BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/RGA/AO/27-29/2015-16]

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

S.No.	Name of the Entity	Pan No.
1.	Akshay Poddar	AFUPP0096C
2.	Shradha Agarwala	ACTPA8806F
3.	Indrakshi Trading Co. P. Ltd.	AAACI5318Q

In the matter of Complaint of Shri R.G. Furtado & Zuari Industries Ltd. and Gobind Sugar Mills Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had conducted investigation during the period from January 01, 2010 till June 30, 2010 in the matter of 'Zuari Industries Ltd (hereinafter referred to as **'ZIL'**) and Gobind Sugar Mills Ltd' (hereinafter referred to as **'GSML'**) based on complaints received from Mr R.G. Furtado, a shareholder of ZIL. The investigation revealed that Akshay Poddar, Shradha Agarwala and Indrakshi Trading Co. Pvt Ltd (hereinafter collectively referred to as **'Noticees/Promoters'**) are the promoters of GSML. The shareholding of promoter group for the quarter ended

December 2009 was 59.86%. The Noticees along with other persons acting in concert acquired 5% shares of GSML through bulk deals. Consequent to the acquisition, shareholding of promoter group for the quarter ended March 31, 2010 increased to 64.86%. In view of the above, SEBI initiated Adjudication proceedings against the Noticees for the violation of Regulation 11 (2) read with second proviso to Regulation 11 (2) of SAST Regulations, 1997. Vide Adjudication order dated September 07, 2011, the erstwhile Adjudicating Officer disposed of the matter by concluding that the allegations as per the Show Cause Notice do not stand established and that it is not a fit case to impose monetary penalty.

2. Subsequently, a complaint dated February 06, 2012 from Mr. R.G. Furtado, was received alleging that the Noticees had made false representation/submissions before the erstwhile Adjudicating Officer. The re-investigation was carried out to ascertain if there was any difference/ contradiction/ false submission made by the Noticees during the past investigation vis-a-vis to the Adjudicating Officer and into the possible violation of the provisions of the Securities and Exchange Board of India Act,1992 (hereinafter referred to as **'SEBI Act, 1992'**) and various rules and regulations and guidelines made there under.

3. The re-investigation revealed that the acquisition by the Noticees did not qualify for exemption under regulation 3(1)(e)(iii)(b) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'SAST Regulations, 1997'**) and the same triggers the provisions of Regulation 11(2) read with second proviso to Regulation 11(2) of SAST Regulations, 1997 read with regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'SAST Regulations, 2011'**). It was thus observed that the aforementioned violation by the Noticees still subsist.

4. SEBI, therefore, initiated fresh adjudicating proceedings under the SEBI Act, 1992 to inquire into and adjudge under section 15 H of the SEBI Act, 1992 the aforesaid alleged violations committed by the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer vide order dated June 09, 2014 under section 15 I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire into and adjudge under section 15H for the alleged violation of regulation 11(2) of SAST Regulations, 1997 read with second proviso to regulation 11(2) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice (s) dated October 31, 2014 (hereinafter referred to as '**SCN(s)'**) were issued to the Noticees under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15H of the SEBI Act, 1992 for the alleged violation specified in the SCN(s).

7. It was alleged in the SCN that the Noticees had violated regulation 11(2) of SAST Regulations, 1997 read with second proviso to regulation 11(2) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011.
8. Vide letter dated November 24, 2014, the Noticees sought time for filing reply to the SCN. Vide letter dated December 10, 2014, the Noticees requested for inspection of documents. Accordingly, an opportunity of

inspection was granted to the Noticees on January 02, 2015. Vide letter dated January 06, 2015 the Noticees requested for inspection of documents once again. Accordingly, another opportunity of inspection was granted to the Noticees on January 21, 2015. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticees were granted an opportunity of personal hearing on March 17, 2015 vide notice dated March 02, 2015. The Authorized Representatives of the Noticees appeared for the personal hearing and filed written submissions vide letter dated March 17, 2015.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

    a. Whether the Noticees had violated the provisions of regulation 11(2) of SAST Regulations, 1997 read with second proviso to regulation 11(2) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011?
    b. Does the violation, if any, attract monetary penalty under section 15H of SEBI Act, 1992?
    c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

10. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations 1997 and SAST Regulations, 2011 which reads as under:-

SAST Regulations,1997

Consolidation of Holdings

(1)..

(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

..

Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).

SAST Regulations, 2011

Repeal and Savings.

35.(1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken

including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired,

accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Finding

The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticees had violated the provisions of regulation 11(2) of SAST Regulations, 1997 read with second proviso to regulation 11(2) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011?

11. I note from the material available on record, that SEBI had conducted investigation during the period from January 01, 2010 till June 30, 2010 in the matter ZIL and GSML based on complaints received from Mr R.G. Furtado, a shareholder of ZIL. The investigation revealed that the Noticees are the promoters of GSML. The Noticees along with other persons acting in concert acquired 5% shares of GSML through bulk deals. Consequent to the acquisition, promoter group shareholding for the quarter ended March 31, 2010 increased from 59.86% to 64.86%. It was observed that the Noticees violated regulation 11 (2) read with second proviso to regulation 11 (2) of

SAST Regulations, 1997 for which SEBI initiated Adjudication proceedings against the Noticees. Vide Adjudication order dated September 07, 2011, the erstwhile Adjudicating Officer disposed of the matter by concluding that the allegations as per the Show Cause Notice do not stand established and that it is not a fit case to impose monetary penalty.

12. Subsequently, a complaint dated February 06, 2012 from Mr. R.G. Furtado, was received alleging that the Noticees had made false representation/submissions before the erstwhile Adjudicating officer which led SEBI to re-investigate the matter.

13. It was observed during the re-investigation that

- The Noticees are promoters of GSML.
- Uttar Pradesh Trading Corporation (hereinafter referred to as **"UPTC"**) had sold 1,60,000 shares to the promoter group entities of GSML as shown in the table below:

Name of Seller	**Relationship with GSML**	**Date**	**No. of shares**	**% of shares**	**Price**	**Name of Buyer**	**Relationship with GSML**	**Market/Off Market**
UPTC	Erstwhile promoter group of GSML	9-Feb-10	30000	0.94	49.9	Akshay Poddar	Promoter group of GSML	CSE
		9-Feb-10	20000	0.63	50	Ayesha Poddar	Promoter group of GSML	CSE
		9-Feb-10	10000	0.31	49.9	Greenland Trading Pvt Ltd.	Promoter group of GSML	CSE
		4-Feb-10	200	0.01	58.5	Indrakshi Trading Co. P. Ltd.	Promoter group of GSML	CSE
		5-Feb-10	200	0.01	55.6	Indrakshi Trading	Promoter group of	CSE

						Co. P. Ltd.	GSML	
		8-Feb-10	100	0.00	51.6	Indrakshi Trading Co. P. Ltd.	Promoter group of GSML	CSE
		9-Feb-10	19500	0.61	50.1	Indrakshi Trading Co. P. Ltd.	Promoter group of GSML	CSE
		9-Feb-10	20000	0.63	50	Shradha Agarwala	Promoter group of GSML	CSE
		10-Feb-10	20000	0.63	49.9	Aashti Agarwala	Promoter group of GSML	CSE
		10-Feb-10	20000	0.63	49.9	Anisha Agarwala	Promoter group of GSML	CSE
		10-Feb-10	10000	0.31	50	Akshay Poddar	Promoter group of GSML	CSE
		10-Feb-10	10000	0.31	50	Green land Trading Pvt Ltd.	Promoter group of GSML	CSE
Total			1,60,000	5				

- Consequent upon, the aforesaid acquisition, the shareholding of the 'promoter group' of GSML increased by 5% from 59.86% to 64.86% in the quarter Jan 01, 2010 to March 31, 2010 . It was also observed that the Noticees had acquired shares through bulk deals i.e. more than 0.5% of the listed capital per day.

- The re-investigation also revealed that the Noticees had earlier submitted during the past investigation that the said acquisition was covered under second proviso to regulation 11(2) of the SAST Regulations, 1997, whereas, before the erstwhile Adjudicating Officer they have submitted that the transaction was exempt under Regulation 3(1)(e)(iii)(b) of the SAST Regulations, 1997.

14. It was observed that the conditions specified under regulation 3(1)(e)(iii)(b) of the SAST Regulations, 1997, for exemption from the applicability of the regulations 10, 11, 12 of the SAST Regulations, 1997, are as follows:

(i). The transferor(s) and transferee(s) are qualifying promoters in terms of the explanation to regulation 3(1)(e)(iii) of the SAST Regulations, 1997.

(ii). The transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the acquisition.

(iii). The *inter se* transfer of shares should not be at a price exceeding 25% of the price determined in terms of regulations 20(4) and 20(5) of the SAST Regulations, 1997.

(iv). The provisions of Regulations 6, 7 and 8 of the SAST Regulations, 1997 have been complied with by the transferor(s) and the transferee(s).

Further, the following compliances also need to be carried out for transactions under regulation 3(1)(e)(iii)(b) of the SAST Regulations, 1997:

(v). The stock exchanges where the shares of the company are listed shall be notified of the details of the transactions at least 4 working days in advance of the date of the acquisition, in case of acquisition exceeding 5 per cent of the voting share capital of the company, in terms of regulation 3(3) of the SAST Regulations, 1997.

(vi). The acquirer(s) shall file a report with SEBI in the specified format within twenty one (21) days of the date of acquisition along with requisite fees, in terms of regulations 3(4) read with regulation 3(5) of the SAST Regulations, 1997.

15. It is a matter of record that Akshay Poddar and UPTC have been holding shares of GSML for atleast three years prior to the transaction. The other transferees in the transaction were not holding any shares of GSML before the said transaction as is evident from the submissions made by the Noticees before the erstwhile Adjudicating Officer. Therefore, all the transferor and the transferees have not been holding the shares in GSML for a period of at least three years prior to the transaction.

16. In this context, the Noticees submitted before the erstwhile Adjudicating Officer that SEBI has taken a view in certain responses issued by it under SEBI (Informal Guidance) Scheme, 2003, that even if one of the transferees has been holding shares of the target company for a period of at least 3 years prior to the said acquisition and the other transferees do not satisfy this criterion, the acquisition would still be exempted under Regulation 3(1)(e)(iii)(b) of SAST Regulations, 1997 provided that the other conditions mentioned therein are fulfilled. The said view of SEBI has been expressed in several responses including, inter-alia, the following: (i) SEBI's response dated October 19, 2004 to Sudarshan Chemical Industries Ltd. (ii) SEBI's response dated March 26, 2008 to ABC India Ltd. and (iii) SEBI's response dated June 18, 2007 to Jubilee Investments & Industries Ltd.

17. In this regard, the re-investigation observed that even if the views given by SEBI to the said informal guidance applications is considered, the same is subject to compliance with conditions as mentioned at para no. 14 (i) to (vi) hereinabove. It is a matter of record that the Noticees did not file the report under Regulation 3 (4) read with Regulation 3(5) of SAST Regulations, 1997. The acquirers/ transferees had not complied with the condition at (vi), i.e. they had not submitted the report and the fees in

terms of regulation 3(4) of SAST Regulations, 1997 read with regulation 3(5) of the SAST Regulations, 1997 to SEBI within the stipulated time as is also evident from the submissions made by the Noticees before the erstwhile Adjudicating Officer. Therefore, this condition for exemption has not been satisfied.

18. It was thus alleged that the aforesaid acquisition did not satisfy the condition at 14 (ii) above, i.e., the transferor(s) as well as the transferee(s) should have been holding shares in GSML for a period of at least three years prior to the acquisition. Further, the requirement at 14 (vi) above of filing report along with fees with SEBI, in terms of regulation 3(4) read with 3(5) of SAST Regulations, 1997 has also not been complied with by the Noticees. Therefore, the aforesaid transactions are not exempted under Regulation 3(1)(e)(iii)(b) of SAST Regulations, 1997, and would fall under the purview of Regulation 11(2) read with second proviso to Regulation 11(2) of SAST Regulations, 1997.

19. The Noticees in their reply have submitted that the promoters of GSML acquired 1,60,000 shares of GSML from UPTC and that the shareholding of the promoters increased from 59.86% to 64.86% in the quarter ending on March 31, 2010. In this regard, the earlier exemption from open offer obligation was mistakenly sought under the second proviso to regulation 11(2) of SAST Regulations, 1997, which was rectified and subsequently sought under regulation 3(1)(e)(iii)(b) of the SAST Regulations, 1997. In this regard, the promoters were required to comply with regulation 3(4) of SAST Regulations, 1997, which provided for filing of report. This requirement was to be complied within 21 days of the date of acquisition by the promoters. However, the report was filed with SEBI on April 05, 2011 with a delay of 410 days.

20. Further, the Noticees submitted that filing of report under regulation 3(4) of SAST Regulations, 1997 is a procedural requirement and is to be made post the inter-se transfer taking place. Delay in filing of the said

report did not vitiate the exemptions provided under SAST Regulations, 1997 in support of which they relied upon the judgment of Hon'ble Securities Appellate Tribunal ("**SAT**") in J.M. Financial & Investment Consultancy Services Ltd. v. Shri Ananta Barua, Adjudicating Officer, SEBI in Appeal No. 31/2000 dated March 16, 2001. They also submitted that they had suo moto filed consent application to seek condonation of delay in filing of the report and fees under regulation 3(4) and regulation 3(5) of SAST Regulations, 1997. SEBI passed consent order dated April 08, 2013 which also took into account the delay of 410 days in filing of the report under regulation 3(4) of SAST Regulations, 1997. A settlement charge of ₹ 2,00,000/- was levied and paid by the Noticees, subsequent to which the matter was held to be settled and that no further action would be pursued by SEBI, on the same grounds.

21. I note that Regulation 3 of SAST Regulations, 1997 provides exemptions from the obligation of making open offer/public announcement as required under regulation 10, 11 and 12 of SAST Regulations, 1997. One such exemption is Regulation 3(1)(e)(iii)(b) of SAST Regulations, 1997, in terms of which acquisition by way of inter-se transfer of shares amongst promoters is subject to fulfillment of certain conditions which are as follows:

(i) The transferor(s) and transferee(s) are qualifying promoters in terms of the explanation to regulation 3(1)(e)(iii) of the SAST Regulations, 1997.

(ii) The transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the acquisition.

(iii) The *inter se* transfer of shares should not be at a price exceeding 25% of the price determined in terms of regulations 20(4) and 20(5) of the SAST Regulations, 1997.

(iv) The provisions of Regulations 6, 7 and 8 of the SAST Regulations, 1997 have been complied with by the transferor(s) and the transferee(s).

22. In this context, I agree with the submission of the Noticees that sub-regulation (3) and (4) of regulation 3 of SAST Regulations, 1997 are subsequent to availing of exemption and not a pre-requisite for claiming exemption. It is relevant to quote the case of J.M. Financial & Investment Consultancy Services Ltd. v. Shri Ananta Barua, Adjudicating Officer, SEBI in Appeal No. 31/2000 dated March 16, 2001, which the Noticees have also relied upon wherein Hon'ble SAT has stated that ***"****Requirements of notifying stock exchange and reporting to SEBI in terms of sub regulations (3) and (4) are consequential to availing of exemption and not a requirement to avail exemption under regulation 3 as is made crystal clear in the Regulations."*

23. Out of the four conditions mentioned at para no. 21 for claiming exemption under Regulation 3(1)(e)(iii)(b) of SAST Regulations,1997, it was alleged that condition no. (ii) was not fulfilled by the Noticees and therefore they are not eligible for exemption under regulation 3(1)(e)(iii)(b) of SAST Regulations, 1997. In this regard, I find from material available on record, that Akshay Poddar, one of the transferees and UPTC, transferor have been holding shares of GSML for atleast three years prior to the transaction. It is also an admitted fact that the other transferees in the transaction were not holding any shares of GSML before the said transaction.

24. In this regard, the Noticees have relied on view of SEBI that has been expressed in several responses issued by it under SEBI (Informal Guidance) Scheme, 2003, including inter-alia the following: (i) SEBI's response dated October 19, 2004 to Sudarshan Chemical Industries Ltd. (ii) SEBI's response dated March 26, 2008 to ABC India Ltd. and (iii) SEBI's response dated June 18, 2007 to Jubilee Investments & Industries Ltd. and argued that since the transferor as well as one out three transferees were holding shares of the target company for at least 3 years prior to the date of acquisition, they are in compliance with the condition stipulated at Regulation 3(1)(e)(iii)(b) (ii) and they are exempt from the obligation of making open offer under Regulation 11 (2) of SAST Regulations.

25. I have gone through the views expressed by SEBI in the aforesaid responses. The substance of the view expressed by SEBI in this context is that as required under Regulation 3(1)(e)(iii)(b) of SAST Regulations, the transferors as well as the transferees should hold shares in the target company for 3 years or more prior to the proposed acquisition. If the transferees collectively and the transferors collectively hold shares in the target company for the last three years prior to the date of the proposed acquisition and some of the members of the qualifying promoter group (transferees) are not holding shares in target company for the last 3 years prior to the proposed acquisition, the acquisition would be exempted provided that the other conditions as mentioned in regulation 3(1)(e)(iii)(b) are also fulfilled. When this is applied in the instant case, I am of the view that by virtue of the fact the transferor i.e. UPTC and one of the transferees i.e. Akshay Poddar were holding the shares for more than 3 years prior to the transfer/acquisition and also the fact that there is no allegation of non-compliance with other conditions stipulated under Regulation 3(1)(e)(iii)(b), it is only fair and appropriate to construe the acquisitions by the Noticees as being in compliance with the condition

under Regulation 3(1)(e)(iii)(b)(ii). Therefore, I do agree with the submission of the Noticees that their subject acquisition is exempt under Regulation 3(1)(e)(iii)(b) of SAST Regulations, 1997, from the applicability of Regulation 11 (2) of SAST Regulations.

26. I also note that in respect of the subject acquisition, the Noticees filed report with SEBI on April 5, 2011, albeit with a delay, under Regulation 3 (4) of SAST Regulations. Further, they had suo moto filed consent application to seek condonation of delay in filing of the report under regulation 3(4) and SEBI passed consent order dated April 08, 2013 upon payment of the settlement charges of Rs.2,00,000/- by the Noticees.

ORDER

27. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act, 1992, I hereby conclude that the charges levelled against the Noticees in the SCN do not get established and the matter is, accordingly, disposed of.

28. In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

DATE: October 30, 2015 **A. SUNIL KUMAR**

PLACE: KOLKATA **ADJUDICATING OFFICER**