SEBI/WTM/MPB/EFD/ 42 /2019

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

ORDER

UNDER SECTIONS 15-I (3) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF GOENKA DIAMONDS LIMITED

***IN RE* SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011 AND SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992**

IN RESPECT OF

S. No.	NAME	PAN
1	Mr. Nitin Goenka	AHJPG7482L

1) Securities and Exchange Board of India ('SEBI') during the examination in the scrip of Goenka Diamond and Jewels Ltd ('GDJL/Company') observed that Mr. Nitin Goenka ('Mr. Nitin / Noticee'), Promoter and Managing Director of GDJL at the relevant point of time, had transferred his entire shareholding i.e. 4,09,76,250 (12.93%) to his mother, Ms. Nirmala Goenka through an off-market transaction on November 11, 2013 but failed to disclose the same to the Company / Stock Exchange. On account of such failure, the Noticee allegedly violated Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeover Regulations') and Regulations 13(3), 13(4), 13(A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations').

2) In view of the above, SEBI initiated Adjudication Proceedings against the Noticee under section 15A(b) of Securities and Exchange board of India Act, 1992 ('SEBI Act') for the alleged non-disclosure of change in his shareholding. The Adjudicating Officer ("AO") appointed under the said proceedings issued a show cause notice dated September 11, 2017 to the Noticee and thereafter an opportunity of filing reply and to appear for personal hearing was provided to the Noticee. The said opportunities were availed by the Noticee.

3) After considering the reply / submissions filed by the Noticee and the material on record, the AO in his order dated March 27, 2018 ("AO Order") recorded the following:

" ...

Issue a) Whether Mr. Nitin has violated the Takeover Regulations and PIT Regulations for allegedly failed to disclose the change his holdings?

16. Mr. Nitin, Promoter & Managing Director of Goenka, held 4,09,76,250 shares (12.93% of the share capital of Goenka). On November 11, 2013, Mr. Nitin through off-market transferred 4,09,76,250 shares to Ms. Nirmala, which resulted in change in holdings of Mr. Nitin. Subsequent to the transfer of shares, the holdings of Nitin reduced to nil in the Company.

17. Mr. Nitin in his submissions has contested that the disclosure would arise only in case of change in the shareholding. It has been contested that the very transfer of the shares out of his account itself is being agitated in the court of law as the same has been alleged to have been fraudulently done. Given the same, it has been mentioned that the competent authority has applied a freeze on the holding and thus neither Mr. Nitin nor Ms. Nirmala are able to exercise any rights arising out the disputed holding.

18. Further, from the submission of Mr. Nitin, it is observed that on the anticipatory bail filed by Ms. Nirmala, the Order of Ld. Session Court of Greater Mumbai dated January 10, 2014 has rejected the anticipatory bail application on the ground that:

> *a. The evidence collected by the investigating agency as pointed out above clear in terms prima facto pointing out that the gift deed and release deed are forged and fabricated. So also, on the basis of the forged signature of the informant on TIFD slip the shares are transferred from the demat account to the account of the applicant.*
>
> *b. The papers of investigation further indicates that the accused and accused and the co accused Navneet Goenka signed the documents and the forged and fabricated documents are tendered by the co accused Navneet Goenka and managed to get transferred huge shares of the informant to the account of the applicant. She is beneficiary of the crime. In absence of the informant all these acts are committed therefore she is part of conspiracy.*
>
> *c. The offence charged against the applicant is certainly serious in nature. She has direct nexus with the alleged crime. In order to unearth the conspiracy her custodial interrogation is essential. She has not come before the court with clean hands. Therefore, according to me the applicant failed to make out the case for grant of anticipatory bail.*

19. Even, in the submission of Ms. Nirmala dated February 23, 2018, she has acknowledged that "there were internal disputes between the family which resulted in the transferor Mr. Nitin file a case against his mother, who is the noticee alleging fraudulent transfer of the subject shares. The entire shares therefore was subjected to a freeze order by the Investigation Department, Crime Branch where an FIR was

registered. Ms. Nirmala had to obtain Anticipatroy Bail from the Hon'ble High Court in this regard".

20. Given the specific observations of the competent authority on the veracity as well as the legality of the transaction leading to the change in the holding of Mr. Nitin, it would not be appropriate to adjudge this matter at this stage until the Competent Authority decides the matter.

Issue b) If yes, does the violation, on the part of Mr. Nitin attract monetary penalty under section 15A(b) of SEBI Act?

Issue c) If yes, what quantum of monetary penalty should be imposed on the Mr. Nitin taking into consideration the factors mentioned in Section 15J of the SEBI Act?

21. Given observations at 21 above, these issues cannot be dealt."

4) In view of the above reasons, the AO disposed of the show cause notice dated September 11, 2017 without imposition of any penalty on the Noticee.

PROCEEDINGS IN RESPECT OF REVIEW OF THE AO ORDER UNDER SECTION 15-I(3) OF THE SEBI ACT

5) SEBI, after examining the order passed by the AO and material relied upon by him, was of the opinion that the above mentioned AO order, in as much as not holding the Noticee liable for imposition of penalty, under section 15A (b) of the SEBI Act was erroneous and not in the interests of the securities market for the reason that the matter has not been decided on merit.

6) In view of above, SEBI issued a show cause notice dated June 26, 2018 under section 15-I (3) of SEBI Act to the Noticee advising him to show cause as to why appropriate penalty should not be imposed against him in terms of section 15A (b) of the SEBI Act, for the violation as alleged in SCN dated September 11, 2017 issued by AO. It was also mentioned therein that the contents of this show cause notice dated June 26, 2018 shall be read along with the previous SCN dated September 11, 2017 issued by the AO.

Hearing and written submissions

7) The Noticee submitted his reply to the show cause notice vide a letter dated July 11, 2018. An opportunity of personal hearing was provided to the Noticee on October 25, 2018 but the hearing was adjourned at the request of the Noticee. Subsequently, another opportunity of hearing was provided to the Noticee on November 28, 2018. In that regard, vide an email dated November 27, 2018, the Noticee communicated that he would not be able to attend the hearing as he would be traveling on the scheduled date of hearing i.e. November 28,

2018. He also submitted his submissions and requested that the same may be taken on record. No further opportunity of hearing was sought by the Noticee.

8) The submissions filed by the Noticee are, *inter alia*, as under:

"From the reading of the aforesaid show-cause notice is noted that this show-cause notice has been issued primarily on the basis that

(a) on the basis of material available on record SEBI is of the opinion that order is erroneous and in the interest of security markets as the matter is not decided on merits and

(b) AO did not hold the undersigned liable for imposition of penalty in terms of Para 6 of the show-cause notice under reply.

According to the undersigned, both these contentions in the show-cause notice under reply is on account of incorrect reading of the facts as evident from my reply dated 16.03.2018 which may be considered part and parcel of this reply

A. The order passed by the AO on 27.03.2018 is on merits and not 'erroneous', as alleged:

1 ...

Information qua fraudulent transfer of 4,09,76,250 Equity Shares of the Company from my DEMAT Account kept and maintained with IndusInd Bank Limited;

1.1 That the said shares were never transferred by me to Mrs. Nirmala Goenka, as alleged in the show-cause notice, and upon knowledge of the same on 22.11.2013, after filing the criminal complaints against Nirmala Goenka, I personally wrote an email dated 25.11.2013 to SEBI informing the fraudulent transfer of my 4,09,76,250 Equity Shares from my DEMAT Account maintained with IndusInd Bank Limited. The copy of this email was also sent to BSE, NSE, NSDL and CSDL.

1.2 Vide email dated 27.11.2013, SEBI replied that 'the subject matter relating to forgery of signature does not fall under the purview of SEBI and advised me to complaint with Police Authorities.

1.3 So, in the aforesaid manner, SEBI was informed immediately by the undersigned with regard to fraudulent transfer of his shares and SEBI was well aware about such fraudulent transfer which is the subject matter of the show-cause notice under reply.

Filing of Criminal Complaint / FIR with regard to fraudulent transfer of my 4,09,76,250 Equity Shares of Goenka Diamond & Jewels Limited:

1.4 On the complaint of fraudulent transfer of the said shares filed by the undersigned, the Mumbai Police registered FIR No. 265 of dated 26.11.2013 with MG Marg Police Station, Mumbai.

