BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: - SD/AO/99/2010]

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

Against

MAHENDRA GOPAL GORIVALE

[PAN: Not Available]

In the matter of

M/s. MEGA CORPORATION LTD.

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had conducted investigation into the dealings in the scrip of Mega Corporation Limited (hereinafter referred to as **'MCL'**) for the period January 2005 to September 2005.

2. During the course of the said investigation, the Investigating Authority (IA) of SEBI issued summons/notices dated February 2, 2007, February 15, 2007, March 9, 2007 & March 16, 2007 to Mahendra Gopal Gorivale (hereinafter referred to as the **'Noticee'**) requiring it to furnish certain information/documents. The Noticee had duly received the said summonses. It is alleged that the Noticee failed to comply with the said summonses.

3. SEBI has initiated adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the

'SEBI Act'), against Mahendra Gopal Gorivale on account of his failure to furnish to the IA appointed by SEBI, information/documents regarding his dealings in the scrip of MCL by failing to comply with the summons and cooperate with the IA.

APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Babita Rayudu was appointed as the Adjudicating Officer vide order of SEBI dated June 19, 2007 under Section 15-I of the Act r/w Rule 3 of SEBI (Procedure for holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the Adjudication Rules) to inquire into and adjudge under Section 15 A (a) of the SEBI Act, the alleged violation of the provisions of Section 11C (2) & 11C (3) of the SEBI Act by the Noticee.

5. Subsequently, the then Adjudicating Officer was sent on deputation and thereafter the undersigned was appointed as the Adjudicating Officer in the instant matter vide SEBI Order dated November 23, 2007.

SHOW CAUSE NOTICE/ REPLY

6. A show cause notice (SCN) dated April 24, 2008 was issued to the Noticee in terms of the provisions of Rule 4 (1) of the Adjudication Rules seeking reply of the Noticee as to why an inquiry should not be held against the Noticee in respect of the violations alleged to have been committed by him. The SCN was sent through R.P.A.D which returned undelivered. Subsequently, the said SCN was attempted to be served on the Noticee by affixture at his last known address as provided for in the Adjudication Rules. The said SCN was not allowed to be affixed as the Noticee was not found at the said address. In this circumstance, I deem the SCN to have been served on the Noticee.

7. On considering the facts of the case, it was decided to conduct an inquiry in the matter and the Noticee was granted an opportunity of personal hearing. The Hearing Notice was attempted to be served on the Noticee by affixture at its last known address. However, the said hearing notice was not allowed to be affixed as the Noticee was not found at the said address. The inquiry is proceeded with taking into account the facts and material available on record.

CONSIDERATION OF EVIDENCE AND FINDINGS

8. The allegation against the Noticee is that he failed to comply with the said summons/Notices dated February 2, 2007, February 15, 2007, March 9, 2007 & March 16, 2007 issued by the IA and in view of the same, the Noticee was asked to show cause as to why he cannot be made liable to the penalty prescribed under Section 15A (a) of the SEBI Act. In this regard it is pertinent to note that Section 11C (2) of the SEBI Act empowers the IA to require a manager, managing director, officer and other employee of a company and every intermediary or any person associated with the securities market to furnish such information or to preserve and produce all the books, registers, other documents and record of the company or the intermediary, as may be required by the Investigating Authority. Further, Section 11C (3) empowers the Investigating Authority to require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorized by it in this behalf as it may consider necessary if the furnishing of such information or documents are necessary.

9. I find from the records that the queries contained in the said summons dated February 2, 2007, February 15, 2007, March 9, 2007 & March 16, 2007 are as following:

i. Relationship with the company MCL, its promoters, directors & associate companies & all individuals/entities mentioned in Annexure A annexed to the SEBI letter dated February 13, 2007 available on the record.
ii. Details of purchase, sale & off market transactions done in the scrip of MCL for the period from January 01, 2005 to December 31, 2005 including date, name of broker, name of counter party, quantity & price and also copies of demat accounts for the said period.
iii. All bank account statements for the period January 01, 2005 to December 31, 2005 showing details of payments made/received for the purchase/sale of shares of MCL & financing received, if any, for the purchase of shares.

10. The Noticee was required to furnish the said details by February 12, 2007, February 23, 2007, March 16, 2007 & March 23, 2007 for summons dated February 2, 2007, February 15, 2007, March 9, 2007 & March 16, 2007 respectively. The Noticee was also informed that his personal appearance was not required at that stage of inquiry and providing information would be considered as compliance of summons.

11. It is noted that all the said summonses were received by the Noticee as the acknowledgments of the same are available on record. There is sufficient proof of delivery of summonses. However, there is nothing on record which shows that the Noticee had complied with the said summonses. The Noticee failed to provide even basic details to the IA. The said action/inaction of the Noticee is clearly indicative of his non co-operative attitude.

12. In this regard, it is pertinent to mention that timely submission of information is very important for concluding Investigation proceedings

and non co-operation by an entity can be detrimental to the interest of investors and securities market on account of any delay in the investigation. As the Noticee failed to respond to the SCN and other notices sent during the course of adjudication proceedings, on the basis of the facts of the case and on perusal of the evidence available on record it is concluded that the Noticee failed to provide the required information to the IA. In view of the same, I find the Noticee guilty and his failure to comply with the summonses/notices attracts penalty under Section 15A (a) of the SEBI Act, 1992.

13. Any non compliance of the summons of the Investigating Authority hampers the process of investigation. The Hon'ble SAT has also recognized the importance of compliance of summons and in the matter of ***DKG Buildcon Pvt. Ltd. v. SEBI***[1]**,** it has held: *"…It is of utmost importance that every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations. If persons are allowed to flout the summons issued to them during the course of the investigations, the Board as the watchdog of the securities market will not be able to perform its duties in protecting the interests of the investors and safeguarding the integrity of the securities market."*

14. In view of the above, the next issue for consideration is as to what would be the monetary penalty that can be imposed on the Noticee for the violation of provisions of Section 11C (2) & (3) of the SEBI Act, 1992.

15. The Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund***[2] interalia held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non*

[1] SAT Appeal No. 106 of 2006, Date of decision: 7.1.2009
[2] [2006] 68 SCL 216(SC)

of violation and the intention of parties committing such violation becomes totally irrelevant. Thus, as the violation of statutory obligations by the Acquirers has been established, I hold that they are liable for monetary penalty."

16. The Hon'ble SAT in ***Mayfair Paper & Board Pvt. Ltd., Vs SEBI***[3] has held that failure to furnish information to the Investigating Authority of SEBI shall attract the penalty prescribed under Section 15A of the SEBI Act.

17. The provisions of Section 15A (a) of SEBI Act as prevailing at the relevant time is reproduced hereunder :

"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, 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;"*

18. While imposing monetary penalty 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."

19. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the

[3] SAT Appeal No.95/2004

default. Further, the amount of loss caused to an investor or group of investors also cannot be quantified on the basis of the available facts and data. However, with regard to the repetitive nature of the default it is noted that the Investigating Authority had issued four summonses to the Noticee and the Noticee failed to comply with all the said summonses. The failure on the part of the Noticee to furnish necessary information to SEBI despite issuance of multiple summonses indicates that the default committed by the Noticee is repetitive in nature. The Hon'ble SAT in the matter of ***Nokia Finance International Pvt. Ltd. v. SEBI***[4] held: *"The fact that NFI received three summonses and chose not to supply the information amounts to committing the same offence repeatedly. The penalty imposed by the Adjudicating Officer, therefore, is justified and legitimate in this particular case and therefore the appeal should be dismissed and the impugned order should be upheld.* The failure on the part of the Noticee in providing the information has to be viewed in this context.

ORDER

20. Considering the facts and circumstances of the case it is established that the Noticee failed to provide required information to the Investigating Authority of SEBI. Therefore, in exercise of the powers conferred upon me u/s 15- I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.5,00,000/- (Rupees Five Lakhs Only) under the provisions of Section 15 A (a) of the SEBI Act, 1992 on the Noticee viz. Mahendra Gopal Gorivale. I am of the view that the said penalty is commensurate with the violation committed by the Noticee.

21. The penalty shall be paid by way of demand draft drawn 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

[4] SAT Appeal No: 114 of 2005

shall be forwarded to the Division Chief, Investigation Department (ID2), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to Mahendra Gopal Gorivale and also to Securities and Exchange Board of India.

Date: August 6, 2010 **SANDEEP DEORE**

Place: Mumbai **ADJUDICATING OFFICER**