BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/AA/AO/130-140/2018-19]

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

1. **Shri Fateh Lal Shah (PAN: AEOPS0905E)**
2. **Shri Jitendra Yadav (PAN: AHUPY2091G)**
3. **Shri Alop Chatruvedi (PAN: AYAPC9717A)**
4. **Shri Anil Tiwari (PAN: AMUPT7149R)**
5. **Shri Anil Gagrani (PAN: Not Available)**
6. **Shri Pushpendra Patel (PAN: CDBPP4291C)**
7. **Shri Shivram Sharma (PAN: BWTPS4434E)**
8. **Shri Govardhan Lal Prajapat (PAN: CKJPP1185L)**
9. **Shri Arjun Geel (PAN: AIOPG0153C)**
10. **Shri Rajesh Mantri (PAN: AJYPM5183H)**
11. **Shri Puppy Chatruvedi (PAN: Not Available)**

In the matter of Shreenath Industrial Investment Company Limited

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FACTS OF THE CASE

1. A Letter of Offer was filed by M/s Winsome Retail and Marketing Private Limited to acquire 26% equity shares of Shreenath Industrial Investment Company Limited (hereinafter referred to as '**SIICL/Target Company'**). The public announcement for the same was made on March 13, 2014. The shares of the

Target Company were listed on the Ahmedabad Stock Exchange (hereinafter referred to as '**ASE**') and subsequently were listed on the Bombay Stock Exchange with effect from July 16, 2015.

2. While examining the letter of offer, Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that Shri Fateh Lal Shah (hereinafter referred to as '**Noticee 1**'), Shri Jitendra Yadav (hereinafter referred to as '**Noticee 2**'), Shri Alop Chatruvedi (hereinafter referred to as '**Noticee 3**'), Shri Anil Tiwari (hereinafter referred to as '**Noticee 4**'), Shri Anil Gagrani (hereinafter referred to as '**Noticee 5**'), Shri Pushpendra Patel (hereinafter referred to as '**Noticee 6**'), Shri Shivram Sharma (hereinafter referred to as '**Noticee 7**'), Shri Govardhan Lal Prajapat (hereinafter referred to as '**Noticee 8**'), Shri Arjun Geel (hereinafter referred to as '**Noticee 9**'), Shri Rajesh Mantri (hereinafter referred to as '**Noticee 10**') and Shri Puppy Chatruvedi (hereinafter referred to as '**Noticee 11**') in the past had violated the provisions of Regulation 3(1) and Regulation 4 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**'). The aforesaid entities are hereinafter collectively referred to as the '**Noticees**'. In view of the non-compliances observed, SEBI initiated adjudication proceedings against the Noticees under Section 15H(ii) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Prasad Jagadale was appointed as the Adjudicating Officer vide communique dated February 22, 2016 under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules**') to inquire into and adjudge under Section 15H(ii) of the SEBI Act, the

violation of Regulation 3(1) and 4 of the SAST Regulations, 2011 alleged to have been committed by the Noticees.

4. Pursuant to the transfer of Shri Prasad Jagadale, Shri Suresh Gupta was appointed as Adjudicating Officer. Thereafter, vide appointment order dated May 18, 2017, the adjudication proceedings were transferred to the undersigned which was intimated vide communique dated July 24, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as '**SCN**') dated October 06, 2017 was issued to the Noticees under Rule 4 of the Adjudication Rules communicating the alleged violations of SAST Regulations, 2011. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15H(ii) of the SEBI Act for the alleged contravention of Regulations 3(1) and Regulation 4 of SAST Regulations, 2011.

6. The details in respect of violations allegedly committed by the Noticees are as given below:

   a) It was observed that the Noticees collectively acquired a total of 55,000 shares representing 27.50% of the then share capital of SIICL on March 30, 2013. Upon acquisition of the aforesaid shares, the Noticees were managing the affairs of SIICL and thus, were in control of the Target Company.

   b) As the afore-mentioned acquisition of 27.50% of shares entitled the Noticees to exercise 25% or more of the voting rights of SIICL, they were required to make a public announcement of an open offer as stipulated under Regulation 3(1) of the SAST Regulations, 2011. Further, the afore-mentioned transaction dated March 30, 2013 also resulted in the

Noticees acquiring control over SIICL and consequently the Noticees were also required to make public announcement of an open offer as stipulated under Regulation 4 of the SAST Regulations, 2011.

c) It was alleged that the Noticees failed to make a public announcement of an open offer for the aforesaid acquisition of 27.5% shares of SIICL and thereby violated Regulations 3(1) and Regulation 4 of the SAST Regulations, 2011.

Sr. No.	Regulation/sub-regulation	Number of shares acquired	Status of compliance
1	3(1) & 4 of SAST Regulations, 2011	55,000 (representing 27.50% of share capital of SIICL)	Not complied

7. The SCN issued to the Noticees was sent via "Registered Post Acknowledgement Due". However, the SCN issued to Noticee1, Noticee 3, Noticee 4, Noticee 6, Noticee 7, Noticee 8, Noticee 9 and Noticee 11 returned undelivered while the delivery status of SCN to Noticee 2, Noticee 5 and Noticee 10 could not be ascertained. In view of the same, a reminder letter dated November 06, 2017 enclosing a copy of the SCN was sent to the Noticees. However, the same could not be delivered and the attempt to affix the SCN at the last known addresses of the Noticees was also not successful. In view of the same and in compliance with the Adjudication Rules, a notice was published in English and Hindi newspapers on December 30, 2017 with an intimation to the Noticees to collect the SCN from SEBI's office and reply, if any, may be filed within 15 days of the publication of notice. Further, the Noticees were intimated vide the above publication that a copy of the undelivered SCN is also available on SEBI's website – "www.sebi.gov.in" under the heading "ENFORCEMENT-Unserved Summons / Notices". The Noticees were also a granted an opportunity of personal hearing before the undersigned on January 19, 2018 vide the said publication of notice.

8. Thereafter, letters from Noticee 2, Noticee 3 and Noticee 11 were received wherein they requested for inspection of documents collected in the matter. Noticee 2 also appointed Shri Vikas Bengani as his Authorized Representative ("AR"). On scheduled date of hearing on January 19, 2018, none of the Noticees appeared for availing the hearing opportunity. Subsequently, Noticee 5, Noticee 9 and Noticee 10 vide letters received by SEBI on February 02, 2018 requested for additional time for appointing an AR and for inspection of documents collected in the matter. In view of the above, Noticee 2, Noticee 3, Noticee 5, Noticee 9, Noticee 10 and Noticee 11 were advised vide letter dated February 06, 2018 to complete the inspection of documents in the matter on or before February 20, 2018 in coordination with Enforcement Department of SEBI. Further, all the Noticees were granted final opportunity of hearing in the matter on February 28, 2018. The letters issued to Noticee 1, Noticee 3, Noticee 4, Noticee 6, Noticee 7, Noticee 8 and Noticee 11 returned undelivered (*Noticee 3 and Noticee 11 had sought inspection of documents in the matter*). An attempt was made to affix a copy of letter to the last known address of the said Noticees and it was affixed at the last known address of Noticee 1, Noticee 4, Noticee 7 and Noticee 11.

9. Shri Vikas Bengani, the AR of Noticee 2, completed the inspection of documents on February 23, 2018 and the proceedings of the said inspection of documents is on record. However, the Noticee 3, Noticee 5, Noticee 9, Noticee 10 and Noticee 11 did not contact the Enforcement Department of SEBI for inspection of documents and failed to take inspection of documents in the matter. Meanwhile, Shri Vikas Bengani, the AR of Noticee 2, vide email dated February 20, 2018 had requested for adjourning the hearing scheduled on February 28, 2018. In view of the same, the AR of Noticee 2 was granted final opportunity of hearing on March 06, 2018, which was again postponed to April 19, 2018 at his request.

10. As noted above, the remaining Noticees had been granted a final opportunity of hearing on February 28, 2018. On the scheduled date of hearing, Shri Harsh Kesharia appeared as the AR of the Noticee 5, Noticee 9 and Noticee 10, while the remaining Noticees did not attend the hearing. During the course of hearing, the AR submitted individual letters dated February 23, 2018 from the Noticee 5, Noticee 9 and Noticee 10 and requested for inspection of documents in the matter. The undersigned enquired about the reasons for seeking inspection again when the opportunity of same was already provided vide letter dated February 06, 2018. The undersigned also observed that the SCN could not be delivered via Registered Post to the said Noticees and subsequently a paper publication had to be made for the same. However, the letters submitted by the AR bear the same address of the said Noticees as in the SCN. The undersigned enquired about the reasons for the same. In view of the above, the AR was advised to submit a detailed reply in respect of the queries raised by the undersigned latest by March 07, 2018. Subsequently, the AR vide email dated March 07, 2018 submitted the reply from Noticee 5, Noticee 9 and Noticee 10 wherein it was *inter alia* stated that the said Noticees could not complete inspection of documents as they were availing legal guidance and that the said Noticees were available at the address mentioned in the SCN. In view of the said reply, the AR of the Noticee 5, Noticee 9 and Noticee 10 was advised vide email dated March 23, 2018 to complete the inspection of documents by contacting the Enforcement Department of SEBI. The Noticee 5, Noticee 9 and Noticee 10 were also granted one-time opportunity of hearing on April 19, 2018 vide the above email and their AR was advised to complete the inspection of documents before the said hearing. However, the above Noticees did not contact the Enforcement Department of SEBI for inspection of documents and failed to take inspection of documents in the matter.

11. Subsequently, Shri Vikas Bengani withdrew his name as the AR of the Noticee 2 vide email dated April 17, 2018 citing non – receipt of any instructions from Noticee 2. Further, Shri Harsh Kesharia vide email dated April 17, 2018 also withdrew his name from being the AR of Noticee 5, Noticee 9 and Noticee 10. Thereafter, Noticee 2 vide email dated April 18, 2018 confirmed the name of Shri Balveer Singh Choudhary, Chartered Accountant as the AR for all the Noticees for attending the hearing on April 19, 2018. The AR Shri Balveer Singh Choudhary, during the course of hearing on April 19, 2018, did not dispute the facts of the case stated in the SCN and submitted that the SPA was signed by all the Noticees for sale of shares to the buyer. The AR did not seek any further hearing in the matter.

CONSIDERATION OF ISSUES

12. I have carefully perused the documents available on record. The issues that arise for consideration in the present case are :

a) Whether the Noticees had violated the provisions of Regulations 3(1) and 4 of the SAST Regulations, 2011 as alleged in the SCN dated October 06, 2017?

b) Does the violations, if any, attract monetary penalty under Section 15H(ii) of the SEBI Act?

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

13. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 2011 which read as under:-

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.

Acquisition of control.

4. Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over 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.

FINDINGS

14. Upon perusal of documents available on record, I find that the Noticees had collectively purchased 55,000 shares representing 27.50% of the share capital of SIICL on March 30, 2013. Pursuant to the acquisition of the said shares, the Noticees were managing the affairs of SIICL and thus, were in control of SIICL. As the Noticees had collectively acquired more that 25% of share capital and had taken control of SIICL, they were required to make a public announcement of open offer under Regulation 3(1) and Regulation 4 of SAST Regulations, 2011. However, the Noticees failed to make a public announcement for open offer. This was confirmed vide email dated June 16, 2014 by M/s Intensive Fiscal Services Private Limited, which was the Merchant Banker to the open offer made by M/s Winsome Retail and Marketing Private Limited. I also note that the Noticees have not filed any written reply on the merits of the matter. In this regard, I rely upon the decision of the Hon'ble SAT in the matter of *Classic Credit Ltd. vs. SEBI [2007] 76 SCL 51 (SAT -MUM),* wherein it was *inter alia* held that –*"the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".*

15. I also observe that the AR of the Noticees did not dispute the above facts, which were stated in the SCN, during the hearing held on April 19, 2018. In view of the same, I find that the Noticees have accepted that the violations alleged in the SCN were committed by them. Therefore, I am of the view that the alleged violation of Regulation 3(1) and Regulation 4 of SAST Regulations, 2011 stands established against the Noticees.

16. The Hon'ble Supreme Court of India in the matter of *SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC)* held 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…".* Further, in the matter of *Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010),* the Hon'ble Securities Appellate Tribunal had observed that - "*Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*".

17. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section H(ii) of the SEBI Act, which reads as under:

Penalty for non-disclosure of acquisition of shares and takeovers.[1]

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

…

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

….

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 "

[1] Section 15H(ii) as existing at the time of commission of alleged violation

18. While determining the quantum of penalty under Section 15H(ii) 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."

19. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, on account of default by the Noticees. I note that the AR of the Noticees during hearing had stated that the SPA was signed by all the Noticees for sale of shares to the buyer M/s Winsome Retail and Marketing Private Limited. I also note that the buyer had subsequently made an open offer at a price which included the interest for period of delay caused due to failure of the Noticees to make an open offer.

ORDER

20. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors

mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 6,00,000 (Rupees Six Lakh only) on the Noticees viz. Shri Fateh Lal Shah, Shri Jitendra Yadav, Shri Alop Chatruvedi, Shri Anil Tiwari, Shri Anil Gagrani, Shri Pushpendra Patel, Shri Shivram Sharma, Shri Govardhan Lal Prajapat, Shri Arjun Geel, Shri Rajesh Mantri and Shri Puppy Chatruvedi under the provisions of Section 15H(ii) of the SEBI Act. The amount of the penalty shall be paid jointly and severally by the Noticees. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

21. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

22. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1-DRA III), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051":

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

23. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Shri Fateh Lal Shah, Shri Jitendra Yadav, Shri Alop Chatruvedi, Shri Anil Tiwari, Shri Anil Gagrani, Shri Pushpendra Patel, Shri Shivram Sharma, Shri Govardhan Lal Prajapat, Shri Arjun Geel, Shri Rajesh Mantri and Shri Puppy Chatruvedi and also to the Securities and Exchange Board of India.

Date: May 23, 2018
Place: Mumbai

K SARAVANAN
GENERAL MANAGER &
ADJUDICATING OFFICER