

ADJUDICATION ORDER NO. EAD-3/JS/SP/50/2018

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: **Salputri Commerce Pvt. Ltd.**

CIN- U51909WB2009PTC133944

PAN: AAMCS8925R

In the matter of: **Falcon Tyres Ltd.**

BACKGROUND

1. Securities and Exchange Board of India (**'SEBI'**), conducted investigation to ascertain whether the acquisition of shares through preferential allotment by certain entities in the scrip of Falcon Tyres Ltd. (**'Falcon/Company'**) was in violation of provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (**'PIT Regulations'**). During the investigation, it was observed that "Salputri Commerce P Ltd", (**'Salputri/Noticee'**) had failed to disclose its change in share holdings in the scrip of Falcon. The nature of findings along with alleged violations of relevant provisions in respect of Salputri, are as follows:

Findings in brief	Alleged violations of provisions
Salputri, made delayed disclosure regarding the acquisition of more than 5% equity shares of Falcon through preferential allotment under PIT Regulations.	Regulation 13(1) read with Regulation 13(5) of PIT Regulations {to be read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015}.

2. In view of the above, SEBI initiated adjudication proceedings against Salputri to inquire and adjudge under Section 15A(b) of SEBI Act, 1992 (**'SEBI Act'**) for the alleged violations as mentioned in above table.

APPOINTMENT OF ADJUDICATING OFFICER

3. Adjudicating Officer was appointed vide order dated May 17, 2017 under Section 15-I read with Section 19 of the SEBI Act, 1992 (**'SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (**'Adjudication Rules'**) and Section 19 of the SEBI Act to inquire into and adjudge under Section 15A(b) of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice ('**SCN**'), dated October 11, 2017, in terms of provisions of Rule 4 of Adjudication Rules was issued to Salputri to the address available in the record i.e. "Jamuna, GI, 127, B T Road., Kolkata – 700 018", to file reply within 14 days of the receipt of the SCN. The SCN was duly delivered to Salputri on October 17, 2017.
5. Since, no reply was received from Salputri, vide letter dated November 07, 2017, Salputri was once again informed to file reply to the SCN. The said letter was issued to the address mentioned at para 4, however, the same was returned undelivered.
6. Subsequently, vide letter dated February 05, 2018, Salputri was once again informed to file reply to SCN by February 20, 2018 and to appear for the hearing on February 23, 2018. The said letter was issued to the address mentioned at para 4, however, the same was returned undelivered. It is observed that the address mentioned at para 4, is the same address from which Salputri, vide letter dated June 17, 2015, had made disclosures, in terms of PIT Regulation, for the change in its holdings to Falcon.
7. Further, vide letter dated March 20, 2018, Salputri was once again informed to file reply to the SCN by April 02, 2018 and to appear for personal hearing on April 05, 2018. The said letter was issued to the address mentioned at para 4, however, the same was returned undelivered. Also, an attempt was made to affix the letters dated February 05, 2018 and March 20, 2018 was not materialised.
8. In the meantime, Salputri, vide letter dated March 20, 2018, in reply to the SCN, has informed that:
 - a. *"The disclosure made under Regulation 13 of SEBI (PIT) Regulations, 1992 on 17.06.2015 in respect of shares of Falcon Tyres Ltd. and Dunlop India Ltd., which was delayed due to an inadvertent, unintentional and ignorance on the part of the company.
Thus, we request your honour not to take any penal action and kindly drop the proceeding, if any, against the company considering our unintentional mistake on the above matter.*
 - b. *Kindly also note that the disclosure has also been made by the company under Regulation 29 of the SEBI (Substantial Acquisition of shares and Takeover), 2011 in respect of shares of Falcon Tyres and Dunlop India Ltd on April 30, 2012.*

Accordingly, requested not to take any penal action against the company and also not to initiate any proceeding on the above matter. We will not commit such mistake in future which kindly note”.

Salputri, vide its referred letter has informed to send all the correspondence to the address i.e. “Metro Tower, Flat B/14, 240, S.N. Roy Road, Kolkata- 700038”, from which the letter was addressed. The letter of Salputri also contain its email id i.e. salputri.comm@gmail.com. It is also observed from the MCA records that the above address is the registered office address of Salputri.

9. Subsequently, vide letter dated June 13, 2018, Salputri was granted a last and final opportunity to appear for the personal hearing on June 27, 2018. Also, a copy of the SCN dated October 11, 2017, letters dated November 07, 2017, February 05, 2018 and March 20, 2018 were forwarded along with the letter dated June 13, 2018 to the address provided by Salputri, mentioned at above para 8 from which it had responded. However, the notice was returned undelivered with no remarks. Further a copy of the SCN and the letters mentioned above, issued to Salputri was emailed to salputri.comm@gmail.com, email id provided by Salputri on its letter head of letter date March 20, 2018, which was delivered as there are no intimation of non-delivery. The noticee however, failed to appear on the date of hearing.
10. Thus, it is observed that enough hearing opportunity was granted to Salputri, however, Salputri failed to appear before the Adjudicating Officer. Thus, the matter is proceeded in terms of Rule 4(7) of the Adjudicating Rules, based on the information available on records.

CONSIDERATION OF ISSUES AND FINDINGS

11. After perusal of the material available on record, the following issues are for consideration viz.
 - A. Whether Salputri had failed to disclose the change in its holdings as alleged in the SCN?
 - B. If yes, does the violation, if any, on the part of Salputri attract monetary penalty under Section 15A (b) of SEBI Act?

C. If yes, what would be the monetary penalty that can be imposed on Salputri taking into consideration the factors mentioned in Section 15J of SEBI Act?

ISSUE A- Whether Salputri had failed to disclose the change in its holdings, as alleged in the SCN?

12. Falcon, on April 26, 2012 had allotted a total of 4,33,87,048 equity shares of Falcon on a preferential basis to three entities including Salputri, against an outstanding loan of Rs. 144,04,49,995/-.

13. Salputri, was allotted 1,30,16,114 shares, which is 16.80% of the share capital of Falcon. The intimation with respect to allotment of shares of Falcon was received by Salputri on April 28, 2012.

14. It is pertinent to note that in terms of Regulation 13(1) read with Regulation 13(5) of PIT Regulations, Salputri was required to disclose the said acquisition of 16.80% of share capital of Falcon within two working days of the receipt of intimation of allotment of shares. However, it was observed that Salputri had disclosed the said acquisition of shares to Falcon on June 17, 2015, in turn, the Falcon made the required disclosure under Regulation 13(6) of PIT Regulations to BSE. Thus, a delay of more than 3 years, is observed from the date of receipt of intimation of allotment of shares by Salpturi.

15. It is an admitted fact that Salputri has made delayed disclosure with respect to the change in its holdings. It is also observed for the said acquisition, Salputri had made disclosure in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 within the time of two working days from the date of the receipt of intimation of allotment of shares.

Issue B: Does the violation, if any, attract monetary penalty under Section 15A (b) of SEBI Act?

16. In view of the above conclusion drawn, it now remains to be determined whether the violation attracts the monetary penalty under section 15A(b) of the SEBI Act. In this regards the provisions of Section 15A(b) is quoted as follows:

“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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;”

17. Hon’ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

18. Based on the above, present case is a fit case for imposing penalty upon Salputri under Section 15A(b) of SEBI Act for violation of Regulation 13(1) read with Regulation 13(5) of PIT Regulations {to be read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015}.

Issue C- what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

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

¹*[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]*

20. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors due to such violations and nor has such allegations been made against Salputri. Material/ information on records do not suggest that the act of the noticee is repetitive in nature.
21. The factors set out in the Order of the Hon'ble Securities Appellate Tribunal in *Ashok Jain V. SEBI (Appeal no. 79 of 2014 decided on June 09, 2014)*, have been considered as under "..... Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations..."
22. As regards the delayed disclosures made, it is noted that the Hon'ble Securities Appellate Tribunal in the matter of *Yogi Sungwon (India) Ltd. Vs SEBI* dated May 04, 2001 in the appeal No. 36 of 2000 has observed that: ".....that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay."
23. Therefore, taking into consideration the facts / circumstance of the case and above factors, a justifiable penalty needs to be imposed upon Salputri.

ORDER

24. After taking into consideration all the facts and circumstance of the case, in view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, in exercise of the powers conferred under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, it is concluded that the proceeding against Salputri Commerce P Ltd., stands

¹ Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

established in terms of the provisions of the SEBI Act. Accordingly, impose a monetary penalties against Salputri Commerce P Ltd. of **Rs. 3,00,000 (Three lacs Rupees only)** for non-compliance of Regulation 13(1) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

25. Salputri shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

26. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - II [EFD1-DRA-II], SEBI Bhavan, Plot No.C4-A, ' G ' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;

1. Case Name :
2. Name of Payee:
3. Date of payment:
4. Amount Paid:
5. Transaction No:
6. Bank Details in which payment is made:
7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)

27. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Salputri and also to SEBI.

Date: August 07, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer