SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ORDER/MS/SB/2018-19/2022]

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 BRIJDHAM DEALCOM PRIVATE LTD.

(PAN No: AADCB6626P; CIN: U51909WB2009PTC131997)

In the matter of acquisition of shares of JMD Telefilms Industries Limited

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FACTS OF THE CASE IN BRIEF

1. The surveillance alert of Securities and Exchange Board of India (hereinafter, **SEBI**) had indicated that the shareholding of Brijdham Dealcom Private Ltd (hereinafter, the **Noticee / Acquirer**) in JMD Telefilms Industries Limited (hereinafter, **JTIL / Target Company**) increased beyond the 5% threshold in November, 2013. It is alleged that the acquirer / noticee failed to make the requisite disclosures to the target company and the Stock Exchanges in terms of Regulation 29 (1) read with Regulation 29 (3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter, **SAST Regulations**) and Regulation 13 (1) read with Regulation 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter, **PIT Regulations**).

APPOINTMENT OF ADJUDICATION OFFICER

2. Shri D. Ravi Kumar was appointed as the Adjudicating officer vide office order dated May 23, 2014 under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter, **SEBI Act**) and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, **Rules**) to enquire into and adjudge under section 15 A (b) SEBI Act the alleged violation of cited regulatory provisions by the noticee. Subsequently, the matter was transferred to Ms. Soma Majumder, vide order dated December 09, 2014 and thereafter to Mr. P. Mahapatra vide

order dated June 22, 2015. Pursuant to his transfer, the undersigned was appointed as AO vide order dated January 27, 2016.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter, **SCN**) dated November 18, 2015 was issued to the noticee under Rule 4 of the Rules, calling it to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the Rules, read with section 15-I of SEBI Act and penalty be not imposed on it under section 15A(b) of SEBI Act for its alleged non-disclosure as required under Regulation 29(1) of SAST Regulations and Regulation 13(1) of PIT Regulations, to the company and to the stock exchanges about the increase in its shareholding in the target company from 34,91,000 (4.84%) to 37,91,000 shares constituting 5.25% of the latter's share capital, pursuant to its acquisition of 3,00,000 shares of the target company on November 06, 2013. The SCN was dispatched through Speed Post with Acknowledgement Due (hereinafter, **SPAD**) to the address of the noticee as available on records and it returned undelivered with the postal endorsement "no such company in this address….".

4. Thereafter, an opportunity of personal hearing was provided to the noticee on November 15, 2018 vide letter dated October 31, 2018, enclosing a copy of the SCN. This notice was dispatched by SPAD to the registered address and also to the alternate office address of the noticee, both, as available in the Portal of the Ministry of Corporate Affairs (hereinafter, **MCA**). However, they returned undelivered with the endorsement, "no such company in this address….." and "insufficient address….(in Hindi)", respectively.

CONSIDERATION OF ISSUES AND FINDINGS

5. I note that the address of the noticee / acquirer, as available on records, is the same as its registered office address as available in the MCA portal and that both the SCN and notice of personal hearing were despatched to this address by SPAD and have returned undelivered. I find that the acquirer is incorporated under the provisions of Companies Act, 1956 and is, therefore, under statutory obligation vide Section 146 r/w Section 610B of this Act to receive and acknowledge all communications and notices addressed to its

registered office and also to make necessary filing with the Registrar of Companies / MCA portal, in case of change in this address. Sections 12 and 398 of the Companies Act, 2013, which came into force w.e.f. May 29, 2015 and April 01, 2014, respectively, correspond to the aforesaid provisions of Companies Act, 1956. Hence, the consequences of non-compliance to these provisions, if any, shall vest solely with the acquirer. Moreover, Order 29, Rule 2 (b) of the Civil Procedure Code states that:

"*2. Service on corporation.- Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—*

(a) .....

(b) *by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered office then at the place where the corporation carries on business*."

I, therefore, hold that the service of the notices to the address of the registered office of the acquirer through SPAD, as valid service under 7(b) of the cited Rules. I also note that serving of notice through affixture and newspaper publication in terms of Rules 7 (c) & (d), respectively, are more relevant to natural persons who are under no statutory obligation to intimate any authority about their address or any change in it thereof.

6. Accordingly, I proceed in this matter on the basis of the material available on records, and the issues that arise for consideration are:

a. Whether the acquirer acquired shares of the target company, which taken together with its existing holding, exceeded the threshold of 5%?
b. Whether the acquirer failed to disclose the change in its shareholding as aforesaid to the target company and the stock exchanges, as required under the cited SEBI Regulations?
c. Does the violation, if any, on the part of the acquirer attract monetary penalty under Section 15 A (b) of the SEBI Act?
d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?

7. Before recoding my findings, it would be appropriate to quote the applicable regulatory provisions during the relevant period, which read thus: -

"Disclosure of acquisition and disposal.

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.*

(2) ……

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of 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."

"Disclosure of interest or holding by directors and officers and substantial shareholders in a 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.

(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."

(6) *Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations "(l), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.*

8. I intersperse my findings with relevant narrative on the applicable disclosures. Listed companies are, *inter-alia,* required to disclose the holding of public shareholders, who hold more than 1% of its shares, to the stock exchanges on a quarterly basis, in terms of the Listing Agreement and w.e.f. September 02, 2015, under the provision of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. In turn, the stock exchanges are required to disclose the same, immediately on their website. The Data Warehousing

and Business Intelligence System of SEBI (hereinafter, **DWBIS**) captures and analyses information from various sources including the aforesaid filings, data from and stock exchanges and depositories etc. In this regard, I note that as per the alert from DWBIS, the shareholding of the acquirer increased from 34,91,000 shares to 37,91,000 shares, constituting 4.84% and 5.25%, respectively, of target company's share capital, in November 2013. Further, from the holding statement so generated, it is noted that the acquirer acquired 3,00,000 shares of target company through off market transaction on November 06, 2013, thereby increasing its shareholding as aforesaid. I, therefore, find that the acquirer acquired shares of the target company, which taken together with its existing holding, increased its shareholding above the threshold of 5%.

9. The acquirer is required to disclose the aforesaid increase in its shareholding to the target company within 2 days of its acquisition on November 06, 2013, under Regulation 29 (1) r/w 29 (3) (b) of SAST Regulations and Regulation 13(1) of PIT Regulations. Further, under 13 (6) of PIT Regulation, the target company is required to disclose the aforesaid information within two days of its receipt to all the stock exchanges in which its shares are listed, which in turn is required to be immediately disseminated by the stock exchanges on their website. I note that the target company is listed in the Bombay Stock Exchange (hereinafter, **BSE**) and the exchange vide its e-mail reply to SEBI on January 27, 2014, *inter-alia*, stated that it did not receive any disclosure about the impugned transaction in November, 2013, u/r 13(6) of PIT. This leads two possible inference; that 1) the acquirer informed the target company and the latter failed to inform BSE or 2) the acquirer failed to inform the target company. In this regard, I also note that target company vide its email on February 06, 2014 to SEBI, submitted that it did not received any disclosure in terms of Regulation 13 (1) of the PIT Regulations and Regulation 29 (1) of SAST Regulations from the acquirer. In the absence of any response from the acquirer, there is nothing to controvert the submissions of the target company and accordingly I hold that the inference at serial no. 2 immediately above to be correct.

10. As regards the disclosure required to be made by the acquirer to the stock exchanges under Regulation 29 (1) r/w (3)(a) of SAST Regulations and in turn to be disseminated by the stock exchanges on the website u/r 28 (4) of SAST, I note that BSE vide its cited e-mail, has stated it did not receive any disclose u/r 29 (1-3) of SAST Regulations pertaining to target company in November 2013. The aforesaid non disclosures render the acquirer liable for penalty under section 15A(b) of SEBI Act, which read thus :-

Penalty for failure to furnish information, return, etc.

***(a)* 15A.** *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 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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

The penalty amount was amended as "*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",* by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

11. As the acquisition which led to the default, happened in November 06, 2013, Section 15 A (b) of SEBI Act, as it stood prior to its amendment, would be applicable. Nevertheless, guided by the principle of rule of beneficial construction of even ex post facto law to mitigate the rigour of law, as was laid by the Hon'ble Supreme Court in T. *Barai vs. Henry Ah Hoe and Ors.* (07.12.1982 - SC): MANU/SC/0123/1982 - (1983)1SCC177, the amended version of section 15 A (b) of SEBI Act is applied in the instant matter also.

12. While determining the quantum of penalty under Section 15 A (b) of SEBI Act as aforesaid, provisions of Section 15 J of SEBI Act would be applicable, which read as under:-

15 J 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.*

With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the acquirer

or loss caused to the investors as a result of the failure on its part to make disclosure to the target company under Regulation 29 (1) r/w (3) (b) of SAST Regulations and Regulation 13 (1) of PIT Regulations and to the concerned stock exchange under Regulation 29 (1) r/w (3) (a) of SAST Regulations, are not available on record. Nevertheless, it is well recognized that disclosure is a key pillar in the efficient functioning of financial markets, as it empowers the stakeholders by facilitating informed decision making. The benefits of disclosure are not restricted to just the existing shareholders alone for their reappraisal; a person, who is not a shareholder in a company and chooses to be so or to invest pursuant to the disclosure, are also beneficiaries of the disclosure. Further, the character of an investor metamorphoses from that of financial to strategic investor as his/ her shareholding in the target company increases. When shareholding crosses certain substantial or critical level, then it may also lead to takeover or change in control of the target company. It is precisely to address such scenarios that the SAST Regulations provide disclosures at various levels of shareholding, including for non-substantial acquisition, such as in the instant case, to empower stakeholders. Similarly, in the case of PIT Regulations, elaborate measures including norms for disclosure at various thresholds by different categories of shareholders viz. those holding above 5%, directors, promoters etc. are provided as a bulwark against misuse of unpublished price sensitive information by 'insiders'. Therefore, noncompliance to the disclosure requirement, such as in the instant case, cannot be treated as a mere technical lapse, as it undermines the aforesaid stakeholder protection framework.

ORDER

13. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 2,50,000 (Rupees Two Lakhs Fifty Thousands only)** under Section 15A(b) of the SEBI Act against **Brijdham Dealcom Private Ltd**, which will be commensurate with its non-compliances.

14. The noticee shall 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 **Kolkata** OR through e-payment to the following bank account:

Bank account details 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

15. The noticee shall forward the said Demand Draft or the details/confirmation of penalty so paid through e-payment, as per format below, to the Regional Director, SEBI, Eastern Regional Office, L & T Chambers, 16, Camac Street, V Floor, Kolkata – 700 017

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction Number	
Bank details in which payment is made	
Payment is made for (like Penalties / disgorgement / recovery / settlement amount and legal charges along with order details	

16. In terms of Rule 6 of the Rules, copy of this order is sent to the noticee and to Securities and Exchange Board of India.

Date: January 31, 2019
Place: Kolkata

S. MANJESH ROY
ADJUDICATING OFFICER