

ADJUDICATION ORDER NO. EAD-3/ORDER/JS/SP/2018-19/1332

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

In respect of:

Falcon Tyres Ltd (Pan: AAACF7258E)

In the matter of:

Falcon Tyres Ltd.

CIN: L25114KA1973PLC002455

BACKGROUND

1. Securities and Exchange Board of India (**‘SEBI’**) during the course of investigations in the acquisition of shares through preferential allotment by certain entities in the scrip of Falcon Tyres Ltd. (**‘Falcon/Noticee’**) on April 26, 2012 (**‘period of investigation or IP’**), issued summonses to Falcon Tyres Ltd. (**‘Falcon/Company’**), was listed at Stock Exchange, Mumbai (**‘BSE’**) to furnish certain information before the Investigating Authority (**‘IA’**). The details of the summonses issued are as follows:

Summonses issued to	Summonses issued under	Summonses dated	Delivery Details/ Evidence
Compliance Officer, Falcon	11(3) and 11C (3) of SEBI Act, 1992	July 22, 2015	Acknowledgement of receipt of the Summons. Letter of Falcon dated Oct 14, 2015 acknowledging the receipt of the Summons.
Compliance Officer, Falcon		August 06, 2015	➤ Acknowledgement of receipt of the Summons. ➤ Email of Falcon dated August 18, 2015 and ➤ Letters of Falcon dated August 18, 2015 and Oct 14, 2015, acknowledging the receipt of the Summons
Compliance Officer, Falcon		August 19, 2015	Letters of Falcon dated September 08, 2015 and Oct 14, 2015 acknowledging the receipt of the Summons.

Summonses issued to	Summonses issued under	Summonses dated	Delivery Details/ Evidence
Compliance Officer, Falcon	11(3) and 11C (3) of SEBI Act, 1992	September 10, 2015	Letter of Falcon dated September 18, 2015 acknowledging the receipt of Summons
Managing Director, Falcon		July 05, 2016	Acknowledgement of receipt of the Summons

2. It was alleged that Falcon failed to furnish the information as required under the summonses issued by the IA during the investigations.
3. Therefore, it was alleged that Falcon have violated Section 11C (3) of SEBI Act, 1992 (**'SEBI Act'**). Accordingly, SEBI initiated adjudication proceedings against Falcon to inquire and adjudge under Section 15A (a) of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

4. Adjudicating Officer was appointed vide order dated May 17, 2017 under Section 15-I read with Section 19 of the SEBI Act, 1992 (**'SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (**'Adjudication Rules'**) and Section 19 of the SEBI Act to inquire into and adjudge under Section 15A(a) of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (SCNs) dated October 04, 2017 was issued to Falcon, in terms of provisions of Rule 4 of Adjudication Rules, to the address available in our record i.e. *"KRS Road, Metagalli, Mysore- 570 016, Karnataka"*, the address from which Falcon had communicated during the investigations. The SCN was duly delivered to the address on October 09, 2017. Also, a copy of the SCN along with its annexures was emailed to feedback@falcontyre.com.
6. Since, Falcon, failed to file reply to the SCN, vide letter dated November 07, 2017, Falcon was once again informed to file reply to the SCN within 14 days of the receipt

of the letter. However, Falcon have failed to file reply to the SCN. Subsequently, vide letter dated February 02, 2018, Falcon was informed to file reply to the SCN on or before February 14, 2018 and to appear for the personal hearing on February 23, 2018. The letter dated February 02, 2018 was duly delivered to the address of Falcon.

7. Since, Falcon failed to file reply to the SCN and also to appear for the personal hearing, vide letter dated March 20, 2018, Falcon was once again informed to file reply to the SCN latest by April 02, 2018 and also to appear for the personal hearing on April 05, 2018. The letter to Falcon dated March 20, 2018 was duly delivered to the address of Falcon on March 24, 2018. Falcon, once again failed to file reply to the SCN and also to appear for the personal hearing.
8. As a last and final opportunity, Falcon, vide letter dated June 12, 2018, was once again informed to file reply to the SCN on or before June 22, 2018 and to appear for the personal hearing on June 26, 2018. It is pertinent to note all the SCN/letters were issued to the same address from which Falcon had communicated during the investigations. Subsequently, the letter dated June 12, 2018 was uploaded at SEBI website under the heading "Unserved Notices/SCNs".
9. On the date of hearing, Falcon, once again failed to reply to the SCN and to appear for the personal hearing. It is observed Falcon was granted enough opportunity to file reply to the SCN and to appear for personal appearing, however, Falcon failed to make submissions or appear for personal hearing. Thus, the matter is proceeded in terms of Rule 4(7) of the AO Rules, based on the information available on records.

CONSIDERATION OF ISSUES AND FINDINGS

10. After perusal of the material available on record, the following issues are for consideration viz.
 - A. Whether Falcon have violated Section 11C(3) of SEBI Act, 1992?
 - B. Does the violation, if any, attract monetary penalty under Section 15A (a) of SEBI Act?

C. What would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

ISSUE A- Whether Falcon have violated Section 11C(3) of SEBI Act.

11. It is pertinent to mention that the provisions under Section 11C(3) of the SEBI Act, grant powers to IA to seek such information or record evidences/ statement which are relevant or necessary for the purpose of investigations, from any person associated with securities market in any manner. Accordingly, it is noted that for the purpose of ascertaining the facts and role of various entities involved in alleged manipulations, IA sought information/documents from Falcon relating to acquisitions of shares of Falcon by certain entities and the assignment of debt. Thus, the information sought by IA was relevant to the investigations.

12. Vide summonses dated July 22, 2015, August 06, 2015, August 19, 2015, September 10, 2015 and July 05, 2016, Compliance Officer and Managing Director of Falcon were summoned to file reply to the summonses. However, Falcon failed to provide the requisite information/documents sought during the investigations.

13. As per records, IA issued summonses to Compliance Officer and Managing Director of Falcon seeking various details which were not submitted and thus the basis for alleged non-compliance with the summons. The details sought by IA during the investigations are as follows:

Sr. No.	Details sought from Falcon through various Summons	Whether Falcon provided information / documents for the summonses issued
a.	<i>While referring to reply of Falcon dated June 19, 2015, in response to the Summons, Falcon was advised to provide the following information/documents: You are advised to confirm whether the cheques referred in Annexure "C" of your letter were presented for payment at respective bank(s). If yes, provide the account no. and bank account statement highlighting all the cheques and amount.</i>	<i>Not Provided</i>
b.	<i>you are advised to confirm whether any deed of assignment was signed between the company and Suncap, Regus & Salputri for assigning loan of Rs 144.04 Crs given to Falcon. If yes, provide a certified copy of the same.</i>	<i>Not Provided</i>

	<p><i>It is further mentioned in your reply that Regus, Suncap and Salputri approached the company with a proposal for assignment of debt. Whether Manali had dealt with any of these companies in the past. If yes, kindly explain the nature of dealings.</i></p> <p><i>Further, considering the huge amount of loan which was assigned to these entities, whether any security was taken for assignment of loan or due-diligence with regard to the repaying capacity of these entities was done by Manali. If yes, provide documentary evidence of the same.</i></p>	
c.	<p><i>It is mentioned in your reply that Salputri, Suncap & Regus were required to repay the loan amount to Manali by October 31, 2012 or earlier. However, from your reply and bank account statement analysis of Salputri, Suncap and Regus, it is observed that the entities started repaying the said loan in April/May 2013. You are advised to provide the details of penal actions taken by the company for non-payment of the assigned amount by the assignee(s) on or before October 31, 2012 along with documentary evidences regarding the same.</i></p>	Not Provided
d.	<p><i>Provide the balance sheet for the FY 2009-10 , 2010-11 and 2011-12.</i></p>	Not Provided
e.	<p><i>Annexure E of your letter did not contain the list of shareholders along with the percentage of their holdings for the period from April 01, 2010 to December 31, 2012. You are once again advised to provide the same.</i></p>	Not Provided
f.	<p><i>it is observed that Manali paid Rs. 12,02,38,000 between Feb 09, 2012 to Feb 15, 2012 by way of crossed cheques to Falcon which formed part of the total loan disbursed to Falcon , whereas the deed of assignment was executed on Feb 09, 2012. Explain the contradictory nature of the transactions.</i></p>	Not Provided
g.	<p><i>It is mentioned that the amount was transferred to Regus and Salputri on May 10th 2013 & May 28, 2013 towards payment of dividend.</i></p> <p><i>It was observed from BSE website that the board of directors of the company had declared a dividend of Rs 0.50 per share at its meeting held on November 19, 2012 (effective date December 21, 2012) which was approved by the shareholders in its AGM dated December 29, 2012. As per section 205 of the Companies Act, 1956, the dividend so declared has to be deposited in a separate bank account within five days from the date of declaration of such dividend. Further, the dividend so declared has to be paid within 30 days from the date of declaration failing which it has to be transferred to a special dividend account.</i></p> <p><i>Hence, it is observed that the dividend was not paid to the shareholders within the timelines stipulated as per the companies act, 1956. Further, it was observed from the bank account statement of your company that the payment of dividend to the shareholders as made from Cash Credit account of the company maintained with Oriental Bank of Commerce which is not in accordance with the provisions of companies act, 1956.</i></p> <p><i>In this regard, you are advised to provide the copies of Bank statements of your company evidencing the payment of dividend declared on November 19, 2012 along with bank certificate in this regard.</i></p>	Not Provided
h.	<p><i>Whether Falcon Tyres Ltd. or any of its directors(including directors during preferential allotment of shares to Suncap , Regus & Salputri) is related to any of the above mentioned entities namely, Manali Properties, Regus Impex Pvt. Ltd. Suncap commodities Ltd. & Salputri</i></p>	Not Provided

