BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : Order/GR/RK/2020-21/10153]

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

Genie Commercial Ventures Pvt. Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India ("**SEBI**") received a letter dated September 19, 2019 from Vistara ITCL (India) Ltd. ('**Vistara**'), a SEBI registered Debenture Trustee in which Vistara had provided a list of companies from which it had not received till that date the Half Yearly Communication ('**HYC'**) as per Regulation 52(4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, ('**LODR Regulations**') for the half year ended March 31, 2019. The aforesaid list of companies included Genie Commercial Ventures Pvt. Ltd. ('**Noticee**/**Company**'). In view of the aforesaid information, SEBI conducted an examination and had observed *prima facie* violation of Regulations 52(1), 52(4) and 52(5) of LODR Regulations by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer ('**AO**') vide order dated June 10, 2020, under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter, "**SEBI Act**") and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, **Rules**) to enquire into and

adjudge under Section 15A(b) the alleged violations of Regulations 52(1), 52(4) and 52(5) of LODR Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated August 28, 2020 (hereinafter, "**SCN**") was issued by the AO to the Noticee under Rule 4 of the Rules, calling it to show cause as to why an inquiry should not be held against it and penalty be not imposed on it under Section 15A(b) of the SEBI Act for the violations as specified in the SCN and reproduced herein below:

(a) Failure to submit financial results of the company for the half year ended March 31, 2019 to the exchange, which is not in compliance of Regulation 52(1) of the LODR Regulations.

(b) Failure to disclose the line items as specified under the Regulation 52(4) of LODR Regulations to the exchange.

(c) Failure to submit the certificate signed by the Debenture Trustee taking note of the contents prescribed under Regulation 52(4) of LODR Regulations to the exchange, thereby non-compliance with Regulation 52(5) of LODR Regulations.

4. The SCN was sent via digitally signed email to the Noticee on its email obtained from MCA website. The SCN was duly delivered to the Noticee, however no reply was received from the Noticee.

5. Subsequently, in the interest of natural justice, the Noticee was granted an opportunity of personal hearing on October 20, 2020 vide Hearing Notice dated October 06, 2020. The said Hearing Notice was sent vide digitally signed email dated October 06, 2020 and was duly delivered to the Noticee. It is pertinent to mention here that vide the aforesaid notice it was clearly indicated that in case of failure to appear before the undersigned, the case would be proceeded with ex-parte on the basis of the material available on record.

However, the Noticee neither appeared for the said hearing nor filed any reply in this regard.

6. Considering the fact that the Noticee has neither filed any reply to the SCN, nor availed the opportunity of personal hearing despite being granted opportunities for the same, I am of the view that the Noticee has nothing more to submit, and in terms of rule 4(7) of the Rules, the matter can be proceeded ex-parte on the basis of material available on record.

ISSUES FOR CONSIDERATION AND FINDINGS

7. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are:

   a. Whether the Noticee has violated the provisions of Regulation 52(1), 52(4) and 52(5) of the LODR Regulations?
   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 LODR Regulations, which reads as under:

Regulation 52(1)

"The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty-five days from the end of the half year to the recognised stock exchange(s).

Provided that in case of entities which have listed their equity shares and debt securities, a copy of the financial results submitted to stock exchanges shall be provided to Debenture Trustees on the same day the information is submitted to stock exchanges."

Regulation 52(4)

"The *listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:*

(a) credit rating and change in credit rating (if any);

(b) asset cover available, in case of non-convertible debt securities;

(c) debt-equity ratio;

(d) previous due date for the payment of interest / dividend for non-convertible redeemable preference shares / repayment of principal of non-convertible preference shares / non-convertible debt securities and whether the same has been paid or not; and,

(e) next due date for the payment of interest/ dividend of non-convertible preference shares /principal along with the amount of interest / dividend of non-convertible preference shares payable and the redemption amount;

(f) debt service coverage ratio;

(g) interest service coverage ratio;

(h) outstanding redeemable preference shares (quantity and value);

(i) capital redemption reserve/debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India.

Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators."

Regulation 52(5)

"The listed entity shall within seven working days from the date of submission of the information required under sub-regulation (4), submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents"

Prior to May 07, 2019, the aforesaid sub-regulation 5 of Regulation 52 of SEBI (LODR) Regulations, 2015 read as "While submitting the information required under sub-regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents".

FINDINGS

9. The first issue for consideration is whether the Noticee has violated Regulation 52(1), 52(4) and 52(5) of the LODR Regulations.

10. It may be noted that Regulation 52(1) of LODR Regulations provides for submission of the financial results within forty-five days from the end of the half year. Further, Regulation 52(4) provides for disclosure of certain line items along with the half yearly / annual financial results, while Regulation 52(5) provides for submission of a Certificate signed by the Debenture Trustee taking note of the contents prescribed under Regulation 52(4).

11. From the fact of the case, I observe that in pursuance of the reference of Vistra, SEBI sought information from Exchanges (NSE and BSE) regarding the compliance status of the Noticee with respect to Regulation 52(1), 52(4) and 52(5) of LODR Regulations for the half year ended March 31, 2019. From the submissions of the BSE vide its emails dated October 07, 2019 and March 11, 2020, it was observed that the company has not complied with provisions of Regulation 52(1), 52(4) and 52(5) of LODR Regulations.

12. Based on the aforesaid findings, I conclude that the Noticee has violated the provisions of Regulations 52(1), 52(4) and 52(5) of LODR Regulations.

13. 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*".

14. 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 52(1), 52(4) and 52(5) of the LODR Regulations. The provisions of Section 15A (b) of the SEBI Act, 1992 read as under:

SEBI Act 15A - "Penalty for failure to furnish information, return, etc. –

If any person, who is required under this Act or any rules or Regulations made there under-

(a) ……

(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less".*

15. 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.

16. 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, 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, the facts of the case clearly bring out the default made by the Noticee. I note that the Noticee had failed to make timely disclosures and thereby has violated Regulation 52(1), 52(4) and 52(5) of the LODR Regulations.

ORDER

17. 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 3,00,000/-** (Rupees Three lacs only) on the Noticee viz. Genie Commercial Ventures Pvt. Ltd. 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.

18. 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.

19. 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-3), 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	

20. 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.

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

Date : January 25, 2021 **G Ramar**

Place : Mumbai **Adjudicating Officer**