

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. GEE/ VCPL/AO/DRK/DS/EAD3- 353/19-2013]**

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**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

Against  
Vitro Commodities Pvt. Ltd.  
11/1, Sarat Bose Road, Ideal Plaza,  
Suit No. 314, Kolkata - 700020

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**FACTS OF THE CASE IN BRIEF**

1. SEBI had conducted an investigation into the trading in the scrip of GEE Ltd. (hereinafter referred to as 'GEE') during the period from April 28, 2009 to August 31, 2009 (hereinafter referred to as the 'investigation period'). The shares of the company are listed in the Bombay Stock Exchange Ltd (hereinafter referred to as 'BSE'). The investigation report observed that Vitro Commodities Private Limited (hereinafter referred to as the noticee) acquired shares of GEE without making the mandatory disclosures under the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the Takeover Regulations) and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the PIT Regulations).

**APPOINTMENT OF ADJUDICATING OFFICER**

2. I was appointed as the Adjudicating Officer under section 15-I of the Securities and Exchange Board of India Act, 1992 read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding

Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Rules') to inquire into and adjudge under 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') the alleged violations of the provisions of Regulation 7(1) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations in respect of the dealings of Vitro Commodities Pvt. Ltd. in the scrip of GEE during the investigation period.

### **SHOW CAUSE NOTICE, HEARING AND REPLY**

3. A Show Cause Notice dated April 27, 2011 was issued to the noticee by Registered Post Acknowledgement Due (RPAD) in terms of the provisions of Rule 4 of the Rules, requiring it to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under Section 15A(b) of the SEBI Act for the alleged violation of the provisions of Regulation 7(1) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations.
4. It was alleged on the basis of the findings of the Investigation Report (hereinafter referred to as 'IR') that till March 2009, the noticee was not appearing as a promoter entity. However, the noticee was holding 5.36% of shares in the quarter ending March 2009. The noticee had informed that it is promoted by one of the Directors of GEE namely Shri Govind Saraf and it had purchased 50,000 shares of GEE from the open market on November 12, 2008. Further, the noticee was also allotted bonus shares of GEE on January 10, 2009 taking its shareholding in GEE to 1,00,000 shares.
5. Further, it was also observed that in February 2009 Ferroseal India Pvt. Ltd., Filarc Eng Pvt. Ltd. and Sagar Merchandise Pvt. Ltd. were amalgamated with GEE. Pursuant to the amalgamation, the noticee was allotted 7,94,093 shares of GEE on February 28, 2009. Further,

pursuant to the said amalgamation, the noticee was also allotted 1,58,819 bonus shares of GEE bringing its shareholding at 10,12,912 shares in GEE constituting 5.36% of the share capital of GEE.

6. It is noted that GEE provided the copies of letters written by the noticee to GEE and GEE to BSE informing the initial acquisition of 50,000 shares of GEE by the noticee. However, there was no subsequent disclosure of the further acquisition of shares of GEE by the noticee. Further, no such disclosures are available on the website of BSE. Therefore it was alleged that the noticee had failed to make the necessary disclosure of its acquisition of 5.36% shares in GEE to GEE and the stock exchange where GEE was listed. In view of same, it was alleged that the noticee had violated the provisions of Regulation 7(1) of the Takeover Regulations and Regulation 13(1) of the PIT Regulations.
7. The SCN stated that the reply shall reach within 15 days from the date of receipt of the notice, failing which it shall be presumed that the noticee has no reply to submit and the matter shall be proceeded on the basis of material available on record.
8. The said SCN was returned undelivered by the postal authorities with the remark "left". Subsequently vide letter dated June 22, 2011, the Eastern Regional Office of SEBI (ERO) was requested to serve the SCN on the noticee. ERO vide letter dated July 05, 2011 informed that the office of the noticee was not found at 505, Mukti Chambers, Dr. Rajendra Prasad Sarani, Kolkata 700001 or at the alternate address at 11/1, Sarat Bose Road, Ideal Plaza, Suit No. 314, Kolkata 700020 and hence the copies of the SCN were affixed at the above addresses. The certificate of the said affixture is available on record.
9. Subsequently, vide hearing notice dated September 19, 2011, the noticee was provided an opportunity of personal hearing and was advised to attend the hearing on October 11, 2011 at SEBI Bhavan, Mumbai. The

noticee was also reminded vide the above hearing notice, that the reply to the SCN has not been received so far. The said hearing notice was sent by RPAD and by courier at both the addresses mentioned in pre-para. However, the said hearing notice was returned undelivered by the postal authorities with remark "left". Subsequently, the said hearing notice was affixed on the premises of the noticee by ERO. The certificate of the said affixture is available on record.

10. Vide hearing notice dated December 27, 2011 the noticee was provided final opportunity of personal hearing and was advised to attend the hearing on January 09, 2012 at SEBI Bhavan, Mumbai. The said hearing notice sent by RPAD at both the available addresses of the noticee were again returned undelivered with remark "left". Since the efforts to serve the SCN and the hearing notices directly on the noticee did not succeed, the Stock Broker of the noticee, SPFL Securities Limited was requested to serve the said hearing notice on the noticee. Subsequently, the said hearing notice was affixed by ERO on the premises of the noticee. The certificate of the said affixture is available on record.

11. The noticee, vide its letter dated January 07, 2011 informed that it has not received any notice till date at its correspondence address. The noticee also sought some time to file the reply to the SCN and adjourn the hearing. The noticee also provided its email-ID for future correspondence.

12. The noticee, vide its letter dated January 09, 2011 confirmed that the hearing notice dated December 27, 2011 was received by it through its stock broker and sought time to file its reply to the SCN and requested to defer the hearing by four weeks. The noticee requested that the future correspondence in the matter may be addressed to 11/1, Sarat Bose Road, Ideal Plaza, Suit No. 314, Kolkata 700020 or at G K Saraf (Director), 042, Park Towers, 14, Ballygunge Park Road, Kolkata 700019.

13. It is observed that the SCN and the hearing notices dated September 19, 2011 and December 27, 2011 were sent to the same address as provided by the noticee which were returned by the postal authorities with the remark "left" and by ERO with the remark "not found". Accordingly, the SCN and the hearing notices were affixed at the address provided by the noticee i.e. 11/1, Sarat Bose Road, Ideal Plaza, Suit No. 314, Kolkata 700020. Therefore, the submission made by the noticee that it had not received the previous correspondence in the matter appears to be unacceptable.
14. Subsequently, vide letter dated February 08, 2012, a copy of the SCN dated April 27, 2011 was forwarded to the noticee at the addresses as provided by the noticee by RPAD. A copy of the said SCN was also forwarded to the email-ID provided by the noticee. The noticee was advised to file its reply to the SCN within 15 days of the receipt of the email/letter. The letter addressed to G K Saraf (Director), 042, Park Towers, 14, Ballygunge Park Road, Kolkata 700019 was served on the noticee and the proof of service is available on record. However, the said letter addressed to 11/1, Sarat Bose Road, Ideal Plaza, Suit No. 314, Kolkata 700020 was returned undelivered by the postal authorities with a remark "left".
15. Vide letter dated April 12, 2012, ERO was again requested to serve the SCN dated April 27, 2011, hearing notice dated September 19, 2011, final hearing notice dated December 27, 2011 and the letter dated February 08, 2012 to the noticee. Vide letter dated April 17, 2012, ERO informed that the said documents were served on the noticee on April 11, 2012. Acknowledgement copy of the same is available on record.
16. However, the noticee neither filed any reply to the SCN nor appeared for the personal hearings granted to it, inspite of service of the same by the stock broker of the noticee, ERO and by affixure. Therefore, it can be stated that the noticee has not cooperated with the current adjudication

proceedings. In view of the above, I am compelled to pass an exparte order based on the material available on record.

