

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-99/2014]**

**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. Atlas Jewellery India Limited (PAN No. AAACG5890R)

(Formerly M/s. GEE EL Woollens Limited)

In the matter of

M/s. Atlas Jewellery India Ltd.

FACTS OF THE CASE

1. M/s. Atlas Jewellery India Limited (Formerly M/s. GEE EL Woollens Ltd.) (hereinafter referred to as '**the Noticee/the Company**') is a company incorporated under the Companies Act. M/s. Atlas Jewellery Private Limited (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. 9.50/- per fully paid-up equity share payable in cash. The public announcement in respect of the said offer was made on February 27, 2013 and the shares of the Noticee were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**'), Ahmedabad Stock Exchange Ltd. (hereinafter referred to as '**ASE**'), Jaipur Stock Exchange (hereinafter referred to as '**JSE**') and The Delhi Stock Exchange Ltd. (hereinafter referred to as '**DSE**').
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 8(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations**') during the period from 2006 to

2011 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 8(3) of the Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated August 19, 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 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/31223/2013 dated December 3, 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 Manager to the Offer 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 (No. of Days)
1	8(3)	30.04.2006	25.04.2011	1820
2	8(3)	30.04.2007	25.04.2011	1455
3	8(3)	30.04.2008	14.03.2011	1048
4	8(3)	30.04.2009	14.03.2011	683
5	8(3)	30.04.2010	14.03.2011	318
6	8(3)	30.04.2011	02.05.2011	02

5. The SCN ref. no. EAD-6/AK/VRP/31223/2013 dated December 3, 2013 was issued at the following address: M/s. GEE EL Woollens Ltd., H-35, Sainik Farms, New Delhi-110062.

The same was acknowledged by one Ramsumaran on December 10, 2013. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, an opportunity of hearing was granted to the Noticee on February 04, 2014 vide letter dated January 20, 2014 at the same address. The Noticee did not appear for the hearing on February 04, 2014. The Noticee vide email dated February 12, 2014 informed that they had not received any SCN at the registered office address of the company. It was pointed out that the notice was dispatched to the old registered office address of the company which had changed long back. The Noticee requested for a copy of the SCN through email. Hence, vide letter dated February 14, 2014, fresh SCN dated February 14, 2014 was sent at the new registered office address of the Noticee. A scanned copy of the SCN was also sent by email which was duly acknowledged by the Noticee. 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.

6. The Noticee vide reply dated February 28, 2014 to the SCN *inter alia* submitted as under:
 - 6.1 That the company had accidentally failed to file the disclosures under Regulation 8(3) required to be filed annually before 30th April each year. However, on March 14, 2011, April 25, 2011 and May 02, 2011 all the pending disclosures were filed;
 - 6.2 That the failure to make disclosures under Regulation 8(3) of Takeover Regulations for the years 2006 to 2011 was completely unintentional and there were no malafide interest or intentions. It was due to oversight on the part of the Company and its officers;
 - 6.3 Further, that the Company had not filed disclosures under Regulation 8(3) as on record date, required to be filed at the time of declaration of dividend during the years 2006 to 2011, as there were no dividend proposed;
 - 6.4 That no investor complaint was made against unintentional violation of Regulation 8(3) of Takeover Regulations, as nobody was affected as such;

- 6.5 That the violation was not an intentional one, but, purely technical in nature and due to the fact that company was not performing any business;
- 6.6 That the new management is taking all steps to ensure all statutory compliances with various regulatory authorities and specifically with the Listing Agreement and Regulations of SEBI are complied on time;
- 6.7 That the SEBI Takeover Code, 2011 has done away with the requirement of making disclosure of promoter share holding as on record date;
- 6.8 That in case of M/s. Gupta Carpets international Limited with similar facts; the Hon'ble Adjudicating Officer has vide order no. PB/AO-49/2012) on July 12, 2012, imposed a penalty of Rs. One lac.
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 April 17, 2014 vide notice dated March 20, 2014 and the said notice was duly acknowledged by the Noticee. The Noticee vide email dated April 14, 2014 requested fifteen day time to collate the documents/ information and sought adjournment of the hearing. Accordingly another opportunity of hearing was granted to the Noticee on May 8, 2014 vide letter dated April 21, 2014. Mr Devesh Pandey, Company Secretary in Practice, Authorized Representative (hereinafter collectively referred to as "**AR**") appeared for the hearing on May 08, 2014. The AR reiterated the written submissions made vide letter dated February 28, 2014. Further, the AR submitted that the company was under suspension from the 1999 to 2011 for non-compliance of listing agreement and the suspension was revoked by BSE vide Notice No 20111214-26 dated December 14, 2011. AR submitted a copy of the said Notice and a copy of the in-principle approval letter dated August 09, 2011 for revocation of suspension in trading of equity shares of the Noticee. Further the AR submitted that there were no sales by the promoters of the company and that there was no change in the promoters share holding of the company during the period of non-compliance.

