

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: EAD-2/SS/SK/2018-19/782]

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

In respect of:

Jay Ushin Limited
(PAN No. AAACJ1214A)
G.O.14, HSIIDC Indl. Estate,
Sector 18, Gurgaon – 122001.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') during the examination of trading in the scrip of Jay Ushin Limited (hereinafter referred to as 'the Noticee') listed on BSE Ltd. (hereinafter referred to as 'BSE') observed that on April 26, 2015, 73,029 equity shares were transmitted from Mrs. Gayatri Devi Minda, pursuant to her death on June 14, 2010, to her husband Mr. Jaideo Prasad Minda (hereinafter referred to as 'JPM'), director and promoter of the Noticee. As the change in JPM's shareholding consequent to aforesaid transmission of 73,029 shares of the Noticee was more than the threshold limit of 25,000 shares as stipulated under regulation 13(4) and (4A) read with 13 (5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations'), JPM was required to make the requisite disclosures to both the Noticee and BSE within two working days from the date of transmission i.e. on or before April 29, 2015. Upon inquiry by SEBI, vide e-mail dated January 04, 2018, JPM had, *inter-alia*, submitted as under:

"I have made disclosures to the company vide my letter dated April 29, 2015 for acquiring 73,029 equity shares of Jay Ushin Limited from Mrs Gayatri Devi Minda by way of transmission (inter-se transfer)....

I have no proof of dispatch of my letter dated 29-04-2015 sent to the exchange as it was send by post."

2. Pursuant to receipt of disclosures from JPM i.e. on April 29, 2015, the Noticee was required to make the requisite disclosures to BSE in specified Form in terms of regulation 13(6) within two working days

from the date of receipt of disclosure from JPM i.e. on or before May 01, 2015. Upon inquiry by SEBI, vide e-mail dated January 03, 2018, the Noticee had, *inter-alia*, submitted as under:

“...we have no proof of dispatch for letter dated 29-04-2015 which was sent by post and for November 5, 2015 intimation we are attaching the subject email as per Annexure 1 & 2.”

3. From the records, it is noted that the intimation sent by the Noticee to BSE vide email dated November 07, 2015 contained reply dated November 05, 2015, with regard to disclosures filed by its promoters. Vide e-mail dated January 31, 2018, BSE has confirmed that on April 29, 2015, no disclosures were received from either JPM or the Noticee in terms of the requisite provisions of the PIT Regulations. However, BSE informed that they have taken on record the disclosure date as November 05, 2015 considering the date when Noticee's letter dated November 05, 2015 was received by BSE. After examining the information available on record, SEBI has alleged that the Noticee had made the requisite disclosures received from JPM to BSE belatedly i.e. on November 05, 2015 instead of the actual due date viz. May 01, 2015. Therefore, it has been alleged that the Noticee has violated the provisions of Regulation 13(6) of the PIT Regulations.
4. In view of the above, SEBI felt satisfied that there are sufficient grounds to adjudicate upon the aforesaid alleged violations by the Noticee and on March 07, 2017 appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer (AO) to inquire and adjudge the alleged violations of the provisions of regulation 13(4) and (4A) read with 13 (5) of the PIT Regulations by the Noticee. When the records of the proceedings were provided to him on November 16, 2017, the AO had remitted back the matter to the concerned department in SEBI seeking clarification/evidence on November 21, 2017. By a common communication- order dated April 02, 2018 issued by a Deputy General Manager of SEBI this case has been transferred to me with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders '*shall remain unchanged and shall be in full force and effect*' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders read with this order*" (i.e. communication –order dated April 02, 2018). Thus, the terms of reference before me are the same as they were before the erstwhile AO and these proceedings are to continue with respect to the allegation and charges as aforesaid.
5. Thereafter, on receipt of record of these proceedings on May 23, 2018, the notice to show cause no. EAD/SKS-SS/OW/15427/2018 dated May 25, 2018 (hereinafter referred to as 'the SCN') was issued

to the Noticee in terms of Rule 4(1) of the Adjudication Rules, calling upon it to show cause as to why an inquiry should not be held against it and penalty be not imposed under Section 15A (b) of SEBI Act for the aforesaid alleged violations. The relevant provisions of PIT Regulations charged in this case and possible consequential penal provision therefor as provided in SEBI Act are reproduced herein under:

PIT Regulations

13. (1)

Continual disclosure.

(3)

Disclosure by company to stock exchanges.

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

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,-*

(a)

(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;

6. The Noticee vide its letter dated June 04, 2018 received in the matter on June 13, 2018 filed his reply to the SCN and requested for a personal hearing in the matter. An opportunity of personal hearing was granted to the Noticee on June 26, 2018, in terms of Rule 4 (3) of the Adjudication Rules when Ms. Shailashri Bhaskar, Authorized Representative (AR) of the Noticee appeared on his behalf and reiterated the submissions made by the Noticee vide its letter dated June 04, 2018. The replies/submissions of the Noticee are as follows:

- a. JPM's wife Mrs. Gayatri Minda (the deceased shareholder), belonging to promoter group of the Noticee was holding 73,029 shares which constituted 1.89% of the paid up capital of the company. On her demise, the shares held by her were transmitted to JPM who is also part of the promoter group of the Noticee.

