

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:

1. Enbee Trade & Finance Ltd (PAN: AAACE6791P)
2. Amar Narendra Gala (PAN: AEIPG9529A)
3. Samta Gala (PAN: APUPG7373M)
4. Bharathi N. Gala (PAN: AAJPG9438M)
5. Bharat Mamania (PAN: AABPM3713B)

In the matter of Enbee Trade & Finance Ltd

BACKGROUND

1. Securities and Exchange Board of India (hereinafter, referred to as "**SEBI**") observed that certain disclosures which ought to have been made by Enbee Trade & Finance Ltd (hereinafter, also referred to as "**Enbee Trade**") under regulation Regulation 7(2)(b) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter, referred to as "**PIT Regulations 2015**") and by promoters viz, Amar Narendra Gala, Samta Gala, Bharathi N. Gala and Bharat Mamania under Regulation 7(1)(b) of PIT Regulations 2015, were not made. Above company and its promoters are hereinafter, referred individually by their respective name and collectively referred to as "**Noticees**".
2. SEBI observed that Amar Narendra Gala became promoter of Enbee Trade on 28/12/2015. Further, Bharathi N. Gala, Bharat T Mamania, and Samta Gala became promoter of Enbee Trade on 31/03/2016. The above facts are also reflected in quarterly shareholding details of Enbee Trade for quarter ending 31/12/2015 and 31/03/2016 available on the website of BSE.
3. As per information provided by Enbee Trade regarding compliances of provisions of SEBI SAST and PIT Regulations and copy of disclosures received from promoters and non-promoters, SEBI observed that requisite disclosure under 7(1)(b) of PIT Regulation 2015 were not made to Enbee Trade by Amar Narendra Gala, Bharathi N. Gala, Bharat Mamania and Samta Gala upon becoming promoters of the Enbee Trade.
4. In view of the above, it is alleged that Amar Narendra Gala, Bharathi N. Gala, Bharat Mamania, and Samta Gala violated provisions of regulation 7(1)(b) of PIT Regulation 2015.
5. Enbee Trade made preferential allotment of 1,00,000 shares to promoter Amar Narendra Gala on 31/03/2016. SEBI observed that Enbee Trade was aware of the above allotment of shares to Amar Narendra Gala, and also in this regard Enbee Trade received disclosure dated April 4, 2016 from Amar Narendra Gala. However, Enbee Trade has not disclosed the same to BSE.

6. Upon receipt of disclosure under regulation 7(2)(a) of PIT Regulations 2015 or becoming aware of the information, Enbee Trade was required to make disclosure to Stock Exchange under Regulation 7(2)(b) of PIT Regulations 2015.
7. As per information provided by Enbee Trade vide e-mail dated January 30, 2017 to SEBI, it is noted that Amar Narendra Gala sent an e-mail on April 15, 2016 from his e-mail ID amargala@gmail.com to a non designated e-mail id of BSE viz, listing.centre@bseindia.com enclosing copy of disclosure made in form C.
8. Hence, it is noted that instead of Enbee Trade making the disclosure, the same was made by Mr. Amar Narendra Gala at individual level, and that too sent to incorrect e-mail ID of BSE which was not the designated ID for submission of disclosures.
9. In view of the above, it is alleged that Enbee Trade despite being aware of above acquisition of 1,00,000 shares by Amar Narendra Gala, failed to make the subsequent requisite disclosure to Stock Exchange under Regulation 7(2)(b) of PIT Regulations 2015.

APPOINTMENT OF ADJUDICATING OFFICER

10. SEBI, in terms of Section 19 read with Section 15-I of SEBI Act, 1992 and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as “**SEBI Adjudication Rules 1995**”) appointed Adjudicating Officer to inquire into and adjudicate the alleged violation(s) stated above and if satisfied, impose liable penalty in terms of rule 5 of the SEBI Adjudication Rules 1995 and as per the provisions of Section 15A(b) of SEBI Act 1992 (hereinafter, referred to as “**SEBI Act**”).

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

11. Show Cause Notice dated 18/07/2018 (hereinafter, referred to as “**SCN**”) was issued to the Noticees, mentioning the allegation against the Noticees and to show cause within 14 days of receipt of the SCN, as to why an inquiry should not be held and penalty be not imposed under Section 15A(b) of SEBI Act for the aforesaid alleged violation against the Noticees.
12. SCN was sent through Speed Post and E-mail, and the same was delivered to Noticees. Noticees through joint letter dated 04/08/2018 and E-mail dated 04/08/2018 requested for extension of time till 20/08/2018 to submit reply to the SCN.
13. Vide letter dated 07/08/2018 and e-mail dated 09/08/2018 to Noticees extension of time was granted and Noticees were advised to submit their reply to SCN latest by 20/08/2018, and an opportunity of hearing was also provided on 27/08/2018.

14. Noticees vide their e-mail dated 20/08/2018 sought an extension of one day for submission of reply to SCN. Subsequently, Noticees submitted their reply dated 21/08/2018. On perusal of reply, it is noted that Noticees through authority letters authorised Mr. Amar Narendra Gala to make submissions on their behalf. Mr. Amar Narendra Gala has submitted two replies including one for Enbee Trade and other on behalf of rest of the 4 Noticees. Following key submissions are noted from the same:

a) Submissions on behalf of Enbee Trade w.r.t alleged violation of Regulation 7(2)(b) of PIT Regulations 2015

We would like to submit that since the Regulations were new and the management had changed with the old and experienced staff having left the company, this error occurred only due to inadvertence and ignorance. Since our promoter had already made the necessary disclosure to the stock exchange, we were under the mistaken impression that we need not have to file this information with the stock exchange once again.

Since there was no malafide intention and this error occurred only due to inadvertence, we request you to kindly take a lenient view and drop all further proceedings in this matter. We assure you that we will not make such errors in future.

b) Submissions on behalf of Amar Narendra Gala, Samta Gala, Bharathi N. Gala and Bharat Mamanian w.r.t alleged violation of Regulation 7(1)(b) of PIT Regulations 2015

"I, Amar Gala made the necessary disclosures under Regulation 29(1) of the SAST Regulations, 2011 on the acquisition of shares under preferential allotment on June 04, 2015 without any delay. In that disclosure which is available in public domain also enclosed by you as an annexure to your letter, it is clearly stated as a note that I was in the process of becoming a promoter as I had made a public announcement and the open offer process was going on. Further on becoming a promoter in December 2015, the shareholding pattern filed with the stock exchange which is available in public domain (also enclosed by you as an annexure to your letter) clearly states that I had become a promoter and my shareholding is classified as a part of the promoter shareholding.

Further for the second preferential allotment of 690000 shares made on March 31, 2016 to me, Samta Gala, Bharathi N. Gala and Bharat Mamanian, necessary disclosures have been made under Regulation 29(1) / 29(2) of the SAST Regulations, 2011. Further the shareholding pattern filed with the stock exchange for the quarter ended March 31, 2016 which is available in public domain (also enclosed by you as an annexure to your letter) clearly states that the other noticees had also become promoters and their shareholding is classified as a part of the promoter shareholding. Further we would also like to submit that the Annual Disclosure required to be made under Regulation 30(1) / (2) of the SAST Regulations, 2011 have also been made on April 07, 2016 which brings out the fact that the I along with the other noticees belong to the promoter group and the share have been allotted, but await listing / trading approval. This disclosure is also in the public domain. Necessary disclosures have been under Form C of the SEBI (PIT) Regulations, 2015 for this allotment

We have made all the disclosures to the Stock exchange: regarding the change in promoter holding both under the SEBI (SAST) Regulations, 2011 and the change has also been captured in the shareholding pattern filed for the quarters ended December 2015 and March 2016, which are all in the public domain and this information was available to the investors / shareholders at all times.

We have inadvertently failed to make the disclosure to the Company in Form B as mandated under the SEBI (PIT) Regulations, 2015 on becoming a promoter, which it is humbly submitted is only an internal communication to be filed with the company and is not made available to the investing public. The information which is required to be made to the public have been made on time without any delay. Hence we would like to humbly submit that no information has been kept away from the public and request you to kindly take a lenient view in the matter and drop all further proceedings."

15. Authorised representatives of the Noticees availed the hearing on 27/08/2018, and made following submissions:

“As regards to alleged violations by individual promoters, it is submitted that they were not aware of the requirements for internal disclosure to the company. Further, the same fact was never withheld from public, as other disclosures were filed with the Stock Exchange.

As regards to alleged violation by Enbee Trade and Finance Ltd (Company), it is submitted that it was on account of lack of awareness about the provisions of new PIT Regulations, 2015, and it was never the intention to not make the disclosure to Stock Exchange.”

CONSIDERATION OF ISSUES AND FINDINGS

16. Based on the allegations mentioned in the SCN, the reply of the Noticee to SCN, submissions made in the personal hearing and other material on record, the following issues arise for consideration:

- a) Whether Enbee Trade has failed to file the necessary disclosure and thereby violated the provisions of Regulation 7(2)(b) of PIT Regulations 2015?
- b) Whether Amar Narendra Gala, Samta Gala, Bharathi N. Gala and Bharat Mamanian failed to file the necessary disclosures and thereby violated Regulation 7(1)(b) of PIT Regulations 2015?
- c) If yes, does the violations attract monetary penalty under Section 15A(b) of the SEBI Act?
- d) If yes, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS

Issue a) - Whether Enbee Trade has failed to file the necessary disclosure and thereby violated the provisions of Regulation 7(2)(b) of PIT Regulations 2015?

17. As per information available on records, Enbee Trade made preferential allotment of 1,00,000 shares to promoter Amar Narendra Gala on 31/03/2016. Enbee Trade was aware of the above allotment of shares to Amar Narendra Gala, and also in this regard, Enbee Trade received disclosure dated 04/04/2016 from Amar Narendra Narendra Gala under Regulation 7(2)(a) of PIT Regulations 2015. However, Enbee Trade despite being aware of above acquisition by Amar Narendra Gala, failed to make the subsequent requisite disclosure to Stock Exchange under Regulation 7(2)(b) of PIT Regulations 2015.
18. Records further shows that it is not the case that no disclosure was made to Stock Exchange, as Amar Narendra Gala at individual level made the disclosure to Stock Exchange (BSE) on

15/04/2016. However, it is pertinent to note that against the requirement of company making the disclosure to Stock Exchange, same was made by individual himself and that too with minor delay. Further, the said disclosure was also made to an email ID of Stock Exchange which is not a designated e-mail ID for the purpose of receipt of disclosure by Stock Exchange. Hence, Stock Exchange could not take the above disclosure on record, and disseminate the same on its website for information of public. Hence, it is determined that the regulatory requirement has not been fulfilled.

19. Enbee Trade in its reply to SCN has admitted the default at its end and submitted that same happened inadvertently, as PIT Regulations 2015 were new and the management had changed with the old and experienced staff having left the company. Since individual /promoter had already made the necessary disclosure to the stock exchange, Enbee Trade was under the mistaken impression that we need not have to file this information with the stock exchange once again. It is also submitted that there was no malafide intention behind non disclosure and even it was not the intention to not make the requisite disclosure.
20. Given the above findings, it is clear that though technical in nature but there was failure on part of Enbee Trade to make requisite disclosures to Stock Exchange, and it has thereby violated the provisions of Regulation 7(2)(b) of PIT Regulations 2015.

Issue b) - Whether Amar Narendra Gala, Samta Gala, Bharathi N. Gala and Bharat Mamania failed to file the necessary disclosures and thereby violated Regulation 7(1)(b) of PIT Regulations 2015?