	<p><i>Commerce Pvt. Ltd and/or any of its promoters/directors. If yes, kindly provide the details of relationship.</i></p> <p><i>Further, in addition to the information as mentioned above, you are also advised to confirm whether Falcon Tyres Ltd. has received any disclosures under SEBI(SAST) Regulations, 2011 during the period from April 01, 2012 to June 30, 2012. If yes, provide documentary evidence of the same along with the date of receipt by the company. Further, also provide the details of subsequent disclosures made by the company under SEBI(SAST) Regulations, 2011 to the stock exchange during the same period along with documentary evidence, if any.</i></p>	
i.	<p><i>you are also advised to confirm whether any disclosures(other than the disclosures received from Regus Impex Pvt. Ltd., Suncap Commodities Ltd. & Salputri Commerce Pvt. Ltd.) has been received by the company under SEBI(SAST) Regulations, 2011 and SEBI(PIT) Regulations, 1992 and whether the company has filed any subsequent disclosure under SEBI(SAST) Regulations, 2011 and SEBI(PIT) Regulations, 1992 to the Stock Exchange. If yes, provide documentary evidences regarding the same.</i></p>	Not Provided

14. Falcon, in this regard, vide email dated August 18, 2015, letters dated August 18, 2015, September 08, 2015, September 18, 2015 and October 14, 2015 has made the following submissions:

- a. *We are in process of arranging and compilation of required details as required in Annexure but we need at least a month time for the same.*
- b. *We further request you to grant us at least 15 days' time i.e 23rd September, 2015 in view of leaving of almost all staffs, suspension of works in the plant from April 2015 and various insurmountable issues.*
- c. *The detailed submissions to the summons could not be mad since our staff is busy in compiling final accounts and Income Tax Return preparation. We therefore request your honour to grant us adjournment of atleast 1 month to compile the detailed reply as required in your summons.*
- d. *We would like to state that we have preferred a writ petitions bearing No. W.P.28358/2015 before the Karnataka High Court, Bangalore against SEBI in the matter of issue of summons and the fishing inquiry and roving expedition carried on by you. As the matter is sub-judice and pending before the Karnataka High Court at Bangalore, we request you to kindly not to address any further communication/summons on the subject of preferential allotment till the writ petition is disposed of by the Hon'ble Karnataka High Court at Bangalore.*

15. It is not in dispute that summonses were issued to Falcon under Section 11C(3) of SEBI Act, to furnish certain information/documents. Further, the referred summonses were duly received by Falcon, which is also not disputed. However, inspite of granting

multiple opportunities to file reply to the summonses, Falcon failed to file required information sought by the IA.

16. On a bare perusal of the information sought from Falcon by the IA it can be concluded that the information sought was in the knowledge of Falcon and that the same could not be gathered from any other source without hampering timelines for investigations. The non-submission of information before the IA have hampered the investigation to proceed further in the matter.

17. It is critical to the investigation process that the information flow is unhampered as a fact finding mission can easily be derailed by entities by not submitting the relevant information. Further, it is assessed from the requisition of the information that the information was indeed specific to Falcon.

18. It is pertinent to note that, Falcon was informed to supply required documents instead it had sought extension of time. Thus, multiple extension of time were granted to Falcon, however, Falcon failed to file reply to the summonses which depicts an approach to not cooperate with the investigations.

19. Further, Falcon, has gone on records to state that it had filed a writ petition against SEBI and thus avoided providing the information as sought by the IA. The obligation to provide the information to the SEBI-IA had no relation to the writ filed by the Falcon against SEBI. Thus, by not providing the requisitioned information on one count or the other, Falcon hampered the investigations.

20. Even during this proceedings, Falcon continued to adopt the same approach as it did during investigations, by not responding to the SCN, despite granting sufficient time to file reply and to appear for the personal hearing.

21. Thus, it is concluded that Falcon have failed to file any response and have not co-operated at all during this proceedings. In this regard, it is pertinent to note that the Hon'ble Securities Tribunal ("SAT") in the matter of Classic Credit Ltd. vs. SEBI

(Appeal No. 68 of 2003 decided on December 08, 2006) has, inter-alia, observed that, *"..... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*. It is also pertinent to note that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: *"..... Appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..."*.

22. Thus, for not complying with the summons for supplying information/ documents sought by the IA during the investigations, it is held that Falcon have violated Section 11C(3) of SEBI Act.

Issue B: Does the violation, if any, attract monetary penalty under Section 15A (a) of SEBI Act?

23. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

24. As regards the imposition of monetary penalty for non-compliance of summonses, it is noted that the Hon'ble SAT had the occasion to deal with this issue in the matter of *DKG Buildcon Pvt. Ltd.(supra)*, wherein it observed: *"It was then argued on behalf of DKG that section 15A(a) of the Act does not apply as the Act, Rules or Regulations made thereunder do not per se require the production of documents or furnishing of information and that it was only a direction of the Board contained in the summons that the appellant was required to comply with. The argument indeed is that non-compliance with the directions of the Board would not attract section 15A(a) and that the penalty could be levied under the residuary provision contained in section 15HB. The argument is being noticed only to be rejected. Section 11C of the Act was introduced with effect from 29.10.2002*

and sub-section (3) thereof provided that the investigating authority may require any person associated with the securities market "to furnish such information, or produce such books, or registers, or other documents, or record before him...". The power to require a person to furnish any information or record or documents includes the power to require such person to make a statement and give clarifications with regard to the information and documents produced by him. In the absence of such a power the purpose of the legislature in introducing section 11C would be frustrated and the Board will not be able to investigate properly the market irregularities and offences. In order to advance the object of Parliament the language used in sub-section (3) of section 11C has to be given a wider meaning. We are, therefore, of the considered opinion that section 11C (3) gives the power to the investigating authority to call upon any person to make a statement while furnishing any information, document or record." Thus, it is clear that if a person fails to comply with the summonses of IA he is liable for penalty under Sec. 15A (a) of SEBI Act. As the violation of provisions of section 11C(3) of SEBI Act, 1992 by the noticee has been established, it is held that Falcon is liable for monetary penalty under section 15A(a) of SEBI Act.

25. The aforesaid provisions read as under:

"15A. Penalty for failure to furnish information, return, etc.- If any person, who is required under this Act or any rules or regulations made thereunder,-

(a) to furnish any document, return or report to the Board, fails to furnish the same, 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".

26. Given the above, it is concluded that the present case is a fit case for imposing penalty upon Falcon Tyres Ltd. under Section 15 A(a) of the SEBI Act, 1992.

Issue C- what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

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

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.

¹*[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

28. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by Falcon and the loss suffered by the investors as a result of the default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by Falcon as a result of default. However, it is pertinent to mention here by not submitting complete details to the summonses as well as not appearing before the IA for giving evidence despite having received the summonses compromises the regulatory framework and hampers the investigation.

29. Therefore, taking into consideration the facts / circumstance of the case and above mitigating factors, a justifiable penalty needs to be imposed upon Falcon.

ORDER

30. After taking into consideration all the facts and circumstance of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceedings against Falcon Tyres Ltd. stands established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, a monetary penalty of **Rs. 35,00,000 (Rupees Thirty Five Lakhs only)** imposed on Falcon Tyres Ltd. under Section 15A(a) of the SEBI Act, 1992.

31. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties

¹ Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

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

32. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - II [EFD1-DRA-II], SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

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)

33. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Falcon and also to SEBI.

Date: September 21, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer