

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.IVD-ID6/OPG/EIL/AO/DRK/AKS/EAD-3/336 /2 -13]

**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:

**Shri Om Prakash Gupta
Ms. Shakuntala Gupta
Ms. Neeru Gupta
Ms. Charu Gupta**

Residing at: Flat No. 202, Mangalam Residency,
101, Anoop Nagar,
Indore – 452001

FACTS IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation relating to buying, selling or dealing in the shares of Empower Industries India Ltd. (hereinafter referred to as '**EIL / company**') to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Regulations made there-under. Investigation period was taken as February 16, 2005 to March 11, 2005.
2. The shares of the company are listed only on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**'). On BSE the price of the scrip rose from

₹ 81.00 on February 16, 2005 to ₹ 113.00 on March 11, 2005 during 18 trading days. Total trading volume during the period of investigation was 2,17,700 shares with an average daily trading volume of 12,095 shares. One month before the investigation period the scrip traded with the daily average volume of 2,365 shares and the price of the scrip increased from ₹ 61.00 on 13th January, 2005 to ₹ 79.50 on 9th February, 2005. One month after the investigation period the scrip traded with an average daily trading volume of 13,773 shares and the price of the scrip came down to ₹ 97.80 on 11th April, 2005 as against ₹ 110.75 on 14th March, 2005 (Decrease of 13.29% during one month after investigation period).

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer (subsequent to the transfer of previous AO) under Section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') vide order dated 17.01.2012 to inquire into and adjudge under Section 15A(b) of the SEBI Act, for the violation of Regulation 7(1) read with Regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**') alleged to have been committed by Shri Om Prakash Gupta, Ms. Shakuntala Gupta, Ms. Neeru Gupta and Ms. Charu Gupta (hereinafter referred to as '**noticees / Gupta Family**').

SHOW CAUSE NOTICE, HEARING AND REPLY

4. Show Cause Notices (herein after referred to as '**SCNs**') dated 09.12.2009 were sent to the noticees in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring the noticees to show cause as to

why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under Section 15 A(b) of the SEBI Act for the alleged violation of Regulation 7(1) read with Regulation 7(2) of SAST Regulations. In the said SCN it was alleged that the noticees had together received a total of 51,000 shares (10.20% of the paid up capital) of EIL, in physical form from Shri Devang Master, Promoter – Director (herein after referred to as '**DM**'). This transaction required the Gupta Family, acting in concert with each other, to disclose their shareholding as prescribed under Regulations 7 (1) read with 7 (2) of SAST Regulations, as it crossed 10% shares or voting rights in EIL. However, no such disclosure was made by the Gupta Family.

5. All the SCNs came back undelivered. Therefore, vide letter dated 19.01.2010, stock broker Arihant Capital Markets Ltd. was advised to serve the SCNs on the noticees. The stock broker vide its letter dated 06.02.2010 submitted the proof of service of all 4 SCNs. The noticees vide their letter dated 12.02.2010 requested for extension of time by 4 weeks to submit a reply to the SCN as they are in the process of collecting all related information and documents.
6. Vide personal hearing notices dated 11.03.2010 the noticees were granted an opportunity of hearing to appear for hearing at SEBI Bhavan, Mumbai on 19.03.2010 at 10:00 am. However, the noticees failed to attend the hearing without providing any reasons. The noticees were granted another opportunity of hearing vide hearing notices dated 06.04.2010 to appear for hearing at SEBI Bhavan, Mumbai on 15.04.2010 at 10:00 am. The said hearing notices were sent through the stock broker Arihant Capital Markets Ltd. The stock broker vide its letter dated 13.04.2010 submitted the proof of service of all hearing notices. Noticees vide their letter dated 13.04.2010 requested to adjourn the hearing by one month because of unavailability of travel tickets and pre occupation in family function. Subsequently vide hearing

notices dated 16.04.2010, the noticees were granted another opportunity of hearing at SEBI Bhavan, Mumbai on 07.05.2010 at 10:00 am.

7. In the meanwhile the noticees availed the consent proceedings vide their consent application dated 28.04.2010. However, noticees consent application was rejected which was communicated to them vide letter dated 18.04.2011.
8. Subsequent to the transfer of previous AO, the undersigned granted a final opportunity of hearing to the noticees vide hearing notices dated 07.05.2012 to appear for hearing at SEBI Bhavan, Mumbai on 29.05.2012 at 11:00 am. In the said hearing notices the noticees were also advised to submit a detailed reply to the SCNs on or before 18.05.2012 and proof of service is on record. Shri Somil Mandowara, noticee's relative and their authorized representative (herein after referred to as '**AR**') vide his letter dated 09.06.2012 requested for another date of hearing as he had received the hearing notices on 08.06.2012. Considering his request noticees were granted another opportunity of hearing vide hearing notice dated 13.06.2012 to appear for hearing at SEBI Bhavan, Mumbai on 04.07.2012 at 11:00 am. The noticees were again advised to submit a reply to the SCNs on or before 27.06.2012. Proof of service is on record. The noticees vide their letter dated 21.06.2012 confirmed their or theirs AR attendance on 04.07.2012.
9. The AR vide his letter dated 03.07.2012 requested to adjourn the hearing as he is unable to attend the hearing due to some unavoidable circumstances. Considering the ARs request for adjournment the noticees were granted a final opportunity of hearing vide hearing notice dated 24.08.2012 to appear for hearing at SEBI Bhavan, Mumbai on 10.09.2012 at 11:00 am and the noticees were again advised to submit a reply to the SCNs on or before 07.09.2012. Proof of service is on record.

10. Noticees had now authorized Shri Nakul Modani to appear for the hearing on 10.09.2012. The AR submitted a copy of the letter dated 28.12.2008 which was earlier submitted to the investigation department and the same was taken on record. Further, we have received through fax 2 contract notes dated 07/08/2003 and 08/08/2003 and 2 bills dated 05/08/2003 and 08/08/2003 but it is noted that they were already in our records. When questioned about non submission of reply for more than 2½ years, the AR could not give a suitable reply.

11. Noticee vide his letter dated 05.10.2012 submitted as follows:

- a. All his transactions were made through his stock broker and as an investor he is under the assumption that if there is any other compliance or formalities required to be completed, the stock broker should inform him to comply with it. The noticee submitted a copy of contract note and bills of transaction made through his stock brokers M/s Vijay Bhagwandas & Co. and Arihant Capital Markets Ltd.
- b. The noticee has no mala fide intention to not to comply. It is purely of technical error. This is the first technical error and assures that it will not occur in future.
- c. The noticee humbly requested that considering the circumstances of the matter and in particular that no prejudice has been caused to anyone including shareholder or any other concerned person of the company, the offence may be compounded with minimum penalty and he be relieved of all liabilities in consequence thereof.

CONSIDERATION OF EVIDENCE AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case and the material made available on record. The issue in the present matter is whether the Gupta Family has failed to make the required disclosure under

Regulation 7 (1) read with Regulation 7 (2) of SAST Regulation when they acquired shares of the EIL.

13. It is observed from the investigation report (hereinafter referred to as 'IR') that during the investigation period DM had transferred 2,13,000 shares of EIL in physical form (42.60% of the paid-up capital) to various entities on February 25, 2005, as given in the table below:

Sr. No	Name of the transferee	No. of Shares transferred	Percentage of paid-up capital
1.	Shakuntala Gupta	14000	2.80%
2.	Om Prakash Gupta	11000	2.20%
3.	Neeru Gupta	10000	2.00%
4.	Charu Gupta	16000	3.20%
5.	Others	162000	32.40%
	Total	213000	42.60%

14. During the course of personal hearing, the AR of the noticees submitted copies of 4 bills and 2 contract notes issued by the stock broker Vijay Bhagwandas & Co. showing that the shares were purchased from the market in the month of August 2003. Hence, there were no off market transfers from DM in February 2005. In view of noticees submission / argument comments of investigation department were sought.

15. Investigation department informed as follows:

- a. The Registrar and Share Transfer Agent, Sharex Dynamic (India) Pvt. Ltd. (herein after referred to as '**RTA**') vide its letter dated 19.08.2008 had confirmed that the date of transfer of shares as 25.02.2005. Further, vide its letter dated 25.10.2012 the RTA has provided the share transfer forms for the aforesaid transactions.
- b. With respect to the 2 contract notes, BSE vide its email dated 18.10.2012 has submitted that no trades were executed in the scrip on August 7-8, 2003.

16. From the above table it is observed that the Gupta Family has together received a total of 51,000 shares (10.20% of the paid up capital) of EIL, in physical form from DM. This transaction required the Gupta Family, acting in concert with each other (same address and belonging to the same family), to disclose their shareholding to the company and to the stock exchanges where shares of the company are listed as prescribed under Regulations 7 (1) read with 7 (2) of SAST regulations, as it crossed 10% shares or voting rights in the company. However, there is nothing on record to show that the required disclosures were made by the Gupta Family to the company and to BSE.

17. At this juncture I would like to quote the observations made by the Hon'ble High Court of Calcutta in W.P. No. 33/2001- *Arun Kumar Bajoria Vs SEBI* and others as under:

"... the object of Regulation 7 is to inform the investors that an individual has acquired 5 per cent shares in the company concerned. If the acquisition has been made by more than one individual in association with each other, it is also obligatory on the part of such individuals to disclose their identity...."

18. Also the Hon'ble Securities Appellate Tribunal in the matter of *Mega Resources V. SEBI* decided on 19.03.2002 has observed as follows:

"... it is not possible to agree with Shri Banerjee's submission that in view of the use of the word "acquirer" in singular and the absence of the words "acting in concert" in the regulation excludes an acquirer whose individual holding does not exceed 5%, from complying with the requirement of the regulation. In the light of the definition of the expression 'acquirer' and the 'persons acting in concert' and also taking into consideration the purpose of regulation 7, I am of the view that the acquisition of shares by persons acting in league, is very relevant and the disclosure of such concerted acquisition to the target company and the company in turn to the concerned stock exchange is in tune with the objective of the said disclosure...

.... As already stated one of the objects of the Regulations is to protect the interests of the investors through prompt disclosures. In my view the shares acquired by all those persons acting in league has to be taken as a whole for the purpose of regulation 7...."

19. In view of the above facts and circumstances of the case it can be concluded that the Gupta Family has violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations. The text of the said provisions is as follows:

SAST Regulations:

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

Regulation 7(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.

20. The said violation attracts penalty under Section 15 A(b) of the SEBI Act. The text of the said provisions is as follows:

Regulation 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.

21. 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

22. It may be added that it is difficult to quantify the profit/ loss for the nature of violation committed by the noticees and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the noticee's violations. Therefore, in view of the abovementioned conclusion and after considering all the factors mentioned under Section 15J of the SEBI Act, I hereby impose on the noticees jointly and severally a penalty of ₹ 2,00,000/- (Rupees Two Lakh only) under Section 15 A(b) of the Securities and Exchange Board of India Act, 1992 for failure to make disclosures under Regulation 7(1) read with Regulation 7(2) of SAST Regulations which is appropriate in the facts and circumstances of the case.

ORDER

23. 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 penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on Shri Om Prakash Gupta, Ms. Shakuntala Gupta, Ms. Neeru Gupta and Ms. Charu Gupta, jointly and severally in terms of the provisions of Section 15 A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of Regulation 7(1) read with Regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the noticees.

24. 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 General Manager- ID-6, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

25. 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 are being sent to Shri Om Prakash Gupta, Ms. Shakuntala Gupta, Ms. Neeru Gupta and Ms. Charu Gupta having address at Flat No. 202, Mangalam Residency, 101, Anoop Nagar, Indore - 452001 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: January 07, 2013

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