21. As per information available on record, Amar Narendra Gala became promoter of Enbee Trade on 28/12/2015. Further, Bharathi N. Gala, Bharat T Mamania, and Samta Gala became promoter of the Enbee Trade on 31/03/2016. The above facts are also reflected in quarterly shareholding details of Enbee Trade for quarter ending 31/12/2015 and 31/03/2016 available on the website of BSE, and same are undisputed.
22. Regulation 7(1)(b) of PIT Regulations 2015, requires that *every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.*
23. In this regard, as per details of all the disclosures received by Enbee Trade during 31/12/2015 to 22/06/2016 and such details provided to SEBI, above Noticees did not file the requisite disclosure with Enbee trade under Regulation 7(1)(b) of PIT Regulations 2015 upon becoming the promoter of Enbee Trade.

24. Noticees, in their reply to SCN has admitted the inadvertent delay in making the internal disclosure to the company i.e, Enbee Trade on becoming the promoter. Noticees have also submitted that it was never their intention to not make the disclosure of their shareholding on becoming promoter, to Enbee Trade under Regulation 7(1)(b) of PIT Regulations. In support of the stand, Noticees have highlighted the fact that at the same time their shareholding as promoter was correctly disclosed to Stock Exchange, and same were also reflected on the website of Stock Exchange for Qtr ending December 2015 and March 2016.
25. Given the above findings, it is clear that though technical in nature there was failure on part of Amar Narendra Gala, Samta Gala, Bharathi N. Gala and Bharat Mamanian to make requisite disclosures to Company i.e, Enbee Trade, and thereby there is a violation of the provisions of Regulation 7(1)(b) of PIT Regulations 2015.

Issue c) - If yes, does the violations attract monetary penalty under Section 15A(b) of the SEBI Act?

26. Given the established violation as above, it is now to be determined whether the present matter is fit case for imposing monetary penalty.
27. Reliance is placed on order of Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which 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....."*
28. Thus, it is determined that the Noticees are liable for monetary penalty under Section 15A(b) of SEBI Act which reads as follows:

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 58[a penalty 59[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]];*

58 Substituted for —a penalty not exceeding five thousand rupees for every day during which such failure continues, by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002.

59Substituted for the words —of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.

Issue d) - If yes, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

29. While determining the quantum of penalty under section 15A(b) of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as follows:

Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 15-I of SEBI Act, 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.”

93[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.]

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

30. The material made available on record neither reveals nor specify disproportionate gains/ unfair advantage made by the Noticees, the specific loss suffered by the investors due to violations by the Noticees nor is so alleged in the SCN.
31. There is no material available on record to suggest that the act of the Noticees were repetitive in nature.
32. Therefore, taking into consideration the facts / circumstance of the case, and the technical nature of default, an appropriate penalty is justified to be imposed in the matter.

ORDER

33. In view of the above, after taking into consideration findings, and all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of the SEBI Act, under provisions of section 15A(b) of SEBI Act, following penalty is imposed on Noticees:
 - a) Rs. 1,00,000/- (Rupees One Lakh only) on Enbee Trade & Finance Ltd
 - b) Rs. 1,00,000/- (Rupees One Lakh only) on Amar Narendra Gala
 - c) Rs. 1,00,000/- (Rupees One Lakh only) on Bharathi N. Gala
 - d) Rs. 1,00,000/- (Rupees One Lakh only) on Bharat Mamania
 - e) Rs. 1,00,000/- (Rupees One Lakh only) on Samta Gala
34. Noticee shall remit / pay the said amounts 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

35. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of the Enforcement Department 1 (EFD1) – Division of Regulatory Action 1 (DRA 1) of SEBI
36. The format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular no. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID: tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary / Other Entity	
Type of Intermediary	
SEBI Registration no. (If any)	
PAN	
Amount (in Rupees)	
Purpose of payment (including the period for which payment was made e.g, Quarterly, Annually	
Bank Name and Account Number for which payment is remitted	
UTR No.	

37. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

Date: August 31, 2018
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer