

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/AE/2020-21/8864]

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

In respect of:
Whitefeathers Realty Pvt Ltd
(PAN : AABCW0378F)

In the matter of Mapro Industries Limited

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) observed that the entity, Whitefeathers Realty Pvt Ltd (*hereinafter referred to as “Noticee”*), a public shareholder of the company – Mapro Industries Ltd (*hereinafter referred to as “MIL”*), had acquired 10,000 shares of MIL in offmarket transaction on 14.09.2016, which led to Noticee’s shareholding to increase from 4.92% to 5.04% of the total share capital of MIL. Since the holding of the Noticee crossed the threshold of 5% of share capital of MIL, mandatory disclosure requirement was triggered in terms of Regulation 29(1) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (*hereinafter referred to as “SAST Regulations, 2011”*). The disclosure was required to be made by the Noticee to the stock exchanges and MIL within 2 working days from the date of acquisition i.e. due date was 19.09.2016. However, it was observed that the Noticee has not made the aforesaid mandatory
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disclosure. Accordingly, it was alleged that the Noticee had violated the provisions of Regulation 29(1) read with 29(3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer (**AO**) by SEBI vide Order dated January 03, 2020 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid violation alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. EAD-4/ADJ/GR/AE/OW/02814/1/1/2020 dated January 21, 2020 (*hereinafter referred to as 'SCN'*) was issued to the Noticee in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as "Rules"*) for the violations as specified in the SCN. Subsequently, an opportunity of personal hearing was granted to the Noticee on March 12, 2020, however the same was not attended by the Noticee. The Noticee vide letter dated March 06, 2020 had requested for additional time of four weeks to file reply in the matter. In response, the Noticee was granted time till March 30, 2020 to furnish its replies, if any, and also another opportunity of personal hearing on March 30, 2020. In response, the Noticee vide email dated March 28, 2020, *inter alia* requested for extension in the matter, however, no further reply was received from the Noticee. Subsequently, the Noticee was granted another opportunity of personal hearing on August 27, 2020 vide digitally signed email dated August 20, 2020. The Noticee was also granted the option of conducting the hearing through video conferencing on the scheduled date and time. However, the Noticee did not appear for the said hearing nor did it submit any reply to the SCN.

CONSIDERATION OF ISSUES AND FINDINGS

4. I have carefully examined the material available on record, and the submissions made by the Noticee. The issues that arise for consideration in the present case are :
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- I. Whether the Noticee has violated the provisions of Regulations 29(1) read with 29(3) of SAST Regulations, 2011?
- II. Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?
- III. Quantum of penalty.

FINDINGS

5. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticee and the same is reproduced below:

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and*
- (b) the target company at its registered office.*

Issue I) Whether the Noticee has violated the provisions of Regulations 29(1) read with 29(3) of SAST Regulations, 2011?

6. I note that the allegation against the Noticee is mainly to the effect that it had not made disclosure under Regulations 29(1) read with 29(3) of SAST Regulations, 2011.
7. From the material available on record, it is noted that the Noticee had acquired 10,000 shares of MIL in offmarket transaction on 14.09.2016. The transaction statement of the

Noticee's demat account provided by CDSL shows the credit of 10,000 shares on 14.09.2016 and the consequent change in its shareholding from 4,13,050 shares (4.92%) to 4,23,050 shares (5.04%). Since the shareholding of the Noticee crossed 5% of the total shares of MIL, the Noticee was required to submit disclosures under Regulation 29(1) read with 29(3) of SAST Regulations, 2011 regarding his shareholding to MIL and the stock exchanges within two working days from the date of the acquisition. In this regard, I note that the company i.e. MIL, and BSE vide their respective emails dated 19.07.2019 and 21.07.2017 have confirmed that no disclosure under Regulation 29(1) read with 29(3) of SAST Regulations, 2011 has been received by them from the Noticee. The aforesaid fact regarding non-disclosure has not been controverted by the Noticee. In view of the same, I find that the Noticee has violated the provisions of Regulation 29(1) read with 29(3) of SAST Regulations, 2011.

Issue II) Does the violation, if established, attract monetary penalty under Section 15A(b) of SEBI Act, 1992?

8. In this regard, I note that the Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.*"
9. I also note that in Appeal No. 66 of 2003 – **Milan Mahendra Securities Pvt. Ltd. Vs. SEBI** – the Hon'ble Securities Appellate Tribunal (SAT) has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market*". 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*".
10. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory

obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of **Akriti Global Traders Ltd. Vs SEBI** had observed that –

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

11. Thus, the violation of Regulation 29(1) read with 29(3) of SAST Regulations, 2011 makes the Noticee liable for penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under –

SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

Issue III) Quantum of penalty.

12. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules, require that while adjudging the quantum of penalty, 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.

13. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that no quantifiable figures or data are available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default committed by the Noticee. I also note that no prior default of the Noticee is available on record. I note that securities market is based on free and open access to information. As a result of the violation committed by the Noticee, the investors were deprived of valuable information which would have enabled them to take well informed decisions regarding their investments in the company. In the present matter, I note that Noticee has not made disclosure under Regulation 29(1) read with 29(3) of SAST Regulations, 2011 to the company and stock exchange regarding its acquisition of 10,000 shares leading to its shareholding from 4,13,050 shares (4.92%) to 4,23,050 shares (5.04%) i.e. breaching the 5% threshold.

ORDER

14. Accordingly, taking into account the aforesaid observations and in exercise of power conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Rules, I hereby impose a penalty of Rs. 1,00,000/- (rupees One Lakh Only) on the Noticee viz. Whitefeathers Realty Pvt Ltd under Section 15A(b) of SEBI Act, 1992 for the violations of the provisions of Regulation 29(1) read with 29(3) of SAST Regulations, 2011.
15. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available
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on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

16. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department - DRA-3), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”. The Noticee shall also provide the following details while forwarding DD / payment information:
 - a) Name and PAN of the Noticee
 - b) Name of the case / matter
 - c) Purpose of Payment – Payment of penalty under AO proceedings
 - d) Bank Name and Account Number
 - e) Transaction Number
17. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
18. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

Date: September 01, 2020

Place: Mumbai

**G Ramar
Adjudicating Officer**