BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. JJ/AK/AO-08/2014]

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
M/s Vybra Automet Limited
(PAN No. - Not Available)
In the Matter of M/s Vybra Automet Limited

FACTS OF THE CASE IN BRIEF

1. An open offer was made by M/s Mandakini Holdings Private Limited (hereinafter referred to as "**Acquirer**") to the shareholders of M/s Vybra Automet Limited (hereinafter referred as **"Noticee/VAL/Company"**), Target Company listed at BSE Limited (**BSE**) and Hyderabad Stock Exchange (**HSE**), through a public announcement dated July 01, 2009 for acquisition of 14,25,800 equity shares representing 20% of share capital of VAL, at a price of ₹10 per equity share of ₹10 each, payable in cash.

2. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) examined the letter of offer pertaining to the aforesaid open offer and alleged that the Noticee had failed to comply with regulations 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **"SAST Regulations, 1997"**) read with regulation

35 of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 2011 (hereinafter referred to as **"SAST Regulations, 2011"**) for the financial years 1998 to 2003.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Piyoosh Gupta had been appointed as Adjudicating Officer vide order dated June 27, 2013 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) 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 15A(b) of the SEBI Act. Consequently, upon transfer of Shri Piyoosh Gupta, the undersigned has been appointed as Adjudicating Officer vide order dated November 08, 2013 to enquire and adjudge the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD/JJ/AK/29624/2013 dated November 20, 2013 (hereinafter referred to as "**SCN**") was issued to the Noticee 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 15A (b) of the SEBI Act for the alleged violation specified in the SCN. The said SCN was duly delivered to the Noticee on November 28, 2013 by Speed Post (Acknowledgement / Proof of Delivery is present on record). However, the Noticee did not submit any reply to the SCN.

5. It was alleged in the SCN dated November 20, 2013 that Noticee had made the disclosures required as per regulation 8(3) of SAST Regulations, 1997 as against the due date of compliance with a delay. Thus, it was alleged that

Noticee had failed to comply with regulation 8(3) of SAST Regulations for the years 1998 to 2003. The details of delay in this regard are as under:

S.No.	Regulation	Due date of compliance	Actual date of compliance	Delay if any (in no. of days)
1	8(3)	30.04.1998	10.06.2007	3328
2	8(3)	30.04.1999	10.06.2007	2963
3	8(3)	30.04.2000	10.06.2007	2597
4	8(3)	30.04.2001	10.06.2007	2232
5	8(3)	30.04.2002	10.06.2007	1867
6	8(3)	30.04.2003	10.06.2007	1502

6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on January 10, 2014 vide notice dated December 31, 2013. The said Notice of Inquiry (hearing notice) dated December 31, 2013 was also duly delivered to the Noticee on January 04, 2014 by Speed Post (Acknowledgement / Proof of Delivery is present on record). However, I find that the Noticee had neither appeared for hearing scheduled on January 10, 2014 nor sought for any adjournment. I further find that almost after a lapse of 45 days from the date of delivery of SCN, 10 days from the date of delivery of hearing notice and 5 days from the date of hearing scheduled, Noticee had submitted its reply.

7. Further, I find that the Noticee vide letter dated January 15, 2014 had submitted the reply to the SCN and to the hearing notice, stating *inter alia* as under:

"...........

- *Presently the company under the new change of management, who had taken over the company in the month of April, 2010 through open offer followed with '**SAST Regulations**' and complied the process in accordance with SEBI Order.*
- *As per Para No.2 mentioned by you that we do not have any information of M/s Mandakini Holdings Pvt. Ltd., who is acquirer by July 01, 2009. Hence, we do not have any information with regards to the above said acquirer and unable to furnish the information.*
- *As we are not relevant to the said subject for filing the disclosures under section 8(3) of SAST regulations. we request you not to levy any penalty and close the matter by noting the information.*
  ...."

8. From the Noticee's letter dated January 15, 2014, I find that it had not sought for any adjournment of hearing, rather had requested to close the matter by noting the information. For the reasons mentioned above, I observe that the Noticee was provided with enough opportunity of being heard and hence, I am proceeding with the inquiry taking into account the material available on record.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

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9. After perusal of the material available on record, I have the following issues for consideration, viz.,
   A. Whether the Noticee has violated the provisions of Regulation 8(3) of SAST Regulations, 1997?
   B. Whether the Noticee is liable for monetary penalty under Section 15 A (b) of the SEBI Act ?
   C. What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act ?

FINDINGS

10. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticee has violated the provisions of Regulation 8(3) of SAST Regulations, 1997?

11. The provisions of regulation 8(3) of SAST Regulations, 1997 read as under:

Regulation 8(3)

> *Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.*

12. Regulation 8(3) of SAST Regulations deals with yearly disclosure, by the company to the stock exchange/s where the shares of the company are listed, of the changes, if any, in respect of the holdings of the persons referred to under regulation 8(1) and in respect of holdings of promoters or persons having control over the company within 30 days from (i) the financial year ending March 31, as well as (ii) the record date for dividend declaration.

13. From the material available on record, I note that the Noticee had failed in making the yearly disclosures of the holdings of the promoters or persons(s) having control over the company to all the stock exchanges on which the shares of the Noticee were listed within the stipulated time frame as required under Regulation 8(3) of the SAST Regulations, 1997. The details of the same, are as follows:

S.No.	Regulation	Due date of compliance	Actual date of compliance	Delay if any (in no. of days)
1	8(3)	30.04.1998	10.06.2007	3328
2	8(3)	30.04.1999	10.06.2007	2963
3	8(3)	30.04.2000	10.06.2007	2597
4	8(3)	30.04.2001	10.06.2007	2232
5	8(3)	30.04.2002	10.06.2007	1867
6	8(3)	30.04.2003	10.06.2007	1502

14. From the aforesaid, it is clear that the Noticee had failed to make the required disclosures within the time specified under regulation 8(3) of the SAST Regulations, 1997 for the years 1998 to 2003. This shows that the Noticee had continuously neglected its duty of making the disclosures in compliance with regulation 8(3) of the SAST Regulations, 1997 since 1998 to 2002 and the disclosures for all the 6 years were made only on June 10, 2007.

15. Further I am of the view that, when an acquirer, acquires the shares or voting rights or both of a target company from its shareholders through a public offer in the open market with an intention to gain control over the management of target company, the target company, while transferring its control and management to the acquirer also transfers all its assets and liabilities accrued by that business over its past years and all of the risks that company faces in its commercial environment to the acquirer. This also includes the foreseeable liabilities, i.e. unquantified damages such as those that could arise from litigation, non compliances of statutes including SEBI Regulations, etc. The alleged contravention of the provisions of SAST Regulations, 1997 is against the Noticee and not against the management of the Noticee whether present or erstwhile. Therefore the argument raised by the Noticee that the

alleged contraventions of the provisions of regulation 8(3) of SAST Regulations, 1997 are not relevant to them does not stand good.

16. There can be no dispute that compliance of regulations is mandatory and it is duty of SEBI to enforce compliance of these regulations. To give equal treatment and opportunity to all shareholders/investors and protect their interests and to bring about transparency in the transactions, dissemination of full information is required. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. However, the Noticee has neglected its duty of making the disclosures in compliance with Regulation 8(3) of the SAST Regulations, 1997 since 1998 and the same has continued till 2003, thereby reflecting the lackadaisical attitude of the Noticee in fulfilling statutory obligations.

17. In view of the above, I hold that the Noticee had failed to comply with regulation 8(3) of SAST Regulations within the stipulated time as mentioned in the SAST Regulations, 1997. Thus, the violation against the Noticee stands established.

ISSUE 2: Whether the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act ?

18. I note that the first five violations had happened in the years 1998 to 2002, i.e. when the Noticee had failed to make the required disclosure by 30.04.1998, 30.04.1999, 30.04.2000, 30.04.2001 and 30.04.2002 respectively. The provisions of Section 15A(b) of the SEBI Act (as it existed then) read as under:

> ***"Penalty for failure to furnish information, return, etc.***
>
> ***15A.*** *If any person, who is required under this Act or any rules or regulations made thereunder,—*
>
> *(a)…..*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;"

19. Subsequently, the SEBI Act was amended by the SEBI (Amendment) Act, 2002 w.e.f. October 29, 2002 and the provisions of Section 15A(b) of the SEBI Act after the amendment, read as under:

"Penalty for failure to furnish information, return, etc.

***15A.** If any person, who is required under this Act or any rules or regulations made thereunder,—*

(a)…..

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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;"

20. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* 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".*

21. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005 the Hon'ble SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

22. As the violation of the statutory obligation under regulation 8(3) of SAST Regulations has been established, I hold that the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act ?

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

"15J - Factors to be taken into account by the adjudicating officer

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."

24. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee, the details of the shareholding of the persons having substantial stake, promoter-group and persons in control over the Noticee and timely disclosure thereof, were of some importance from the point of view of investors as that would have prompted them to buy or sell shares of the Noticee. The disclosure made under regulation 8(3) of SAST Regulations by a company is made public only through Stock Exchange. Therefore, it is mandatory for the

company to give the required information under the aforesaid SAST Regulations to the Stock Exchange, so that the said information becomes known to all the investors at large. Therefore, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosures, the Noticee had not provided the vital information within the prescribed time which is detrimental to the interest of investors in securities market.

25. Further, the violation had continued for 6 years, i.e., every year since 1998 to 2003 the Noticee failed to make disclosures in compliance with regulation 8(3) of SAST Regulations, 1997. The disclosures were made only in 2007 thereby frustrating the whole purpose of regulation 8(3) of SAST Regulations, 1997. The entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Hence, the violations of the Noticee cannot be viewed lightly. Further, the Noticee failed to make the necessary disclosures on time for 6 years. Therefore, the default of the Noticee is repetitive in nature.

26. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 6,00,000/- (Rupees six lakhs only) on the Noticee under Section 15A(b) of the SEBI Act for the violation of regulation 8(3) of SAST Regulations, 1997 which is appropriate in the facts and circumstances of the case.

ORDER

27. In exercise of the powers conferred under Section 15 I of the SEBI Act and Rule 5 of the Rules, I hereby impose a penalty of ₹ 6,00,000/- (Rupees six lakhs only) on M/s Vybra Automet Limited in terms of the provisions of Section 15A(b) of SEBI Act for the violation of regulation 8(3) of SAST 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 Noticee.

28. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Division Chief, Corporation Finance Department, Division of Corporate Restructuring, SEBI, SEBI Bhavan, Plot No. C– 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

29. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: January 20, 2014 **Jayanta Jash**

Place: Mumbai **Adjudicating Officer**