

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-100/2014]**

**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. W W Technology Holdings Limited (PAN AACCS2572A)

In the matter of

M/s. W W Technology Holdings Limited

FACTS OF THE CASE IN BRIEF

1. A letter of offer was made by Mr. Paresh Mulji Kariya (herein after referred to as '**the Acquirer**') to acquire 63,700 fully paid up equity share of Rs 10/- each at an offer price of Rs. 26/- per equity share (representing 26% of the total paid-up equity share capital and voting rights) of M/s. W W Technology Holdings Limited (hereinafter referred to as '**the Noticee**'/ '**the company**'). The public announcement of the same was made on November 02, 2012 and the shares of the company were listed at Bombay Stock Exchange Ltd. (herein after referred to as '**BSE**')
2. While examining the letter of offer document of the Acquirer to acquire the shares of the company, it was observed that the company did not comply with the provisions of Regulation 8(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations**') during the period from 1997-98 to 2001-02, and 2003-04, 2006-07 and 2008-09 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 the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) were initiated against the Noticee under Sec 15 A (b) of the SEBI Act to inquire into and adjudicate the alleged violation of the provisions of Regulation 8(3) of the Takeover Regulations by the company.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide Order dated September 02, 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 Regulation 8(3) of the Takeover Regulations by the company.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (hereinafter referred to as '**SCN**') Ref. No. EAD-6/AK/VG/30872/2013 dated November 29, 2013 was issued to the company 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 Manager to the Offer was also sent along with the SCN.

Target Company

Sr. No.	Regulation/Sub-Regulation	Due date for compliance as mentioned in the Regulation	Actual date of compliance	Delay (No. of days)
1	8(3)	30.04.1998	04.10.2012	5,271
2	8(3)	30.04.1999	04.10.2012	4,906
3	8(3)	30.04.2000	04.10.2012	4,540
4	8(3)	30.04.2001	04.10.2012	4,175
5	8(3)	30.04.2002	04.10.2012	3,810
6	8(3)	30.04.2004	26.05.2004	26
7	8(3)	30.04.2007	09.05.2007	9
8	8(3)	30.04.2009	27.05.2009	27

5. The company 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.
6. The company replied to the SCN vide its letter dated December 16, 2013 *inter alia* stating:
 - a. That the company was suspended by BSE with effect from May 31, 1999. The company received an in-principle approval from BSE vide its letter dated August 09, 2011 for revocation of suspension of trading and the trading in the shares of the company was resumed with effect from January 24, 2012;
 - b. That the company was making losses for all the years except for the year ended March 31, 2011 and March 31, 2012, where only marginal profits were reported. The net-worth of the company was negative;
 - c. That the delay in filing was due to oversight and lack of knowledge and did not result in any undue benefit being caused to the company, nor, did the non-compliance result in any loss or damage being caused to the Investor Community;
 - d. That thereafter, the company has been regular in filing all its disclosures.
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 January 8, 2014 vide notice dated December 26, 2013. On the scheduled date, Mr. Nikesh Jain, Mr. Kevin Koradia and Mr. Brijesh Khandwala, Authorized Representatives (hereinafter referred to as '**ARs**') appeared for the hearing on behalf of the Noticee. The ARs reiterated the written submissions made vide letter dated December 16, 2013. The ARs *inter alia* further stated that they would be providing copies of the filings made under Regulation 8(3) by the company. The ARs also submitted that the trading of shares of the company was suspended by BSE due to non compliance with Clause 16 of the Listing Agreement.

8. Vide letter dated January 13, 2014, the Noticee submitted copies of the filings made under the Takeover Regulations as well as the suspension letter and letter of revocation of suspension received from BSE. Thereafter, vide email dated January 23, 2014 and February 03, 2014, the Noticee was *inter alia* advised to submit details of the acquisitions and past non-compliance of Takeover Regulations and SEBI (Prohibition of Insider Trading) Regulations, if any, and action taken by SEBI, if any. Vide letter dated February 24, 2014, the company filed a reply *inter alia* stating that there were no other non-compliance by the Noticee.

CONSIDERATION OF ISSUES

9. 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 the company failed to make the relevant disclosure under the provisions of Regulation 8(3) of the Takeover Regulations for the years 1997-98 to 2001-02, and 2003-04, 2006-07 and 2008-09 within the stipulated time.
10. The issues that arise for consideration in the present case are:
- a. Whether the Noticee failed to make the relevant disclosures under the provisions of Regulation 8(3) of the Takeover Regulations for the years 1997-98 to 2001-02, and 2003-04, 2006-07 and 2008-09 within the stipulated time?
 - b. Do the violations, 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

11. Before moving forward, it is pertinent to refer to the provisions of the Takeover Regulations, which reads as under:

Regulation 8 (3) of the Takeover Regulations

8 (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.

12. The first issue for consideration is whether the company failed to make the relevant disclosures under Regulation 8(3) of the Takeover Regulations for the financial years 1997-98 to 2001-02, and 2003-04, 2006-07 and 2008-09 within the stipulated time. As per Regulation 8(3) of the Takeover Regulations, company was required to make yearly disclosures within 30 days from the financial year ending March 31 to the 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 the 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 2001-02, and 2003-04, 2006-07 and 2008-09, I find that the company vide its reply dated December 16, 2013 has specifically admitted that due to oversight and lack of knowledge, there were delays in filing of compliance papers under Regulation 8(3) of the Takeover Regulations. It is, thus, established without doubt that the Company has violated the provisions of Regulation 8(3) of the Takeover Regulations for the financial years 1997-98 to 2001-02, and 2003-04, 2006-07 and 2008-09. 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 (a) above.
13. 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."

14. 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:

SEBI Act, 1992 prior to SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)

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,—

(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 not exceeding five thousand rupees for every day during which the failure continues.

SEBI Act, 1992 after SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)

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,—

(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.

15. While determining the quantum of monetary penalty under Section 15 A(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.”

16. 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.

17. As per Section 15A(b) of the SEBI Act, with effect from October 29, 2002, the company 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 company 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 company. However, I 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 Company that the non-compliance did not result in any loss or damage being caused to the Investor Community is not relevant for the given case.

18. 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 company has violated the relevant provisions of the Takeover Regulations.
19. The paid up capital of the company was 2,45,000 shares of Rs. 10/- each aggregating to Rs. 24,50,000/- during the entire period of non-disclosure. I further note from the BSE website that there were about 73 shareholders in public shareholding category holding

approximately 39.27% of total paid-up capital of the company during the non-disclosure period of 2003 to 2009. Further as per the BSE website, during the period 2001-02, approximately 55.97% of the shareholding was held by the non-promoters. I also note from the letter of offer that the trading in equity shares of the Noticee Company was suspended by BSE w.e.f. May 31, 1999 due to non compliance of listing agreement and the Noticee Company received an in-principle approval from BSE vide its letter dated August 09, 2011 for revocation of suspension and thereafter the trading was resumed by BSE w.e.f. January 24, 2012. I, thus, note from the same that it was due to delinquency on the part of the Noticee Company in complying with the provisions of the listing agreement that resulted in non-trading of the Noticee Company's shares on BSE. Hence, it cannot support the Noticee Company's case for non-disclosure under Regulation 8(3) of the Takeover Regulations. I further find that the Noticee Company had not made the disclosure to the exchange for 8 financial years, i.e. 1997-98 to 2001-02, and 2003-04, 2006-07 and 2008-09 within the stipulated time.

20. As a listed company, the Noticee Company 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 company'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

21. After taking into consideration all the facts and circumstances of the case, I impose a penalty of Rs. 5,00,000/- (Rupees Five Lakhs only) under Section 15 A(b) on the Noticee Company M/s. W W Technology Holdings Limited, which will be commensurate with the violations committed by it.

22. The company 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.
23. 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: June 30, 2014

Place: Mumbai

Anita Kenkare
Adjudicating Officer