

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/DPS/19-25/2018-19]**

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

- 1) Mitul Jaysukh Gondalia (PAN No. AGOPJ4903F) having address at – 5, Radha Krishna Apts, Mehul Nagar, Kotharia Main Road, Rajkot 360002.
- 2) Daxaben J. Gondalia (PAN No. AKEPG0809K) having address at – 5, Radha Krishna Apts, Mehul Nagar, Kotharia Main Road, Rajkot 360002.
- 3) Chandulal R. Gondalia (PAN No. AKDPG2208D) having address at – 5, Radha Krishna Apts, Mehul Nagar, Kotharia Main Road, Rajkot 360002.
- 4) Laxman bhai Dhaduk (PAN No. AKYPD3702A) having address at – 5, Radha Krishna Apts, Mehul Nagar, Kotharia Main Road, Rajkot 360002.
- 5) Sanjay P. Gondalia (PAN No. AJUPG1903H) having address at – 5, Radha Krishna Apts, Mehul Nagar, Kotharia Main Road, Rajkot 360002.
- 6) Jaysukh R. Gondalia (PAN No. AJLPG8857B) having address at – 5, Radha Krishna Apts, Mehul Nagar, Kotharia Main Road, Rajkot 360002.
- 7) Gopal P. Gondalia (PAN No. AKDPG9743K) having address at – 5, Radha Krishna Apts, Mehul Nagar, Kotharia Main Road, Rajkot 360002.

In the matter of M/s Osian Industries Limited.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, “**SEBI**”) conducted an investigations in the scrip of M/s Osian Industries Limited (hereinafter referred to as '**Osian / Scrip / Company**'). Investigation revealed that (1) Mitul Jaysukh Gondalia, (2) Daxaben J. Gondalia, (3) Chandulal R.

Gondalia, (4) Laxman bhai Dhaduk, (5) Sanjay P. Gondalia, (6) Jaysukh R. Gondalia and (7) Gopal P. Gondalia (hereinafter referred to as '**the Noticee No. 1 to 7**' respectively or '**the Noticees / You**' collectively) are in violation of section 11C(3) of the SEBI Act. The Noticees No. 1-7 are the Promoters of the company - Osian Industries Ltd.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the "**Adjudication Rules**") vide order dated June 13, 2018 to inquire into and adjudge under Section 15A(a) of the SEBI Act against the Noticees for the alleged violations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. On appointment of the undersigned as the Adjudicating Officer in the instant matter, Show Cause Notice No. EAD-5/MC/DPS/20701/2018 dated July 24, 2018, (hereinafter be referred to as, the "**SCN**") was served upon the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A(a) of the SEBI Act for the aforesaid alleged violations. Copies of the documents relied upon in the SCN were also provided to the Noticees along with the SCN.
4. The allegations levelled against the Noticees in the SCN are as below:
 - a) Investigation was initiated on the basis of investor complaints received by SEBI from investors in respect of non-transfer and non-dematerialization of shares of Osian.

- b) During investigation, it was observed that there were 9 promoter entities during the quarter ended March 2011 out of which 8 promoter entities sold their entire shareholding during April 2011 through off-market transactions. Only one promoter, namely, Noticee No. 6, did not sell his shareholding and was the only promoter during the period April 2012 to November 2012.
- c) In order to ascertain the claims of the investors, information regarding the same was sought from the Noticees / Promoters of the company vide summons dated March 27, 2015 under section 11C(3) of the SEBI Act, requiring all the Noticees to provide the information / documents / reports etc. as mentioned in annexure attached therewith by April 7, 2015. The said summons was sent through Regd. Post AD. Copy of said summons dated March 27, 2015 along with delivery proof were provided to the Noticees as Annexure – 2 of the SCN.
- d) Despite the receipt of summons by the Noticees, no information was received from the Noticees. Therefore another summons dated April 17, 2015 was issued through Regd. Post AD to the Noticees under section 11C(3) of the SEBI Act, requiring all the Noticees to provide the desired information by April 24, 2015. Copy of said summons dated April 17, 2015 along with delivery proof were provided to the Noticees as Annexure – 3 of the SCN. However, again the information sought under the said summons were not provided by the Noticees.
- e) Thereafter, another summons dated January 19, 2017 was issued by the Investigating Authority to the Noticees, under section 11C(3) of the SEBI Act, requiring them to furnish the information by February 1, 2017 and also enclosing copies of the summons dated March 27, 2015 and reminder summons dated April 17, 2015. Copy of said summons dated January 19, 2017 along with delivery proof were provided to the Noticees as Annexure – 4 of the SCN. Noticees were also informed vide

summons dated January 19, 2017 that despite repeated communication they had failed to provide the information and in case no information was provided by February 1, 2017, then, SEBI would initiate adjudication proceedings against them. However, again the information sought under the said summons was not provided by the Noticees.

- f) In view of the above, it was alleged that the Noticees had failed to provide information sought vide the summons issued by the Investigating Authority under Section 11C(3) of the SEBI Act, despite receipt of the aforesaid 3 summons issued to them. Hence it was alleged that the information sought under Section 11C(3) of the SEBI Act, regarding off-market transfer of shares to entities who later sold the shares in the market could not be obtained, and thus it has hampered the investigation. Therefore, it was alleged that the Noticees had failed to comply with the summons issued under Section 11C(3) of the SEBI Act.

5. The provision of section 11C(3) is produced as under;

11C(3) *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.*

6. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticees liable for monetary penalty under Section 15A(a) of the SEBI Act.

7. The aforesaid SCN was served through Speed Post Acknowledgement Due (SPAD) on July 27, 2018 to the Noticees under rule 4(1) of the said Adjudication Rules advising to submit reply towards the allegations within a period of 14 days from service of the SCN. However, no reply was received from the Noticees in respect of the SCN.
8. After considering the facts and circumstances of the case, an opportunity of hearing was granted to the Noticees on September 12, 2018 vide notice dated August 27, 2018 by way of SPAD. It is relevant to point out that as the Noticees has not submitted their reply towards the said SCN, in the said hearing notice issued on August 27, 2018, Noticees were asked to file their replies, if any, on or before September 7, 2018 and it was also communicated that if no appearance is made or no reply is furnished by the Noticees, the matter would be decided on the basis of evidence available on record in terms of Rule 4(7) of the Adjudication Rules. In this regard, vide email dated September 10, 2018, Noticees requested for an adjournment of hearing to next week or first week of October, 2018. Accordingly, vide email dated September 11, 2018 Noticees were granted hearing on September 18, 2018.
9. Hearing on September 18, 2018 was attended by the Authorised Representative (AR) of Noticees. The AR submitted during hearing that they would be submitting their reply to the said SCN by September 24, 2018 along with Original Authorization letters from all the Noticees. Vide email dated October 3, 2018 Noticees again requested for grant of time till October 8, 2018 for filing reply.
10. Vide letter dated October 5, 2018, which was received by SEBI on October 15, 2018, Noticees filed their reply and also submitted that the detailed reply to the SCN will be submitted by October 31, 2018. In this regard, Noticees were informed vide email dated October 22, 2018 that opportunity of replying to the said SCN had already been provided twice i.e. September 24, 2018 and October 8, 2018 as per their request after hearing. Hence, their reply if any,

should be filed on or before October 24, 2018, failing which the matter would proceeded further on the basis of evidence available on record. No further reply was received from the Noticees till October 24, 2018.

11. The key submissions of the Noticees in their reply dated October 5, 2018 towards the SCN are mentioned below;

- a) We hereby submit that, SEBI sought certain information in connection with change of holding of promoter and send the letter to our addresses as mentioned in the notice in and around 2015.
- b) The noticees were not staying in the said addresses since 2012 and shifted their residence as part of family settlement.
- c) One Ms Daxaben Gondalia Noticee No. 2 who is relative of the undersigned having age 60 years approximately without having English knowledge accepted the letters and kept the same for her consumption with an ulterior motive that, SEBI wants to give some shares to the noticee which she can use for her personal benefit and to meet her grid.
- d) None of the Noticees were aware of the alleged notice of SEBI seeking information.
- e) By coincidence the summon issued by SEBI was received by another family member other than Ms. Daxaben J. Gondalia and we came to know about the same.
- f) The signature there in the acknowledgement is in Gujarati and it confirms that it was received by her. Attached here with please find the voter identity card of Ms. Daxaben J. Gondalia.
- g) The facts of the case is as under:
- h) One Mr. Ved Mehta one of the close friend of Mr. Jaysukhbhai R Gondaliya (Noticee No. 6) in the year 2011 agreed to take over the company Osian Industries Limited for which both Mr. Jayasukhbhai and Mr. Ved Mehta had agreed upon for consideration of Rs.1.5 Crore after completion of the formalities. Subsequently Mr. Ved Mehta send Mr. Bindesh Kurani to Mr. Jaysukhbhai R. Gondaliya and who explained how to deal with the procedure and for which lots of documents are required to be signed, KYC needs to be done etc.
- i) By telling to fulfill the formalities Mr. Bindesh Kurani had taken signature on the share transfer deeds of all other noticee save except for Mr. Jaysukhbhai, on blank letter heads of the company and signature on various papers to give effect to the takeover of the company. Out of good faith and Jaysukhbhai was having good relation with his friend Mr. Ved Mehta, Mr. Jaysukhbhai's family signed all documents without receiving a single penny from Mr. Ved Mehta.
- j) Thereafter Mr. Bindesh Kurani was absconding both Mr. Ved Mehta and Mr. Jaysukhbhai were behind him to know about the status of the company. In 2012 it came to the knowledge of Mr. Ved Mehta and Mr. Jaysukhbhai that, lots of irregularities are going on the company and shares of all noticee are transferred except the shares of Mr. Jaysukhbhai who is still holding 10.5%

of the shares of the company which can be seen from the share holding pattern filed with BSE for the quarter ended June, 2011.

- k) After knowing there are violations under various Regulations of SEBI Act, 1992, Mr. Jaysukhbhai tender his resignation as director of the company and intimated the same to BSE in the year 2012. Thereafter Mr. Jaysukhbhai along with Mr. Ved Mehta went to Santacruz police station and lodged a F.I.R against Mr. Bindesh Kurani for cheating and fraud made to them and without consideration transferred the shares of the noticee to unknown accounts and putting them in serious problem.
- l) Only after one of the relatives of the noticee found the said summon and then it came to out knowledge about the SEBI investigation and we immediately responded the same.
- m) It took ample time for us to gather information and documents to submit before you to prove ourselves innocent and victimized by Mr. Bindesh Kurani and the same may help you for your adjudication proceeding.
- n) It is further to submit that, we are cheated, victimized and defrauded by Mr. Bindesh Kurani who is still absconding. Considering the facts and material submitted hereinabove SEBI may take lenient view while adjudicating the matter.
- o) We will be submitting a detail reply to the noticee of the SEBI by October 31, 2018.
- p) I Jaysukhbhai R. Gondaliya filing this reply for and on behalf of all the Noticee named in the notice.

CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticees had failed to provide information sought vide the summons issued by the Investigating Authority, and thereby violated provisions of section 11C(3) of SEBI Act?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(a) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I

- (a) **Whether the Noticees had failed to provide information sought vide the summons issued by the Investigating Authority, and thereby violated provisions of section 11C(3) of SEBI Act?**

13. The record shows that three summons were issued by the Investigating Authority appointed by SEBI with subsequent reminders issued under direction of said Investigating Authority to the Noticees. The first summon dated March 27, 2015, required all the Noticees to provide certain information / documents regarding details of shares of Osian Industries Limited sold for the financial year 2011-12, copy of bank statement showing credit of sale proceeds along with bank account details, disclosures made to the company/ and stock exchange, etc, in relation to the acts of Noticees relevant to the investigation by April 7, 2015. Despite the receipt of summons by the Noticees, no information was received from the Noticees. Therefore second summons dated April 17, 2015 was issued through Regd. Post AD to the Noticees, requiring all the Noticees to provide the desired information by April 24, 2015. However, again the information sought under the said summons was not provided by the Noticees.
14. Therefore, third summons dated January 19, 2017 was issued by the Investigating Authority to the Noticees, requiring them to furnish the information by February 1, 2017 and also enclosing copies of the summons dated March 27, 2015 and reminder summons dated April 17, 2015. Noticees were also informed vide summons dated January 19, 2017 that despite repeated communication they had failed to provide the information and in case no information was provided by February 1, 2017, then, SEBI would initiate adjudication proceedings against them. However, again the information sought under the said summons was not provided by the Noticees. At the outset, it is to be mentioned that there is no dispute with respect to service of summonses.
15. In reply to SCN, Noticees had submitted that the Noticees were not staying in the said addresses since 2012 and shifted their residence as part of family settlement. One Ms Daxaben Gondalia (Noticee No. 2) who is relative of the Noticee No. 6, having age 60 years approximately without having English knowledge accepted the letters and kept the same for her consumption with an ulterior motive that, SEBI wants to give some shares to the Noticees which she

can use for her personal benefit and to meet her greed. None of the Noticees were aware of the alleged notice of SEBI seeking information. By coincidence summons issued by SEBI was received by another family member other than Ms. Daxaben J. Gondalia and thus came to know about the same.

