BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/VV/AS/2022-23/16624 - 16628]

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATIONS) ACT, 1956.

In respect of:

Noticee No.	Noticee Name	PAN No.
1	Shilpi Cable Technologies Ltd	AADCR3380E
2	Mukesh Kumar Gupta	AEIPG5741G
3	Manish Goel	AEDPG0138E
4	Ghanshyam Pandey	AEDPP9478A
5	Sunita Gaur	ASMPG1222E

(*The aforesaid 5 noticees are hereinafter being referred to as Noticee No. 1 to 5, respectively or collectively referred to as '**the Noticees**'*)

In the matter of IPO of Shilpi Cable Technologies Ltd

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1. Shilpi Cable Technologies Ltd. (hereinafter referred to as '**Company'** or **'SCTL'**) is a listed company, whose shares are listed on National Stock Exchange of India Limited ("**NSE**") and Bombay Stock Exchange Limited ("**BSE**"). The Company came out with an Initial Public Offer ("**IPO**") for issuance of 80,98,145 equity shares of face value Rs.10/- each through 100% book building process at a price of Rs. 69/- per fully paid up equity share (including a premium of Rs 59/- per equity share) and aggregating to approximately Rs. 55.87 crore. SCTL was listed on the exchanges, BSE and NSE, on April 08, 2011. On the date of listing, on BSE the scrip opened at Rs.78.35/-, touched a high of Rs.84.65/- before closing at Rs. 47.60/- and thereby registered a fall of 39.25% from the opening price. On NSE, it opened at Rs.78.00/- and touched a high of Rs.84.70/- before closing at Rs. 48.05/- and thereby registered a fall of 38.4% from the opening price. Accordingly, Securities and Exchange Board of India ("**SEBI**") *suo moto* initiated investigation in the matter of IPO of the Company.

2. The observations of investigation are detailed in following paragraphs:

   a) The Company was incorporated on July 09, 2006 as a public limited company with the name M/s Rosenberger Shilpi Cable Technologies Limited. It was established as a 50:50 joint venture between Shilpi Communications Pvt. Ltd and Rosenberger Hochfrequenztechnik GmbH & Co KG, Germany, to take up the project of Radio

Frequency (RF) cables. On May 10, 2008, the said joint venture ceased and all the shareholding of Rosenberger Hochfrequenztechnik GmbH & Co KG in the company was transferred to Shilpi Communication Pvt. Ltd. On October 21, 2008, the name of company was changed to Shilpi Cable Technologies Ltd.

b) It was observed from the Annual Report of SCTL for the year 2010-11, that an Annual General Meeting ("**AGM**") of the members of SCTL held on September 29, 2011. In the para 8 of the notice given regarding aforesaid AGM of the members of SCTL, following special business was listed to be transacted in the AGM:

"8. To consider and, if thought fit, to pass with or without modification, the following resolution as a Special Resolution:

Resolved that pursuant to the provisions of section 61 of the Companies Act 1956, the Securities & Exchange Board of India (Issue of Capital & Disclosure Requirements) Regulations,2009 and other applicable provisions, if any, consent of the Members of the Company be and is hereby given to the Board of Directors of the Company (hereinafter referred to as "the Board" which expression shall be deemed to include any Committee constituted/to be constituted by the Board to exercise its powers, including the powers conferred by this Resolution) to amend, vary or alter the Objects of the Issue and/or deployment of funds as mentioned in the Offer Document dated March 28, 2011, issued by the Company at the time of its Initial Public Offer (IPO) by, inter alia, altering the utilization of the issue proceeds, as the Board may consider necessary or expedient in the best interest of the Company, as described in the Explanatory Statement annexed to this Notice.

Resolved further that the Board of Directors of the Company be and is hereby authorized to do all such acts, deeds, matters and things as may be considered necessary, expedient or incidental for the purpose of giving effect to this resolution and to settle any question that may arise in this regard and incidental thereto, without being required to seek any further consent or approval of the shareholders."

c) It was further observed that the notice along with the businesses to be transacted at the said AGM was approved by the Board of Directors of the Company in its meeting held on July 29, 2011.

d) It was observed that vide letter dated November 28, 2014, the Company had *inter alia* submitted to SEBI copies of the Board resolution dated July 29, 2011 and the voting results of resolutions authorized by its members in the said AGM.

e) As per the provisions of Section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA'**) read with clause 35A of the Equity Listing Agreement (hereinafter referred to as '**Listing Agreement'**), a company which enters into such agreement, agrees to submit to the stock exchange the details regarding voting results, within 48 hours of conclusion of its General Meeting.

f) However, it was observed that the disclosures regarding voting results for the businesses transacted in the AGM dated September 29, 2011, wherein the business regarding the change in objects was to be transacted was not intimated to NSE or BSE. It was observed that details of intimation from SCTL as regard the aforesaid voting results, if any, was sought from BSE and NSE. Thereafter, BSE vide email dated October 07, 2020 and NSE vide emails dated October 07, 2020 and January 15, 2021, respectively, confirmed that they had not received such intimation from the Company. Therefore, it was alleged that the Company have violated the provisions of Section 21 of the SCRA read with clause 35A of the Listing Agreement with the Exchanges.

g) Further, as per section 24(1) of the SCRA, 1956, when a contravention of any provision of the SCRA is committed by a company, every person who was in charge of and was responsible for the conduct of its business, shall also be liable to be proceeded against along with the company. It was observed that Mr. Mukesh Kumar Gupta (Managing Director, SCTL), Mr. Manish Goel (Whole Time Director, SCTL), Mr. Ghanshyam Pandey (Whole Time Director, SCTL) and Ms. Sunita Gaur (then Compliance Officer, SCTL) were the person who were in charge of SCTL and were responsible for conduct and reporting of SCTL business. Therefore, it was alleged that Mr. Mukesh Kumar Gupta (Noticee No. 2), Mr. Manish Goel (Noticee No. 3), Mr. Ghanshyam Pandey (Noticee No. 4) and Ms. Sunita Gaur (Noticee No. 5) have violated the provisions of Section 21 of the SCRA read with clause 35A of the Listing Agreement.

3. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the aforesaid provisions of the SCRA and Listing Agreement by the Noticees. Accordingly, vide communication order dated July 09, 2021, Shri Parag Basu ("**erstwhile AO**") had been appointed as the Adjudicating Officer Adjudicating Officer under Section 23-I (1) of the SCRA read with Rule 3 of SCR(R) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **'Adjudication Rules'**) in the matter to inquire and adjudge under Rule 5 of the Adjudication Rules and under section 23E read with section 24(1) of the SCRA , of the alleged aforesaid violations by the Noticees. Thereafter, pursuant to transfer of erstwhile AO,

undersigned has been appointed as the Adjudicating Officer vide communication order dated March 11, 2022. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect*'. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders*'.

4. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 23I of the SCRA, a notice to show cause no. EAD-7/ADJ/PB/AS/OW/19767/19768/19770/19779/19783/2021 dated August 13, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticees by erstwhile AO calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and why penalty, if any, be not imposed under Section 23E of the SCRA, as the case may be for respective alleged violations as mentioned hereinabove.

5. On receipt of records, it was observed that the SCN was forwarded *via* Speed Post Acknowledgement Due ("**SPAD**") to the Noticees. The delivery status of the SCN and reply, if any filed by the Noticees in the matter is as follows:

Table 10

Name of Noticee	SCN Delivered (Date/ Mode)	Date of Reply to the SCN
Shilpi Cable Technologies Ltd	SCN delivered to Official Liquidator – Mr. Huzefa Fakhri Sitabkhan *via* Speed Post on 24.08.2021.	13.10.2021
Mukesh Kumar Gupta	SCN delivered *via* Affixture on address – "*B 8, Chirag Enclave, Nehru Palace, New Delhi - 110019*" on 20.11.2021.	No Reply.
Manish Goel	SCN delivered on 20.11.2021 *via* Affixture on following addresses: *a. Flat No 904, Tower H1, EWS Sector, 11, Pratap Vihar, Ghaziabad, Uttar Pradesh - 201009.* *b. D112, New Friends Colony, New Delhi - 110025.* c. *B 8, Chirag Enclave, Nehru Palace, New Delhi -110019.*	No Reply.
Ghanshyam Pandey	SCN delivered *via* Speed Post on 24.08.2021.	08.09.2021
Sunita Gaur	SCN delivered *via* Speed Post on 24.08.2021.	30.08.2021

6. The submissions made by the Noticees No. 1, 4 and 5 in the matter *inter alia* is as follows:

A. <u>Shilpi Cable Technologies Ltd – Reply filed by Mr. Huzefa Fakhri Sitabkhan, Liquidator</u>

a) Corporate Insolvency Resolution Process ("**CIRP**") was initiated in respect of Corporate Debtor (SCTL) under the provision of Insolvency and Bankruptcy Code, 2016 ("**Code**") by an order of the Hon'ble National Company Law Tribunal, New Delhi, Principal Bench ("**NCLT**"), w.e.f. May 24, 2017.

b) SCTL is undergoing liquidation and the services of all the employees of the SCTL has also been terminated by the NCLT order.

B. Mr. Ghanshyam Pandey

a) He has resigned as a director of SCTL on 09.05.2017 and his resignation was accepted on 06.06.2017. He does not have any records or papers.

b) Clause 35A of the Listing Agreement was introduced in the Listing Agreement only on October 05, 2011. Also, the said Clause 35A was only made applicable to "*top 500 listed entities based on market capitalisation*" as on date of the SEBI circular CIR/CFD/DIL/7/2011 dated 05.10.2021.

c) SEBI circular has a separate clause on applicability of the aforesaid circular. It clearly provides that the provisions of para 2(d) of the said circular would be applicable from January 01, 2012.

d) SCTL was not even part of the to 500 listed entities based on market capitalisation at the relevant point of time and the AGM has taken place on September 29, 2011 and therefore, Clause 35A of the Listing Agreement did not exist on relevant date.

e) In view of the above, he requests to drop the charges made out in the SCN against him, as same is not applicable at relevant point of time.

C. Ms. Sunita Gaur

a) During his tenure at SCTL i.e. October, 2009 to May, 2012, all the compliance related to the Listing Agreement was done and complied with.

b) Clause 35A of the Listing Agreement was inserted vide SEBI circular CIR/CFD/DIL/7/2011 dated October 05, 2021, and was made applicable for all the shareholders' meetings, for which notices are issued on or after January 01, 2012.

c) The subject voting results were pertaining to the AGM held on September 29, 2011, which was not falling under the purview of applicability of Clause 35A of the Listing Agreement.

d) Based on the above fact there was no contravention/ violation of the provisions of Section 21 of the SCRA read with Clause 35A of the Listing Agreement pertaining to said AGM.

7. I have considered the allegation levelled in the terms of reference, the relevant material brought on record, reply/ submissions of the Noticees No. 1, 4 and 5 made during the instant proceedings before the undersigned. Before dealing the case, it would be appropriate to provide reference to the provisions alleged to be violated by the Noticees at the relevant times and same read as under: -

SCRA, 1956

21. *Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

Equity Listing agreement

Disclosure of voting results by listed entities

35A *The company agrees to submit to the stock exchange, within 48 hours of conclusion of its General Meeting, details regarding the voting results in the following format:*

Date of the AGM/EGM: ___________________________

Total number of shareholders on record date:

No. of shareholders present in the meeting either in person or through proxy:

Promoters and Promoter Group:

Public:

No. of Shareholders attended the meeting through Video Conferencing

Promoters and Promoter Group:

Public:

(Agenda-wise)

Details of the Agenda:

Resolution required: *(Ordinary/Special)*

Mode of voting: *(Show of hands/Poll/Postal ballot/E-voting)*

In case of Poll/Postal ballot/E-voting:

Promoter/Public	*No of shares held (1)*	*No of votes polled (2)*	*% of Votes polled on outstanding shares (3)=[(2)/(1)]*100*	*No of votes - in favour (4)*	*No of votes – against (5)*	*% of votes in favour on votes polled (6)=[(4)/(2)]*100*	*% of votes against on votes polled (7)=[(5)/(2)]*100*
Promoter and Promoter Group							
Public – Institutional holders							
Public-Others							
Total							

8. I note that, it is an admitted fact that the impugned AGM of the SCTL in question had held on September 29, 2011, wherein, the voting has taken place w.r.t. *Special Resolution* mentioned in para 8 of the notice of the said AGM. Pursuant to voting in said AGM, it was alleged that the Company has failed to disclose the same to the respective stock exchanges within 48 hours and thus, the Company has violated the provisions of Section 21 of the SCRA read with Clause 35A of the Listing Agreement. It is further noted that, Noticees no. 4 and 5 has questioned the applicability of the Clause 35A of the Listing Agreement on basis of date of applicability of the said provision from January 01, 2012. Therefore, the limited question before me is whether, the said provision of the Clause 35A of the Listing Agreement was applicable or not at the relevant point of time.

9. In this regard, I note that the Corporate Finance Department of SEBI had introduced a circular CIR/CFD/DIL/7/2011 on October 05, 2011, wherein, Clause 35A – Disclosures of voting results by listed entities has been inserted in the Listing Agreement and content of the relevant portion of the said circular reads as under:

"……

<u>Sub: Amendments to the Equity, IDR and SME Equity Listing Agreements</u>

……

2. The full texts of amendments to be effected in the Listing Agreements are given at ***Annexure****. Some of the amendments are as under: -*

………

(d) Insertion of Clause 35A - Disclosure of voting results by listed entities

In order to ensure wider dissemination of information regarding voting results, listed entities shall disclose their voting results in the prescribed format, to the exchanges and also place the same on their websites, within 48 hours from the conclusion of the concerned shareholders' meeting. To begin with, this requirement *shall be applicable to top 500 listed entities based on market capitalization computed as on the date of this circular.*

3. Applicability

(a) …….

(b) Provisions of Para 2(d) shall be applicable for all the shareholders' meetings, for which notices are issued on or after January 01, 2012. Stock Exchanges are advised to notify the list of entities for whom the said provision would be applicable based on the criteria specified at 2(d) above.

……"

10. From the Clause 3(b) of the aforesaid circular, it is very much clear that the provisions of Clause 35A will be applicable for the shareholders' meetings and notices issued on or after January 01, 2012 and no ambiguity exists as on date regarding applicability of the charging provisions in terms of specific date of applicability provided in the aforesaid circular. Therefore, I am inclined with the view of the Noticees no. 4 and 5, that at relevant point of time, when said AGM held on September 29, 2011, the aforesaid provision of Clause 35A was not at existence. Since, the provisions alleged to be violated was not in existence at the relevant date of AGM, the charges in this case cannot be fastened upon the Noticees. In view of the above, I found that the Noticees have not violated the alleged provisions of the SCRA pursuant to said AGM in this case and accordingly, the SCN is disposed of qua the Noticees No. 1 to 5.

11. In terms of Rule 6 of the SEBI Adjudication Rules and Rule 6 of the SCRA Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: May 30, 2022
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer