

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/AO/DSR/BKM/RG/563-564/2015]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF
INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY
ADJUDICATING OFFICER) RULES, 1995**

In respect of:

- 1. GMR Holdings Private Limited (PAN:AACCR1554R)**
- 2. Shri Srinivas Bommidala (PAN:ADAPB2985L)**

In the matter of

**PARRYS SUGAR INDUSTRIES LIMITED
(FORMERLY KNOWN AS GMR INDUSTRIES LIMITED)**

1. Based on the shareholding pattern filed by certain companies with the Bombay Stock Exchanges (BSE) and certain observations made by it, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an examination in the scrip of Parrys Sugar Industries Limited (formerly known as GMR Industries Limited and hereinafter referred to as 'Parrys Sugar / Company') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'Act') and various Rules and Regulations made there under.
2. Upon examination, it was, *inter alia*, observed that GMR Holdings Private Limited, Promoter entity of Parrys Sugar, along with the Persons Acting in Concert (PACs) namely, Shri Srinivas Bommidala (hereinafter collectively referred to as the Noticees) had acquired 1,02,547 shares, 1,78,000 shares, 1,26,134 shares and 1,09,936 shares of Parrys Sugar on May 06, 2009, May 07, 2009, May 08, 2009 and May 11, 2009 respectively constituting 0.51%, 0.89%, 0.63% and 0.55%, respectively, of the total

equity capital of Parrys Sugar through bulk deal. However, it was observed that no public announcement was made for the said acquisition by them as required under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations').

3. SEBI has, therefore, initiated adjudication proceedings against the Noticees for the alleged violation of the provisions of Regulation 11(2) of SAST Regulations.

Appointment of Adjudicating Officer:

4. The undersigned has been appointed as the Adjudicating Officer vide SEBI Order dated March 26, 2014 under section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Rules') to inquire into and adjudge under Section 15H(ii) of the Act against the Noticees for the alleged violation of the provisions of law.

Show Cause Notice, Reply and Personal Hearing:

5. A common show cause notice dated July 08, 2014 (hereinafter referred to as the SCN) was issued to the Noticees in terms of Rule 4 of the Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of provisions of law. Vide letter dated July 24, 2014, the Noticees acknowledged the receipt of the said SCN and further requested time till August 16, 2014 to file their replies in the matter. Further, vide email dated August 13, 2014, the Noticees requested for additional time till September 16, 2014 to file their replies in the matter. The said request was acceded to and accordingly vide letter dated September 15, 2014, the Noticees submitted their common reply in the matter. Thereafter, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the said Rules, an opportunity of personal hearing was granted to the Noticees on December 14, 2015. The Authorized Representatives (ARs) attended the hearing on the scheduled date on behalf of the Noticees and made oral submissions. The ARs also

reiterated the submissions made by the Noticees vide their common reply dated September 15, 2015.

Consideration of Issues, Evidence and Findings:

6. I have carefully perused the charges leveled against the Noticees as per the SCN, written submissions made by the Noticees and the material as available on record. The issues that arise for consideration in the present case are:

(a) Whether the Noticees have violated the provisions of Regulations 11(2) of the SAST Regulations?

(b) Do the violations, if any, on the part of the Noticees attract any penalty under Section 15H(ii) of the Act?

(c) If yes, what should be the quantum of penalty?

7. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SAST Regulations which read as under:-

11(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 that

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%).

8. I find from the SCN that based on the shareholding pattern filed by certain companies, including Parrys Sugar, SEBI had carried out an examination in the said scrip. Upon examination, it was revealed that GMR Holdings Private Limited, being promoter of Parrys Sugar had acquired shares of company through bulk deal beyond the permissible limit on various occasions. The details of acquisition made through bulk deals are as under:

Name of Acquirer	Date of Acquisition	Number of Shares Acquired	% of shareholding Acquired
GMR Holdings Private Limited	May 06, 2009	102547	0.51%
GMR Holdings Private Limited	May 07, 2009	178000	0.89%
GMR Holdings Private Limited	May 08, 2009	126134	0.63%
GMR Holdings Private Limited	May 11, 2009	109936	0.55%

9. From the above table, it is noted that GMR Holdings Private Limited, Promoter entity of Parrys Sugar, along with the PAC as mentioned in para 2 above, had acquired 1,02,547 shares, 1,78,000 shares, 1,26,134 shares and 1,09,936 shares of Parrys Sugar on May 06, 2009, May 07, 2009, May 08, 2009 and May 11, 2009 respectively constituting 0.51%, 0.89%, 0.63% and 0.55%, respectively, of the total equity capital of Parrys Sugar through bulk deal. Upon the said acquisition, the promoter namely, GMR Holdings

Private Limited along with the PAC were required to make a public announcement in terms of the Regulation 11(2) of the SAST Regulations as the said acquisition was through bulk deals. However, it was alleged that the Noticees had not made the public announcements. The shareholding details of the promoter and promoter group (acquirers) from quarter ended March 2009 to September 2011 are as under:

Scrip name	Parrys Sugar Industries Limited.	
Quarter ending	% promoter group holding during the quarter ending.	Increase (%)
Mar 09	70.77	
Jun 09	74.85	4.08%
Sept 09	74.85	
Dec 09	74.85	
Mar 10	74.85	
Jun 10	74.85	
Sept 10	65.00	
Dec 10	65.00	
Mar 11	65.00	
Jun 11	65.00	
Sept 11	65.00	

- 10.** Therefore, it was alleged in the SCN that the Noticees had violated the provisions of Regulation 11(2) of the SAST Regulations. Vide common reply dated September 15, 2014, the Noticees made submissions in the matter and stated that GMR Holdings Pvt. Ltd is a company which was incorporated under the Companies Act, 1956 and Shri Srinivas Bommidala was a director of GMR Holdings Pvt. Ltd at the time of the open market acquisitions. When GMR Holdings Pvt. Ltd had made the said acquisitions in the scrip of Parrys Suagr, the Noticees were the only persons constituting the “Promoter and Promoter Group” of the Company as per the shareholding pattern filed by the company with the NSE and the BSE in accordance with the Listing Agreement. As per the shareholding pattern on March 31, 2009, GMR Holdings Pvt. Ltd was holding 1,41,25,976 shares constituting 70.77% of the Company’s paid up equity share capital and Shri Srinivas Bommidala was holding 992 shares of the Company. Subsequently,

pursuant to a share purchase agreement dated April 25, 2010 between GMR Holdings Pvt. Ltd and E.I.D. – Parry (India) Limited, GMR Holdings Pvt. Ltd had sold 52.82% of its shareholding in the Company to E.I.D. – Parry (India) Limited at a price of Rs. 54.85 per equity share. Pursuant to the stake sale, the mandatory open offer under the Takeover Regulations was triggered. Copies of the letter of offer from E.I.D. – Parry (India) Limited to the shareholders of the company and the post-offer public announcement issued by E.I.D. – Parry (India) Limited in relation to the open offer have been provided by the Noticees in support of their submissions. Following the consummation of the stake sale and the mandatory open offer by E.I.D. – Parry (India) Limited in August 2010, GMR Holdings Pvt. Ltd and Shri Srinivas Bommidala had ceased to be members of the “Promoter and Promoter Group” of the Company. The Noticees further submitted that as per the shareholding pattern for the quarter ended June 30, 2014 GMR Holdings Pvt. Ltd is holding 22.03% of the paid up equity capital of the company and E.I.D. – Parry (India) Limited holds 65% of the paid up equity capital of the company and is the only “Promoter and Promoter Group” of the Company. Shri Srinivas Bommidala holds 992 shares of the Company.

- 11.** With respect to the acquisitions made by GMR Holdings Pvt. Ltd in May 2009, the Noticees submitted that GMR Holdings Pvt. Ltd desired to consolidate its controlling interest in Parrys Sugar by purchasing additional shares of the company in the open market in compliance with the SEBI Takeover Regulations. The intention behind the said acquisition was to increase the shareholding in the company in compliance with the proviso to Regulation 11(2) of the SAST Regulations so as to not cross the 75% threshold specified therein. Accordingly, GMR Holdings Pvt. Ltd had instructed its broker India Infoline Ltd to purchase shares of the company on normal segment of the stock exchange from April 29, 2009 to May 27, 2009, including the open market acquisitions on May 06, 2009, May 07, 2009, May 08, 2009 and May 11, 2009 subject to the proviso to Regulation 11(2) of the Takeover Regulations. Pursuant to these open market acquisitions, GMR Holdings Pvt. Ltd acquired an aggregate of 814312 shares of the company constituting 4.07% of the Company’s paid up equity

share capital thereby increasing the shareholding of the Noticees in the company from 70.77% to 74.84% of the paid up equity capital of the company. The said open market acquisitions were within the 5% creeping acquisition limit set out in the proviso to the said regulation. In addition, the said acquisitions did not increase the shareholdings of the Noticees beyond the 75% threshold set out the sub-clause (ii) of the proviso to Regulation 11(2) of the SAST Regulations.

- 12.** The Noticees also submitted that the interpretative circular dated August 06, 2009 bearing ref. no. CFD/DCR/TO/CIR-1/2009 /06/08 specifies that an acquirer who holds between 55% and 75% of the shares or voting rights of the target company (together with persons acting in concert with him), "..... may acquire additional shares or voting rights upto a maximum of 5% voting rights in the target company in one or more tranches, without any restrictions on the time frame within which the same can be acquired....". Accordingly, in terms of the said circular, the proviso to Regulation 11(2) of the SAST Regulations permits an acquirer to acquire shares upto the entire permitted acquisition limit of 5% of a target company's share capital in a single tranche i.e. through a single trade. Therefore, it is the case of the Noticees that the language of the proviso to Regulation 11(2) prohibiting acquisitions through bulk deals (i.e. acquisition of more than 0.5% of a target company's share capital on the normal market segment on a single day) ceases to be applicable.
- 13.** The Noticees submitted that due to inadvertent calculations, the quantum of shares acquired by GMR Holdings Pvt. Ltd pursuant to the open market Acquisitions on each specified day exceeded 0.5% of the paid up equity capital of the Company, thereby, constituting open market acquisitions on each specified day to be a bulk deal in terms of SEBI Circular dated January 14, 2004. Further, it is the case of the Notices that merely because Shri Srinivas Bommidala was a promoter of the company along with GMR Holdings Pvt. Ltd at the time of the open market acquisitions does not establish the Shri Srinivas Bommidala was a "person acting in concert" with GMR Holdings Pvt. Ltd in connection with the said acquisitions. Shri Srinivas

Bommidala did not have any agreement or understanding with GMR Holdings Pvt. Ltd in connection to the said acquisitions. The said acquisitions were undertaken solely by GMR Holdings Pvt. Ltd and Shri Srinivas Bommidala had a limited professional role in the capacity of being the director of GMR Holdings Pvt. Ltd at the relevant time.

14. I have carefully perused the material available on record and the submissions made by the Noticees. I note that Regulation 11(2) of the SAST Regulations makes it clear that any acquirer together with PACs holding 55% but less than 75% of the shares or voting rights in a company acquires any additional shares or voting rights together with PACs in that company, has to make a public announcement. However, the second proviso to Regulation 11(2) of the SAST Regulations makes an exception to the said Regulations. It states that an acquirer along with PACs can acquire up to 5% additional shares or voting rights subject to that the said 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*.
15. SEBI, vide Circular bearing No. SEBI/MRD/SE/Cir-7/2004 dated January 14, 2004, had stipulated in para 1.1 of the said Circular that a 'bulk deal' constituted of "all transactions in a scrip (on the exchange) where total quantity of shares bought /sold is more than 0.5% of the number of equity shares of the company listed on the exchange". Thus, the quantitative limit of 0.5% could be reached through one or more transactions executed during day in the normal market segment.
16. I find that in the present case, the acquirer viz. GMR Holdings Pvt. Ltd along with the PAC had acquired shares of the Company during the relevant period. I find that the said acquisition did cross the quantitative limit of 0.5% of the number of equity shares of the company listed on the exchange which amounted to a bulk transaction (details as given in paras 8 & 9 above).As bulk deal transactions / acquisitions are not exempt from the obligation of making an open offer, the Noticees were required to make a public announcement upon acquiring the said shares. I find that the Noticees have

admitted the acquisition of shares in the company through bulk deal and that the said acquisitions did cross 0.50% of the equity share capital of the company on all the four occasions .

17. I do not find merit in the submissions of the Noticees with respect to the circular dated August 06, 2009 inasmuch as it only clarifies the second proviso to regulation 11(2) of the SAST Regulations and does not deal with the conditions to the same as mentioned in para 2 of the said circular itself which states "subject to the conditions as specified in this newly inserted proviso.....". In the light of the same, the contention of the Noticees that the prohibition on acquisition through bulk deals ceased to be applicable is devoid of merit and the same is untenable.

18. Further, I do not find any merit in the submissions of the Noticees that merely because Shri Srinivasan appeared in the promoter / promoter group of the company at the relevant time when the acquisitions were made by GMR Holdings Pvt. Ltd, he cannot be treated as a PAC and cannot be alleged of the said violation inasmuch as it is a basic principal that promoter group is a homogenous class and therefore, the entire group is considered to have acted together unless proved otherwise. I find that the Regulation 11(2) of the SAST Regulations makes it clear that once acquisition crosses the prescribed limit and the same comes within the definition of bulk deal, the same should be followed by a public announcement. Here, I would cite the judgement passed by the Hon'ble Securities Appellate Tribunal in the case Rajesh Toshniwal Vs. SEBI &Ors dated June 01, 2012 wherein it was observed as under:

"It is the basic principle of Corporate Law that promoter group is a homogenous class. It is a normal practice to club the entire promoter group into one class unless otherwise proved by the Acquirer. The Acquirers have always filed their shareholding as belonging to the promoter group. In the disclosures made to the stock exchanges and the Board, the promoters' shareholding consisted of the group as a whole. Even though there is a mention in the offer document that the acquirers by themselves are responsible to the offer to the exclusion of other promoter group the conduct

of the promoters as a whole suggests that their behaviour was always united.....

The promoters, as a rule, belong to a homogenous group unless otherwise proved by attendant circumstances to be otherwise.....”

19. At this juncture, I would like to cite the order passed by the Hon'ble Supreme Court of India in the case of Swedish Match AB &Anr. Vs SEBI dated August 25, 2004, wherein, it was held as follows: “Indisputably, the purport and object of which a regulation is made must be duly fulfilled. Public announcement is at the base of Regulations 10, 11 and 12. Except in a situation which would bring the case within one or the other 'exception clause', the requirement of complying with the mandatory requirements to make public announcement cannot be dispensed with...”

20. In view of the above, I conclude that the Noticees namely, GMR Holdings Pvt. Ltd (Acquirer) and Shri Srinivas Bommidala (PAC) by failing to make public announcement, upon acquiring shares, through bulk deal have violated the provisions of Regulation 11(2) of the SAST Regulations which makes them liable for monetary penalty under Section 15H(ii) of the Act which reads as under:

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

(i)

(ii) *make a public announcement to acquire shares at a minimum price; or*

(iii).....

(iv).....

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

21. At this juncture, I would like to note the observations of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was observed that “*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...”.

22. While determining the quantum of penalty under Section 15H(ii) of the Act, it is important to consider the factors stipulated in Section 15J of the Act, 1992 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.”*

23. I observe, from the material available on record, that it is not possible to quantify, any gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default of the Noticees. The defaults are repetitive in nature. I find that the Noticees by not making public announcements on acquiring shares of the Company viz. Parrys Sugar Industries Limited, have not only failed to comply with the provisions of SAST Regulations but have also deprived the shareholders of the exit opportunity at the relevant times which has to be viewed seriously.

ORDER

24. In view of the above, after considering all the facts and circumstances of the case and in exercise of the powers conferred under Section 15-I of the Act and Rule 5 of Rules, I hereby impose a monetary penalty of `25,00,000/- (Rupees Twenty Five Lakh Only) on the Noticees viz. GMR Holdings Private Limited (Acquirer) and Shri Srinivas Bommidala (PAC) under Section 15H(ii) of the Act, to be paid jointly and severally. In my view, the penalty is commensurate with the defaults committed by the Noticees.

- 25.** The Noticees 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 Deputy General Manager, Corporate Finance Department, DCR-I, SEBI, SEBI Bhavan, Plot No. C– 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
- 26.** In terms of Rule 6 of the said Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: December 23, 2015

Place: Mumbai

**D.SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER**