BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/GR/PU/2021-22/14463]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Mr. Dinesh Kumar (PAN: AVDPK5041M)

In the matter of

Multipurpose Trading and Agencies Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination in the matter of Multipurpose Trading and Agencies Ltd. (hereinafter referred to as **'Company/Target Company**'). The examination was to ascertain whether there was any violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**') by certain entities for the period January 01, 2016 to September 30, 2016 (hereinafter referred to as '**examination period**').

2. During the examination, it was observed that Mr. Dinesh Kumar, (hereinafter referred to as 'the **Noticee**') has failed to disclose the acquisition of shares and subsequent change in its shareholding, to the company and the exchange (BSE). Hence, it was alleged that the Noticee had violated Regulations 29 (1) and 29(2) read with 29 (3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer ('**AO**') vide order dated February 08, 2021, under Section 19 read with Section 15-I of SEBI Act and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, '**Adjudication Rules**') to enquire into and adjudge under Section 15A(b) the alleged violation of Regulations 29 (1) and 29(2) read with 29 (3) of SAST Regulations, 2011 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated June 05, 2021 (hereinafter, "**SCN**") was issued to the Noticee under Rule 4 of the Adjudication Rules, calling it to show cause as to why an inquiry should not be held and penalty be not imposed on it under Section 15A(b) of the SEBI Act for alleged violation specified in the said SCN. In response to this, the Noticee vide its email dated July 21, 2021 requested for some additional time to file his reply to the SCN.

5. Hence, vide email dated July 29, 2021, the Noticee was granted additional time till August 06, 2021 to file its reply to the SCN. Further, in the interest of natural justice, an

opportunity of personal hearing was granted to the Noticee on August 10, 2021 vide the same email. The Noticee failed to appear for the said hearing, however, vide his email dated September 03, 2021 filed his reply to the SCN which is summarized as below:

"The applicant was in receipt of your above mentioned notice dated 05.07.21. It is submitted that the alleged transactions were executed in the month of May and June 2016 and after thorough search outs by the applicant and his office staff no document was traced in evidence of compliance of Section 29 (1) r/w 29 (3) of SEBI (SAST) Regulations 2011. The applicant states that if at all, any non compliance has taken place then the same is unintentional and not to cause harm to any third party.

In these facts and circumstances it is stated that some lenient view be taken as the applicant is not aware of any such compliance."

6. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticees ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticees.

ISSUES FOR CONSIDERATION AND FINDINGS

7. I have carefully perused the submissions made by the Noticees and documents available on record, and the issues that arise for consideration in the present case are:

   a. Whether the Noticee has violated the provisions of Regulations 29 (1) and 29(2) read with 29 (3) of SAST Regulations, 2011?

   b. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act?

c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?

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

SAST Regulations 2011

Regulation 29

(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to, —(a)every stock exchange where the shares of the target company are listed; and(b)the target company at its registered office.

FINDINGS

9. The first issue for consideration is whether the Noticee has violated Regulations 29 (1) and 29(2) read with 29 (3) of SAST Regulations, 2011.

10. During the examination, it was observed that the Noticee had acquired 50,000 equity shares of the target company on May 13, 2016, thereby increasing its shareholding in the target company from 4.04% to 5.05%. Since pursuant to the aforesaid transaction, the shareholding of the Noticee increased to more than 5%, the Noticee was under obligation to make requisite disclosure to the stock exchange under Regulation 29(1) read with 29(3) of SAST Regulations 2011 within 2 working days of the said transaction.

11. It was further observed that, the Noticee had acquired 2,00,000 equity shares of the target company on June 03, 2016, thereby increasing its shareholding in the target company from 5.05% to 9.09%. Since the aforesaid change increase in shareholding was more than 2%, the Noticee was under obligation to make requisite disclosure to the stock exchange under Regulation 29(2) read with 29(3) of SAST Regulations 2011 within 2 working days of the said transaction.

12. In this regard, the Noticee vide letters dated February 25, 2020 and March 13, 2020 and emails dated February 26, 2020, March 30, 2020 and October 13, 2020 was advised to provide details of disclosure related to aforementioned transactions submitted to the target company and BSE (if any). However, no reply was received from the Noticee in this regard. Additionally, SEBI vide letter dated February 25, 2020 and email dated March 04,

2020 had advised the target company to provide details of any disclosures related to aforesaid transactions submitted to it along with proof of submission (if any) by the Noticee. However, no reply was received from the Target company in this regard.

13. Further, BSE vide email dated December 07, 2020 was advised to confirm whether the Noticee had made the aforesaid disclosures to exchange or not. In reply to this, BSE vide their email dated December 08, 2020 submitted that the exchange has not received any disclosure from the Noticee for the said transactions.

14. The Noticee in its reply has contended that if at all, any non-compliance has taken place then the same is unintentional and it has not caused any harm to any third party. In this regard, I place reliance on Hon'ble SAT's judgement dated October 14, 2014 in the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014), in which Hon'ble SAT observed that "………. *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures." (Emphasis supplied).*

15. Further, I am of the view that the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed via disclosures so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Further, timely disclosures of the details of the shareholding of the

persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Further, Hon'ble Securities Appellate Tribunal ('**SAT**') in the matter of ***Coimbatore Flavors & Fragrances Ltd. vs SEBI*** (Appeal No. 209 of 2014 order dated August 11, 2014), has also held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

16. Based on the aforesaid findings, I conclude that the Noticee has violated the provisions of Regulations 29 (1) and 29(2) read with 29 (3) of SAST Regulations, 2011.

17. I further note that Hon'ble Supreme Court of India, in the matter of Chairman, *SEBI vs. Shriram Mutual Fund* {*[2006] 5 SCC 361*} held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

18. In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulations 29 (1) and 29(2) read with 29 (3) of SAST Regulations, 2011. The provisions of Section 15A(b) of the SEBI Act, 1992 read as under:

<u>Penalty for failure to furnish information, return, etc.</u>

15A. *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 [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];

19. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under: -

Factors to be taken into account by the adjudicating officer.

Section 15J - 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.*

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

20. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticee is available on record. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticee. Hence, I note that the Noticee failed to make disclosers for acquisition of shares and subsequent change in shareholding to the Target Company and the exchange (BSE) and thereby has violated Regulations 29 (1) and 29(2) read with 29 (3) of SAST Regulations, 2011.

ORDER

21. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Rules, I hereby impose a penalty of **Rs 1,00,000/-** (Rupees One lac only) on the Noticee, in terms of the provisions of Section 15A(b) of the Securities and Exchange

Board of India Act, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

22. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

23. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department -DRA-4), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 –A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

24. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

25. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date : December 13, 2021 **G Ramar**

Place : Mumbai **Adjudicating Officer**