

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. AO/JS/VRP/17/2017

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:
Mr. Harish C Mirchandani
PAN No.AADPM2802R
In the matter of Jyoti Structures Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted investigation in the scrip of Jyoti Structures Limited (hereinafter referred to as 'The **Company**') during the period April 01, 2014 to March 31, 2015 (hereinafter referred to as the '**investigation period**').
2. Pursuant to investigations, it was alleged by SEBI that entity viz. Mr. Harish C Mirchandani (hereinafter referred to as '**The Noticee**') had violated the provisions of the Regulations 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 for transferring via off-market 50,000 shares of the Company to Shri. Rishab Sanjay Mirchandani (hereinafter referred to as '**RSM**') on May 08, 2014. Pursuant to the said transfer, shareholding changed from 2,50,000 shares of the company to 2,00,000 shares, by more than 25,000 shares.

APPOINTMENT OF ADJUDICATING OFFICER

3. An Adjudicating Officer was appointed vide order dated August 29, 2016 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**') and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rule, 1995 (hereinafter referred to as '**Adjudication Rules**'), to inquire into and adjudge under Section 15A(b) of SEBI Act, 1992. Consequent to transfer the proceedings are now proceeded with in terms of Order dated May 18, 2017

to inquire into and adjudge under Sections 15A(b) the alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as 'SCN') in terms of the provisions of Rule 4 of Adjudication Rules read with Section 15I of SEBI Act, 1992 was issued on July 14, 2017 to the Noticee calling upon the Noticee to show cause as to why an inquiry should not be held against them under Rule 4 of the Adjudication Rules and penalty be not imposed for the alleged violation. Records show that the aforesaid SCN were delivered to the Noticee.
5. The Noticee vide letter dated August 14, 2017 submitted its reply to the SCN as follows:

I am 83 year old man & due to my love and affection & my age factor, I gifted shares to my grandson.

Since the above Equity Shares were gifted to my grandson Mr. Rishabh Mirchandani, no consideration for sale or transfer of said Equity Shares was received by me.

Lenient, view in the above matter be taken since the shares has been gifted to my grandson Mr. Mr. Rishabh Mirchandani and it has no adverse impact in the pricing of equity shares of Jyoti Structures Limited and to the shareholder of the company at large.

6. An opportunity of personal hearing was granted to the Noticee on November 08, 2017 vide hearing notice dated October 27, 2017. Authorized Representative appeared at the hearing (herein after referred to as 'AR').
7. The AR reiterated the submissions made vide letter dated August 14, 2017 and November 06, 2017.

ISSUES FOR CONSIDERATION

8. After perusal of the material available on record, the following issues arise for consideration,
 - I. Whether the Noticee had violated of the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992?
 - II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?
 - III. If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992?

FINDINGS

9. On perusal of the material available on record and considering the facts and circumstances of the case and submissions of the Noticee, the findings with respect to the issues as hereunder.

ISSUE I: Whether the Noticee had violated the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992?

10. Noticee in its replies has not disputed the alleged change in the holding as stated in the SCN and admitted that the Noticee had gifted the 50,000 equity shares of the company to his grandson and requested to take lenient view in the matter.
11. In terms of Regulation 13(4A) of PIT Regulations, "*Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or **25,000 shares** or 1% of total shareholding or voting rights, whichever is **lower**.*"
12. It is noted in the case in hand that, there was change in the shareholding of the Noticee and the change exceeded 25,000 shares as provided in the Regulation 13(4A) of PIT Regulation, 1992. The Noticee was required to disclose the said change in the shareholding to the company and to the stock exchange where the securities were listed in Form D as prescribed in the PIT Regulations, 1992. The required disclosure was not made by the Noticee to the company and to the stock exchange.
13. While the Noticee has not denied the change in the holding beyond the threshold, he has claimed that he has gifted the shares to the grandson and that there was no benefit accrued to him.
14. After considering all the contentions put forth by the Noticee, for the reasons stated above, there is material on records to hold the Noticee to have violated the provisions of the Regulations 13(4A) read with 13(5) of PIT Regulations, 1992.

ISSUE II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?

15. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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 and hence the intention of the parties committing such violation becomes wholly irrelevant...”.

16. In view of the foregoing, it is determined to be a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, 1992 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 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 ¹[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];

(c)

ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticee considering the factors stated in section 15J of SEBI Act, 1992?

17. While determining the quantum of monetary penalty under Section 15A(b) of SEBI Act, 1992 I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Factors to be taken into account by the adjudicating officer.

15J. *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.

²*[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.]*

18. As per Section 15A(b) of the SEBI Act, 1992 of the Noticee is liable to penalty, 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, as the violations is in continuation.

¹ Substituted 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.

² 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.

19. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty.

20. BSE in its email dated November 17, 2015 mentioned that while disclosures were not filed with the Exchange in terms of Regulation 13(4A) of PIT Regulation, 1992, however, the disclosures were filed by the Noticee in terms of the Regulation 30(2) of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulations 2011.

The relevant text of the provisions are as under:-

"The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty - first day of March, in such target company in such form as may be specified."

21. Further, the information of the change in the shareholding was "– interse transfer among the family on May 09, 2014" has been mentioned in page no 16 of the Annual Report for the year 2014-15 while depicting the change in the promoters shareholding. Thus this information was in public domain though belated.

22. Hon'ble Securities Appellate Tribunal (SAT) on 4.9.2013 in the case of '*Vitro Commodities Private Limited vs SEBI*' interalia held that *"....provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."* The ratio of this judgement applies to the present matter.

23. There is no information on record to state that the act of the Noticee is repetitive in nature, nor has it been alleged as so.

24. After taking into consideration all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of SEBI Act, 1992. I impose a penalty of **Rs 1,50,000/- (Rupees one lakh fifty thousand only)** under Section 15 A(b) on the Noticee Mr. Harish C Mirchandani –PAN AADPM2802R, which in my opinion, will be commensurate with the violations committed by the Noticee.

25. 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 through e-payment facility into Bank Account the details of which are given below;

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 Chief General Manager of Enforcement Department of SEBI. 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 Adjudication Rules, copies of this order are sent to the Noticee and also to the SEBI.

Date: November 22, 2017
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer