

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-56/2014]**

**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

M/s. Grandma Trading & Agencies Limited

PAN No. (AABCG5307L)

In the matter of

M/s. Grandma Trading & Agencies Limited

FACTS OF THE CASE

1. M/s. Grandma Trading & Agencies Limited (hereinafter referred to as **“The Noticee/The Company”**) is a company incorporated under the Companies Act. Mr. Bharat B Jain (hereinafter referred to as **“the Acquirer”**) had filed a Letter of Offer to acquire 26% of the paid up capital and voting equity shares capital of Noticee at a price of Rs.11/- per fully paid-up equity share. The Public announcement in respect of the said offer was made on 07.01.2013 and the shares of the Noticee were listed on Bombay Stock Exchange (hereinafter referred to as **‘BSE’**).
2. While examining the letter of offer document of the Acquirer to acquire the shares of the Noticee, it was observed that the Noticee did not comply with the provisions of Regulation 6(2) and 6(4) each in the year 1997 & Regulation 8(3) of the SEBI (Substantial

Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **‘Takeover Regulations’**) during the period from 1998 to 2010 within the stipulated time. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of SEBI Act, 1992 (hereinafter referred to as **“Act”**) were initiated against the Noticee under Sec 15 A(b) of SEBI Act, 1992 to inquire into and adjudicate the alleged violation of the provision of regulation 6(2), 6(4) & 8(3) of the Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer, vide order dated 19.08.2013, under Section 15-I of the SEBI Act read with rule 3 of SEBI Rules to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of Regulations 6(2), 6(4) & 8(3) of Takeover Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (hereinafter referred to as **“SCN”**) Ref. No. EAD-6/AK/VRP/31215/2013 dated 03.12.2013 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations as detailed below. A copy of status of compliance document received from the merchant banker was also sent along with the SCN and is as given below:

Sl.no.	Regulation/Sub-Regulation	Due date of compliance	Actual date of compliance	Duration of non-compliance (Number of Days)
1	6(2)	20.05.1997	30.11.2010	4,942
2	6(4)	20.05.1997	30.11.2010	4,942
3	8(3)	30.04.1998	30.11.2010	4,597
4	8(3)	30.04.1999	30.11.2010	4,232

5	8(3)	30.04.2000	30.11.2010	3,866
6	8(3)	30.04.2001	30.11.2010	3,501
7	8(3)	30.04.2002	30.11.2010	3,136
Sl.no.	Regulation/Sub-Regulation	Due date of compliance	Actual date of compliance	Duration of non-compliance (Number of Days)
8	8(3)	30.04.2003	30.11.2010	2,771
9	8(3)	30.04.2004	30.11.2010	2,405
10	8(3)	30.04.2005	30.11.2010	2,040
11	8(3)	30.04.2006	30.11.2010	1,675
12	8(3)	30.04.2007	30.11.2010	1,310
13	8(3)	30.04.2008	30.11.2010	944
14	8(3)	30.04.2009	30.11.2010	579
15	8(3)	30.04.2010	30.11.2010	214

5. The Noticee was called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations. The Noticee vide email dated 11.12.2013 informed that they were in process of preparing and submitting the reply to the SCN and also informed the change in its registered office address.
6. The Noticee vide reply dated 23.12.2013 to the SCN while admitting the alleged violation/non-compliance has *inter alia* stated as under:
 - i. *That the company is having a small capital base and the business activities are too low to afford professionals to look into the various legal matters;*
 - ii. *That the Noticee was suspended since 10.09.2001 and thereafter the suspension was revoked on 27.06.2011 by BSE;*

- iii. *That during the revocation of suspension from the BSE, the Noticee had received letter from BSE for non filing of the reporting under regulations 6(2), 6(4) and 8(3) of the Takeover Regulations for the period from 1997 to 2010 and accordingly they had filed the reporting;*
- iv. *That there was a delay in filing of report/ disclosure under regulations 6(2), 6(4) and 8(3) of Takeover Regulation and that the alleged delay of non-disclosure was unintentional;*
- v. *That the promoters had not sold even a single share except through open offer;*
- vi. *That there has been absolutely no effect on the shareholders of the company or the general investors in the market due to delay in filing of report;*
- vii. *That the shareholding position was in any event available with the public, in form of quarterly disclosures made by the company.*