16. It is not denied by the Noticees that the summons were received by them. Their defense is that the summons were received by one of the Noticees, Ms. Daxaben J. Gondalia (Noticee No. 2), who did not inform the others and was not literate enough to comprehend the summons. Be that as it may, considering that the summons were duly served, it cannot be denied that the Noticees failed to provide the information sought from them through the said summons issued under Section 11C(3) of SEBI Act.

17. I now proceed to examine the contents of the summons. I note that the same information has been sought from the Noticees No. 1 to 5 and 7, namely, details of shares sold by them, copy of bank statement showing credit of sale proceeds, copies of disclosures made by them under SEBI (Prohibition of Insider Trading) Regulations, 1992 (PIT Regulations) or SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (SAST Regulations), DP account beneficiary details and PAN number. There is also a query as to whether they knew any of the 12 persons listed in the summons. In respect of Noticee No.6, who was Managing Director (MD) of the Company, additional information has been sought such as copy of annual reports of the Company for 2012 and 2013, names and addresses of and transactions done by promoters, directors, group companies and associates of the Company, and copies of demat statements of Noticee, promoters, directors, group companies and associates of the company and details of shares held and transactions done by him between January 2011 and November 2012.

18. I note that most of the information sought from Noticees No.1 to 5 and Noticee No. 7 could have been obtained from sources such as depositories and exchanges. Hence, even though, the Noticees did not respond to the summons,

the same information was available from alternate sources and thus failure of these Noticees to respond by itself could not have impeded the investigation.

19. I further note that the investigation was initiated on the basis of investor complaints regarding non-transfer and non-demat of shares and it was noted during investigation that there was mismatch in the data on shareholders provided by RTAs / company. However, the information sought from the Noticees No. 1 to 5 and Noticee No. 7 did not relate to this subject.

20. Noticee No. 6 was MD of the company and the information sought from him could have thrown light on the reasons for non-transfer and non-demat of shares being faced by investors, as well as mismatch of data provided by RTAs/ company. I note that such information could not have been obtained from other sources and failure to respond to summons by Noticee No. 6 impeded the investigation process.

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(a) of the SEBI Act?

&

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

21. While it is established that all the Noticees failed to comply with the summons issued under Section 11 C(3) of SEBI Act, I am of the view that non-compliance by Noticees No. 1 to 5 and Noticee No.7 did not impede the investigation in any significant manner as the information sought from them was available from exchange and depositories. Thus levy of penalty is not warranted in respect of these Noticees.

22. As regards, Noticee No.6, who was MD of the Company, non-compliance with summons resulted in impeding the investigation and thus Noticee No.6 is liable for monetary penalty under Section 15A(a) of the SEBI Act, for violation of summons issued under Section 11C(3) of SEBI Act. The text of Section 15A(a) of SEBI Act is reproduced as under:

SEBI Act

“15A. 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

23. While determining the quantum of penalty under Section 15A(a) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

24. The material made available on record neither reveals nor specifies disproportionate gains/ unfair advantage made by the Noticee No.6, and the specific loss suffered by the investors due to violations by the Noticee No.6. However, failure to provide information sought by the Investigating Authority vide the summons issued under Section 11C(3) of the SEBI Act, despite receipt of the aforesaid summons compromises the regulatory framework and hampers the investigation. Further, any delay or hurdle in investigation due to non-cooperation by any entity is detrimental to the interest of investors in securities market.

25. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of ₹2,00,000/- (Rupees Two Lakh only) upon the Noticee No. 6 will be commensurate with the violations committed.

ORDER

26. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/- (Rupees Two Lakh only) upon the Noticee No. 6, i.e. Jaysukh R. Gondalia under Section 15A(a) of the SEBI Act for failure to comply with the summons issued under Section 11C(3) of SEBI Act and dispose off proceedings against Noticees No. 1 to 5 (Mitul Jaysukh Gondalia, Daxaben J. Gondalia, Chandulal R. Gondalia, Laxman bhai Dhaduk, Sanjay P. Gondalia) and Noticee No. 7 (Gopal P. Gondalia), without imposing penalty.

27. The Noticee No. 6 shall remit / pay the said amount of penalty within 45 days of 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

28. The Noticee No. 6 shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – IV of SEBI. The Noticee No. 6 shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

29. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: OCTOBER 31, 2018

PLACE: MUMBAI

MANINDER CHEEMA

ADJUDICATING OFFICER