

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2018-19/1329-1330]

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:

1. **Prakash B. Dhebhar HUF**
2. **Mr. Prakash B. Dhebhar**

In the matter of
GCV Services Limited

1. GCV Services Limited (formerly known as Gujarat Capital Ventures Limited and hereinafter referred to as 'GCV'), is a company having its shares listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'). During the examination in the scrip for the period January-March, 2010, SEBI observed that during the quarters ending December-2009 and March-2010 one of the promoters of GCV *viz*, Prakash B. Dhebhar HUF (Noticee No. 1) had acquired 4.21% shares, 0.14% shares and 4.15% shares (total 8.49% shares) of GCV from the other promoters Ms. Sadhana Dhebar, Mr. Jignesh K Chokshi and Indo US Services Ltd.; respectively. Such change in shareholding of the promoters/promoter group of GCV during the period December 2009 to March 2010 as disclosed in the shareholding pattern of the promoter's holding at BSE are shown in the following table:-

Sr. No.	Name of Shareholder	December-2009		March-2010	
		No. of shares held	% to total shares	No. of shares held	% to total shares
1	Prakash B. Dhebhar HUF (Noticee 1)	499300	4.98	1351400	13.47
2	Mr. Prakash B. Dhebhar (Noticee 2)	338400	3.37	338400	3.37
3	Ms. Sadhana Dhebar	422100	4.21	0	0
4	Mr. Jignesh K Chokshi	13800	0.14	0	0
5	Indo US Services Ltd.	416200	4.15	0	0
Total		1689800	16.84	1689800	16.84

2. Consequent to the above *inter-se* transfers of shares, the individual shareholding of Prakash B. Dhebhar HUF increased from 4.98 % to 13.47% and combined shareholding of the promoters (other than sellers) in GCV increased from 8.35% to 16.84%.
3. It was also observed that with regard to the aforementioned *inter-se* transfer of shares amongst the promoters which had increased the shareholding of Prakash B. Dhebhar HUF in excess of 5% it was required to make disclosures under regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'the PIT Regulations'). The relevant provisions of PIT Regulations is reproduced hereunder:

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - 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.

4. Further, Prakash B. Dhebhar HUF was also under obligation to make requisite disclosures to BSE under regulation 7(1) read with regulation 7(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'the SAST Regulations') with regard to the aforesaid acquisitions when its shareholding crossed 5%, and 10% benchmark in terms of regulation 7(1). The relevant provisions of regulation 7 of the SAST Regulations are reproduced hereunder:

SAST 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.

5. During the examination, BSE, vide its email dated September 04, 2015 informed that no disclosures were received by it under PIT Regulations for any of the aforesaid transfer of shares.
6. GCV had, vide its email dated September 27, 2010, informed that Mr. Prakash B. Dhebhar (Noticee No. 2) is Karta of the Prakash B. Dhebhar HUF and is a 'person acting in concert' (PAC) category.
7. Admittedly, the aforesaid gross acquisition through *inter-se* transfer of shares amongst promoters was exempted under regulation 3(1) (e) (iii) of the SAST Regulations from the open offer obligations in under the SAST Regulations. However, the acquirer, was under obligation to make requisite disclosures under regulation 3(3) and file post acquisition report in terms of regulation 3(4) read with regulation 3(5) of the SAST Regulations. The provisions of the said regulation 3(3), 3(4) and 3(5) as applicable at the relevant time provided as follows:

SAST Regulations, 1997

Applicability of the regulation

3. (3) *In respect of acquisitions under clauses 3 (e), (b) and (i) of sub-regulation (1), the stock exchanges where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance of the date of the proposed acquisition, in case of acquisition exceeding 5 per cent of the voting share capital of the company.*

(4) *In respect of acquisitions under clauses (a), (b), (e) and (i) of sub regulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 15 per cent or more of the voting rights in a company.*

Explanation--For the purposes of sub-regulations (3) and (4), the relevant date in case of securities which are convertible into shares shall be the date of conversion of such securities.

(5) The acquirer shall, along with the report referred to under sub-regulation (4), pay a fee of twenty five thousand rupees to the Board, either by a banker's cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai

8. SEBI vide letter dated January 16, 2014 and reminder letters dated June 04, July 02 and August 20, 2014 sought details regarding the aforementioned increase in shareholding in GCV from Mr. Prakash B. Dhebhar and *inter-alia* advised him to explain whether provisions of SAST Regulations including filing of report under regulation 3(4) of SAST Regulations have been complied with. However, no information was provided by him.
9. Thereafter, SEBI vide email dated February 05, 2015 sought details from BSE about disclosures if made by GCV under regulation 3(3) and regulation 7(1) of SAST Regulations. BSE, vide emails dated February 09 and 13, 2015 provided the details of disclosures under regulation 3(3) and regulation 7(1) of SAST Regulations made by GCV. From the documents submitted by BSE about such disclosures, SEBI noted that the disclosures made to BSE under regulation 3(3) were received by it belatedly on May 17, 2010, with regard to aforesaid *inter-se* transfer of shares amongst the promoters during the quarter ended December 2009 and March 2010.
10. In view of the above, it was observed that the Noticees have violated the provisions of PIT Regulations and SAST Regulations as given in the following table:

Noticee No.	Name of Noticee	SAST Regulations violated	PIT Regulations violated
1	Prakash B. Dhebhar HUF	3(3) and 3(4) read with 3(5), 7(1) read with 7(2)	13(1)
2	Mr. Prakash B. Dhebhar	3(3) and 3(4) read with 3(5)	-

11. SEBI felt that there are sufficient grounds to adjudicate upon the aforesaid allegation by the Noticees and on August 01, 2016 appointed Mr. Suresh Gupta, Chief General Manager, as Adjudicating Officer (AO) to inquire and adjudge the alleged violations by the Noticees under section 15A (b) of the SEBI Act. The AO sought evidence from the concerned department for the non-disclosure to company under regulation 13(1) of PIT Regulations. The concerned department of SEBI vide letters dated November 29, December 28, 2017 and April 02, 2018 addressed to GCV and vide letter dated April 02, 2018 addressed to Prakash B Dhebhar

HUF, sought information regarding disclosures under PIT Regulations for aforementioned acquisition by Prakash B. Dhebhar HUF. However, no information was provided by either GCV or Prakash B. Dhebhar HUF.

12. Simultaneously, by a communication-order dated April 02, 2018 this case was transferred to me and records of the instant proceedings were provided on June 26, 2018. After receipt of records, the notice to show cause no. EAD-2/SS/VS/21710/1-2/2018 dated August 02, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') read with section 15I of the SEBI Act and the terms of reference advised vide communication dated April 02, 2018. By the SCN the Noticees were called upon to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act which reads as under:

SEBI Act

Penalties and Adjudication

Penalty for failure to furnish information, return, etc.

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

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty 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*

13. The SCN was sent at the last known address of the Noticees through Speed Post Acknowledgment Due, which was, duly served upon the Noticees. In the said SCN, the Noticees were asked to reply within a period of 14 days. However, no reply was received from the Noticees. Further, in the interest of natural justice and in terms of rule 4(3) of the Adjudication Rules, the Noticees were given additional opportunity to file reply to the SCN and were also granted an opportunity of personal hearing on September 11, 2018 and the same was communicated vide notice dated August 28, 2018. The said notice was duly served upon the Noticees on September 05, 2018. However, no reply / communication has been received from the Noticees despite service notices upon them. Vide the said SCN/notice of hearing, it was clearly indicated that in case of failure to submit reply or to appear for the

hearing, the case would be proceeded with *ex-parte* on the basis of the material available on record. It is noted that the Noticees have neither filed any reply nor have availed the opportunity of personal hearing despite service of notices upon them. In the facts and circumstances of this case, I am of the view that the Noticees have nothing to submit and in terms of rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record.

14. I have carefully considered the allegations and charges levelled against the Noticees and relevant material relied upon in this case. In absence of any response from the Noticees, it is presumed that they have admitted the charge of provisions as alleged in the case. In this regard, the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) are relevant to rely upon wherein it has 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*". Further, 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, *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 levelled against them in the show cause notices...*"
15. It is, thus, admitted position that the Noticee No. 1 failed to make disclosures in terms of regulation 13(1) of the PIT Regulations with regard to increase in its shareholding from 4.98% to 13.47% during the quarter ended December 2009 and March 2010. Further, it is the same transactions which triggered similar obligation under regulation 7(1) read with 7(2) of the SAST Regulations. For the purpose of inquiry and adjudication of these similar violations arising out of same transactions it is relevant to rely upon the order dated September 04, 2013 passed by the Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs. SEBI wherein the it had observed that:

"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover

Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other ".

16. Accordingly, I am of the view that the violation of the provisions of regulation 13(1) of PIT Regulations and regulation 7(1) read with regulation 7(2) of the SAST Regulations are not substantially different and can be considered as a single violation for the purpose of adjudication in the matter.
17. It is undisputed fact that in the aforesaid *inter se* transfer of shares amongst promoters of GCV the promoters other than sellers and acquirers are part of the promoter group and hence they are persons acting in concert (PACs) with regard to acquisitions of transferee promoter i.e. Noticee No.1. It is also admitted fact that the acquisition in question was exempted from open offer obligations under regulation 11. However, with regard to such exempted acquisition the acquirer is obligated to make disclosures to the stock exchange under regulation 3(3) and file report with SEBI under regulation 3(4) read with regulation 3(5) of SAST Regulations. It is also admitted position that the Noticee no.1 had made delayed disclosures under regulation 3 (3) of the SAST Regulations, which was received by it on May 17, 2010.
18. It is relevant to mention that the provisions of relevant regulations are clear in that the alleged disclosure obligations are transaction specific and relate to the date of transaction and not to periodic disclosures as sought to be alleged. In this case, the Noticee have not filed any response. But the material on record such as disclosures made by Noticee No.1 to BSE shows that the transaction wherein the Noticee No. 1 acquired shares as on March 30, 2010 from other promoters.
19. The disclosures made therein show compliance of disclosure obligation to BSE under regulation 3(3) and 7(1) read with 7(2) of SAST Regulations, though belatedly. However, the failure to comply with provisions of regulation 7(1) of SAST Regulations and regulation 13(1) of PIT Regulations as regards disclosure to GCV is concerned is not disproved and there is complete non-compliance of obligation to file requisite report to SEBI under the provisions of regulation 3(4) of SAST Regulations in this case.

20. It is noted that the allegation is unclear as to the obligation of Noticee No.2 being a person acting in. It is not on reasonable basis as to how the PAC should make disclosures about transaction one of the promoters. In similar situation, while deciding the issue of disclosure obligations of acquirer and PACs under regulation 7(1A) of the erstwhile 1997 SAST Regulations, The Hon'ble SAT in the matter of *O.P. Gulati v. SEBI (Appeal No. 185 of 2011 decided on January 11, 2012)* has held as following:

“...The next question that arises is whether it casts an obligation on her to make a disclosure under regulation 7(1A) of the takeover code. Does the said regulation require each and every acquirer within the meaning of the takeover code to make a declaration to the stock exchanges is the moot question. We are of the view that it is not so. The said regulation casts an obligation to disclose purchase or sale of the share capital of the target company to the target company and to the stock exchanges within two days of such purchase or sale if: 1) person is an acquirer; 2) that person has acquired shares or voting rights; 3) such acquisition is under sub-regulation (1) to regulation 11; and 4) purchase or sale aggregates two per cent or more of the share capital of the target company. To attract the provisions of regulation 7(1A), it is necessary that all the four conditions stipulated above are satisfied. ... The purpose of declaration to the target company and to the stock exchanges where shares of the target company are listed is well served by the disclosure to be made by the acquirer who acquires the shares of the target company. A person who may fall within the definition of acquirer under the takeover code but has not acquired the shares and is not a person acting in concert with the person acquiring the shares is not obliged to make disclosure under regulation 7(1A) of the takeover code. In a given case, suppose there are 20 persons in a target company who may fall within the definition of ‘acquirer’ under the takeover code and say only two of them have purchased or sold shares aggregating two per cent or more of the share capital of the target company and these two persons are not acting in concert with any of the other eighteen persons. If the argument of learned counsel for the respondent Board is accepted then all the twenty persons who fall within the definition of ‘acquirer’ are required to make disclosure to the company as well as to the concerned stock exchanges. Such additional disclosure by eighteen persons who have neither purchased nor sold shares, nor are persons acting in concert with the two acquirers, serves no purpose.”

21. Thus, the obligation under these regulations would be on the promoter who is transacting in the shares on the relevant date and not on all PACs as held by Hon'ble SAT in the aforementioned *O.P. Gulati case* and in the matter of *Mr. Gopalakrishnan Raman and Ors Vs. SEBI* decided on November 20, 2015 wherein it held that requiring every promoter to

make such disclosures would lead to absurd consequences and disclosure by each promoter is not required under the language and spirit of relevant regulations. In this case, it is unclear as to why both the Noticees should make disclosures about individual transactions of Noticees No.1 as alleged. In the facts and circumstances of this case, the charge against Noticee No.2 does not sustain.

22. For the purpose of adjudication under section 15A (b) read with section 15J of the SEBI Act, In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. In such transactions timely disclosures, as required under the PIT Regulations and SAST Regulations, are of significant importance from the point of view of the investors and regulators. In this case, the delay in making disclosures under regulation 3(3) and regulation 7(1) of the SAST Regulations to BSE was not substantial and was not blameworthy. However, it is noted that the transaction in question was by way of *inter-se* transfer and wherein the some of the promoters were exiting the target company and shareholding and control was being consolidated with the Noticee promoters. In such situation, it was crucial that the requisite disclosures are made in prescribed manner and in specified time frame as such disclosures are aimed to bring about transparency in the transactions and assist SEBI to effectively monitor the transactions in the market. In this case, the complete failure in making disclosures to the target company under regulation 7(1) read with 7(2) of SAST Regulations and under regulation 13(1) of PIT Regulations and in filing Report with SEBI under regulation 3(4) of the SAST Regulations as found in this case, had clearly defeated the purposes of regulations. I also note that the matter is more than 8 years old. There is no allegation that the default in question was under any design or device to gain price or position advantage over the public shareholders and transaction in question was legally exempted from obligation of providing exit opportunity to public shareholder.
23. Considering all the facts and circumstances of the case as above and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose the monetary penalty of ₹ 1,00,000/- (Rupees One Lakh only) as prescribed under Section 15A(b) of the SEBI Act, 1992 upon Noticee viz; Prakash B. Dhebhar HUF. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

24. The Noticee shall remit / pay the aforesaid total 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 as follows:

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

25. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052." And also to e-mail id :- tad@sebi.gov.in

1	Case Name	
2	Name of the 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)	

26. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: September 21, 2018
Place: Mumbai

Santosh Shukla
Chief General Manager &
Adjudicating Officer