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7. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticee was granted an opportunity of hearing on 05.02.2014 vide notice dated 20.01.2014 and the said notice was duly acknowledged by the Noticee. However, the Noticee failed to appear for the personal hearing. In the interest of justice another opportunity of hearing was granted on 26.02.2014 vide notice dated 06.02.2014. Vide email dated 17.02.2014, the authorized person for the Noticee informed that they have authorized Mr. Balveer Singh Chaudhary to attend and represent the matter, and, requested to provide date either on 20th or 21st or post 03.03.2014, in view of the travel plans of their authorized representative. The Noticee was accordingly granted an opportunity of hearing on 04.03.2014 vide notice dated 24.02.2014 and the said notice was duly acknowledged by the Noticee. Mr. Balveer Singh Chaudhary, Authorized Representative (hereinafter referred to as 'AR') appeared for the hearing on 04.03.2014. The AR reiterated the written submissions made vide letter dated 23.12.2013. AR further stated that he would be providing supporting documentary evidence by 10.03.2014 to substantiate the claim of the Noticee regarding filing made under regulation 8(3) of the Takeover Regulation.

The Noticee vide letter 03.03.2014 submitted that to the best of their knowledge and belief, SEBI has not taken any action against the Noticee. Further the Noticee vide letter dated 05.03.2014 submitted that they had duly complied with various provisions of SEBI Act, 1992 and Regulations framed thereunder, except the violation mentioned in the show cause notice No. EAD-6/AK/VRP/31215/2013 dated 03.12.2013. While submitting therewith the copies of disclosures made to the Exchange under Regulation 8(3) of the Takeover Regulations for the relevant period, it was *inter alia* also submitted that the company had a small capital, was incurring losses during the relevant period and that there was no history of non-compliance.

CONSIDERATION OF ISSUES

8. I have carefully perused the written submissions of the Noticee and the documents available on record. It is observed that the allegation against the Noticee is that they have failed to make the relevant disclosure under the provisions of Regulation 6(2) and 6(4) of the Takeover Regulations during the year 1997 and Regulation 8(3) of the Takeover Regulations during the period from 1998 to 2010.
9. The issues that, therefore, arise for consideration in the present case are:
 - a) Whether the Noticee has violated the provisions of Regulation 6(2) and 6(4) of the Takeover Regulations during the year 1997 and Regulation 8(3) of the Takeover Regulations during the period from 1998 to 2010?
 - b) Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
 - c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

10. Before moving forward, it is pertinent to refer to the provisions of Regulation 6(2), 6(4) and 8(3) of Takeover Regulations, which reads as under:

Transitional provision.

6.(1)

(2) Every company whose shares are held by the persons referred to in sub-regulation (1) shall, within three months from the date of notification of these regulations, disclose to all the stock exchanges on which the shares of the company are listed, the aggregate number of shares held by each person.

(3)....

(4) Every company, whose shares are listed on a stock exchange shall within three months of notification of these regulations, disclose to all the stock exchanges on which the shares of the company are listed, the names and addresses of promoters and/or person(s) having control over the company, and the number and percentage of shares or voting rights held by each such person.

8. Continual disclosures.

(1)

(2)

(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

11. The issue for consideration is whether the Noticee failed to make the relevant disclosures under provisions of Regulation 6(2) and 6(4) of the Takeover Regulations during the year 1997 and Regulation 8(3) of the Takeover Regulations during the period

from 1998 to 2010 within the stipulated time. As per Regulation 6(2) every company whose shares are held by the persons referred to in sub-regulation (1) of regulation 6 shall, within three months from the date of notification of Takeover Regulations, disclose to all the stock exchanges on which the shares of the company are listed, the aggregate number of shares held by each person. And as per regulation 6(4), every company whose shares are listed on a stock exchange shall within three months of notification of Takeover Regulations, disclose to all the stock exchanges on which the shares of the company are listed, the names and addresses of promoters and/or person(s) having control over the company, the number and percentage of shares or voting rights held by each such person.

12. SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 were enacted in the year 1997 and came into force from 20.02.1997, the day it was published in the Official Gazette. Thus the Noticee was required to disclose the aggregate number of shares held by each person who had acquired shares under sub-regulation (1) of regulation 6 to BSE within three months from the date of notification of Takeover Regulations i.e. 20.02.1997. Similarly, the Noticee was required to disclose to BSE, the names and addresses of promoters and/or person(s) having control over the company, and the number and percentage of shares or voting rights held by each such person within three months from the date of notification of Takeover Regulations i.e. 20.02.1997. The Noticee vide its reply dated 23.12.2013 has specifically admitted that there has been a delay in filing of report under regulation 6(2) and 6(4) of Takeover Regulations. Thus, it is established without doubt that the Noticee has violated the provisions of Regulation 6(2) and 6(4) of the Takeover Regulations for the year 1997.
13. The second issue for consideration is whether the Noticee failed to make the relevant disclosures under Regulation 8(3) of the Takeover Regulations for thirteen (13) consecutive financial years from 1997-98 to 2009-10 within the stipulated time. As per Regulation 8(3) of the Takeover Regulations, Noticee was required to make yearly

disclosure within 30 days from the financial year ending March 31 to stock exchanges on which the shares of the company were listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March. With regard to the disclosures for the financial years 1997-98 to 2009-10, I find that the Noticee vide its reply dated 23.12.2013 has specifically admitted that there was a delay in filing the yearly disclosures under regulation 8(3) of the Takeover Regulations for the financial years ended 1997-98 to 2009-10. Thus, it is established without doubt that the Noticee has also violated the provisions of Regulation 8(3) of the Takeover Regulations for the financial years from 1997-98 to 2009-10. The respective number of days of non-compliance in respect of each financial year on BSE has been enumerated in the table at Para 4 above.

14. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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..."*. Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of Takeover Code was violated the penalty must follow."*

15. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

Section 15A(b) after SEBI (Amendment Act), 2002 w.e.f 29-10-2002

Penalty for failure to furnish information, return, etc.-

15.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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Section 15A(b) prior to SEBI (Amendment Act), 2002

Penalty for failure to furnish information, return, etc.-

15.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 not exceeding five thousand rupees for every day during which such failure continues.*

16. While determining the quantum of monetary penalty under Section 15A(b), I have considered the factors stipulated in Section 15-J 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.”

17. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. The main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and

informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of the Takeover regulations is investor protection.

18. As per Section 15A(b) of the SEBI Act, with effect from 29.10.2002, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Prior to the same, the Noticee is liable to a penalty not exceeding five thousand rupees for every day during which such failure continues or one crore rupees, whichever is less. 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. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee.
19. I further note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014) has observed that:
“Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”
In view of the same, the argument put forth by the Noticee that there has been absolutely no effect on the shareholders of the Noticee or the general investors in the market due to delay in filing of report is not relevant for the given case.

In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of Noticee's shares on BSE during the relevant period; c) the changes in promoters shareholding, if any during the relevant period; and d) the number of occasions in the instant proceeding that the Noticee has violated the relevant provisions of the Takeover Regulations.

21. I note that the share capital of the Noticee was 1,50,000 equity share of Rs. 10/- each aggregating Rs.15,00,000/- and during the entire period of non-disclosure, 77,700 shares i.e. 51.80% of the share capital of the Noticee was held by the promoters and 72,300 shares i.e., 48.20 were held by the public as per the BSE website, and, there was no change in the said shareholding during the entire period. I further note from the BSE website that there were about 83 shareholders in public shareholding category holding 48.2% of the share capital. Further, I note from reply dated 23.12.2013 of the Noticee that the shares of the Noticee were suspended from trading since 10.09.2001 and the suspension was revoked on 27.06.2011. I further note that it was due to delinquency on the part of the Noticee in complying with the provisions of the listing agreement that resulted in non-trading of the Noticees shares on BSE, and thus, cannot support the Noticee's case for non-disclosure. I find that the Noticee had not made the disclosure to the exchange under the provisions of Regulation 6(2) and 6(4) of the Takeover Regulations during the year 1997 and on 13 occasions under Regulation 8(3) of the Takeover Regulations during the period from 1998 to 2010 within the stipulated time. As a listed company, the Noticee had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose so that the investors could take a decision whether to buy, sell, or hold the Noticee's securities. Non-compliance/ Delayed compliance with disclosure requirements by a listed company

undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

22. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs 7,00,000/- (Rupees Seven Lakh only)** under Section 15 A(b) on the Noticee M/s. Grandma Trading & Agencies Limited which will be commensurate with the violations committed by the Noticee.
23. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
24. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **28.04.2014**

Place: **Mumbai**

Anita Kenkare
Adjudicating Officer