BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. CFD-DCR/ WIL/AO/DRK-DS/EAD3- 577-578/121-122 -2014]

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

In respect of:

Sr. No.	Name of the Entity	PAN No.
1	Hooghly Mills Project Ltd.	AAACH7668G
2	Hooghly Stocks & Bonds Pvt. Ltd.	AAACH6468A

Having address at:
76, Garden Reach Road,
Kolkata – 700 043

(In the matter of Waverly Investments Ltd.)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), while examining the offer document filed by Franktex Enterprises Pvt. Ltd. and Goodfaith Commercial Pvt. Ltd. to acquire 20% shares of Waverly Investments Ltd. (*hereinafter referred to as "WIL/ Company"*) observed certain non compliances by the promoters of the company. The shares of the company were listed at Calcutta Stock Exchange Limited (CSE).

APPOINTMENT OF ADJUDICATING OFFICER

2. I was appointed as 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 'Rules') to inquire

into and adjudge under Section 15H (ii) of the SEBI Act, the violation of Regulation 11(2) read with Regulation 14(1) of SEBI (Substantial Acquisition of Shares & Takeover) Regulations 1997 (hereinafter referred to as *"SAST Regulations"*) alleged to have been committed by Hooghly Mills Project Ltd. (hereinafter referred to as *"HMPL"/ "Noticee 1") and* Hooghly Stocks & Bonds Pvt. Ltd. (hereinafter referred to as *"HSBPL"/"Noticee 2")* and collectively referred to as *"Noticees"*.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A common Show Cause Notice no. A&E/EAD-3/DRK/CS/14033/2014 dated May 16, 2014 (hereinafter referred to as 'SCN') was served on the noticees in terms of the provisions of Rule 4 of the Rules, 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 15H(ii) of the SEBI Act for the alleged violation of Regulations 11(2) read with Regulation 14(1) of the SAST Regulations. The said SCN was sent through Speed Post Acknowledgement Due (SPAD) and was served on the noticees.

4. It was alleged in the SCN that on April 15, 2009 the Noticees being the promoters of the company had acquired 12,300 (2.46%) and 20,000 (4%) shares. Due to this acquisition the shareholding of the promoters increased from 60.46% to 66.92% which was in violation of regulation 11(2) read with 14(1) of the SAST Regulations. At this juncture, as per regulation 11(2) read with regulation 14(1) of the SAST Regulations, Noticees were required to make a public announcement within four working days of such acquisition. However, Noticees have failed to do so. The details of the transaction are as follow:

<table>
<tr><th rowspan="2">Name of the acquirer</th><th rowspan="2">Date of the transaction</th><th rowspan="2">Purchase</th><th colspan="2">Total shareholding of promoters in</th></tr>
<tr><th>Pre-acquisition</th><th>Post acquisition</th></tr>
<tr><td>Hooghly Mills Projects Ltd.</td><td rowspan="2">15.04.2009</td><td>20,000 (4%)</td><td>60.46</td><td>64.46</td></tr>
<tr><td>Hooghly Stocks & Bonds Pvt. Ltd.</td><td>12,300 (2.46%)</td><td>64.46</td><td>66.92</td></tr>
</table>

5. Noticees vide their letters dated May 29, 2014 sought additional 15 days time to file reply. Subsequently, Noticees vide their similarly worded letters dated June 13, 2014 made the following submissions:

   a. *During the Financial Year 2009-10, our Company had acquired 20,000 shares representing 4.00% (Noticee 1) and 12,300 shares representing 2.46% (Noticee 2) of the equity and voting share capital of WIL through Off market mode. Pursuant to the aforesaid acquisition, the shareholding of the Promoters/Promoter Group of WIL had increased from 60.46% to 66.92% of WIL.*
   b. *Prima facie it appears that the acquisition of 20,000 equity shares (Noticee 1) and 12,300 equity shares (Noticee 2) through Off Market resulted in violation of Regulation 11(2) of the SAST Regulations.*
   c. *The said violations were unintentional and occurred only due to lack of proper interpretation of the Regulations. The alleged violation was totally technical in nature and without any malafide as there was no change in control of WIL pursuant to the such acquisition. It is needless to say that acquisition of this meager quantity of shares had in no way jeopardized the interest of the shareholders of WIL in any manner whatsoever.*
   d. *Please note that that acquisition made by us pertain toprovide exit opportunity to a shareholder pressing hard to the Promoters due to absence of trading at any of the Stock Exchanges where shares of the company were then listed.*

6. As requested by the noticees, vide common hearing notice dated June 25, 2014 the noticees were provided an opportunity of being heard and were advised to attend the hearing on July 15, 2014 at SEBI Bhavan, Mumbai. The said common hearing notice was sent through RPAD and was served on the noticees. Vide letter dated July 07, 2014, the noticees authorised Shri. Shashi Kumar Shah - FCA as Authorised Representative (AR).

7. The AR of the noticees appeared for the hearing on July 15, 2014 and made the following submissions:

   a) *The AR has reiterated the submissions made vide their reply dated June 13, 2014 for the noticees.*

b) *AR has stated that the violation was unintentional and had occurred due to lack of proper interpretation of the erstwhile regulations. AR has further stated that the shares of Waverly Investments Ltd. were delisted from CSE on November 2013. AR has stated that Hooghly Stocks & Bonds Pvt. Ltd. is not registered with SEBI in any category.*

c) *AR has requested to not to levy any penalty as the violation was technical in nature and without any malafide as there was no change in control. AR has stated that he has no further submissions to make.*

CONSIDERATION OF EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case, and the material made available on record.

9. It was alleged in the SCN that the noticees had failed to make public announcement as required under Regulation 11(2) read with14(1) of the SAST Regulations.

10. As per the requirements of Regulation 11(2) read with14(1) of the SAST Regulations, the noticees were required to make public announcement within four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares

11. The noticees have admitted that they have violated the aforesaid Regulations and submitted that the said violation is unintentional and occurred due to lack of proper interpretation of the Regulations. Therefore, it is concluded that the noticees had failed to comply with the provisions of Regulation 11(2) read with Regulation 14(1) of the SAST Regulations. The text of the said provisions is reproduced below:-

"11.(2) No acquirer, who together with persons acting in concert with him holds, fifty-five percent (55%) or more but less than seventy five percent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he

makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in case where the target company had obtained listing of its shares by making an offer of atleast ten percent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy-five percent (75%), the words and figures 'ninety per cent (90%) were substituted.

14.(1)The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than <u>four working days</u> of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:"

12. The aforesaid failure to make public announcement makes the noticees liable for penalty under Section 15H(ii) of the SEBI Act which is reproduced below:

15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-

(ii) make a public announcement to acquire shares at a minimum price; or

(iii)…….

(iv)…………

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."

13. 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.*

14. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain or unfair advantage made by the noticees or loss caused to the investors as a result of the failure on the part of the noticees to make the public announcement are not available on record. Further, it may also be added that it is difficult to quantify the unfair advantage made by the noticees or the loss caused to the investors in a default of this nature.

15. 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*".

16. Having considered the facts and circumstances of the case, submissions made by the noticees and after taking into account the factors under section 15J of the SEBI Act, 1992, I find that a penalty of ₹ 50,00,000 [Rupees Fifty Lakhs Only] on the noticees would commensurate with the failure on the part of the noticees to make public announcement.

<u>ORDER</u>

17. In exercise of the powers conferred under Section15 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 ₹ 50,00,000 [Rupees Fifty Lakhs Only] on the noticees viz. Hooghly Mills Project Ltd. and Hooghly Stocks & Bonds Pvt. Ltd. in terms of the provisions of Section 15H(ii) of the Securities and Exchange Board of India Act,1992 for the failure to comply with the provisions of Regulation 11(2) read with Regulation 14(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the failure of the noticees to make the public announcement. The Noticees shall be jointly and severally liable to pay the said monetary penalty.

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

19. 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 the noticees viz. Hooghly Mills Project Ltd. and Hooghly Stocks & Bonds Pvt. Ltd. and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai
Date: August 13, 2014

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER