

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 64-66/2014]**

**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
M/s. Coimbatore Flavors and Fragrances Limited (PAN: AACCC5015G)
Shri Benny Abraham (PAN: AJXPA6363J)
Ms. S. Subashini (PAN: AQMPPS3311E)

In the matter of

M/s. Coimbatore Flavors and Fragrances Limited

FACTS OF THE CASE

1. A letter of offer was made by Shri P B Krishna Prasad (Acquirer) to acquire 7,80,000 fully paid equity shares of Rs. 10/- each (representing 26% of the paid up and voting equity share capital) of M/s. Coimbatore Flavors and Fragrances Limited (herein after referred to as '**the Company**'). The Public Announcement of the same was made on November 30, 2012 and the shares of the Company were listed on Madras Stock Exchange Ltd. (hereinafter referred to as '**MSE**'), Coimbatore Stock Exchange Ltd. (hereinafter referred to as '**CmSE**'), Cochin Stock Exchange Ltd. (hereinafter referred to as '**CSE**') and Ahmedabad Stock Exchange Ltd. (hereinafter referred to as '**ASE**').
2. While examining the letter of offer document of the Acquirer to acquire the shares of the Company, it was observed that the erstwhile promoter of the Company, Shri Benny Abraham, did not comply with the provisions of Regulation 30(1) and (2) read with 30(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011

(hereinafter referred to as '**Takeover Regulations, 2011**') for the financial year ended March 31, 2012 within the stipulated time. It was further observed that another erstwhile promoter, Ms. S. Subashini, had delayed filings under the provisions of Regulation 8(1) and 8(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations, 1997**') for the financial years ended March 31, 2003 and March 31, 2005. Furthermore, the Company had failed to comply with the provision of Regulation 8(3) of the Takeover Regulations, 1997 within the stipulated time during the year 2003. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations 1997 and 2011, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**') were initiated against M/s. Coimbatore Flavors and Fragrances Limited, Shri Benny Abraham and Ms. S. Subashini (hereinafter collectively referred to as '**the Noticees**') under Section 15 A (b) of SEBI Act, 1992 to inquire into and adjudicate the alleged violation of the aforesaid provisions of the Takeover Regulation, 1997 and the Takeover Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer on November 26, 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 under Section 15A (b) of the SEBI Act for the alleged violation of the Takeover Regulations, 1997 and 2011 committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice (hereinafter referred to as '**SCN**') Ref. No. EAD-6/AK/VG/2809/2014, EAD-6/AK/VG/2812/2014 and EAD-6/AK/VG/2819/2014 dated January 27, 2014 was issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations, 1997 and 2011 as detailed below. A copy of

the status of compliance document as admitted by the concerned Noticees and detailed below was also sent along with the SCN.

i. By the Company

Takeover Regulations 1997	Due date of compliance	Actual date of compliance	Delay (number of days)
8(3)	30.04.2003	30.05.2003	30

ii. Shri Benny Abraham

Takeover Regulations 2011	Due date of compliance	Actual date of compliance	Delay (number of days)
30(1)&(2)/30(3)	10.04.2012	20.04.2012	10

iii. Ms. S. Subashini

Takeover Regulations 1997	Due date of compliance	Actual date of compliance	Delay (number of days)
8(1) & (2)	21.04.2003	30.05.2003	38
8(1) & (2)	21.04.2005	26.04.2005	5

5. The Noticees were 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.
6. Ms. S. Subhashini, vide letter dated February 3, 2014 submitted that she be permitted to nominate a representative and submit her representation by the end of February 2014. Shri Benny Abraham and the Company, vide separate letters dated February 10, 2014 sought extension of time of at least 30 days to make their submissions in reply to the SCN. Accordingly, the Noticees were granted a personal hearing on March 11, 2014 to make

their oral and written submission to the SCN. Vide letter dated March 7, 2014 to the SCN, Shri Joby Mathew, the Authorized Representative (AR) of the Noticees, sought an extension of 14 days on behalf of the Noticees to file a reply to the SCN. The request of the Noticees was acceded to and the same was communicated to the AR vide email dated March 11, 2014. The Noticees viz. M/s. Coimbatore Flavors and Fragrances Limited, Shri Benny Abraham and Ms. S. Subashini filed their replies vide letters dated March 28, 2014, March 25, 2014 and March 27, 2014 respectively. The Noticees were granted a final opportunity for personal hearing on April 24, 2014, wherein Shri Joby Mathew, the AR of the Noticees, appeared before me and made submissions on behalf of the Noticees.

7. The Noticees have *inter alia* submitted as follows:

- a) *That over the past 15 years there had been no trading at all in the scrip of the Company in any of the stock exchanges, and hence there was no loss caused to any investor due to the delayed disclosures made by the Noticees;*
- b) *That the delay was unintentional and inadvertent;*
- c) *That the delay was purely technical, and the same neither resulted in any loss or harm to public at large, nor, any economic benefit had accrued to the Noticees on account of the delayed submissions of disclosure;*
- d) *That there are only two instances of delay in the case of Ms. S. Subhashini and one single instance of delay in case of the Company as well as Shri Benny Abraham;*
- e) *Shri Benny Abraham has submitted that the delay was on account of the fact that he resided in Koothattukulam, in Ernakulam District of Kerala, whereas the company and its registered office was at Coimbatore;*
- f) *That further, Shri Benny Abraham has submitted that the delay occurred in 2012, the transitional year from the Takeover Regulations 1997 to Takeover Regulations 2011. Shri Benny Abraham has stated that he submitted the disclosures in new form under Regulation 30(1)&(2) on April 20, 2012, under the bonafide belief that the time limit of 21 days under the Takeover Regulations, 1997 continued under the Takeover Regulations, 2011, and, it was only upon receipt of the SCN that he*

realized that the time limit was reduced to 10 days under the Takeover Regulations, 2011;

g) The Company has submitted that the single instance of delay in filing the disclosure, since the Takeover Regulations came into force, was on account of delay in informing the change in shareholding by the erstwhile promoter viz. Ms. S Subhashini to the Company;

h) That no complaint has been received from any shareholder or members of the public in respect of the said delays.

8. At the time of hearing, the AR reiterated the submissions made in the replies of the Noticees dated March 28, 25 and 27, 2014 and further confirmed that there were no past non-compliances of SEBI Act and Regulations by the Noticees.

CONSIDERATION OF ISSUES

9. I have carefully perused the written submissions of the Noticees and the documents available on record. It is observed that the allegation against Shri Benny Abraham, is that he did not comply with the provisions of Regulation 30(1) and (2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012 within the stipulated time; Ms. S. Subashini is alleged to have delayed filings under the provisions of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the financial years ended March 31, 2003 and March 31, 2005; and the Company is alleged to have failed to comply with the provision of Regulation 8(3) of the Takeover Regulations, 1997 within the stipulated time during the year 2003.

10. The issues that, hence, arise for consideration in the present case are :
- a. Whether Shri Benny Abraham did not comply with the provisions of Regulation 30(1) and (2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012 within the stipulated time?

- b. Whether Ms. S. Subashini did not comply with the provisions of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the financial years ended March 31, 2003 and March 31, 2005 within the stipulated time?
- c. Whether the Company has failed to comply with the provision of Regulation 8(3) of the Takeover Regulations, 1997 within the stipulated time during the year 2003?
- d. Do the violations, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
- e. 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

11. Before moving forward, it is pertinent to refer to the relevant provisions of the Takeover Regulation, 1997 and the Takeover Regulations, 2011, which reads as under:

Regulation 8 (1), 8(2) and 8 (3) of the Takeover Regulations, 1997

Continual disclosures.

8. (1) Every person, including a person mentioned in regulation 6 who holds more than fifteen per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.

(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

Regulation 30(1), (2) and (3) of the Takeover Regulations, 2011

Continual disclosures

30(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—

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

12. The issue for consideration is whether the Noticees did not comply with the provisions of the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable, within the stipulated time. As per Regulation 30(1)/30(2) read with 30 (3) of the Takeover Regulations, 2011, Shri Benny Abraham was required to disclose within seven working days from thirty-first day of March, their aggregate holdings to the Company and the concerned stock Exchanges where the shares of the Company were listed. As per Regulation 8(1) and (2) of the Takeover Regulations, 1997, Ms. Subhashini was required to make disclosures of the number and percentage of shares and voting rights within 21 days from the financial year ending March 31 to the Company. As per Regulation 8(3) of the Takeover Regulations, the Company was required to make yearly disclosure within 30 days from the financial year ending March 31, to the stock exchanges on which the shares of the Company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the Company as on 31st March. With regard to the aforesaid compliances, the Noticees in their submission have stated that the lapses/delay in compliance of making disclosures have occurred due to inadvertence and were unintentional. Thus, I note that the Noticees have admitted to the delay in complying with the respective

alleged provisions of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable.

13. I, thus, find from the submission of the Noticees that it is established without doubt that Shri Benny Abraham did not comply with the provisions of Regulation 30(1) and (2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012 within the stipulated time, Ms. S. Subashini did not comply with the provisions of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the financial years ended March 31, 2003 and March 31, 2005 within the stipulated time, and the Company has failed to comply with the provision of Regulation 8(3) of the Takeover Regulations, 1997 within the stipulated time during the year 2003. The respective number of days of non-compliance in respect of each financial year has been enumerated in the table at Para (4) above.
14. 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."*
15. 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.

16. 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.”

17. 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 Noticees. 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 Noticees. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be 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. 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 the Takeover regulations is investor protection.

18. As per Section 15A(b) of the SEBI Act, the Noticees are liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticees. However, I note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014) has observed that:

“Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”

In view of the same, the argument put forth by the Noticees that there was no loss caused to any investor due to the delayed disclosures made by the Noticees, is not relevant for the given case.

19. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the Company at the relevant point of time; b) the trading volumes of the Company's shares on the exchange, where the shares were listed, during the relevant period; and c) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations.

20. The paid up capital of the Company was 30,00,000 shares of Rs. 10/- each aggregating Rs. 3,00,00,000/-. I note from the letter of offer made by the Acquirer Shri P B Krishna Prasad that the equity shares of the company were not frequently traded. I find that that Shri Benny Abraham did not comply with the provisions of Regulation 30(1) and (2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012 within the stipulated time on one occasion, and that the delay was of 10 days. Ms. S. Subashini did not comply with the provisions of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 on two occasions, i.e. for the financial years ended March 31, 2003 and March 31, 2005 within the stipulated time, and the delay was of 38 days and 5 days respectively. The Company has failed to comply with the provision of Regulation 8(3) of the Takeover Regulations, 1997 on one occasion for the year 2003 and the delay was of 30 days.
21. I further find from the submissions made by Shri Benny Abraham that the delay occurred as he was under a bonafide belief that the time limit under Takeover Regulations, 2011 continued to be 21 days, as was the case under the Takeover Regulations, 1997, and, it was only upon receipt of the SCN that he realized that the time period was reduced under Takeover Regulations, 2011. I do not find this argument tenable. *Ignorantia legis neminem excusa*, as a promoter of listed company, Shri Benny Abraham was expected to be up-to-date with regards to changes in the regulatory environment as regulations are in public interest. Furthermore, by his own statement, Shri Benny Abraham had made the disclosures in the new formats prescribed under the Takeover Regulations, 2011. The fact that the filings were made under the new formats is clear evidence of the fact that Shri Benny Abraham was well aware of the new Regulations.
22. Further, I find that Shri Benny Abraham has also stated that the delay was on account of the fact that he resides in Ernakulam district of Kerala whereas the registered office of the Company is in Coimbatore. In today's electronic world where filing can be done through fax, email etc., this appears to be a flimsy excuse for delayed disclosure, especially when

the aim of the Takeover Regulations is to encourage timely filing to enable investors to make an informed decision.

23. The Company has also stated that the delay on its part in the filing of disclosures under Regulation 8(3) of the Takeover Regulations, 1997 occurred as the erstwhile promoter Ms. S Subhashini submitted the information regarding change in her shareholding to the Company after some delay. However, I note that the requirement under Regulation 8(3) is one of continuous, yearly disclosures and there is nothing on record to show that the Company had filed the disclosure with the Exchanges in a timely manner based on the information available with it.
24. Besides, I also note that the Noticees in their submissions have stated that the delay was purely technical. In the matter, I note that the Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. Vs SEBI (Appeal No.66 of 2003) 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. We cannot therefore subscribe to the view that the violation was technical in nature."

Thus, transaction which requires compliance of the Takeover Regulations, if not complied, is always a serious matter, and cannot be considered a mere "technical" violation, since other shareholders/ investors are deprived of the information.

25. As a listed company, M/s. Coimbatore Flavors and Fragrances Limited itself, and as promoters of the listed company, Shri Benny Abraham and Ms. S Subhashini had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose. Non-compliance/ Delayed compliance with disclosure requirements by a listed company and/ or its promoters undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

26. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 2,00,000/- (Rupees Two Lakh only)** on **each of the Noticees viz. M/s. Coimbatore Flavors and Fragrances Limited and Shri Benny Abraham** and a penalty of **Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand only)** on **Noticee Ms. S. Subashini** under Section 15 A(b) of SEBI Act, 1992, which will be commensurate with the violations committed by them.
27. The Noticees 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.
28. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: **April 30 , 2014**

Place: **Mumbai**

Anita Kenkare
Adjudicating Officer