

**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**ADJUDICATION ORDER NO. EAD-3/JS/SP/47 /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:**

**Regus Impex P Ltd. PAN: AAECR4244E**  
**CIN U51909WB2009PTC137180**

**In the matter of Dunlop India Ltd.**

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**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 Dunlop India Ltd. (**'Dunlop'**), scrip listed at The Bombay Stock Exchange (**'BSE'**), was in violation of provisions of SEBI (Substantial Acquisition of Shares And Takeover) Regulations, 2011 (**'Takeover Regulations'**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (**'PIT Regulations'**). During the investigation, it was observed that Regus Impex Pvt Ltd. (**'Regus/Noticee'**), had failed to disclose its change in shareholdings in the scrip of Dunlop. The nature of findings along with alleged violations of provisions by Regus, are as follows:

<b>Findings in brief</b>	<b>Alleged violations of provisions</b>
Regus, made delayed disclosure regarding the acquisition of more than 5% equity shares of Dunlop through preferential allotment under Takeover Regulations and PIT Regulations.	Regulation 13(1) read with Regulation 13(5) of <b>PIT Regulations</b> {to be read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015} and Regulation 29(1) read with 29(3) of <b>Takeover Regulations</b>

2. In view of the above, SEBI initiated adjudication proceedings against Regus 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 Regus to the address available at our end i.e. *"2/8, A Netaji Nagar, Kolkata – 700 092"*, which was returned undelivered with remarks *"door locked, intimation served"*. The SCN was uploaded in SEBI website under the heading *"Unserved Summons/ Notices"*.
5. Subsequently, vide letter dated November 07, 2017, an attempt was made to deliver the referred SCN to Regus to the address mentioned above at para 4. Further, vide the referred letter, Regus was informed to file reply to SCN within 14 days from the date of receipt of the letter. The said letter was also returned undelivered with remarks *"left"*.
6. Further, vide letter dated February 05, 2018 Regus was granted an opportunity to appear before the Adjudicating Officer on February 22, 2018 and also informed to file reply to SCN latest by February 20, 2018. The said letter was issued to Regus to the address mentioned at above para 4. However, it was returned undelivered with remarks *"left"*. The letter dated February 05, 2018 was uploaded in SEBI website under the heading *"Unserved Summons/ Notices"*.
7. Subsequently, vide letter dated March 20, 2018, another opportunity of hearing was granted to Regus to appear before the Adjudicating Officer on April 05, 2018 and also informed to reply to the SCN latest by April 02, 2018.

8. In terms of Rule 7(d) of Adjudication Rules, the details of referred SCN and Hearing notices dated February 05, 2018 and March 20, 2018, were published in the newspaper in the edition of “The Times of India” and “Anandabazar Patrika” on May 11, 2018. Also, vide the publication, Regus was granted an opportunity of personal hearing to appear on May 22, 2018. However, on the date of hearing, Regus failed to appear before the Adjudicating Officer.

9. In the meantime, Regus, vide letter dated March 30, 2018 has informed that:

*a. The requirement of disclosures under Regulation 13 of PIT Regulations has been made by the company in respect of shares of Falcon & Dunlop on June 24, 2015. We admit that the delay in this disclosure was purely unintentional and ignorance about the procedure.*

*In view of above, we request you not to take any action or initiate any proceeding against the company as the mistake was happened due to ignorance of the fact as stated above. But this mistake will not happen in future, we assure your honour.*

*b. It is not out of place to mention that the requirement of disclosure under Regulation 29 of Takeover Regulation has also been made by the Company within the time in respect of shares of Falcon and Dunlop as specified under the statute.*

*Thus, considering the above facts, your honour is requested to treat our matter graciously and not to take any action or initiate any proceeding against the company.*

*We hope, your honour will not initiate any penal action against the company and condone the delay.*

*Kindly also note that our office also shifted to above address and informed SEBI about the same vide our letter dated February 15, 2018. Hence, request your honour to correspond with us in future at our above address & oblige.*

The said letter of Regus was addressed from 11A, Dr. Biresh Guha Street, Kolkata- 700 017. Also, vide the referred letter of Regus has provided its email id i.e. [regus.imp@gmail.com](mailto:regus.imp@gmail.com).

10. Subsequently, vide letter dated June 12, 2018, Regus was granted a last and final opportunity to appear before the Adjudicating officer on June 26, 2018. The said letter was addressed to “11A, Dr. Biresh Guha Street, Kolkata- 700 017”. It is same address from which Regus filed its reply. However, the letter dated June 12, 2018 addressed to Regus was returned undelivered with remarks “not known”. Also a copy of the letter

dated June 12, 2018 was emailed to [regus.imp@gamil.com](mailto:regus.imp@gamil.com), email id provided by Regus, which was delivered as there are no intimation of non-delivery. The letter dated June 12, 2018 was uploaded on SEBI website under the heading “Unserved Summons/ Notices”.

