. The Noticee has not submitted any evidence with regard to her making disclosures to the company. However, she has submitted copies of dispatch slip stamped by

the postal authorities dated August 17, 2011 and September 28, 2011 evidencing dispatch of register cover to the BSE.

18. In this regard, it will be appropriate to refer to the observations of The Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of Arun Kumar Bajoria v/s SEBI – Order dated March 27, 2001. The Hon'ble Court while examining the issue of compliance with regard to regulation 7 (the provision deals with disclosure by an acquirer to the target company) of SAST Regulations, made the following observations:-

“..... Therefore, it is obligatory on the part of the person so acquiring to inform the company. In what mode or manner such information should be given has not been prescribed. It has not also been mentioned that the subject information or disclosure must be given in writing. Such disclosure, therefore, may be made orally or through telephone or in writing transmitted in some known manner. The information or disclosure must, however, reach the company. In law, anyone sending written information through the agency of someone else appoints such agency as his agent. If a letter is posted, unless the law specifies, the Postal Authority acts as an agent of the sender. As appears to me, by law, in respect of two instances the post office is considered as the agent of the receiver of the letter. The first is in relation to acceptance of an offer and the second is in respect of a letter sent by registered post. In all other circumstances, the post office acts as a mere agent of the sender of the letter. The Certificate of Posting may be an evidence of engaging the Postal Authority as an agent of the sender to deliver the subject letter, but not the proof of receipt of the letter by the addressee. In the event, it is contended by the addressee that the letter has not been received by him, it must be established and if necessary through the agent that the letter has been received by the addressee. Merely because the letter was sent by post, it cannot be contended that the sender has discharged his obligations under Regulation 7 of the said Regulations as the said regulation cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned and argument contrary thereto is not acceptable. It is not permissible for the sender to contend that he has no control over the mode of transmission inasmuch as he has free choice of selecting the mode of transmission and for that purpose to engage a suitable agent.”

19. In the light of the above referred Hon'ble High Court's judgment, I find that the contention of the Noticee of accepting the proof of dispatch cannot be accepted. It is the responsibility of the sender to establish and if

necessary, through the agent, that the letter has been received by the addressee. Thus, the burden of proving the receipt of the communication is on the Noticee.

20. From the foregoing, the violation of Regulations 7(1) read with 7(2) of SAST Regulations, 1997 and Regulations 13(1), 13 (4A) read with 13(5) of PIT Regulations as alleged in the SCN stands established against the Noticee.
21. 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*”.
22. In Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI – Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal has observed that, “*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.*”
23. As the violation of the statutory obligation under Regulations 7(1) read with 7(2) of SAST Regulations, 1997 and Regulations 13(1), 13 (4A) read with 13(5) of PIT Regulations by the Noticee stand established, I hold that the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act.
24. The provisions of Section 15A(b) of the SEBI Act read as follows:

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 to¹[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

25. While imposing monetary penalty it is obligatory to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:

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

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

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

26. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee, the details of the shareholding of the persons having substantial stake, promoter-group and persons in control over GPIL and timely disclosure thereof, were of importance from the point of view of investors as that would have prompted them to buy or sell its shares. The Noticee failed to make disclosures under Regulations 7(1) read with 7(2) of SAST Regulations, 1997 and Regulations 13(1), 13 (4A) read with 13(5) of PIT Regulations. The purpose of these disclosures is to bring about transparency in the market so as to enable the investors to take informed decision and assist the Regulator to effectively monitor the transactions in the market. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. Moreover, the default committed by the Noticee is repetitive in nature.

Order

27. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a total penalty of ` 2,00,000 /- (Rupees Two Lakhs Only) on the Noticee under Section 15A(b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.
28. The penalty amount as mentioned above shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the Division Chief, Integrated Surveillance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
29. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to Securities and Exchange Board of India.

Date: February 25, 2013

Place: Mumbai

**P K KURIACHEN
ADJUDICATING OFFICER**