

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. - SRP/JP/AO: 199/2011]**

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**UNDER SECTION 15 I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992  
READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE  
FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES,  
1995**

***In respect of:***

**Mr. Bipinkumar Gandhi**

**(Address: 8/16, M K Amin Marg,**

Patel Building, 3<sup>rd</sup> Floor, Fort,

Mumbai - 400 057).

**(PAN not available)**

**In the matter of M/s. Gemstone Investments Limited**

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**BACKGROUND IN BRIEF**

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigations into the affairs, trading and dealings in the shares of Gemstone Investments Limited (hereinafter referred to as '**Company/GIL**') for the period from August 28, 2006 to August 21, 2008 on the basis of a report received from the Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') regarding substantial reduction in the shareholding of the promoters of the Company and unusual spurt in price and traded volume of the scrip.
2. During the investigations, it was, inter alia, observed by SEBI that Mr. Bipinkumar Gandhi (hereinafter referred to as '**the Noticee**') had traded in the shares of GIL on the Bombay Stock Exchange Ltd. (hereinafter referred to as "**BSE**") and allegedly did not make the required disclosures to the Company/BSE in regard to his shareholding/voting rights and thus violated the provisions of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**') and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned has been appointed as Adjudicating Officer under section 15 I of the SEBI Act read with rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') vide order dated March 31, 2010 to inquire into and adjudge under section 15A (b) of the SEBI Act, the alleged violations of the regulation 7 (1) read with regulation 7 (2) of the SAST Regulations and/or regulation 13 (1) of the PIT Regulations by the Noticee.

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

4. Show Cause Notice dated June 08, 2010 was issued to the Noticee under rule 4(1) of the Rules wherein, the Noticee was asked to show cause as to why an inquiry be not held and penalty be not imposed on him under section 15 A (b) of the SEBI Act for the alleged violation of the provisions of the regulation 7 (1) read with regulation 7 (2) of the SAST Regulations and/or regulation 13 (1) of the PIT Regulations. The Show Cause Notice was sent through hand delivery but it could not be delivered. Therefore, another Show Cause Notice dated June 10, 2010 was subsequently sent to the Noticee by registered post with acknowledgement due, but it was also returned undelivered. It may be mentioned that both the said Show Cause Notices were sent at the last known address of the Noticee (i.e. 8/16, MK Amin Marg, Patel Building, 3<sup>rd</sup> Floor, Fort, Mumbai – 400 057). Thereafter, another attempt was made to deliver the Show Cause Notice dated August 09, 2010 (hereinafter referred to as '**SCN**') to the Noticee at his above said address by hand delivery, but it again failed. The SCN could not be served as substituted delivery, as it was not even allowed to be affixed/ pasted at the said premises/address of the Noticee. In view of the same, SEBI was requested on August 12, 2010 to provide alternate address of the Noticee, if any, available with them. It was subsequently confirmed by SEBI on August 30, 2010 that other than the aforesaid address no other address of the Noticee is available. In view of the same, the SCN was placed in public domain at the SEBI website ([www.sebi.gov.in](http://www.sebi.gov.in)) under the head "Undelivered Notices/Summons." Thereafter, two more hearing notices were issued to the Noticee intimating about hearing before the undersigned on February 10, 2010 (vide notice dated December 09, 2010) and hearing on February 23, 2010 (vide notice dated January 10, 2011). Both the said notices were again returned undelivered. It is evident from the notings of the postal department on the said returned covers that due to non-delivery "intimation memo" was issued to the addressee. It is understood that if at the time of delivery of the registered letter the addressee is not available then an "intimation memo" is issued by the postal department advising the addressee to collect the letter within a specified time. If the same is not collected within the given time it is returned back to the sender. Since, all the attempts made to deliver the hearing notices also failed, it were also put on SEBI website.

5. Thereafter, relevant details regarding issuance, non-delivery and availability of the aforesaid SCN and hearing notices etc. on the SEBI website, were published on February 09, 2010 in English and Hindi editions of the "Hindustan Times". Vide the said public notice the Noticee was also advised to collect the notice from the office of the Adjudicating Officer and to appear for hearing on the given date and that if he fails to do so then the matter shall be proceeded with ex-parte in terms of regulation 4(7) of the Rules.
6. Despite all the above, the Noticee has neither replied to the SCN nor appeared before me for the hearing. I am, therefore, compelled to proceed with the matter *ex-parte* on the basis of the material available on record, in terms of rule 4(7) of the Rules which read as follows:

*"If any person fails, neglects or refuses to appear as required by sub-rule (3) before the adjudicating officer, the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so."*

#### **CONSIDERATION OF ISSUES AND FINDINGS**

7. I have carefully examined the allegations against the Noticee and the material/evidences on record. The issues that arise for consideration before me in the present case are as under :
  - a. Whether the Noticee had acquired the shares for which he was required to make disclosures under the provisions of regulations 7(1) read with regulation 7 (2) of the SAST Regulations and/or regulation 13 (1) of the PIT Regulations, and if yes, whether he complied with the said regulations?
  - b. Does the contravention/violation of the aforesaid regulations, if any, committed by the Noticee attract monetary penalty under section 15 A (b) of the SEBI Act?
  - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15 J of the SEBI Act?
8. Before moving forward it would be pertinent to refer to the relevant provisions of the SAST Regulations and the PIT Regulations alleged to have been violated by the Noticee. The provisions of these regulations are reproduced hereunder:

#### **A. SAST Regulations**

##### **Regulation 7 of the SAST Regulations.**

##### ***7. Acquisition of five per cent and more shares or voting rights of a company.***

*(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.*

*(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.*

## **B. PIT Regulations**

### **Regulation 13 of PIT Regulations.**

#### **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 4 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.*

9. I have carefully examined the alleged charges against the Noticee and the same are dealt on merit issue wise as under.

**ISSUE:** Whether the Noticee had acquired the shares for which he was required to make disclosures under the provisions of regulations 7(1) read with regulation 7 (2) of the SAST Regulations and/or regulation 13 (1) of the PIT Regulations, and if yes, whether he complied with the said regulations?

10. The shares of GIL were listed on the Bombay Stock Exchange Ltd. (BSE) and its paid up capital during the relevant period was ₹ 3,00,00,000/- consisting of 30,00,000 equity shares of ₹ 10/- each. It is alleged that during March 31, 2008 and April 1, 2008 the Noticee had made net purchase of 1,98,000 shares of GIL ( bought 2,00,000 shares and sold 200 shares), which amounted to increase in his shareholding/voting rights in GIL to the extent of 6.67% for which he was under obligation to make required disclosures to the Company and/or to the stock exchange (s), where the Company's shares were listed, in terms of regulation 7(1) read with regulation 7(2) of the SAST Regulations and also regulation 13(1) of the PIT Regulations. It is alleged that the Noticee has failed to do so and has thereby violated/contravened the said provisions of the SAST and PIT Regulations.
11. In this regard, in absence of any reply/submissions of the Noticee, I have perused the evidence/ material on record. I have noted the undisputed fact from the shareholding pattern of

the Company that during the relevant period its paid up capital was ₹ 3,00,00,000/- consisting of 30,00,000 equity shares of ₹ 10/- each. I have further noted from the details provided to the Noticee in Annexure II to the SCN that on March 31, 2008 and April 01, 2008 the Noticee (client code: 22516) had purchased a total of 2,00,000 shares of the Company (scrip code 531137) through the stock broker Ami Stock and Share Brokers (member code:966) in 53 trades in the price range of ₹ 17.35 to ₹ 18.25. It is also evident from the said details that the said shares purchased by the Noticee through Ami Stock and Share Brokers (member code:966) were delivered by the selling members in the following manner –

<b>Del. Member Code</b>	<b>Rec. Member Code</b>	<b>Qty.</b>
179	966	95,110
673	966	4,890
179	966	90,505
620	966	8,000
612	966	1,495
<b>Total :</b>		<b>2,00,000</b>

12. It is evident from the above details, which were provided in Annexure II to the SCN, that the Noticee exceeded the threshold of 5 % shareholding/voting rights on 01/04/2008. On crossing the bench mark of 5 %, the Noticee was required to disclose the aggregate of his shareholding/voting rights in the Company to GIL and to the stock exchange (s), where its shares are listed, in terms of regulation 7(1) read with regulation 7(2) of the SAST Regulations. The available records do not suggest/indicate that the Noticee had made the required disclosures. As has been stated above the Noticee has neither denied nor made any submission in respect of the aforesaid violation. Therefore, based on the available facts of the case and the material on record, I hold the Noticee guilty of violating the provisions of the regulation 7(1) read with regulation 7 (2) of the SAST Regulations.
13. Further, on crossing the benchmark of 5% shareholding/voting rights in GIL, the Noticee was also under an obligation to make disclosure to the Company in accordance with the provisions of regulation 13(1) of the PIT Regulations. However, from the above stated observations, I come to the conclusion that the Noticee has failed to do so and has thereby violated/contravened the provisions of regulation 13(1) of the PIT Regulations also.
14. The aforesaid violations make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act which reads as follows:

**15A. Penalty for failure to furnish information, return, etc.**

*(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 therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less*

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

16. Regarding penalty under section 15A (b) of the SEBI Act for failure to make disclosures in terms of regulation 7(1) read with regulation 7 (2) of the SAST Regulations and regulation 13 (1) of PIT Regulations, it is difficult to quantify exactly the disproportionate gains or unfair advantage enjoyed by the Noticee or the consequent losses suffered by the investors. It is also not available on records to show that the Noticee had indulged repetitively in similar or other kinds of violations.
17. Though, it may not be possible to ascertain the monetary loss to the investors on account of such defaults by the Noticee, it is an undisputed fact that the change of shareholding in the Company and timely disclosure thereof, is of significant importance from the shareholder's or investor's point of view in prompt investment decision. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding. Here, the fact remains that the markets in general and the investors in particular were deprived of such important information at the relevant point of time.
18. However, while imposing penalty upon the Noticee in the present case, I have considered the fact there was only one instance of such non disclosure by the Noticee and therefore, considering all the above said facts and circumstances of the case, I am of the opinion that a penalty of ₹ 50,000/- (Rupees fifty thousand only) on the Noticee under section 15A (b) of the SEBI Act shall be commensurate with the violations committed.

## **ORDER**

19. In exercise of the powers conferred upon me under Section 15 I of the Act and rule 5 of the Rules, I impose a penalty of ₹ 50,000/- (Rupees fifty thousand only) on the Noticee under the provisions of section 15 A (b) of the SEBI Act. 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 the Deputy General Manager, IVD – ID 8, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, "G" Block, Bandra Kurla Complex, Bandra (East), Mumbai-400 051.
20. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

**Date: April 28, 2011**

**Place: Mumbai**

**Satya Ranjan Prasad  
ADJUDICATING OFFICER**