- b. JPM had made the disclosures about such transmission of shares on April 29, 2015 i.e. within the stipulated timeline and the Noticee immediately made a disclosure under Regulation 13(6) to BSE by post on April 29, 2015. However, it was surprised to receive an email from SEBI and also from BSE requesting it to provide the details of this transaction and the disclosures made in this regard. Therefore, the Noticee once again submitted the disclosures under Regulation 13(6) to BSE on 07.11.2015. Thus, the requisite disclosures were made to BSE on time without any delay.
- c. The change in the shareholding was reflected in the Shareholding Pattern filed by the Noticee for the quarter ended June 30, 2015 and the same was available in public domain. Further, the transmission was only amongst promoters and no fresh shares were also acquired and there was no change in the shareholding of the promoter group.
- d. In Form D prescribed under regulation 13(4), 13(4A) and 13 (6) of the PIT Regulations, the acquisition by way of transmission of shares are not required to be disclosed. The intention of the regulation does not seem to mandate the disclosure of acquisitions by way of transmission of shares. This proposition is further supported by the fact that in the Form D prescribed for the disclosures to be made under the new PIT Regulations of 2015, the acquisition by way of *inter-se* transfer of shares was added but acquisition by way of transmission is omitted. Nevertheless, the disclosures were made by the Noticee on April 29, 2015 to the BSE by post. In this regard, the learned AR relied upon the copy of the requisite Form D signed by the authorized signatory of the Noticee on April 29, 2015. However, proof of dispatch of Form D to BSE is not available with the Noticee. The learned AR further submitted that the disclosures available on BSE proved that the disclosures were at least made on November 09, 2015. The AR also produced the extract of the disclosure made on BSE to demonstrate that the disclosures about transmission of shares to the Noticee as alleged were made on November 09, 2015.
- e. The learned AR, and relied upon case laws referred in the reply of the Noticee and argued that Adjudicating Officer, SEBI in the matters Devyani Chandrakant Doshi (Rajoo Engineers Ltd) and in the matter of D Sarojanamma (ERP Soft System Ltd) and Sanwaria Agro Oils Ltd wherein it is has been stated that Transmission is brought about by operation of law and is not a voluntary act like transfer of shares and hence does not require disclosures under the SEBI (SAST) Regulations, 2011 and the SEBI (PIT) Regulations, 1992.

7. I have considered the allegations levelled in the terms of reference, the aforesaid submissions of the Noticee and the relevant material available on record. In this case, the acquisition of 73,029 shares of the Noticee by JPM pursuant to transmission of those shares from his deceased wife is admitted. The charge is that the Noticee had made belated disclosure under regulation 13(6) of the PIT Regulations. The Noticee has also claimed that it had made disclosures on April 29, 2015, but has not been able to establish its claim on the basis of any proof / evidence. I also note from record that BSE had confirmed that it had received the disclosures about impugned acquisition from the Noticee on November 05, 2015.
8. With regard to status of legal heirs, it is a settled position that the property of the deceased member vests in the legal members of the deceased and transmission of shares to legal heirs of deceased shareholder is not a voluntary act as in case of transfer of shares. As held by the Company Law Board, in the matter of *S. Kanthimathy, S. Lakshmi, S. vs. The Woodlands Estates Limited (decided on 20 August, 2007) 2008 144 Comp Cases 830 CLB, 2008 83 SCL 491 CLB* when a shareholder dies his legal representatives represent the estate of that shareholder and that when a member dies, his estate is entrusted in the legal representatives. It is sufficient if one's predecessor in interest had invested the funds and any person who succeeded to shares by way of operation of law can be treated as shareholder representing the estate of deceased shareholder.
9. Further, Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter of *Mrs. Devyani Chandrakant Doshi Vs. SEBI* (Appeal No. 64 of 2014 decided on May 08, 2014) had concurred with the view of an Adjudicating Officer in the order in the matter of D Sarojanamma dated November 29, 2013 that *"....while transfer of shares relates to a voluntary act on the part of the shareholder, transmission is brought about by the operation of law."* In *Mrs. Devyani Chandrakant Doshi's* case, the Adjudicating Officer of SEBI had imposed monetary penalty upon Mrs. Devyani Chandrakant Doshi for making delayed disclosures about her acquisition of shares in Rajoo Engineers Ltd. by way of transmission of shares from her husband (since deceased). In appeal filed by the said Devyani Chandrakant Doshi, Hon'ble SAT remanded back the matter to the Adjudicating Officer who, later, by an order dated March 24, 2015 held that the charge against said Devyani Chandrakant Doshi was not established and exonerated her. Further, by an order dated December 28, 2017, passed by another Adjudicating Officer in the matter of Sanwaria Agro Oils Ltd. it was concluded that non-disclosure of acquisition by way of transmission of shares sans any voluntary act on the part of promoter was not a fit case for imposition of monetary penalty and exonerated the concerned promoter from the charges levelled against her.

10. In the instant case also, the acquisition by JPM (a promoter of the Noticee) was by way of transmission of shares to him from his deceased wife (who was also a promoter of the Noticee). There was no change in the promoter shareholding *per se* and acquisition was by way of operation of law as opposed to any voluntary act of acquisition on the part of JPM. In the facts and circumstances of this case, the act of the Noticee cannot be said to be blameworthy and in my view the charge is technical and venial. Considering the aforesaid principles of law endorsed by Hon'ble SAT, I am of the view that the present case also would not be a fit case for imposition of section 15A (b) of the SEBI Act.
11. In view of the above, I conclude that the case does not warrant imposition of any monetary penalty and exonerate Jay Ushin Limited from the charges levelled against it in the SCN. The SCN is disposed of accordingly.
12. In terms of Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticee and also to SEBI.

Date: June 27, 2018

Place: Mumbai

Santosh Shukla

Adjudicating Officer