

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/BD/AB/2020-21/9220]

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
Gilani Infra Private Limited
(Earlier known as Hamraj Fashion Consultants Pvt. Ltd.)
(PAN: AACCH2998F)

In the matter of
Empower Industries Limited

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination of non-disclosures under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') in various scrips during the period November, 2016 to February, 2017. During examination it was noticed that M/s Hamraj Fashion Consultants Pvt. Ltd. (now known as Gilani Infra Private Limited and hereinafter referred to as '**the Noticee**') in the scrip of Empower India Ltd (hereinafter referred to as '**EIL**' / '**the Company**') failed to make requisite disclosures under SAST Regulations.
2. It was alleged that the Noticee had failed to comply with the disclosure requirements specified under the provisions of Regulation 29(1) read with 29(3) of the SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer in the matter vide communique dated July 9, 2020 to inquire into and adjudge under the provisions of section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') under the provisions of section 15A(b) of the SEBI Act for the aforementioned alleged violation of the provisions of law by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice dated August 13, 2020 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15A(b) of the SEBI Act, for the violations alleged to have been committed by the Noticee. The SCN issued to the Noticee, *inter-alia*, alleged that in the demat account held in the name of Gilani Infra Private Limited, there were nil shares as on January 01, 2017. Subsequently, 4,59,10,000 shares (3.94%) of Empower India Limited were credited on January 23, 2017 and 2,60,62,500 shares (2.24%) were credited on February 08, 2017. As a result, the shareholding increased to 6.18%, i.e. more than 5%. The shares were received by way of off-market transfer.
5. Since the shareholding of the Noticee increased to more than 5%, it was required to make disclosure under Regulation 29(1) read with Regulation 29(3) of SAST Regulations within 2 working days. However, no such disclosure was made by the Noticee and the same was confirmed by the exchange as well.
6. The SCN was sent by SPAD as well as e-mail to the Noticee. The Noticee vide e-mail September 3, 2020 sought copy of one of the annexures of the SCN and 4 weeks' time to file reply to the SCN. The Noticee vide e-mail dated September 3, 2020 was advised to file reply to the SCN by September 21, 2020 and also appear for personal hearing on September 25, 2020.

7. The Noticee submitted its reply through an e-mail dated September 7, 2020 and also submitted a compilation of orders. A summary of the submissions made by the Noticee are as follows:
- i. There has been a delay of 3 years in the issuance of SCN and the Noticee is not in a position to defend itself since its unable to trace 3 year old records.
 - ii. The Noticee was not related to EIL and acquired shares as a public shareholder. The name of the Noticee was appearing in the disclosures made by EIL for the quarter ending March, 2017. Thus the Noticee's status and holding was always available in the public domain.
 - iii. The non-disclosure on part of the Noticee was unintentional. As the shareholding of the Noticee was in public domain, the alleged violation is technical and unintentional in nature. The shareholding of the Noticee didn't change from February, 2017 till August, 2020.
 - iv. The Noticee has made the relevant disclosures on August 24, 2020.
 - v. The Noticee also submitted a compilation of cases to show that the quantum of penalty in such technical violation is not high and only a token penalty has been imposed.

CONSIDERATION OF ISSUES

8. I have carefully perused the charges levelled against the Noticee, its reply and the documents / material available on record. The issues that arise for consideration in the present case are :
- (a) Whether the Noticee has violated the provisions of Regulation 29(1) read with 29(3) of the SAST Regulations
 - (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
 - (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. Before proceeding further, I would like to refer to the relevant provisions of the PFUTP Regulations as below:

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) ...

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

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

10. I find that the disclosure requirements under the SAST Regulations are triggered when the shareholding of an entity/ person crosses 5% of the share capital of that company. In the instant matter, I note from the data that the Noticee acquired 6.18% of the share capital of EIL. Consequently, the Noticee was required to make the disclosures to the Company and to BSE in the prescribed format within two working days of its sale of shares in terms of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations. I note that no such disclosures were made by the Noticee in the stipulated time frame and the same has also been admitted by the Noticee. However, it is observed that the necessary disclosures were made to the Company and BSE on August 24, 2020 (after a delay of almost 3 years) and copies of the same were submitted before me during the proceedings. Thus, I conclude that the Noticee has violated Reg. 29(1) r/w 29(3) of SAST Regulations.
11. In this context, I observe that the Hon'ble SAT has consistently held that the obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory

obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI* had observed that

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

12. I further observe that the Hon'ble Supreme Court of India, in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006]} 5 SCC 361} 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”.

13. In view of the violation of the provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty under the provisions of 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 there under-

(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.

14. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

15. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the concerned department of SEBI has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature. As a mitigating factor, I also note that the Company while making quarterly disclosure of shareholding on the exchange for the quarter ending March, 2017 has shown the name of the Noticee (in the category of public shareholder holding more than 1% shareholding) along with its shareholding in the Company. Thus, I am inclined to consider that the information about Noticee's shareholding in the Company was in public domain from April, 2017.
16. I am also of the view that the disclosure requirements that have been prescribed under SAST Regulations are of utmost significance for the protection of interest of the investors, as such information received by them in a time bound manner would facilitate them to take an informed investment decision as regards their holdings in the Company. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

ORDER

17. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lakh only) on the Noticee viz. Gilani Infra Private Limited under the provisions of Section 15A(b) of the SEBI Act.

18. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order, either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR by using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
19. The Noticee shall forward said Demand Draft to the Enforcement Department – Division of Regulatory Action– IV of SEBI. The Noticee shall provide the following details while forwarding the Demand Draft:
- i. Name and PAN of the entity (Noticee)
 - ii. Name of the case / matter
 - iii. Purpose of Payment – Payment of penalty under AO proceedings
 - iv. Bank Name and Account Number
 - v. Transaction Number
20. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: September 28, 2020
Place: Mumbai

B.J. Dilip
ADJUDICATING OFFICER