11. Thus, it is observed that Regus was granted enough opportunity to appear for personal hearing, however Regus failed to appear before the Adjudicating officer or made further written submissions. Thus, the matter is proceeded in terms of rule 4(7) of the AO Rules, based on the information available on records.

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

12. After perusal of the material available on record, the following issues are for consideration viz.

- A. Whether Regus had made delayed disclosure on the change in its holdings as alleged in the SCN?
- B. If yes, does the violation, on the part of Regus attract monetary penalty under Section 15A (b) of SEBI Act?
- C. If yes, what would be the monetary penalty that can be imposed on Regus taking into consideration the factors mentioned in Section 15J of SEBI Act?

#### **ISSUE A- Whether Regus had made delayed disclosure on the change in its holdings as alleged in the SCN?**

13. Dunlop, on April 28, 2012 had allotted a total of 5,00,00,000 equity shares of Dunlop on a preferential basis to three entities including Regus, the notice, against an outstanding loan of Rs. 60,00,00,000/-.

14. Regus, was allotted 1,75,00,000 shares, which is 14.35% of the share capital of Dunlop. The intimation with respect to allotment of shares of Dunlop was received by Regus on April 28, 2012.

15. It is pertinent to note that in terms of Regulation 29(1) read with Regulation 29(3) of Takeover Regulations, Regus required to disclose the acquisition of 14.35% of share capital of Dunlop within two working days of the receipt of intimation of allotment of shares. However, it is observed that Regus had disclosed the said acquisition of shares of Dunlop to BSE on May 07, 2012, which is delay of three working days.
16. Also, for the said acquisition of 14.35% of shares of Dunlop, Regus required to make the disclosure to Dunlop under Regulation 13(1) read with Regulation 13(5) of PIT Regulations within two working days from the date of receipt of intimation of allotment of shares of Dunlop. However, Regus made the required disclosures to Dunlop on June 24, 2015, which was subsequent to issuance of summons by SEBI during the investigation. Thus, a delay of more than 1146 days, which is more than 3 years, is observed from the date of receipt of intimation of allotment of shares.
17. Thus, based on the facts available on record, it is concluded that Regus have failed to comply with 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} and Regulation 29(1) read with Regulation 29 (3) of Takeover Regulations.

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

18. 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;”.***

19. 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.*"

20. Based on the above, present case is a fit case for imposing penalty upon Regus Impex P Ltd. 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} and Regulation 29(1) read with Regulation 29 (3) of Takeover Regulations.

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

21. While determining the quantum of penalty under section 15A(b), 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."*

<sup>1</sup>*[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.*

22. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by Regus and the loss suffered by the investors due to such violations and nor has such allegations been made against Regus.

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<sup>1</sup> 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.

23. It is observed that for the said acquisition of shares of Dunlop, Regus was required to make disclosures in terms of Takeover Regulations as well as PIT Regulations within two days of receipt of allotment of shares however, Regus made a delayed disclosures of 3 days and 1146 days respectively.
24. 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...”
25. 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.”
26. Regus has admitted that there is a delay in filing disclosures was unintentional and ignorance of procedure. In this regard, it is pertinent to refer to SAT order dated September 07, 2017 in the matter of Mega Resources Ltd., Hooghly Mills Project Ltd. and Hooghly Stocks and Bonds Project Ltd., wherein it was held  
“that the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions. It is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor this argument of the appellant, therefore, fails in our opinion”.
27. Therefore, taking into consideration the facts / circumstance of the case and above factors, a justifiable penalty needs to be imposed upon Regus to meet the ends of justice.

## **ORDER**

28. After taking into consideration all the facts and circumstance 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 Regus Impex P Ltd., stands established in terms of the provisions of the SEBI Act. Accordingly, impose a monetary penalties against Regus Impex P Ltd. of **Rs. 3,50,000(Three lac and Fifty Thousand Rupees only)** for non-compliance of Regulation 13(1) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations {to be read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015} and Regulation 29(1) read with Regulation 29 (3) of SEBI (Substantial Acquisition Of Shares and Takeovers) Regulations, 2011.

29. Regus 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:-

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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

30. 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)

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

**Date: July 23, 2018**  
**Place: Mumbai**

**Jeevan Sonparote**  
**Adjudicating Officer**