8. Pursuant to hearing, the Noticee submitted letter dated May 12, 2014 inter alia reiterating the submissions made by the AR at the hearing and confirming that no action has been taken by SEBI against 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 they have failed to make the relevant disclosure under the provisions of Regulation 8(3) of the Takeover Regulations during the period from 2006 to 2011.
10. The issues that, therefore, arise for consideration in the present case are:
- 10.1. Whether the Noticee has violated the provisions of Regulation 8(3) of the Takeover Regulations during the period 2006 to 2011?
- 10.2. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
- 10.3. 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 Regulation 8(3) of Takeover Regulations, which reads as under:

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.

12. The issue for consideration is whether the Noticee failed to make the relevant disclosures under Regulation 8(3) of the Takeover Regulations for six (6) consecutive financial years from 2006 to 2011 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. I find that the Noticee vide its reply dated February 28, 2014 has specifically admitted that the company had accidentally failed to file the disclosures under Regulation 8(3) required to be filed annually before 30th April each year. Also, that failure to make the disclosures under Regulation 8(3) of the Takeover Regulations, for the years 2006 to 2011, was completely unintentional and there were no malafide interest or intentions. Thus, it is established without doubt that the Noticee has violated the provisions of Regulation 8(3) of the Takeover Regulations for the financial years from 2005-06 to 2010-2011. The respective number of days of non-compliance in respect of each aforesaid financial year has been enumerated in the table at Para 4 above. Further, from the same, I do not find any allegation against the Noticee with regards to not filing the disclosures under Regulation 8(3) as on record date.
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:

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.*

15. 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."

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 15 A(b) of the SEBI Act, 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. 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.
18. 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 no investor complaint was made against unintentional violation of Regulation 8(3) of the Takeover Regulations as nobody was affected as such, is not relevant for the given case.

19. 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 the Exchanges 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.
20. I note that the share capital of the Noticee was 43,19,200 equity share of Rs. 10/- each aggregating Rs. 4,31,92,000/- and during the period of non-disclosure approx. 32% share capital of the Noticee was held by the promoters and promoters group and approx. 67% was held by public. Further, as per the BSE website, there were about 6,000 shareholders in the public shareholding category. At the hearing, the AR submitted that there were no sales by the promoters of the company and that there was no change in the promoters shareholding of the company during the period of non-compliance. I also note from the submission made by the Noticee at the time of hearing and the documents provided thereof that the shares of the Noticee were suspended from trading since 1999 to 2011 and the suspension was revoked on December 20, 2011. I further note that the trading in the scrip of the Noticee was suspended for non-compliance of listing agreement and the suspension was revoked by BSE vide Notice No 20111214-26 dated December 14, 2011. Thus 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 8(3) of the Takeover Regulations on six (6) consecutive years from 2006 to 2011 within the stipulated time.
21. I further find that the Noticee has *inter alia* claimed that the violation committed by it was purely technical in nature. However, any transaction which requires compliance of

the Takeover Regulations, if not complied, is always a serious matter, and cannot be considered a mere "technical" violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information.

22. The Noticee in its submission, I find, has further *inter alia* stated in case of M/s. Gupta Carpets international Limited with similar facts, the Hon'ble Adjudicating Officer has vide order no. PB/AO-49/2012) on July 12, 2012 imposed a penalty of Rs. One lac. In the matter, I find that the Hon'ble SAT vide Order dated June 12, 2014 in the matter of M/s. Hybrid Financial Services Limited (Formerly known as Mafatlal Finance Company Ltd.) has observed that:

".....assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted especially when the Regulations prescribe stringent action for non compliance of disclosure provisions which are mandatory....."

23. 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

24. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs 3,00,000/- (Rupees Three Lakh only)** under Section 15 A(b) on the Noticee **M/s. Atlas Jewellery India Limited (Formerly M/s. GEE EL Woollens Limited)** which will be commensurate with the violations committed by the Noticee.

25. 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.
26. 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