

SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD-3/JS/SP/33/2018

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:

Manali Properties & Finance Ltd. PAN: AACCM9560A

CIN U70109WB1994PTC063020

In the matter of Falcon Tyres Ltd.

BACKGROUND

1. Securities and Exchange Board of India (**'SEBI'**), conducted investigation to ascertain whether the acquisition of shares through preferential allotment by certain entities in the scrip of Falcon Tyres Ltd. (**'Falcon'**) was in violation of provisions of SEBI (Substantial Acquisition of Shares And Takeover) Regulations, 2011 (**'Takeover Regulations'**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (**'PIT Regulations'**). During the investigation, it was observed that "Manali Properties & Finance Ltd., promoter of Falcon, (**'Manali/ Noticee'**) had failed to disclose its change in shareholdings in the scrip of Falcon. The nature of findings along with alleged violations of relevant provisions in respect of Manali, are as follows:

Findings in brief	Alleged violations of provisions
Manali, failed to disclose the change in holding from quarter ending March 2012 to quarter ending June 2012. The change in the shareholding was due to the invocation of 2,32,000 shares of Falcon pledged by Manali	Regulation 13(4A) read with Regulation 13(5) of PIT Regulations {to be read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015} and Regulation 31(2) read with Regulation 31(3) of Takeover Regulations

2. In view of the above, SEBI initiated adjudication proceedings against Manali to inquire and adjudge under Section 15A(b) of SEBI Act, 1992 (**'SEBI Act'**) for the alleged violations as mentioned in above table.

APPOINTMENT OF ADJUDICATING OFFICER

3. 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) Rule, 1995 (**'Adjudication Rules'**) and Section 19 of the SEBI Act to inquire into and adjudge under Section 15A(b) of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (**'SCN'**), dated October 10, 2017, in terms of provisions of Rule 4 of Adjudication Rules was issued to Manali and the same was delivered.
5. Manali, vide letter dated October 23, 2017, while acknowledging the receipt of the SCN, has requested to grant one month time to file reply to the SCN. Also, Manali vide the referred letter has provided the new register office address of Manali i.e. *"Subham Apartments", 1, Sarojini Naidu Sarani, 6th Floor, Kolkata- 700017*. Subsequently, Manali vide letter dated November 29, 2017, has further requested two weeks' time to file reply to the SCN.
6. Since, no reply to the SCN was received, vide letter dated February 02, 2018, Manali was once again informed to file reply to SCN by February 14, 2018 and to appear before the Adjudicating Officer for personal hearing on February 22, 2018. The said letter was duly received by Manali.
7. Manali, neither filed reply to SCN nor appeared for hearing. Subsequently, vide letter dated March 20, 2018, another opportunity of hearing was granted to Manali to appear before the Adjudicating Officer on April 05, 2018 and to file reply to SCN latest by April 02, 2018. The said letter was duly received by Manali.
8. In this regard, Manali vide letter dated March 29, 2018, while acknowledging the receipt of the letter dated March 20, 2018, has sought one month time to file reply to SCN and subsequently, vide email dated April 30, 2018, Manali sought 20 days' time to file reply to the SCN.

9. Vide email dated May 03, 2018, Manali was granted extension of 20 days to file reply to the SCN. Subsequently, vide email dated June 08, 2018, Crawford Barley & Co., the representative of Manali has requested another two weeks' time to file reply to the SCN and a hearing opportunity. As requested, vide letter dated June 11, 2018, Manali was once again granted a last and final opportunity to file reply to the SCN latest by June 02, 2018 and to appear before the Adjudicating Officer on June 22, 2018. A copy of the letter dated June 11, 2018 was forwarded to email manali.prop@gmail.com and purti.minawala@crawfordbayley.com. The representative vide email dated June 19, 2018 has confirmed their attendance to appear on the date of hearing.
10. On the date of hearing, representative of Manali appeared before the Adjudicating Officer on June 22, 2018 and submitted that "*the pledger has not notified the noticee of invocation of the shares pledged, thus they could not comply*". Apart from above oral submissions, the noticee has not filed any written submissions or evidence in support of the submissions.
11. In respect of non-submission of the replies by the Noticee, reliance is placed on the judgment of Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others v SEBI* (Appeal No. 68 of 2013 decided on February 11, 2014), 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....."*
12. Given the above, it is clear, that enough opportunities were provided however, Manali did not file any reply to the SCN and the matter is being proceeded with based on information available on records.

CONSIDERATION OF ISSUES AND FINDINGS

13. After perusal of the material available on record, the following issues are for consideration viz.

- A. Whether Manali had failed to disclose the change in holdings/ invocation of shares pledged in terms of PIT Regulations and Takeover Regulations, as alleged in the SCN?.
- B. If yes, does the violation, if any, on the part of Manali attract monetary penalty under Section 15A (b) of SEBI Act?.
- C. If yes, what would be the monetary penalty that can be imposed on Manali taking into consideration the factors mentioned in Section 15J of SEBI Act?.

ISSUE A- Whether Manali had failed to disclose the change in holdings/ invocation of shares pledged in terms of PIT Regulations and Takeover Regulations, as alleged in the SCN?.

- 14. Manali, for the quarter ended March 2012, held 12,13,844 shares which is 3.56% of the share capital of Falcon which was subsequently reduced to 9,81,844 shares which is 2.88% of the share capital of Falcon for the quarter ended June 2012. It is observed that the change in holdings of Manali was due to the invocation of 2,32,000 shares pledged to Almondz Finanz Ltd by Manali. It is on record that Almondz invoked the pledged shares of Manali on May 18, 2012.
- 15. Manali was required to make disclosure in terms of Regulation 31(2) read with Regulation 31(3) of Takeover Regulations for the invocation of 2,32,000 shares pledged. Also, for the change in share holdings, Manali was required to comply with Regulation 13(4A) read with Regulation 13(5) of PIT Regulations. Manali failed to disclose the change in holdings/ invocation of the pledged shares. BSE, vide email dated September 09, 2015 has informed that no disclosures were received in terms of Takeover Regulations and PIT Regulations.
- 16. During the investigation, Manali was summoned to confirm whether any disclosures under Takeover Regulations and PIT Regulations has been filed by Manali with Stock Exchange and/or to the Falcon for which Manali failed to file reply to the summons. For non-compliance of summons, separate proceeding was initiated against Manali.

17. Also, during the adjudication proceedings, Manali requested for extension of time, was granted on five occasions to file reply to the SCN and three opportunity to appear before the Adjudicating Officer. However, during the proceedings i.e. for more than 8 months, Manali failed to reply to the SCN and twice failed to appear before the Adjudicating Officer i.e. on February 22, 2018 and April 05, 2018 nor sought adjournment of hearing. Further during the third hearing, Manali did not make any further submissions.

18. Thus, based on the facts available on record, it is concluded that Manali have failed to comply with Regulation 13(4A) read with Regulation 13(5) of PIT Regulations {to be read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015} and Regulation 31 (2) read with Regulation 13(3) of Takeover Regulations.

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

19. In view of the above conclusion drawn, it now remains to be determined whether the violation attracts the monetary penalty under section 15A(b) of the SEBI Act. In this regards the provisions of Section 15A(b) is quoted 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 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;”.*

20. 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."*

21. Based on the above, present case is a fit case for imposing penalty upon Manali Properties & Finance Ltd. under Section 15A(b) of SEBI Act for violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations {to be read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015} and Regulation 31 (2) read with Regulation 13(3) of Takeover Regulations.

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

22. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of 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.”

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.

23. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors due to such violations and nor has such allegations been made against Manali.

24. There is no information on records to show that Manali have complied with the provisions as on date and thus this non-compliance continues as on date of passing of this order.

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.

25. The factors set out in the Order of the Hon'ble Securities Appellate Tribunal in *Ashok Jain V. SEBI* (Appeal no. 79 of 2014 decided on June 09, 2014), have been considered as under "..... Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations..."
26. As regards the delayed disclosures made, it is noted that the Hon'ble Securities Appellate Tribunal in the matter of *Yogi Sungwon (India) Ltd. Vs SEBI* dated May 04, 2001 in the appeal No. 36 of 2000 has observed that: ".....that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay."
27. Therefore, taking into consideration the facts / circumstance of the case and above factors, a justifiable penalty needs to be imposed upon Manali to meet the ends of justice.

ORDER

28. 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 proceeding against Manali Properties & Finance Ltd., stands established in terms of the provisions of the SEBI Act. Accordingly, impose a monetary penalties against Manali Properties & Finance Ltd. of **Rs.8,00,000 (Eight lakh Rupees only)** for non-compliance of Regulation 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 {to be read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015} and Regulation 31(2) read with Regulations 31(3) of SEBI (Substantial Acquisition Of Shares and Takeovers) Regulations, 2011.

29. Manali 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 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

30. 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)

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

Date: July 03, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer