

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-134/2014]

**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. Essen Supplements India Ltd (now known as Square Four Projects India Ltd)

(PAN No: AAACE7414P)

In the matter of

M/s. Essen Supplements India Ltd (now known as Square Four Projects India Ltd)

FACTS OF THE CASE

1. An offer document (letter of offer) was filed by Mr. Ganesh Kumar Singhania and Ms. Anita Singhania, the promoters of the company (hereinafter referred to as the **‘The Acquirers/ The Promoters’**) to acquire 20.00% of the expanded subscribed equity share capital and 20.12% of the expanded voting share capital of M/s. Essen Supplements India Ltd. (now known as Square Four Projects India Ltd.) (hereinafter referred to as **‘The Company/ The Noticee’**) at a price of Rs. 10/- per fully paid- up equity shares & Rs. 5/- per partly paid-up equity shares payable in cash. The public announcement for the same was made on October 20, 2010 and the shares of the company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as **‘BSE’**), Ahmedabad Stock Exchange Ltd. (hereinafter referred to as **‘ASE’**) and The Hyderabad Stock Exchange Ltd. (hereinafter referred to as **‘HSE’**).

2. On perusal of the letter of offer, SEBI observed that the Noticee in the past had failed to comply with provision of regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations**') within the stipulated time.
3. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') were initiated against the Noticees under Section 15A(b) of SEBI Act to inquire into and adjudicate the alleged violation of the provision of regulation 8(3) of Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer, vide order dated August 8, 2013, under Section 15-I of the SEBI Act read with section 19 of the SEBI Act 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 committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as '**SCN**') Ref No EAD-6/AK/VRP/30312/2013 dated November 29, 2013 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violations of the Takeover Regulations. The Noticee was also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15A (b) of the SEBI Act for the alleged violations. The copy of relevant portion of the letter of offer was also sent along with the SCN.

6. The details of such instances of violation of Regulation 8(3) of Takeover Regulation are shown in the tabular form below:

Sl. no	Regulation/Sub-Regulation	Due date of compliance	Actual date for compliance			Delay (no.days) *	
			HSE	ASE	BSE	HSE	BSE
1	8(3)	30.04.1998	03.09.2004	Not Complied	01.09.2004	2318	2316
2	8(3)	30.04.1999	03.09.2004	Not Complied	01.09.2004	1953	1951
3	8(3)	30.04.2000	03.09.2004	Not Complied	01.09.2004	1587	1585
4	8(3)	30.04.2001	03.09.2004	Not Complied	01.09.2004	1222	1220
5	8(3)	30.04.2002	03.09.2004	Not Complied	01.09.2004	857	855
6	8(3)	30.04.2003	03.09.2004	Not Complied	01.09.2004	492	490
7	8(3)	30.04.2004	20.10.2008	20.10.2008	20.10.2008	1634	1634
8	8(3)	30.04.2005	20.10.2008	20.10.2008	20.10.2008	1269	1269
9	8(3)	30.04.2006	20.10.2008	20.10.2008	20.10.2008	904	904
10	8(3)	30.04.2007	20.10.2008	20.10.2008	20.10.2008	539	539
11	8(3)	30.04.2008	20.10.2008	20.10.2008	20.10.2008	173	173

*Info w.r.t. actual date of compliance on ASE not available

7. An opportunity of personal hearing was granted to the Noticee on January 22, 2014 vide Hearing Notice dated December 18, 2013. The Noticee vide letter dated January 10, 2014 submitted its reply to the SCN, *inter alia*, as follows:

- 7.1. *That there was a change in management of the Company in 2010 when the present management / promoters took over this Company through open offer from the previous promoters;*
- 7.2. *That the Company's financial position was very weak and the functioning of the Company was virtually inoperative;*
- 7.3. *That since the present promoters did not have any experience or knowledge of share market, the entire process of transfer of the Company in a legalized, systematic and smooth manner was more or less entrusted or done under the advise of erstwhile promoters and the Merchant Banker, Registrars and other consultants, who were well versed and aware about the listing rules and regulations of the exchanges;*

- 7.4. *That it was a well understood fact that all the past liabilities of the Company even if they occur in future shall be borne by the erstwhile promoters only;*
- 7.5. *That the present promoters tried to contact the erstwhile promoters after getting the notice, but, most of them were not contactable;*
- 7.6. *That there is no production and no turnover in the Company and the Company is incurring heavy losses, however, the present management is trying their best to revive the Company by all means;*
- 7.7. *That it has been understood that there has been a delay in making compliance under Regulation 8(3) of the Takeover Regulations for the years 1998 to 2008, but, the compliance has already been made and that the present management was not responsible for the delay, as such, taking any action against the Company run by the present management, would be quite unjustified;*
- 7.8. *That the number of shareholders of the Company is very less and virtually there is no trading in the shares of the Company at the exchanges, as such, the belated information had hardly hampered or effected or jeopardized anybody's interest.*
8. The Noticee vide the said reply dated January 10, 2014 also requested to schedule the hearing after February 05, 2014. The said request was acceded to. Accordingly, another opportunity of personal hearing was granted to the Noticee on February 13, 2014 vide hearing Notice January 23, 2014. The Noticee vide letter dated January 28, 2014 requested to prepone the personal hearing to February 12, 2014, instead of February 13, 2014, and the same too was acceded to. Accordingly another opportunity of personal hearing was granted to the Noticee on February 12, 2014 vide hearing Notice dated January 29, 2014. Mr. Atul Kumar Labh, Practicing Company Secretary of M/s. A.K. Labh & Company, Authorized Representative (hereinafter referred to as the 'AR') appeared on behalf of the company. The AR reiterated the submission made vide letter dated January 10, 2014 and submitted another reply dated February 12, 2014, *inter alia* reiterating the submissions already made vide letter dated January 10, 2014. The copies of the disclosures submitted by the Noticee to the Exchanges and a copy of Annual

Reports for the years 2010-2011, 2011-2012 and 2012-2013 were also submitted during the hearing.

9. Further to the same, the Noticee vide letter dated February 24, 2014 submitted additional submissions, *inter alia*, as follows:

- 9.1. *That the Company's shares were suspended at BSE till May 06, 2009, hence delay in making compliances and not furnishing information to the exchanges within time had no impact on any of the shareholders, exchanges or public at large, since all the compliances referred in the SCN were made prior to that date;*
- 9.2. *That there has been no significant changes amongst the shareholding during the period 1998-2008, and a very few nominal cases of share transfers amongst the earlier promoters themselves, would not have any impact on the shareholders, exchange or public at large;*
- 9.3. *that the Company was well regular in making the compliance of Regulation 8(3) of the Takeover Regulations for the rest of the years once it was taken over by the new management;*
- 9.4. *that the compliance in terms of the said Regulation 8(3) has been deleted in the new SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'Takeover Regulations, 2011') and accordingly the obligations of every listed company to disclose to stock exchanges the holdings of substantial shareholder, persons having control and promoters in the Company have been omitted from the new Takeover Regulations (Regulation 30 of new Takeover Regulations). This in some other way also shows the less relevance of the earlier compliance at present, as the said compliance is not required at all in the new Takeover Regulations.*

CONSIDERATION OF ISSUES

10. 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 Regulations 8(3) of Takeover Regulations.

11. The issue that, therefore, arises for consideration in the present case are:
 - 11.1. Whether the Noticee had violated the provisions of Regulation 8(3) of Takeover Regulations during the years 1997-98 to 2007-08?
 - 11.2. Does the violation, if any, as aforesaid, attract monetary penalty under Section 15 A (b) of SEBI Act?
 - 11.3. 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

12. Before moving forward, it is pertinent to refer to the provisions of Regulations 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.

13. The issue for consideration is whether the Noticee has failed to make the relevant disclosures under Regulation 8(3) of the Takeover Regulations for the financial years ending March 31, 1998 to March 31, 2008 within the stipulated time, i.e. on eleven (11) occasions. 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 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 holdings of promoters or person(s) having control over the company as on 31st March.

14. With regard to the disclosures for the financial years ending March 31, 1998 to March 31, 2008, I find that the Noticee vide its reply while *inter alia* admitting that there has been a delay in making compliances, however, has submitted that it was a well understood fact that all the past liabilities of the Company even if they occur in future shall be borne by the erstwhile promoters only. I note her that when a company is incorporated, it becomes a legal personality which is separate from its promoters, directors and its shareholders. This separate legal personality has its own legal rights and obligations, just as individuals. Under Regulation 8(3) of the Takeover Regulations, it was the company which was required to make certain disclosures, which it failed to make within the stipulated time. 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 ending March 31, 1998 to March 31, 2008. The respective number of days of non-compliance in respect of each financial year has been enumerated in the table at Para (6) above.
15. 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."*

16. 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.*

17. 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.”

18. 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.
19. 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. 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. 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 that the delayed disclosure had no impact on any of the shareholders, exchanges or public at large is not relevant for the given case.

20. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the share 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. From the BSE website, I note that the capital of the company was 31,08,900 equity share of Rs 10/- each aggregating Rs. 3,10,89,000/-. Further, as per the BSE website, there was no trading in the shares of the company during the relevant period. The Noticee has submitted that the shares of the company were suspended at BSE till May 06, 2009. The Noticee have *inter alia* submitted that there has been no significant changes amongst the shareholding during the period 1998-2008, except a very few nominal cases of share transfers amongst the earlier promoters themselves. I find that the Noticee had not made the disclosure to the exchange under the provisions of Regulation 8(3) of the Takeover Regulations for eleven (11) consecutive financial years from 1997-98 to 2007-08 within the stipulated time.
22. I find that the Noticee have *inter alia* submitted that the compliance in terms of the said Regulation 8(3) has been deleted in the new Takeover Regulations, 2011 and accordingly the obligations of every listed company to disclose to stock exchanges of holdings of substantial shareholder, persons having control and promoters in the

Company have been omitted from the new Takeover Regulations (Regulation 30 of new Takeover Regulations), which in some way shows less relevance of the earlier compliance at present, as the said compliance is not required at all in the new Takeover Regulations. It is pertinent to note here that under the earlier Takeover Regulations, persons having control/ substantial holding and the promoters of the Company under Regulation 8(1) and 8(2) of the Takeover Regulations were required to make yearly disclosure to the company, in respect of their holdings as on 31st March. The company, in turn, was required to disclose the same to the stock Exchanges under Regulation 8(3) of the Takeover Regulations. On the other hand, under the new Takeover Regulations, 2011, the disclosure to the company and the stock Exchange has to be done by the persons having substantial holding and the promoters themselves under Regulation 30. However, irrespective of whether disclosure to the stock Exchange is made by the company or the promoters themselves, under both the old Takeover Regulations and new Takeover Regulations, 2011, the intent of the law remains the same, to disseminate to investors so as to enhance confidence and informed participation by investors in secondary securities market. This, in turn, enhances the depth, liquidity and efficiency of the securities markets. Hence the inference drawn by the Noticee that the new Takeover Regulations, 2011 in some way shows less relevance of the earlier compliance under Regulation 8(3) of the Takeover Regulations at present is incorrect.

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 5,50,000/- (Rupees Five Lakhs Fifty Thousand only)** under Section 15 A(b) on the **Noticee M/s. Essen Supplements India Ltd (now known as Square Four Projects India Ltd)**, 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 Mr. 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: August 27, 2014

Place: Mumbai

Anita Kenkare
Adjudicating Officer