### **CONSIDERATION OF EVIDENCE AND FINDINGS**

17. I have taken into consideration the facts and circumstances of the case, and the material available on record.
18. It was alleged in the SCN that the noticee had failed to make the necessary disclosure of its acquisition of 5.36% of the share capital in GEE to GEE and to BSE where the shares of GEE are listed.
19. As per the requirement of Regulation 7(1) of the Takeover Regulations, an acquirer who acquires shares or voting rights which would entitle him to more than 5% or 10% or 14% or 54% or 74% shares or voting rights in a company in any manner whatsoever is required to disclose at every stage the aggregate of his shareholding in that company, to the company and to the stock exchanges where shares of the target company are listed.
20. In the instant case, the noticee had acquired 5.36% shares in GEE. As per the requirement of Regulation 7(2) of the Takeover Regulations, the noticee was required to make such disclosure within two days of the receipt of intimation of allotment of shares; or the acquisition of shares or voting rights, as the case may be. Upon considering the material made available on record and in the absence of any reply from the noticee establishing the contrary, it is concluded that the noticee has failed to make disclosure regarding acquisition of 5.36% of share capital of GEE to GEE and to BSE as specified under Regulation 7(1) of the Takeover Regulations. The text of Regulation 7(1) is reproduced below:

**Acquisition of 5 per cent and more shares or voting rights of a company.**

*"7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or*

*fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

*(1A)...*

*(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—*

*(a) the receipt of intimation of allotment of shares; or*

*(b) the acquisition of shares or voting rights, as the case may be."*

21. Further, as per the requirement of Regulation 13(1) of the PIT Regulations, any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder within two working days of the receipt of intimation of allotment of shares; or the acquisition of shares or voting rights, as the case may be. Upon considering the material made available on record and in the absence of any reply from the noticee establishing the contrary, it is concluded that the noticee has failed to make disclosure regarding acquisition of 5.36% of share capital of GEE to GEE as specified under Regulation 13(1) of the PIT Regulations. The text of Regulation 13(1) of the PIT Regulations is reproduced below:

**"Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure**

*13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—*

*(a) the receipt of intimation of allotment of shares; or*

*(b) the acquisition of shares or voting rights, as the case may be."*

22. In this regard I would like to quote the order of Hon'ble Securities Appellate Tribunal in the matter of Milan Mahindra Securities Private Limited vs SEBI (Order dated November 15, 2006 Appeal No. 66 of 2003) "the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature."

23. Therefore, in the light of above I observe that the noticee had failed to comply with the provisions of Regulation 7 (1) of the Takeover Regulations and Regulation 13 (1) of the PIT Regulations and hence required to be dealt with accordingly.

**CONCLUSION:**

24. In view of the above facts and material made available on record, I am inclined to take a view that the noticee has failed to comply with the provisions of Regulation 7 (1) of the Takeover Regulations and Regulation 13 (1) of the PIT Regulations.

25. The aforesaid failure makes the noticee liable for penalty under Section 15A (b) of the SEBI Act which is reproduced below:

15A. Penalty for failure to furnish information, return, etc. -

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



26. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the 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.*

27. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the IR has not quantified the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the failure by the noticee. Further, it is difficult to quantify the unfair advantage made by the noticee or loss caused to the investors in a default of this nature.

28. At this juncture, I would like to quote the judgement of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was held that :

*“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow”.*

29. Having considered the facts and circumstances of the case I find that a penalty of ` 5,00,000/- [Rupees Five Lakh only] for the failure to comply with Regulation 7 (1) of the Takeover Regulations and a penalty of ` 5,00,000/- [Rupees Five Lakh only] for the failure to comply with Regulation 13 (1) of the PIT Regulations on the noticee would

commensurate with the failure of the noticee to comply with the above provisions in the facts and circumstances.

**ORDER**

30. In exercise of the powers conferred under Section 15-I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby, impose a consolidated penalty of ` 10,00,000/- [Rupees Ten Lakh only] on Vitro Commodities Private Limited in terms of the provisions of Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the failure to comply with Regulation 7 (1) of the Takeover Regulations and Regulation 13 (1) of the PIT Regulations.
31. The penalty shall be paid by way of Demand Draft drawn 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 shall be forwarded to the General Manager, IVD-ID-4, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
32. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order is being sent to Vitro Commodities Private Limited and also to the Securities and Exchange Board of India, Mumbai.

**Place: Mumbai**

**Date: March 28, 2013**

**D. RAVI KUMAR  
CHIEF GENERAL MANAGER &  
ADJUDICATING OFFICER**