Petition u/s 397-398 of the Companies Act, 1956 being CP No. 154 of 2013 filed by the undersigned before Company Law Tribunal [CLB] and pending before National Company Law Tribunal [NCLT]:

1.5 The undersigned filed a petition before the CLB with regard to fraudulent transfer of my 4,09,76,250 Equity Shares in the Company as well as an attempt of Mr. Navneet Goenka, Mr. Nandlal Goenka and Mrs. Nirmala Goenka to remove me as Director / Managing Director of the Company and the same was listed on 26.11.2013, and upon detailed hearing and arguments, the Hon'ble CLB directed to maintain status-quo of Shareholding and of Board of Directors.

1.6 The said petition is still pending for adjudication before the National Company Law Tribunal, Principal Bench, New Delhi, as on date as the Company, Goenka Diamond & Jewels Limited preferred an appeal against the order dated 26.11.2013 before the Hon'ble High Court of Rajasthan, as Company Appeal No. 1 of 2014, which is still pending for adjudication / admission.

Modus Oprendi of Fraudulent Transfer of my 4,09,76,250 Equity Shares of the Company is described in detail in 'Anticipatory Bail Rejection Order' of NIRMAL GOENKA passed by the Ld. Session Judge, Greater Mumbai Court on 10.1.2014:

1.7 The copy of bail rejection officer provided to the AO contains the total modus adopted by Mr. Navneet Goenka, son of Mrs. NIRMALA GOENKA which inter alia includes that how the Forged Gift was made by him, how in a fraudulent manner the TIFD Slip was obtained by Mr. Navneet Goenka from IndusInd Bank Limited while the undersigned was not in India, including testimony of the stamp vendor, company secretary etc. etc., which clearly proves that the shares which are the subject matter of the present show-cause notice were fraudulently transferred from the DEMAT account of undersigned to the DEMAT account of Mrs. NIRMALA GOENKA.

Mrs. Nirmala Goenka, beneficiary of these 4,09,76,250 Equity Shares of the Company was to transfer back these shares to the undersigned in terms of

Settlement Agreement dated 18.3.2014 executed before the Ld. Additional Session Judge during 'Anticipatory Bail Proceedings':

1.8 Upon rejection of the anticipatory bail of Mrs. NIRMALA GOENKA, and filing of counter FIRs subsequent to this date, the Ld. Session Judge, Greater Bombay, referred the matter for 'mediation' as the dispute was amongst the family members. During these mediation proceedings, Mrs. NIRMALA GOENKA, Navneet Goenka and Mr. Nandlal Goenka on one side and the undersigned on other side entered into a 'Settlement Agreement' dated 18.3.2014, the copy of which was provided to the AO ... In terms of clause (g) and (h) at page 13 of this duly executed settlement agreement, Mrs. NIRMALA GOENKA was under unconditional and irrevocable obligation to transfer these 4,09,76,250 Equity Shares to the DEMAT Account of undersigned and the undersigned was under obligation to transfer these shares to Mr. NANDLAL GOENKA upon fulfilment of terms of settlement agreement by MRS. NIRMALA GOENKA and others.

...

1.9 Mrs. NIRMALA GOENKA and others failed to perform to comply their obligations under the settlement agreement including transfer back of these 4,09,766,250 Equity Shares to the DEMAT Account of the undersigned till date, despite the fact is that upon release of personal bank guarantee from GDJL, the undersigned resigned as Director of the Company as per CLB order in February,2016.

Hacking of my Email by Mr. NAVNEET GOENKA to ensure that the transfer email sent by Karvy is not received by the undersigned:

1.10 On the complaint made by the undersigned, the Cyber cell of Mumbai Police registered a FIR against Mrs. NIRMALA GOENKA and others on the basis of complaint made by undersigned as FIR No. 08 of 2013.

NIRMALA GOENKA and others failed to perform their obligation under the Settlement Agreement:

1.11 That Mrs. NIRMALA GOENKA and others failed to perform their obligation under the settlement agreement dated 18.3.2014, and the National Company Law Tribunal [NCLT] vide order dated 7.12.2016, directed the Company including NIRMALA GOENKA to perform the remaining terms of the settlement agreement dated 18.3.2014.

2. The AO framed the issues before arriving at conclusion in his order dated 27.3.2014 which are stated as (a), (b) and (c) in Para 15 at page no. 5 of 6 of the said order dated 27.3.2014.

...

2.2 In Para 16 and 17 the AO concluded that Nitin has contested that disclosure requirement would arise only in case of shareholding and when the alleged transfer is contested and that very transfer of the shares out of his account itself is being agitated in the court of law as the same has been alleged to have been fraudulently done. It is further mentioned in para 16 of the order that the competent authority has applied a freeze on the holding and thus, neither Mr. Nitin nor Mrs. Nirmala are able to exercise any rights arising out the disputed holding.

2.3 In Para 18, the AO has reproduced the extract of the submissions of anticipatory bail rejection order dated 10.1.2014 which is based on the facts mentioned hereinbefore.

2.4 In Para 20-21 of the order the AO has stated that considering the facts and circumstances, the issue qua levy of penalty cannot be dealt unless the competent authority decides the matter.

3. In view of the above facts, the order passed by the AO is on merits and cannot be termed 'erroneous' in the show-cause notice under reply, your honour has not specified that on what basis you / SEBI has termed the said order as 'erroneous' which necessitated you to issue the show-cause under reply. Thus, order passed by the AO is not erroneous, as alleged.

B. The Order dated 27.03.2018 is not prejudicial to the interest of securities market:

...

5. This contention of yours that the order dated 27.3.2018 is not passed on merits and therefore is not in the interest of the securities market is a vague and arbitrary conclusion as the show-cause notice do not spell out the reasons for such inference drawn by your honour before issuing the show-cause notice under reply.

...

D. NO PENALTY CAN BE LEVIED FOR TRANSFER OF 4,09,72,250 EQUITY SHARES OF GOENKA DIAMOND & JEWELS LIMITED FROM MY DEMAT ACCOUNT TO DEMAT ACCOUNT OF NIRMALA GOENKA, AS ALLEGED IN SHOW-CAUSE NOTICE:

8. From the foregoing proved facts it is very much clear that:

8,1 The transfer of entire shareholding from my name to the name of Mrs. Nirmala Goenka is not a wilful act on my part, rather is a fraudulent act in connivance of Mrs. Nirmala Goenka, Mr. Navneet Goenka and Mr. Nandlal Goenka, the process of which is described in detail in order dated 10.1.2014 passed by the Ld. Session Judge, as aforesaid.

8.2 Since my entire shareholding was transferred by Mr. Navneet Goenka, Mrs. Nirmala Goenka and Mr. Nandlal Goenka from my DEMAT Account to DEMAT Account of Mrs. Nirmala Goenka is a result of 'fraudulent actions' on the part of these people, and therefore, there is no question of any kind of disclosure by the undersigned to SEBI / Company and / or Stock Exchanges, and therefore, there is no 'failure' of any kind on my part to disclose the change in my shareholding and resultantly there is no violation of Regulation 29(2) or 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 or Takeover Regulations or PIT Regulations, as alleged in Para 2 of the show-cause notice under reply.

8.3 …

Without prejudice, please note that the intimation qua 'transfer of 4,09,76,250 equity shares of Goenka Diamond & Jewels Limited on the basis of fraudulent documents was provided by me to SEBI and Stock exchanges on 25.11.2013, as duly recorded in the order passed by AO and the said email was replied back by SEBI on 27.11.2013. Thus, it cannot be alleged that the undersigned did not file any intimation qua transfer of these 4,09,76,250 Equity Shares which is forming part of reply to the show-cause notice.

8.4 The undersigned had taken all possible and / or reasonable actions / steps that may be expected from a normal prudent person ranging from filing the criminal complaint, information to SEBI, BSE, NSE, CSDL, NSDL, Company Law Board, FIR with Mumbai Police etc. etc., and this fraudulent actions were duly reported at that point of time in print and electronic media and forming part of the internet report even today.

…

10. It is learnt by the reliable sources that there is an effort on the part of Mrs. Nirmala Goenka and Mr. Navneet Goenka to get the penalty imposed from SEBI and paid to create the same as defence that the SEBI has imposed penalty considering the transfer of these shares by Nitin Goenka and Mrs. Nirmala Goenka. In view of these facts, it is prayed that the proceedings be kept in abeyance and / or disposed of until the matter is finally adjudicated by the concerned authorities and courts.

In view of the above facts, it is prayed that the proceedings contemplated in the show-cause notice be dropped against me. "

Consideration of issues

9) I have perused the order passed by the AO, the show cause notice dated June 26, 2018 issued by SEBI, the written submissions made by the Noticee and other material on record. Without looking into the merits, in the facts and circumstances of the case and in light of the above material, I find that the first issue that arises for consideration is *whether the facts and circumstances of the case require the invocation of powers under section 15-I(3) of the SEBI Act.*

10) In this context, it is relevant to note the Noticee's submission that the order passed by the AO was on merits and was not erroneous as has been alleged in the show cause notice. It has also been submitted that the inference drawn by SEBI - mentioned in the show cause notice - that the AO order dated March 27, 2018 is prejudicial to the interest of the securities market is vague and arbitrary as the show cause notice does not spell out the reasons for drawing such an inference. Without prejudice to other arguments, the Noticee has submitted that the intimation *qua* 'transfer of 4,09,76,250 equity shares of GDJL on the basis of fraudulent documents was provided by him to SEBI and Stock exchanges on 25.11.2013, and the said email was replied back by SEBI on 27.11.2013. Thus, according to the Noticee, it cannot be alleged that he did not file any intimation *qua* transfer of these 4,09,76,250 equity shares. The Noticee has further submitted that he had taken all possible and / or reasonable actions / steps that may be expected from a normal prudent person ranging from filing the criminal complaint, informing SEBI, BSE, NSE, CSDL, NSDL, Company Law Board, filing FIR with Mumbai Police, etc. and the fraudulent actions were duly reported at that point of time in print and electronic media and form part of the internet report even today.

11) I have perused section 15-I (3) which reads as under:

"The Board may call for and examine the record of any proceedings under this section and if it considers that the order passed by the adjudicating officer is erroneous to the

extent it is not in the interests of the securities market, it may, after making or causing to be made such inquiry as it deems necessary, pass an order enhancing the quantum of penalty, if the circumstances of the case so justify:

Provided that no such order shall be passed unless the person concerned has been given an opportunity of being heard in the matter:
…"

12) It is noted that section 15-I (3) was inserted in the SEBI Act vide the Securities Laws (Amendment) Act, 2014. Under this section, the Board has been conferred with the power to call for and examine the records of any Adjudication Proceedings taken up under section 15 I, which essentially pertains to Adjudication Proceedings under the SEBI Act. Further, the Board has the power to make an inquiry or it can cause an inquiry to be made if it considers that the order passed by the AO is erroneous to the extent that it is not in the interest of securities market. In my view, the object of section 15-I (3) is in effect revision of the orders passed by AO which are erroneous to the extent that they are not in the interest of securities market.

13) I find it relevant to point out that the show cause notice dated June 26, 2018 has been issued on the ground that the AO order is erroneous and not in the interest of securities market because it has not been decided on merits.

14) On perusal of the AO order dated March 27, 2018, I find that the said order has been disposed of without rendering any finding on merits, for instance (a) whether the Noticee had transferred the shares of GDJL or (b) whether the requirement of disclosure was triggered even though the acquisition itself was disputed few days after the transaction, or (c) whether disclosure requirement was triggered before the alleged dispute on the holding of shares arose, thereby violating the provisions of Regulation 29(2) read with Regulation 29(3) of Takeover Regulations and Regulation 13(3), 13(4) and Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, or (d) whether the Noticee had filed the information regarding the alleged transfer of shares of GDJL to the Stock Exchanges in any manner, and if so, what was the effect of such filing of information on the disclosure requirements under the Takeover Regulations and PIT Regulations, etc. Paragraph 20 of the AO order dated March 27, 2018 states *"Given the specific observations of the competent authority on the veracity as well as the legality of the transaction leading to the change in the holding of Mr. Nitin, it would not be appropriate to adjudge this matter at this stage until the Competent Authority decides the matter".*

15) Therefore, it is clear that the Adjudication Proceedings have been disposed of without dealing with the merits of the case. I note that the power under section 15-I(3) of SEBI Act

can be invoked on the ground that the order of AO which is not on merits is *per se* erroneous to the extent that it is not in the interests of the securities market. However, I find that since AO is a statutory authority (for holding inquiry, and in cases of a violation of securities laws, for imposing penalty), the statutory mandate is better fulfilled by the AO himself/herself by passing a reasoned order on merits. Therefore, the question that arises for consideration before invocation of section 15-I(3) of SEBI Act is whether there is any legal bar on SEBI from initiating fresh Adjudication Proceedings on the same cause of action on which AO proceedings were disposed of without adjudging the issue on merits. In other words, the question that arises for consideration is whether the earlier AO order, which is not on merits, stands as *res judicata* for fresh Adjudication Proceedings for the same cause of action. In this context, it is relevant to quote the following case laws on *"res judicata*" laid down by the Courts:

- In a judgment dated October 27, 2015 rendered by the Hon'ble High court of Gujarat in *Vipulbhai Mansinhbhai Chaudhary vs State of Gujarat* on the subject of "*res judicata"* the following was observed, which is relevant for the present proceedings:.

  "On the aspect of res-judicata, it is required to note that such principles would have application only when in earlier round of litigation between the same parties, there is a final decision on merits and the decision on the issue shall remain binding to such parties.

  However, if the action of the authority is found in breach of legal procedure or in breach of the principles of natural justice to be followed, nothing could be said to have been decided on merits concerning the rights of the parties and therefore, it is always open to the concerned authority to initiate fresh action by following legal procedure or the principles of natural justice before taking action under the provisions of concerned Statute."

- Hon'ble Supreme court in *Mathura Prasad Bajoo Jaiswal and Ors. vs. Dossibai N.B. Jeejeebhoy, 1970 SCR (3) 830* observed as under:

  "A decision of a competent Court on a matter in issue may be res judicata in another proceeding between the same parties: the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be re-opened between them in another proceeding. The previous decision on a matter in issue alone is res judicata : the reasons for the decision are not res judicata. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and

application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue.

When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent Court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the foundation of the right and the relevant law applicable to the determination of the transactions which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision: the decision of law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the Court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law.(emphasis supplied)

- Later in another judgment in *Superintendent (Tech. I) Central Excise vs Pratap Rai*; 1978 SCR (3) 729, the Hon'ble Supreme Court was dealing with a situation where an order of adjudication proceedings of the Assistant Collector under the Customs Act was appealed before Appellate Collector. In appeal, the Appellate Collector by his order vacated "without prejudice" the order of the Assistant Collector mainly on the ground that the Assistant Collector had not complied with the rules of natural justice. It was held by Hon'ble Supreme Court that where an order passed in appeal vacates the order of the first Tribunal on purely technical grounds and expressly states that it is being passed without prejudice, which means an order not on the merits of the case, such an order does not debar fresh Adjudicatory Proceedings which may be justified under the law.

16) The law laid down by the Hon'ble Supreme Court clearly states that when it is said that a previous decision is *res judicata*, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties and fact decided by a competent court is finally determined between the parties and cannot be re-opened between them in another proceeding. Similar is the case law cited above which makes it clear that fresh proceedings can be initiated on the same cause of action if the earlier proceedings have resulted into a decision not on merits. In view of the above, there is no legal bar on SEBI in initiating fresh Adjudication Proceedings on the same cause of action on which

AO proceedings were disposed of without adjudging on the issue on merits. In view of AO order dated March 27, 2018 disposing of the show cause notice dated September 11, 2017 without deciding on merit, on the allegations of fact and law covered in the said show cause notice, there is no bar on SEBI to initiate fresh Adjudication Proceedings on the same cause of action. Accordingly, SEBI is at liberty to initiate fresh Adjudication Proceedings in the matter. Therefore, without dealing with the merits, in the facts and circumstances of the present case, the invocation of section 15-I(3) for the purpose of exercise of powers conferred thereunder, is not required.

17) I find that having answered the issue relating to invocation of section 15-I (3) (as observed above), the matter does not require any further consideration.

18) The revision proceedings under section 15-I (3) of the SEBI Act stand disposed of accordingly.

Sd/-

DATE: April 23, 2019
PLACE: Mumbai

MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA