

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. AK/AO- 26/2014]**

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**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 to**

**M/s. IDBI Bank Ltd. (PAN AABC18842G)**

**In the matter of**

**M/s. Welspun India Limited**

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**FACTS OF THE CASE**

1. M/s. Krishiraj Trading Limited along with Welspun Mercantile Ltd. (**"PAC"**) had filed a Letter of Offer (hereinafter referred to as '**LOO**') before the Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) for acquiring 2,33,35,525 fully paid up equity shares of Rs. 10/- each (representing 26% of the expanded share capital) of Welspun India Ltd. (hereinafter referred to as **"The Company"**) at a price of Rs. 54/- per fully paid up equity share payable in cash. The Company is incorporated and registered under the Companies Act, 1956 having its registered office at Welspun City, Village Versamedi, Taluka Anjar, Kutch Dist., Gujarat -370110. The Company was listed on Bombay Stock Exchange Ltd. (hereinafter referred to as **BSE**), National Stock Exchange of India Ltd. (hereinafter referred to as **NSE**) and Kolkata Stock Exchange Ltd. (hereinafter referred to as **CSE**).
2. While examining the aforesaid offer document of the Acquirer to acquire the shares of the Company, it was observed by SEBI that IDBI Bank (hereinafter referred to as **"The Noticee"**) had acquired 50,00,000 shares of the Company on 22.04.2010 representing 5.64% of the paid up capital of the target Company. However, it was observed that the Noticee did not comply with the provisions of Regulation 7(1) read with 7(2) of SEBI

(Substantial Acquisition of Shares and Takeover) Regulations, 1997 (**hereinafter referred to as ‘Takeover Regulations’**). Hence, it was alleged that the Noticee had violated the provision of Takeover Regulations. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI A of SEBI Act, 1992 (hereinafter referred to as “Act”) were initiated against the Noticee under Sec15A (b) of SEBI Act, 1992 to inquire into and adjudicate the alleged violations of the provisions of regulation 7 (1) read with 7(2) of the Takeover Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

3. Smt. Barnali Mukherjee was appointed as the Adjudicating Officer on 20.05.2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**SEBI Rules**’) to inquire into and adjudge the alleged violations committed by the Noticee.
4. Consequent upon the transfer of Smt. Barnali Mukherjee, I was appointed as the Adjudicating Officer vide order dated 08.08.2013 under Section 15-I of the SEBI Act read with rule 3 of SEBI Rules to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of PIT Regulations committed by the Noticee.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A Show Cause Notice (hereinafter referred to as “**SCN**”) Ref. No. EAD/BM/VRP/17918/2013 dated 22.07.2013 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of takeover Regulations as detailed below:

| Sl. no. | Regulation | Transaction Date | No. of Shares Acquired | Change in % of share holding | Due date of compliance | Actual date of compliance | Duration of non-compliance (No. of Days) |
|---------|------------|------------------|------------------------|------------------------------|------------------------|---------------------------|--|
| 1       | 7(1)       | 22.04.2010       | 50,00,000              | 5.64%                        | 24.04.2010             | 03.05.2010                | 9  |

6. The Noticee was also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.
7. The Noticee vide reply dated 08.08.2013 to the SCN *inter alia* submitted that they had prudently complied with the provisions of Takeover Regulations and SEBI (Insider Trading Amendment) Regulations, 2002 (hereinafter referred to as “**PIT Regulations**”). The Noticee vide the said letter submitted that they had made the relevant disclosures under regulation 7(1) of the Takeover Regulations and regulation 13(1) of the PIT Regulations to the Company, BSE, NSE and CSE on 23.04.2010 itself. The copy of letter dated 23.04.2010 sent to the company along with the disclosures made under regulation 7(1) of the Takeover Regulations and regulation 13(1) of the PIT Regulations was enclosed. Also, copies of courier slips of dispatches made to BSE, NSE and CSE were provided along with the said reply.
8. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticee was granted an opportunity of hearing on 23.08.2013 vide notice dated 14.08.2013 and the said notice was duly acknowledged by the Noticee. The Noticee vide email dated 31.08.2013 referred the hearing notice dated 14.08.2013 and stated that they had received the said hearing Notice only on 30.08.2013. Hence, another opportunity of hearing was granted on 17.09.2013 vide letter dated 03.09.2013. Accordingly Smt. Vaishali Nemlekar (Deputy General Manager) and Mr. Chandrashekhar Jadhav (Manager), the Authorized Representatives of the Noticee (hereinafter referred to as “**ARs**”) appeared on behalf of the Noticee and reiterated the submissions made in their reply dated 08.08.2013 that they had made the relevant disclosure to the Company, BSE, NSE and CSE on 23.04.2010 itself.
9. In view of the above claim of the Noticee, confirmation was sought from BSE, NSE, and CSE as to when they had received the disclosure filed by the Noticee vide letter dated 23.04.2010. BSE vide its email dated 22.10.2013 replied that they had received the disclosure on 27.04.2010. BSE provided a copy of the Noticee’s letter dated 23.04.2010 regarding disclosure under regulation 7(1) of the Takeover Regulations and regulation

13(1) of the PIT Regulations, which was inwarded at BSE on 27.04.2010. Similarly, NSE vide its email dated 21.10.2013 replied that they received the disclosure on 27.04.2010. NSE vide its email dated 25.10.2013 also provided copy of the Noticee's letter dated 23.04.2010 regarding disclosure under regulation 7(1) of the Takeover Regulations and regulation 13(1) of the PIT Regulations, which was inwarded at NSE on 27.04.2010. CSE vide its email dated 23.10.2013 replied that they could not trace any disclosure from the Noticee in the year 2010.

10. Confirmation was also sought from the Manager to the Offer Prime Securities Limited. The Manager to the Offer vide email dated 09.10.2013 informed that the said letter dated 23.04.2010 was sent by the Noticee to the company by Registered Post and was received by the company on 03.05.2010 only, after which the company made the disclosure to the concerned stock Exchanges on the same day i.e. 03.05.2010 by email, followed by hand delivery on 05.05.2010. Proof of receipt of the said letter at the company's end was provided. It is seen from the same that the said letter was stamped by the Colaba Post Office on 26.04.2010 and at Anjar Taluka Post Office on 30.04.2010. The Manager to the Offer has claimed that the said letter was finally delivered to the Company on 03.05.2010; however, the actual date of receipt by the company is not legible.
11. The replies/ confirmation received from the Manager to the Offer and the concerned stock Exchanges were referred to the Noticee for their comments/ reply, if any, on the same. Vide letter dated 18.11.2013, the Noticee reiterated that they had prudently complied with the provisions of the Takeover Regulations by making disclosure on 23.04.2010 to the company and the concerned stock Exchanges.
12. During the proceeding, it was, thus, realized that the acquisition of 50,00,000 shares representing 5.64% change in paid up capital on 22.04.2010 had also triggered the provisions of regulation 13 (1) of PIT Regulations. Hence, a Supplementary Show Cause Notice (hereinafter referred to as "**SCN**") Ref. No. EAD/AK/VRP/868/2014 dated 08.01.2014 was issued to the Noticee as to why an inquiry should not be held in terms of rule 4(1) of SEBI Rules and penalty be not imposed under section 15A(b) of SEBI Act, 1992 for the alleged violation of PIT Regulations as well.

13. The Noticee vide reply dated 25.01.2014 to the supplementary SCN *inter alia* referred to their earlier letters dated 03.08.2013 (it appears that the reference is to letter dated 08.08.2013) and 18.11.2013 and reiterated that they had issued the disclosures by courier to the Exchanges where the company's shares were listed i.e. BSE, NSE and CSE on 23.04.2010 itself. Further, it was submitted that the company's registered office being situated at a village in Kutch, Gujarat, the disclosure was sent through registered post. Thus, it was reiterated that there was no delay in issue of disclosures.
14. Another opportunity of hearing was granted on 13.02.2014 vide notice dated 27.01.2014 and the said notice was duly acknowledged by the Noticee. Mr. Pothukuchi Sitaram (Chief Financial Officer), Mr. Deepak Gupta (General Manager), Mrs. Vaishali Nemlekar (Deputy General Manager) and Mr. Chandrashekhar Jadhav (Manager), Authorized Representatives (hereinafter referred to as the **ARs**) appeared on behalf of the Noticee. The ARs reiterated the submission made vide letter dated 25.01.2014.

### **CONSIDERATION OF ISSUES**

15. I have carefully perused the written submissions of the Noticee and the documents available on record. It is observed that the allegation against the Noticee is that the Noticee has failed to make the relevant disclosure under the provisions of Regulation 7 (1) read with 7(2) of the Takeover Regulations and under regulation 13 (1) of PIT Regulations.
16. The issues that therefore arise for consideration in the present case are:
  - a) Whether the Noticee has failed to comply with the provisions of Regulation 7(1) read with 7(2) of the Takeover Regulations and regulation 13 (1) of PIT Regulations when it acquired 50,00,000 shares on 22.04.2010.?
  - b) Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?
  - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

## **FINDINGS**

17. Before moving forward, it is pertinent to refer to the following provisions:

**Regulation 7(1) read with 7(2) of the Takeover Regulations**, which reads as under:

***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.*

*7(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.*

**Regulation 13(1) of PIT Regulations**, which reads as under:

**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.*

18. The issue for consideration is whether the Noticee failed to make the relevant disclosures under Regulation 7(1) read with 7(2) of the Takeover Regulations and regulation 13(1) of PIT Regulations when it acquired 50,00,000 shares representing 5.64% of the paid up capital of the Company on 22.04.2010. I note that under regulation 7(1) read with 7(2) of Takeover Regulations, 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 shares or voting rights in a Company, in any manner whatsoever, has to disclose the aggregate of his shareholding or voting rights in that Company to the target

Company and to the stock exchanges where shares of the target Company are listed within two (2) days from the receipt of intimation of allotment of shares or from the acquisition of shares or voting rights as the case may be. Similarly, under regulation 13(1) of the PIT Regulations, any person who holds more than 5% shares or voting rights in any listed company, is required to disclose to the company the number of shares or voting rights held on becoming such holder within two (2) working days of receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be.

19. I find that the Noticee had acquired 50,00,000 shares representing 5.64% of the paid up capital of the Company on 22.04.2010 for which the Noticee was required to disclose the aggregate of its share holding or voting rights in the Company to the Company and to BSE, NSE and CSE under the Takeover Regulations and to the Company under the PIT Regulations. The said facts are not disputed by the ARs. I find from the reply of the Noticee that the Noticee vide letter dated 23.04.2010 had sent/made the disclosure under regulation 7(1) of the Takeover Regulations to the company, BSE, NSE and CSE. It had also similarly sent disclosure required under Regulation 13(1) of the PIT Regulations to the company. However, the Noticee did not possess the acknowledged receipts from the company and the concerned stock Exchanges, regarding their having received the said disclosures within the due dates. Hence confirmation was sought from the Manager to the Offer, Prime Securities Limited, as to when the company had received the aforesaid letter dated 23.04.2010. Also, similar confirmation was sought from BSE, NSE and CSE.
20. I find from the reply/confirmation received from the Company that the Noticee had sent letter dated 23.04.2010 disclosing its shareholding by Registered Post. I further find that the said letter was stamped by the Colaba Post Office on 26.04.2010 and by Anjar Taluka Post Office on 30.04.2010. The Manager to the Offer has claimed that the said letter was finally delivered to the Company on 03.05.2010. From the confirmation received from BSE & NSE, I find that the letter dated 23.04.2010 (i.e. Friday) sent by the Noticee was acknowledged by BSE & NSE on 27.04.2010 (i.e. Tuesday). I note that CSE vide email dated 23.10.2013 has stated that they could not trace any disclosure from IDBI Bank in the year 2010 under Regulation 7(1) of the Takeover Regulations.

21. In the matter of Kalinidee Rail Nirman Engineers Ltd. Versus SEBI, the Hon'ble Tribunal vide Order dated 19.07.2010 had held that *"..... the agency through which the document is sent acts as an agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgement received from BSE in regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant. .... In view of the matter, no fault could be found with the impugned order."*
22. I find in the instant case too, the Noticee has not placed on record any acknowledgement from any of the Exchanges BSE, NSE or CSE, or, from the company. On the other hand, the Exchanges BSE and NSE have produced documental proof that the letter dated 23.04.2010 sent by the Noticee was acknowledged by them on 27.04.2010. Also, the documental proof given by the company clearly proves that the letter was received at Anjar Taluka Post Office only on 30.04.2010. The due date for compliance as per the Takeover Regulations was 24.04.2010 and that as per PIT Regulations was 26.04.2010. Thus, after taking into consideration of all the facts and circumstances of the case, it is established that the letter dated 23.04.2010 sent by the Noticee making the disclosure under regulation 7(1) of the Takeover Regulations to the company and to the Exchanges BSE, NSE and CSE was not received both at the company's end as well as the Exchanges end by the due date. The due date 24.04.2010 being a Saturday was a non-working day. However, it is observed from records that the Exchanges BSE and NSE have received the Noticee's letter dated 23.04.2010 disclosing the acquisition only on 27.04.2010 i.e. one day after the next working day, which fell on 26.04.2010 (i.e. Monday). The letter to the company as per records could not have been received earlier than 30.04.2010, in view of the documental proof received. The Noticee has, thus, violated the provisions of Regulation 7 (1) read with 7(2) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations.



23. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*. Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow."*
24. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:
- 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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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
25. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J 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.

26. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. The main objective of the PIT Regulations in respect of the disclosure norms is to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of both - the Takeover regulations and PIT Regulations is investor protection.
27. Further, any transaction which requires compliance of the Takeover Regulations and/ or PIT Regulations, if not complied, is always a serious matter, and, cannot be considered a mere "technical" violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information. Also, the Noticee being a bank had a greater responsibility to ensure compliance with the applicable regulations, and, should have put in place appropriate levels of accountability and checks and balances, to make certain that the documents dispatched by the Noticee were received by the addressee(s) within the timeframe for compliance provided by the underlying regulations. I find that due to the Noticee not ensuring the receipt of documents at the recipients end within the timeframe provided under the relevant provisions of the Takeover and PIT

Regulations, there was delay in dissemination of information to the general investors, as regards acquisition of more than 5% shareholding by the Noticee in the company. Though the information was received by the company much later, however, since it was received by the Exchanges BSE and NSE with a delay of one working day, I consider the delay under both Takeover and PIT Regulations as one working day only.

28. Further, while considering the factors stipulated in Section 15-J of SEBI Act, I find from the data/records during the last 3 years, that SEBI has issued deficiency letters/ Administrative Warning to the Noticee *inter alia* for non-submission of information/ data/ etc. at least on four (4) separate occasions as per the details given below:

- a) Pursuant to inspection of books of accounts of IDBI Bank-DP Operations conducted by SEBI for the period from April 2008 to April 2010, deficiency letter dated 03.11.2010 was issued to the Noticee advising not to repeat the irregularities mentioned in the inspection report in future and to ensure strict compliance of the provisions of SEBI Act, Rules, Regulations issued thereunder and circulars of SEBI and other Securities laws;
- b) Deficiency letter dated 23.02.2011 was issued to the Noticee as a Bankers to an Issue (BTI) pursuant to non submission of quarterly reports from June 2009 to September 2010;
- c) Deficiency letter dated 18.05.2012 was issued to the Noticee for non- submission of half yearly reports with respect to Merchant Banking activities; and
- d) An administrative warning vide letter ref. MIRSD-4/DPINSP/IDBI/22883/2012 dated 11.10.2012 was issued to the Noticee in the course of inspection of books and record of Depository Participant conducted by SEBI. The Noticee was advised in the said letter to take appropriate corrective step to rectify the deficiencies.

29. Vide letter dated 18.02.2014, the Noticee has *inter alia* informed that they have taken corrective steps to rectify the deficiencies brought out vide letter dated 23.02.2011. Further as regards deficiency letter dated 03.11.2010, the Noticee has stated that they have submitted their compliance in respect of SEBI audit observations. Besides, I note that

enquiry proceedings against the Noticee *inter alia* in relation to the irregularities with respect to breach of extant KYC norms observed by SEBI while investigating in the IPO of some companies during the period 2003-05 are still pending.

30. Thus from the above, I find repeated irregularities by the Noticee in complying with the provisions of SEBI Act, Rules, Regulations and circulars of SEBI have come to the notice of SEBI which have been pointed out to the Noticee from time to time. As per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less, and, in the instant case, I find that the delay is by one (1) working day under the relevant provisions of each of the Takeover and PIT Regulations respectively.

#### **ORDER**

31. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) under Section 15 A(b) on the Noticee M/s. IDBI Bank Ltd. which will be commensurate with the violation of Takeover Regulations and PIT Regulations committed by the Noticee.
32. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri V. S. Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
33. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **February 26, 2014**

Place: **Mumbai**

**Anita Kenkare**  
**Adjudicating Officer**