BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/NR/2021-2022/12039]

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:

Rajesh Gupta (PAN: ABMPG60674)
159/1, The Mall, Elite Arcade,
Ludhiana – 141001

In the matter of Himachal Fibres Limited

Background

1. While examining the letter of offer of Himachal Fibres Ltd., (hereinafter referred to as "HFL") Securities and Exchange Board of India (hereinafter referred to as "SEBI"), observed that Mr. Rajesh Gupta, a promoter of HFL , (hereinafter referred to as "Noticee") had not made certain disclosures required under Regulation 7(1A), 7(2) and made delayed disclosures as required under the provisions of Regulation 8(1) and 8(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "Takeover Regulations").

Appointment of Adjudicating Officer

2. SEBI has, therefore, initiated adjudication proceedings against the Noticee and vide order dated April 26, 2013, Sh. D. Ravi Kumar was appointed as Adjudicating officer under Section 15 I of the Securities and Exchange Board of India Act,1992 (hereinafter referred to as 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 'Rules') to inquire into and adjudge under Section 15 I of the Act, for the alleged violation of the provisions of law by the Noticee. It was alleged in the SCN that the Noticee had had not made certain disclosures required

under Regulation 7(1A) and 7(2) and made delayed disclosures as required under the provisions of Regulation 8(1) and 8(2) of Takeover Regulations.

3. Subsequently, undersigned was appointed as Adjudicating officer vide order dated Dec 09, 2014.

Show Cause Notice, Reply and Personal Hearing

4. A show cause notice dated August 23, 2013 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4 of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on it under Section 15A (b) of the SEBI Act for the alleged violation of the provisions of law. It was alleged in the SCN that the Noticee had not made disclosure pertaining to purchase of 1,47,000 shares amounting to 4.89% on May 12, 2008 and sale of 73,500 shares amounting to 2.44% equity share capital / voting rights of HFL on March 12, 2010 and thus violated the provisions of 7(1A), 7(2) of the Takeover Regulations. It was also alleged in the SCN that the Noticee made delayed disclosures pertaining to F.Y. 2009-10 with 8 days of delay and thus violated the provisions of 8(1) and 8(2) of Takeover Regulations

5. The Noticee submitted its reply to the SCN vide letter dated October 10, 2013. Thereafter, in order to conduct inquiry, vide letters dated Feb 15, 2016, Aug 24, 2016, July 19, 2017 & March 07, 2018 an opportunity of personal hearing was granted to the Noticee.

6. The Noticee vide letter dated March 16, 2018 acknowledged the receipt of the hearing notice dated March 07, 2018 and further vide letter dated March 23, 2018 requested to reschedule the date of hearing and suggested few dates during the Month of April 2018. The request of the Noticee was acceded to and personal hearing was scheduled on April 13, 2018 which was attended by the Authorized Representative (hereinafter referred to as “AR”) of the Noticee and the AR reiterated the submissions already made and submitted that written submissions would be made in 4-5 days, however no such submissions were received. Vide letters dated October 14, 2019 another opportunity of additional submission was

given to the notice. The noticee vide letter dated October 31, 2019 sought 15 days' time to submit reply. However, no reply was received. Vide letter dated January 27, 2020 and January 27, 2021 opportunity of making additional submission was again given to the noticee. The notice vide letter dated March 30, 2021 submitted additional submissions.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges levelled against the Noticee in the SCN, written submissions made and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

I. Whether the Noticee has violated Regulation 7(1A), 7(2),8(1) and 8(2) of the SAST Regulations, 1997?

II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the Act?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the Act?

8. Before proceeding further, I would like to refer to the relevant provisions of the *SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997* which read as under:

Acquisition of 5 per cent and more shares or voting rights of a company under SAST Regulations, 1997

7(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation. —For the purposes of sub-regulations (1) and (1A), the term acquirer shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

7(2) The disclosures mentioned in sub-regulations (1) 3[and (1A)] shall be made within two days of-

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be

Continual disclosures under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

8(1) Every person, including a person mentioned in regulation 6 who holds more than [fifteen] per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.

8(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

9. From the SCN, I note that the Noticee, a promoter of HFL, on May 12, 2008 bought 1,47,000 shares amounting to 4.89% and on March 12, 2010 sold 73,500 shares amounting to 2.44% equity share capital / voting rights of HFL and did not make disclosure and thus allegedly violated the provisions of Regulation 7(1A) and 7(2) of SAST Regulations.

10. Further, I also note that Noticee made yearly disclosure pertaining to F.Y. 2009-10 with 8 days of delay and thus allegedly violated the provisions of Regulation 8(1) and 8(2) of SAST Regulations.

Submissions made by the Noticee:

11. The Noticee, vide his letter dated October 10, 2013 submitted inter-alia as under:

(i) That the HFL was formally declared Sick Company under Section 3(1)(o) of the Sick Industrial Companies Act ("SICA") (Case No. 219/2001) on Sep 18, 2007.

(ii) That the operating Agency submitted a Draft Rehabilitation Scheme ("DRS" or "Scheme") to the Board for Industrial and Financial Reconstruction ("BIFR") on Nov 20, 2008.

(iii) That BIFR sanctioned the Scheme on July 21, 2009.

(iv) That BIFR discharged the company from the purview of SICA and protection under SICA and the Scheme was revoked on Oct 13, 2010.

(v) That the Scheme sanctioned by BIFR on July 21, 2009 vide clause 13.7 provided certain reliefs and exemptions from SEBI as a measure of revival of the company which was declared sick by the BIFR.

(vi) Clause 13.7 of the Scheme reads as:

"(i) To exempt the company, its promoters/directors/associates from eh provisions of SEBI(SAST) Regulations, 1997 for issuance of fresh share capital towards funds inducted/ to be inducted for revival during the period of rehabilitation.

(ii) To consider waiver of all penalties for the non-compliances/ delays as per the regulations of the SEBI to the company and the promoters/directors".

(vii) That the BiFR had vide its order dated July 21, 2009 sanctioned this DRS with immediate effect as on that date which gave effect to the sub-clause, the relevant words of the order are *"The Bench observed that there is general consensus in respect of the revival scheme and sanctioned the rehabilitation scheme (SS-09) of HFL with the amendments as in para 5 of these proceedings u/s 19(3) and 18(4) of SICA for immediate implementation by all concerned."*

(viii) That since the scheme was sanctioned on July 21, 2009 and as per clause 13.7 of the scheme had provided for waive of all penalties for the non-compliances / delays as per the SEBI regulations to the company and its

promoters/directors, the defaults that occurred in the year 2008 stood waived vide these provisions of the sanctioned scheme.

(ix) That section 18(7) of the SICA also provides that the sanction accorded by the Board under sub-section (4) shall be conclusive evidence that all the requirements of this scheme relating to the reconstruction or amalgamation, or any other measure specified therein have been complied with and a copy of the sanctioned scheme certified in writing by an officer of the Board to be a true copy thereof, shall, in all proceedings (whether in appeal or otherwise) be admitted as evidence.

(x) That by sanctioning of the scheme and giving effect to the clause 13.7 of the SS-09, the jurisdiction of SEBI over the company and its directors/promoters has been considered to be taken away.

(xi) That the sanctioned scheme was into effect from July 21, 2009 to Oct 13, 2010 and the provisions of clause 13.7 of SS-09 were also in effect until Oct 13, 2010.

(xii) That the defaults of the year 2010 fell within this period, SEBI didn't have any jurisdiction over the company or its directors/promoters.

(xiii) That since SEBI had no jurisdiction over the company or its directors/promoters during the period when the sanctioned scheme was in force, accordingly SEBI has also no jurisdiction to impose penalties for the non-compliances or delays occurred during that period. The appropriate authority, if any, would be BIFR for any of the non-compliances made with respect to the sanctioned scheme.

12. During personal hearing held on April 13, 2018 Noticee submitted inter-alia as under:

(i) That the matter is old, no loss to investors has been caused and the fault is of technical nature, therefore, a lenient view may be taken.

(ii) That default under Regulation 7(1)(A) is not applicable, as Noticee was not an acquirer in terms of Regulation 11 of SAST Regulations, 1997.

13. The additional submissions dated March 30,2021 is summarized as:

It was contended that the appointment of Adjudicating Officer was void as the power to appoint Adjudicating Officer lies with the Board as per Section 15-I of the SEBI Act, 1992. However, in the instant matter, the aforesaid authority was not delegated by Board to any officer.

It was further contended that merely technical/unintentional breach does not merit penal consequences. It was contended that the Adjudicating Officer has the power to determine penalty in any matter, not being limited to factors mentioned in Section 15J of the SEBI Act, 1992. In this regard, the submission cited observations of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as SAT) in the matter of Reliance Industries Ltd vs SEBI, Chandrakant Gandhi Stock Broker Pvt Ltd vs SEBI and in the matter of HDFC(2000)28 SCL 289(SAT)], and the observations of the Hon'ble Supreme Court in the matter of Bhavesh Pabri vs SEBI, Bharjatiya Steel Industries vs Commissioner, Sales Tax, Uttar Pradesh and Hindustan Steel.

FINDINGS:

14. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticees, I record my findings hereunder.

Issue I: Whether the Noticee has violated Regulation 7(1A), 7(2), 8(1) and 8(2) of the SAST Regulations, 1997?

15. I note that certain contentions raised by the Noticee require consideration before going into merits of the case. Noticee has contended that the appointment of AO in the matter has not been done by the Board, as defined by Section 3 and 4 of the SEBI Act, 1992, and the powers of the Board in this regard have not been delegated to any officer. However, I note that the Board has delegated its powers and functions, in exercise of the powers conferred under Section 19 of the SEBI Act, 1992, pursuant to which the appointment of AO in the matter was done by the competent authority. I now proceed to decide the case on merits and address the contentions of the Noticee as regards the same.

16. I note that the Noticee on May 12, 2008 bought 1,47,000 shares constituting 4.89% voting rights of HFL and on March 12, 2010 sold 73,500 shares amounting to constituting 2.44% voting rights of HFL. I note from the letter of offer that prior to purchase of 4.89% on May 12, 2008 the promoters of HFL held 27.07% voting rights and thus purchase of 4.89% voting rights on May 12, 2008 by noticee required disclosure under provisions of Regulation 7(1A) and 7(2) of SAST Regulations. I also note that the promoters of HFL held 62.44 % voting rights prior to sale of 2.44% voting rights by notice on March 12, 2010 and thus sale by notice required disclosure under provisions of Regulation 7(1A) and 7(2) of SAST.

17. I note that provision of Regulation reads as under:

Acquisition of 5 per cent and more shares or voting rights of a company under SAST Regulations, 1997

7(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, 1[or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation: -For the purposes of sub-regulations (1) and (1A), the term acquirer shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

7(2) The disclosures mentioned in sub-regulations (1) 3[and (1A)] shall be made within two days of-

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be

18. I note that the noticee failed to make disclosure for the transaction on May 12, 2008 and March 12, 2010 within two days as prescribed under Regulation 7(1A) read with 7(2), thus noticee violated the provisions of Regulation 7(1A) & 7(2) and thus was liable for monetary penalty as prescribed under Section 15A(b) of the Act

19. Now, I move to consider the alleged violations of Regulation 8(1) & 8(2) of SAST Regulations, 1997. As per SCN, it was alleged that Noticee made yearly disclosure pertaining to F.Y. 2009-10 with 8 days of delay thus allegedly violated the provisions of Regulation 8(1) and 8(2) of SAST Regulations,1997.

20. I note the provision of Regulation 8(1) & 8(2) are as under:

Continual disclosures under SAST Regulations, 1997

8(1) Every person, including a person mentioned in regulation 6 who holds more than [fifteen] per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.

8(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

21. I note that the letter of offer dated August 12, 2012 show that the noticee as one of the promoters of the company HFL.

22. I note that the provisions of the Regulation 8(2) cast obligation on the promoter or every person having control over a company, to make disclosure within the stipulated time, whereas the Regulation 8(1) cast obligation on the person other than mentioned under regulation 8(2). In view of this, the Noticee being promoter of the HFL was required to make the disclosures as per the provisions of Regulation 8(2).

23. According to Regulation 8(1) of SAST regulations, the liability of making disclosures under the said regulations is only on those shareholders holding more than 15% shareholding. In the instant case, the shareholding of the notice was 3.33%, lower the threshold of 15% on the days of alleged violation. Accordingly, the allegations of non-compliance w.r.t Regulation 8(1), on the part of noticee does not stand established.

Issue II: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the Act?

24. Further, as regards the violations of the provision of Regulation 7(1A) read with 7(2) and 8(2) are concerned, I don't find merit in the contentions of the Noticee that the violation is mere technical in nature. Therefore, it can be concluded that the Noticee has failed to comply with the provision of Regulation 7(1A) read with 7(2) and 8(2) of SAST Regulations, 1997, thus liable for monetary penalty as prescribed under Section 15A(b) of the Act.

25. Section 15A(b) of the Act (as existed during the period of violation) reads as under:

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 ……...

(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 there for 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.

26. Here, it is important to refer to the observation 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 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…".

27. I note that Noticee vide his submissions stated that HFL was formally declared sick company within the meaning of Section 3(1)(o) of SICA and BIFR sanctioned the scheme on July 21, 2009, as per scheme clause 13.7 BIFR provided waiver of all penalties for the non-compliances / delays as per the regulations of the SEBI to the company and the promoters/ directors, scheme was operative from July 21, 2009 to Oct 13, 2010 (Hereinafter called "Scheme Period"), the defaults of the year 2010 fell within this period and SEBI didn't have any jurisdiction over the company or its directors/promoters.

28. I do consider that scheme was operative from July 21, 2009 to Oct 13, 2010.The violation of 7(1A) & 7(2) for transaction of March 12, 2010 and Violation of 8(2) for F.Y 2009-2010 are falling in that scheme period and thus I am of the opinion that monetary penalty is not warranted. The violation of Regulation 7(1A) & 7(2) for transaction of May 12, 2008 is before the scheme period and hence, in my opinion, monetary penalty shall apply.

Issue III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the Act?

29. While determining the quantum of penalty under Section 15A(b), it is important to consider the factors stipulated in Section 15J of SEBI Act, which read 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.

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."*

30. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature. I note that, in **Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, the Hon'ble SAT has observed that*, "the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

ORDER

31. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules, I hereby impose a monetary penalty of Rs. 1,00,000 (Rupees One Lakh Only) on the Noticee viz. Mr. Rajesh Gupta under Section 15A (b) of the Act. In my view, the penalty imposed is commensurate with the default committed by the Noticee.

32. The Noticee 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 SEBI website www.sebi.gov.inon the following path, by clicking on the payment link:

ENFORCEMENT ➟ Orders ➟ Orders of AO ➟ PAY NOW

33. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department –Division of Regulatory Action –II of SEBI. The Noticee shall provide the following details while forwarding DD/payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment –Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

34. In terms of Rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 31, 2021 **Narendra Rawat**

Place: Mumbai **General Manager & Adjudicating Officer**