BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No. Order/JS/N./2022-23/18232-18236]

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) RULES, 1995.

In respect of

Sr. No.	Name	PAN
1	Ashok Kumar Mehta	AADPM8885E
2	Kajal Suraj Mehta	AYYPS0654G
3	Kiran P. Mehta	AADPM8787D
4	Pavan N. Mehta	AACPM9957E
5	Usha A. Mehta	AADPM8788N

In the matter of Rose Zinc Limited.

FACTS OF THE CASE

1. Rose Zinc Limited (hereinafter referred to as "RZL" or "Target Company") was listed on BSE Ltd. in the year 1995. RZL was compulsorily delisted from the exchange platform with effect from December 1, 2017.

2. As per the shareholding pattern filed with BSE Ltd. for the quarter ending March 2015, the promoter and promoter group of RZL comprised of Ashok Kumar Mehta, Pavan N. Mehta, Kajal Suraj Mehta, Usha A. Mehta and Kiran P. Mehta (hereinafter referred to as 'noticees' or 'promoters') who held a total of 37,80,420 equity shares (46.78% of shareholding).

3. On the basis of the disclosures made by Pavan N. Mehta, Kiran P. Mehta and Ashok Kumar Mehta under SEBI (Prohibition of Insider Trading) Regulations, 1992 [hereinafter referred to as "SEBI (PIT) Regulations, 1992"] the following *inter se* transfers of shares were made amongst these promoters on April 15, 2015:

Name of Acquirer	Pre-transfer holding	Shares acquired	Post-transfer holding	Name of Seller
Kiran P. Mehta	1,98,100 (2.45%)	37,500 (0.46%)	2,35,600 (2.91%)	Pavan N. Mehta
Ashok Kumar Mehta	17,48,800 (21.64%)	2,35,600 (2.91%)	19,84,400 (24.55%)	Kiran P. Mehta
Ashok Kumar Mehta	19,84,400 (24.55%)	9,86,040 (12.20%)	29,70,440 (36.75%)	Pavan N. Mehta

The shares of the Target Company were infrequently traded during the 12 calendar month preceding the month of the *inter se* transfers.

4. It is observed that the acquisitions made by Ashok Kumar Mehta from Kiran P. Mehta and Pavan N. Mehta on April 15, 2015 led to breach of the threshold of 25% of the shares/voting rights and thus, triggered regulation 3(1) read with regulation 3(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 [hereinafter referred to as "SEBI (SAST) Regulations, 2011"]. Further, the shareholdings of Kajal Suraj Mehta and Usha A. Mehta remained the same at 2,34,780 (2.90%) and 5,53,700 (6.85%) respectively and therefore, the acquisitions triggered regulation 3(2) of the SEBI (SAST) Regulations, 2011 in respect of Ashok Kumar Mehta, Kajal Suraj Mehta and Usha A. Mehta. Also, these transactions required disclosures under regulation 29(2) of the SEBI (SAST) Regulations, 2011 which were not made. The relevant details are as follows:

Name of Acquirer	Pre-transfer holding	Shares transacted	Post-transfer holding	Applicable regulations of SEBI (SAST) Regulations, 2011
Ashok Kumar Mehta	17,48,800 (21.64%)	12,21,640 (15.11%)	29,70,440 (36.75%)	3(1) r/w 3(3), 29(2)
Ashok Kumar Mehta along with Kajal Suraj Mehta and Usha A. Mehta	25,37,280 (31.39%)	12,21,640 (15.11%)	37,58,920 (46.50%)	3(2), 29(2) r/w 29(3)
Kiran P Mehta and Pavan N. Mehta	12,43,140 (15.38%)	12,21,640 (15.11%)	21,500 (0.27%)	29(2) r/w 29(3)

5. The aforesaid acquisitions by Ashok Kumar Mehta falls under the category of *inter se* transfers amongst promoters and are generally exempt from open offer obligations under regulation 10(1)(a)(ii) of the SEBI (SAST) Regulations, 2011 provided that the transferor and the transferee have complied with applicable disclosure

requirements set out in Chapter V of the SEBI (SAST) Regulations, 2011 and the acquisition price is not more than 125% of either the volume weighted average market price for the sixty trading days preceding the date of issuance of notice for the proposed *inter se* transfer under regulation 10(5) (if the shares are frequently traded) or the fair value of the shares under regulation 8(2)(e) (if the shares are infrequently traded).

6. In this regard, it is noted that the shares of Target Company were infrequently traded during the 12 calendar months preceding the month in which the *inter se* transfers were carried out, i.e., April 2015. There was no trading in its shares since December 16, 2011 and the shares were suspended from trading on BSE Ltd. The fair value of the shares under regulation 8(2)(e) appears to be almost nil as its net profit for the year ended March 31, 2015 is negative and its book value as on March 31, 2015 is also negative. The acquisition price, as disclosed under SEBI (PIT) Regulations, 1992, was Rs. 7/- per share. In view of the same, the acquisition appears to be not exempt from the open offer obligations under regulation 3(1) read with 3(3) and 3(2) of the SEBI (SAST) Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI initiated adjudication proceedings against the noticees in terms of section 15H(ii) and section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") for the alleged violations of regulation 3(1) and 3(2) read with 3(3) of SEBI (SAST) Regulations, 2011 and regulation 29(2) read with regulation 29(3) of SEBI (SAST) Regulations, 2011. The undersigned was appointed as the Adjudicating Officer in this matter vide communique dated November 23, 2021 to enquire into and adjudge the alleged violations as per rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Rules') read with sub-sections (1) and (2) of section 15-I of the SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. A common show cause notice dated December 17, 2021 (hereinafter referred to as 'SCN'), was issued to the noticees under rule 4(1) of the Rules to show-cause as to why an inquiry should not be initiated against them and why penalty should not be imposed under section 15H (ii) and section 15A(b) of the SEBI Act, 1992 for the alleged violations. In the said SCN, it was alleged that noticees, as mentioned above have violated of regulations 3(1) and 3(2) read with regulation 3(3) of SEBI (SAST) Regulations, 2011 and regulation 29(2) read with regulation 29(3) of SEBI (SAST) Regulations, 2011. The aforesaid violations, if established, make the noticees liable for monetary penalty under sections 15H(ii) and 15A(b) of the SEBI Act, 1992.

9. Noticees filed a common reply to the said SCN vide letter dated February 8, 2022, *inter alia*, submitting as follows:

(a) SEBI has initiated these proceedings with inordinate and inexplicable delay in issuing the SCN. In fact, SEBI has been inactive for a significant period of about 6 years before issuing the Show Cause Notice. It is trite law that such an inordinate delay by SEBI in continuing its investigation is bound to vitiate the entire proceedings. The transactions pertain to the period April 2015;

(b) The Hon'ble Securities Appellate Tribunal (hereinafter referred to as "Hon'ble SAT") in the matter of Kaushik Rajnikant Mehta vs. SEBI held that:

"12. In so far as inordinate delay is concerned we find that after the remand from the Tribunal by an order of March 14, 2016, the respondent took no steps to decide the matter afresh. When no steps were taken for more than two years it leads to a presumption that the matter had been set at rest and that the respondent does not wish to pursue the matter any further. We are also of the opinion that when there is undue delay in the disposal of the case it causes a prejudice to the person who is being prosecuted against. Once a show cause notice has been initiated it is incumbent upon the authority to decide the muter at the earliest. Delaying the proceedings does not benefit the respondent or the appellant. In fact, the delay in our opinion causes a lot of prejudice to the appellant. Every person has a right to arrange its affairs in a suitable manner. When there is a delay in initiating the proceedings or there is undue delay in the disposal of the case, the uncertainty creeps in which causes prejudice. In the instant case, we find that the Tribunal remanded the matter on March 14, 2016. No steps were taken by the respondent for more than three years and it is only on March 18, 2019 that an AO was appointed who took another nine months to issue a notice for hearing. This inordinate delay in the disposal of the matter pursuant to a remand order is a mitigating factor to be considered while deciding the quantum of penalty under 15J of the Act."

(c) The Hon'ble SAT in the matter of Devendra Suresh Gupta vs. SEBI relied on its previous judgement in the case of Vasudev Ramchandra Kamat vs. SEBI and held that:

"3. Having heard the learned counsel for the parties we are of the opinion that the Impugned order cannot be sustained. The controversy in the present case it squarely covered by a decision of this Tribunal dated February 23, 2020 in Appeal No. 8 of 2020 Vasudev Ramchandra Kamat vs. SEBI and other companion appeals wherein this Tribunal held as under:-

> *4. After remand no proceedings were initiated and after three long years a fresh show cause notice dated August 1, 2019 was issued by the AO alleging that the appellant being part of the group entities had indulged in trading within the group resulting in no change of beneficial ownership and thereby created artificial volume in the scrip of the company which gave a false and misleading appearance in the trading in the scrip. Based on the aforesaid charge, replies were sought and after considering the matter the AO passed*

the impugned order dated November 22, 2019 imposing a penalty of Rs. 1 lakh. The AO being aggrieved by the aforesaid order has filed the present appeal.

5. Having heard the learned counsel for the parties, we find that the Impugned order cannot be sustained. When the matter was remanded by this Tribunal a specific direction was issued that the matter is restored to the file of the AO and the AO was required to decide the matter afresh on merits. It means that the AO was required to decide the matters afresh pursuant to the show cause notice dated October 8, 2013. The AO was required to deal with the charges leveled against the appellant under the said show cause notice dated October 8, 2013. It was not opens to the AO to issue a fresh show cause notice incorporating a new charge. Consequently, on this short ground the impugned orders cannot be sustained and are quashed. Both the Appeals are allowed. No order as to costs."

4. In the instant case, no step were taken for forty five months and thereafter a fresh show cause notice was issued. The aforesaid decision is squarely applicable in the instant cars. In the light of the aforesaid, the impugned order cannot be sustained and is quashed. Appeal is allowed at the admission stage itself with calling for a reply with no order as to costs."

(d) SEBI has already conducted investigation for the transactions concerning the investigation period. Vide its order No. EAD/PM-RR/AO/2/2018-19 dated April 13, 2018, SEBI observed the following in para 14:

"14. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Notices and the loss, if any, suffered by the investors at a result of the Noticee's failure. I note that the Noticees made delayed disclosures thereby violated the Regulation 13(6) of SEBI (PIT) Regulations, 1992."

From the above paragraph, it is evident that there has been no loss to the public shareholders of the company by virtue of the transactions undertaken by the promoters. As such SEBI had levied a penalty of Rs. 1 lakh which the company has already paid;

(e) Further, SEBI vide its order No. EAD/PM-RR/AD/50-52/2017-18 dated March 21, 2018 has levied penalties of Rs. 3 lakh on Ashok Mehta, Rs. 2 lakh on Pawan Mehta and Rs. 1 lakh on Kiran Mehta respectively. These penalties have also been paid off. It was open for SEBI to conduct the investigation under SEBI (SAST) Regulations, 2011 also and levy the penalty, if necessary;

(f) The company is undergoing critical financial crisis. Because of the said issues, the promoters and the directors of the company also have undergone financial crisis. The promoters have honoured all the financial obligations of the company through their personal resources;

(g) The increase in the holding of the company by the noticees was neither intentional nor detrimental to the interest of any shareholder of Rose Zinc Limited;

(h) The promoters have made no personal gain by acquisition of the shares for which disclosures are not done under SEBI (SAST) Regulations, 2011. Further, the company was regular in submitting the shareholding pattern, wherein the acquisition by the promoters was disclosed. The company and the promoters had no intention to hide. The lapse was on account of procedural aspect;

(i) Currently the company is delisted from BSE. The non-submission of disclosures for increase in holding and increase in acquisition price for the *inter se* acquisition, if any, was not intentional and detrimental to the interest of any shareholder;

10. An opportunity of hearing was granted to the noticees on June 15, 2022. Mr. Ashok Kumar Mehta appeared in person on behalf of all noticees along with their consultant, Ms. Neha Gada. During the hearing, the noticees reiterated the submissions made vide their reply dated February 8, 2022 to the SCN in addition to the claim that the transfers were not actuated by any malafide intention.

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

11. I have perused the allegations levelled against the noticees, their reply and the material available on record. The issues that arise for consideration in this regard are as follows:

Issue No. I: *(a) Whether Ashok Kumar Mehta has violated regulation 3(1) read with 3(3) and regulation 29(2) of SEBI (SAST) Regulations, 2011?*

(b) Whether Ashok Kumar Mehta along with Kajal Suraj Mehta and Usha A. Mehta have violated regulation 3(2) and regulation 29(2) read with 29(3) of the SEBI (SAST) Regulations, 2011

(c) Whether Kiran P. Mehta and Pavan N. Mehta have violated regulation 29(2) read with 29(3) of the SEBI (SAST) Regulations, 2011.

Issue No. II: Does the violation, if any, attract monetary penalty under section 15H(ii) and section 15A(b) of the SEBI Act, 1992?

Issue No. III: If so, what would be the quantum of monetary penalty that can be imposed on the noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

12. In this regard, the relevant statutory provisions alleged to have been violated by the noticees read as under:

(a) "Substantial acquisition of shares or voting rights.

3. (1) No acquirer shall acquire 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, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation.— For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation, —

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.

(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .

(3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open

offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert."

(b) "Disclosure of acquisition and disposal.

29.(1) …………….

(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 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. "

13. It is alleged that the acquisitions made by Ashok Kumar Mehta from Kiran P. Mehta and Pavan N. Mehta on April 15, 2015 led to breach of the threshold of 25% of the shares/voting rights and thus, triggered regulation 3(1) read with regulation 3(3) and regulation 29(2) of SEBI (SAST) Regulations, 2011. It is also alleged that vide the aforesaid acquisition of shares from Kiran P. Mehta (2,35,600 shares amounting to 2.91%) and Pavan N. Mehta (9,86,040 shares amounting to 12.20%), Ashok Kumar Mehta along with Kajal Suraj Mehta and Usha A. Mehta triggered regulation 3(2) of the SEBI (SAST) Regulations, 2011 and they failed disclose the same as mandated by regulation 29(2) read with 29(3) of the SEBI (SAST) Regulations, 2011. It was further alleged that upon the aforesaid *inter se* transfer of shares to Ashok Kumar Mehta, the shareholding of Kiran P. Mehta and Pavan N. Mehta was reduced to 21,500 (0.27%) from 12,43,140 (15.38%). However, the same was not disclosed under regulation 29(2) read with 29(3) of the SEBI (SAST) Regulations, 2011.

14. The noticees have not disputed the transactions alleged as above and their failure to make disclosures. However, the noticees have contended that there is inordinate delay in initiating these proceedings which has caused great prejudice to them. In this regard, it is noted that there are no provisions under SEBI Act, 1992 providing a time limit for taking cognizance of a breach of the provisions of SEBI Act, 1992, Rules or Regulations made thereunder. In the matter of Bipin R. Vora vs. SEBI, Hon'ble Securities Appellate Tribunal (hereinafter referred to as "Hon'ble SAT") vide order dated March 22, 2006 had held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations*

per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".

15. Further, in the matter of SEBI vs. Bhavesh Pabari, (2019) SCC Online SC 294, the Hon'ble Supreme Court, *inter alia*, observed as follows:

> *"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third party rights had been created etc."*

16. Similarly, Hon'ble SAT vide order dated March 17, 2020 in Pooja Vinay Jain vs. SEBI held that, *"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same"*. However, in this matter, noticees have failed to show any prejudice caused to them except the delay as such. Therefore, I do not find any merit in the contentions of noticees in this regard.

17. With respect to the submission of the noticees that SEBI had imposed penalties by passing two orders in the past, it is noted that there are two orders dated March 21, 2018 and April 13, 2018 pertaining to the same set of transactions. The former order had imposed penalties on Ashok Mehta, Pawan Mehta and Kiran Mehta for their failure to comply with the disclosure requirements under SEBI (PIT) Regulations, 1992 whereas the latter order imposed penalty on the company for the same violations. However, the said orders pertain to violations of provisions of SEBI (PIT) Regulations, 1992 and the present proceedings pertain to violations of provisions of SEBI (SAST) Regulations, 2011, which are independent causes of action providing for penalties.

18. It is not in dispute that the transactions as alleged in the SCN were carried out by the noticees. It is also not disputed that the aforesaid acquisitions by Ashok Kumar Mehta fall under the category of *inter se* transfers amongst promoters and are generally exempt from open offer obligations [laid down under regulations 3(1) and 3(2) read with regulation 3(3)] as per regulation 10(1)(a)(ii) of the SEBI (SAST) Regulations, 2011. However, the exemptions are not applicable in the case of the noticees for the reason that they had failed to make disclosures under Chapter V of SEBI (SAST) Regulations, 2011 (Disclosure of acquisition and disposal under regulation 29 in the extant matter) and the acquisition price was more than 125% of fair value of the shares determined in terms of regulation 8(2)(e) where fair value of the shares was nil for the reasons that there was no trading in these shares, company's net profit for the year ended March 31, 2015 was negative, its book value as on March 31, 2015 was negative and the acquisition price was Rs. 7.

19. However, it is noted that the violations alleged to have been committed by Kiran P. Mehta and Pavan N. Mehta, i.e. regulation 29(2) read with regulation 29(3) of the SEBI (SAST) Regulations, 2011 are not substantially different from the violations for which penalty was imposed on them vide order dated March 21, 2018 wherein penalty was imposed for failure to disclose under regulation 13 of the SEBI(PIT) Regulations, 1992 . In this regard, judgement of Hon'ble SAT dated September 4, 2013 in Vitro Commodities Private Limited vs. SEBI is relied upon wherein, *inter alia,* it was held that *"….provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."* Therefore, I am inclined take a lenient view with respect to the alleged violations by the aforesaid two noticees and not impose any penalty in this respect.

20. In view of the aforesaid findings, I am of the view that:

(a) Ashok Kumar Mehta has violated regulation 3(1) read with regulation 3(3) and regulation 29(2) of the SEBI (SAST) Regulations, 2011;

(b) Ashok Kumar Mehta along with Kajal Suraj Mehta and Usha A. Mehta have violated regulation 3(2) and regulation 29(2) read with regulation 29(3) of the SEBI (SAST) Regulations, 2011.

21. With respect to the issue whether the violations as above attract monetary penalty under sections 15H(ii) and 15A(b) of the SEBI Act, 1992, it is found that in view of the facts and circumstances of the case, the material available on record and the submissions made, the aforesaid noticees have violated regulations 3(1), 3(2) read with 3(3) of SEBI (SAST) Regulations, 2011, for which penalty is provided under section 15H(ii) of SEBI Act, 1992 and regulation 29(2) read with regulation 29(3) of SEBI (SAST) Regulations, 2011 for which penalty is provided under section 15A(b) of SEBI Act, 1992.

22. In view of the aforesaid, it is a fit case for imposition of monetary penalty on the noticees except Kiran P. Mehta and Pavan N. Mehta under the provisions of sections 15H(ii) and 15A(b) of the SEBI Act, 1992 and in terms of the judgment of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund & Anr. reported in (2006) 5 SCC 361 holding as follows:

> *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant."*

23. The violations of the aforesaid provisions attract penalty as per sections 15H(ii) and 15A(b) of the SEBI Act, 1992 which read as under:

*"**Penalty for non-disclosure of acquisition of shares and takeovers.***
15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to, –
(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
(ii) make a public announcement to acquire shares at a minimum price; or
(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or (iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,
he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher"

*"**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) to furnish any document, return or report to the Board, fails to furnish the same or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, 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;
(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;
(c) to maintain books of account or records, fails to maintain the same, 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"

24. Further, with respect to the quantum of monetary penalty that can be imposed on the noticees, it is important to consider the factors as stipulated in section 15J of the SEBI Act, 1992 which reads as under:

*"**Factors to be taken into account by the adjudicating officer.***
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."

25. In this matter, it is difficult to quantify the disproportionate gains or unfair advantage enjoyed by the noticees and the consequent losses caused to the investors, due to their failure in making the public announcement of offer and there is no material on record to indicate that such default was repetitive.

26. In this regard, it is relevant to note the observations in the order of Hon'ble SAT dated September 14, 2010 in Ushdev Trade Limited v. SEBI which read as under:

> *".........we are satisfied that even though the appellant violated the provisions of Regulation 10 of the takeover code, this violation, in thecircumstances of the case, has not prejudiced or jeopardized the interest ofthe shareholders of the target company and cannot be said to be seriousenough calling for an exorbitant penalty as imposed by the adjudicatingofficer. This is not a case where a non promoter has acquired a substantialchunk of shares in the target company changing its shareholding patternand has gone away without making a public announcement. The acquisitionby the appellant is within the promoter group which has not led to anychange in the control of the target company nor has its managementchanged. However, Regulation 10 having been violated, penalty must follow as observed by the Supreme Court in Chairman, SEBI vs. Shriram Mutual Fund AIR 2006 SC 2287...........".*

The facts in the extant case is similar to the case cited above where promoters transferred shares among themselves which had resulted in violation of certain provisions of SEBI(SAST) Regulations, 2011 mandating public announcement of an open offer.

ORDER

27. In exercise of the powers conferred upon me under section 15-I of the SEBI 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 impose a penalty on the noticees in terms of the provisions of sections 15H(ii) and 15A(b) of SEBI Act, 1992 as under:

(i) penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under section 15H(ii) of the SEBI Act, 1992 jointly and severally on Ashok Kumar Mehta, Kajal Suraj Mehta and Usha A. Mehta;

(ii) Penalty of Rs. 1,00,000/- (Rupees One Lakh only) under section 15A(b) of the SEBI Act, 1992 jointly and severally on Ashok Kumar Mehta, Kajal Suraj Mehta and Usha A. Mehta.

In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by noticees.

28. The noticees 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

29. The noticees shall forward the said demand draft or the details/confirmation of penalty so paid to 'The Division Chief (Enforcement Department 1, DRA-3), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C–4 A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai– 400051'. The noticees shall also provide the following details while forwarding the demand draft/payment information:

- Name and PAN of the noticees;
- Name of the case/matter;
- Purpose of Payment – Payment of penalty under AO proceedings;
- Bank Name and Account Number;
- Transaction Number.

30. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

31. In terms of rule 6 of the Rules, a copy of this order is being sent to the noticees and also to the Securities and Exchange Board of India.

Date: July 29, 2022
Place: Mumbai

JAI SEBASTIAN
ADJUDICATING OFFICER