

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 Shir Nitin Goenka -PAN AJHPG7482L in the matter of Goenka Diamond and Jewels Ltd.

BACKGROUND

1. Securities and Exchange Board of India ('SEBI') during the examination in the scrip of Goenka Diamond and Jewels Ltd ('Goenka/Company'), a company listed at The Bombay Stock ('BSE') and National Stock Exchange ('NSE'), observed that Mr. Nitin Goenka ('Nitin/Noticee'), Managing Director & Promoter of the Company, on November 11, 2013, through off-market had transferred 4,09,76,250 shares (12.93% of the share capital of Goenka), his entire holding in the Company to Ms. Nirmala Goenka ('Nirmala'), Promoter of the Company and mother of Nitin. Subsequent to the transfer of shares, the holdings of Mr. Nitin reduced to nil in the Company. It was alleged that Nitin failed to disclose the change in the shareholding to the Company/Stock Exchanges and thus have violated Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeovers Regulations') and Regulations 13(3), 13(4) and Regulation 13(4A) 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 Nitin to inquire and adjudge under section 15A(b) of SEBI Act, 1992 ('SEBI Act') for the failure to disclose the change in holdings.

APPOINTMENT OF ADJUDICATING OFFICER

3. Adjudicating Officer was appointed vide order dated May 18, 2017, under Section 15-I read with Section 19 of the Securities and Exchange Board of India Act, 1992 ('SEBI Act') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 ('Adjudicating Rules'), to inquire into and adjudge under Section 15A(b) of SEBI Act for the aforesaid alleged violation against Nitin.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Vide letter dated September 11, 2017, a notice was issued to Mr. Nitin informing the appointment of the Adjudicating Officer in the matter.
5. A Show Cause Notice ('SCN') in terms of provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act was issued on September 11, 2017 (Ref No: SEBI/HO/EAD-8/JS/NS/OW/P/21818/1/2017) to Mr. Nitin calling upon the Noticee to

show cause as to why an inquiry should not be held against it under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation, which was duly delivered on September 14, 2017 to the address available on record i.e. '1305, M Panchratna, Opera House, Mumbai – 400 004'. Also, a copy of the SCN was emailed to nitin@goenkadiamonds.com, as the address available on records.

6. Subsequently, the noticee was reminded to file reply to the SCN vide letter dated December 07, 2017, which was also duly delivered to the address mentioned above at para 1. Also, a copy of the reminder was emailed to nitin@goenkadiamonds.com.
7. Since, the noticee failed to reply to the SCN, vide letter dated February 07, 2018, the noticee was once again called upon to file reply to the SCN also an opportunity of personal hearing was granted to the noticee to appear on February 23, 2018.
8. On the date of hearing, Mr. Nitin failed to appear for the personal hearing also failed to reply to the SCN. The other noticee i.e Ms. Nirmala appeared along with her legal representative on the date of hearing i.e. February 23, 2018 and made submission with respect to Ms. Nirmala only. Since Nitin failed to appear for the hearing inspite of delivery of SCN and noticees, Ms. Nirmala was informed to provide the address of Mr. Nitin.
9. In this regard, Ms. Nirmala through her representative vide email dated February 28, 2018 has provided the residential address of Mr. Nitin i.e. 'House No. 5, Chancellor Court, Carmichael Road, Mumbai -400026'.
10. Subsequently, vide letter dated March 01, 2018, another opportunity of hearing was granted to Mr. Nitin i.e. March 19, 2018 and also reminded to file reply to the SCN. Along with the referred letter, a copy of the SCN dated September 11, 2017, letter dated December 07, 2017 and February 07, 2018 was provided to Mr. Nitin. The letter were addressed to both the address of Mr. Nitin i.e. 'House No.5 Chancellor Court, Carmichael Road, Mumbai – 400 026' and to 'Goenka Diamond and Jewels Ltd., 1305, M Panchratna, Opera House, Mumbai -400004' ('Company address'), though hand delivery. However, the letter addressed to the 'Company address' returned undelivered with remarks 'Refused to accept' and with respect to the letter addressed to 'Chancellor Court', the letter was returned undelivered with remarks 'Address not found'.
11. Subsequently, vide letter dated March 06, 2018, an attempt was made to deliver the copy of the letter dated March 01, 2018 along with its annexures to Nitin to the address i.e. 'House No.5 Chancellor Court, Carmichael Road, Mumbai – 400 026' through Speed Post with acknowledgement.

12. In response to the letter, on March 12, 2018, Mr. Nitin called the Office of the Adjudicating Officer on telephone and informed that he received the letter dated March 06, 2018 along with its annexures forwarded vide the letter and also informed that he was amenable for a hearing for any date in the third week of March 2018 and reply to the SCN to be filed on or before March 16, 2018. Also Mr. Nitin provided his email id i.e. 'contactnitingoenka@gmail.com'.

13. In this regard, vide letter dated March 12, 2018, Mr. Nitin was informed to appear for the personal hearing on March 22, 2018 and to file reply to the SCN before March, 16, 2018, which was duly received by him. A copy of the letter dated March 12, 2018 was emailed to 'contactnitingoenka@gmail.com'.

14. Vide email dated March 16, 2018, Mr. Nitin, submitted his reply to the SCN, which are as follows:

- a. *In Para 1 you state that adjudication proceedings were initiated against me vide SCN dated 11.9.2017 to show cause as to why an inquiry should not be held against me in the captioned matter which was duly delivered to me on 14.9.2017 and this notice was also forwarded to my email nitin@goenkadiamonds.com on 12.9.2017. It is further alleged in this Para that I failed to reply to this notice.*
- b. *In Para 2 you have stated that I was reminded to file reply to the said SCN vide letter dated 7.12.2017, 7.2.2018 and the copies of these letters are also forming part of the notice under reply.*
- c. *In Para 3 you have stated that on the date of hearing, the other noticee, Ms. Nirmala Goenka appeared before Competent Authority and provided the new communication address, as mentioned above, and vide this notice under reply you provided another opportunity to me to reply to the said Show-Cause Notice on 19.3.2018 with advance intimation of participation in personal hearing by 14.3.2018, failing which matter will be proceeded against me.*
- d. *The notice under reply is also provided to me with Show-Cause Notice dated 11.9.2017 bearing the subject as 'Adjudication Proceedings in the matter of Goenka Diamond & Jewels Limited: Show Cause Notice under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995'. In this Show-Cause Notice you have alleged In Para 2 that I have transferred my entire shareholding i.e. 4,09,76,250 (12.93%) to Ms. Nirmala Goenka in off-market on November 11, 2013 but have failed to disclose the same to the Company / Stock Exchange, and therefore, I have violated Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Share and Takeovers) Regulation, 2011 and Regulation 13(3), 13(4), 13(A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.*
- e. *After describing the alleged violation provisions in Para 3, in Para 4 you called upon me to show-cause as to why an inquiry be not held against me in terms of Rule 4 of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with sub-section (1) and (2) of 151 of the SEBI Act; and penalty be not imposed in terms of Rule 5 of the said Rules and provisions of Section 15A (b) of SEBI Act, 1992 and in Para 5 you quoted the penal provisions that are referred in Para 4.*

The reply of the undersigned to the letter under reply to the Show Cause Notice dated 11.9.2017 is as under:

No Show Cause Notice or Reminder is received by me:

- f. *The captioned Show Cause Notice was sent by you to the undersigned at the above quoted address which belongs to the Company. Neither Mr. Navneet Goenka nor Mr. Nandlal Goenka, Promoter Directors informed me about any of the communication as referred by you in the said notices under reply. Thus, I was not aware about any Show-Cause Notice or reminders thereto as referred unless the copy of letter / notice under reply is received by me now.*
- g. *Ms. Nirmala Goenka failed to address correct facts in her appearance:*
- h. *From the contents of Para 3 of your letter dated 1.3.2018 it is observed that Ms. Nirmala Goenka (transferee of the alleged 4,09,76,250 Equity Shares of Goenka Diamonds & Jewels Limited) appeared before the Competent Authority and provided you my new address. I believe that either Ms. Nirmala Goenka must*

have filed the reply to the circumstances that led you to issue the show-cause notice or must have explained the circumstances related to these shares if you recorded her statement. May I request you to share the reply filed by Ms. Nirmala Goenka and / or statement recorded so that I can assist in this enquiry arising from the Show Cause Notice dated 11.9.2017.

- i. It is pertinent to mention here that I was not even informed by Ms. Nirmala Goenka about these proceedings.
- j. Before replying the said Show-Cause Notice on merits, I would like to draw your attention to email dated 25.11.2013 sent by me to your office at email address sebi@sebi.gov.in and also to Bombay Stock Exchange (BSE), National Stock Exchange (NSE) including NSDL and CSDL and Karvy (Share Transfer Agent) wherein I informed that these 4,09,76,250 Equity Shares of Goenka Diamond & Jewels Limited stands fraudulently transferred from my DEMAT Account to the DEMAT account of Ms. Nirmala Goenka. The said email dated 25.11.2013 was replied by your office vide email dated 27.11.2013 stating therein that 'the subject matter relating to forgery of signature does not fall under the purview of SEBI and advised me to complaint with the Police Authorities.
- k. Before having advise from your office, I had filed a criminal complaint against Ms. Nirmala Goenka, Mr. Navneet Goenka and Mr. Nandlal Goenka in Police Station MRA Marg, Mumbai vide complaint dated 26.11.2013, which was converted into FIR No. 265 of dated 26.11.2013. The copy of complaint / FIR No. 265 of 2013 of dated 26.11.2013. This FIR is referred at internal page 30 of the Settlement Agreement referred hereinafter.
- l. Upon filing the Police Complaint, a Petition of 'Oppression & Mismanagement' under section 397-398 of the Companies Act, 1956 was filed before the Hon'ble Company Law Board, New Delhi [CLB] and on this petition, CLB vide its order dated 26.11.2013 granted stay and 'status-quo' on these shares.
- m. Thereafter the Ld. Session Court of Greater Mumbai vide its order dated 10.1.2014 rejected the 'anticipatory bail' of Ms. Nirmala Goenka and this bail rejection order contains a detailed investigation that how Mr. Navneet Goenka purchased forged stamp paper, obtained TIFD slip from Indusind Bank and forged my signature to transfer my entire shareholding in Goenka Diamond & Jewels Limited on 11.11.2013.
- n. That during the pendency of the anticipatory bail proceedings of others, in the mediation proceedings before an Additional Session Judge, Shri M.S. Sharma, a Settlement Agreement dated 18.3.2014 in mediation proceedings was arrived at and executed whereby these shares were to be transferred back to me and I was supposed to transfer back upon completion of specified obligation on the part of Mr. Navneet Goenka, Mr. Nandlal Goenka. No action was taken by Mr. Navneet Goenka and Mr. Nandlal Goenka to transfer these 4,09,76,250 Equity Shares of Goenka Diamond & Jewels Limited back to my DEMAT Account, as agreed. [Ref: Internal Page NO. 12-13-14 of Settlement Agreement.
- o. Pursuant to this settlement agreement, Mr. Navneet Goenka and Mr. Nandlal Goenka represented the Company before CLB and I provided my resignation letter to the Company on 10.2.2016 before CLB, as contained in order dated 10.2.2016 passed by CLB.. It is pertinent to mention here that Mr. Nandlal Goenka and Mr. Navneet Goenka failed to perform their part of obligation as per the said settlement agreement.
- p. As stated by you that the above notices were sent through email as well, in this regard it is submitted that my email id nitin@goenkadiamonds.com was hacked by Mr. Navneet Goenka and this information was also made available to you vide email dated 25.11.2013, as referred above. This email has an attachment of complaint dated 24.11.2013 addressed to 'Senior Police Inspector, Cyber Police Station, Bandra Kurla Complex, Mumbai' with subject as 'Hacking of my email account 'nitin@goenkadiamonds.com'. If this email is not bounced back, I apprehend that this email ID is still active on the server of the Company and is in control of Mr. Navneet Goenka.
- q. From the letter / notice under reply it is noted that the present proceedings were initiated by you on the basis of email dated 4.8.2014 of BSE but it is surprising that BSE did not take into consideration the email dated 25.11.2013 written by me and referred hereinabove. Had BSE and your office considered the email dated 25.11.2013, these proceedings would not have been initiated by you.
- r. Thus, from the foregoing contents of this reply it is clear that I did not transfer any Equity Shares of Goenka Diamond & Jewels Limited, as alleged in the notice under reply, but were transferred from my DEMAT Account to DEMAT Account of Mrs. Nirmala Goenka on account of fraudulent action on the part of Mr. Navneet Goenka and Mr. Nandlal Goenka, as evident from order dated 10.1.2014 referred above.
- s. In view of the above facts, there is no default on my part qua alleged violation of Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Share and Takeovers) Regulation, 2011 and Regulation 13(3), 13(4), 13(A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992, and therefore, no enquiry is required to be held against me in terms of Rule 4 of the SEBI (Procedure for holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with sub-section (1) and (2) of 151 of the SEBI Act; and penalty be not imposed in terms of Rule 5 of the said Rules and provisions of Section 15A (b) of SEBI Act, 1992. However, inquiry against Mr. Navneet Goenka and Mr. Nandlal Goenka may necessary for violation of applicable SEBI Rules.

- t. *In view of the above facts, it is prayed that the proceedings contemplated in the show-cause notice are not warranted and be dropped against me and initiated against the person(s), as your honour may deem think fit and proper.*

CONSIDERATION OF ISSUES AND FINDINGS:-

15. Charges levelled against Mr. Nitin as per SCN, submissions of Mr. Nitin in reply to SCN, and the documents available on record have been perused. The issues that arise for consideration are :

- a) Whether Nitin has violated the Takeover Regulations and PIT Regulations for allegedly failed to disclose the change his holdings?
- b) If yes, does the violation, on the part of Mr. Nitin attract monetary penalty under section 15A(b) of SEBI Act?
- 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?

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 Anticipatory 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.

ORDER

22. For the aforesaid reasons, Show Cause Notice SEBI/HO/EAD-8/JS/NS/OW/P/21818/1/2017 dated September 11, 2017, alleging violations of provisions of Regulation 29(2) read with Regulation 29(3) of Takeover Regulations and Regulation 13(3), 13(4) and 13(4A) read with Regulation 13(5) of PIT Regulations, is disposed of without imposition of any penalty.
23. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Nitin Goenka and also to the SEBI.

Date: March 27, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer