

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/DPS/ 145-157 /2017]

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. Tea Time Limited (PAN No. AAAC9777A)
2. HSM International Private Ltd (PAN No. AAACH6609K)
3. Orient International Limited (PAN No. AAACO2857L)
4. Asutosh Enterprises Limited (PAN No. AACCA1969M)
5. Neptune Exports Limited (PAN No. AAACN8502F)
6. Bengal Steel Industries Limited (PAN No. AABCB0969P)
7. V. N. Enterprises Limited (PAN No. AAACV8991L)
8. Hindusthan Udyog Limited (PAN No. AAACH6606G)
9. Macneill Electricals Limited (PAN No. AABCM7111J)
10. HSM Investments Limited (PAN No. AAACH6608J)
11. Mr. V. N. Agarwal (PAN No. ACMPA9017B)
12. Mr. Prakash Agarwal (PAN No. ACMPA9020A)
13. Mrs. Premlata Agarwal (PAN No. ACSPA0122D)

In the matter of Tea Time Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as „SEBI“) during the course of examination observed that the (1) Tea Time Limited, the company and its promoters, namely, (2) HSM International Private Ltd, (3) Orient International Limited, (4) Asutosh Enterprises Limited, (5) Neptune Exports Limited, (6) Bengal Steel Industries Limited, (7) V. N. Enterprises Limited, (8)

Hindusthan Udyog Limited, (9) Macneill Electricals Limited, (10) HSM Investments Limited, (11) Mr. V. N. Agarwal, (12) Mr. Prakash Agarwal and (13) Mrs. Premlata Agarwal (hereinafter referred to as '**the Noticee No. 1 to 13**' respectively or all are collectively referred as '**the Noticees**') had failed to comply with the Minimum Public Shareholding (MPS) norms as stipulated under Rule 19(2)(b) and 19A of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as "SCRR") and Clause 40A of the Listing Agreement read with Section 21 of Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as '**SCRA**'). The Noticee No. 1 is the company listed in Bombay Stock Exchange (BSE) and The Calcutta Stock Exchange (CSE).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings against the Noticees and appointed the undersigned as Adjudicating Officer under section 23I of SCRA read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "**Adjudication Rules**") vide order dated February 17, 2016, to inquire into and adjudge under section 23 E and 23H of the SCRA for the alleged violations of rule 19(2)(b) and 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of SCRA.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. SEBI/HO/EAD/EAO/OW/P/2016/11554/1 dated April 21, 2016 (hereinafter referred to as '**SCN**') was served upon the noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed upon it under sections 23 E and 23 H of the SCRA for the alleged violation of rule 19(2)(b) and 19A of the SCRR and Clause 40A of

the Listing Agreement read with Section 21 of SCRA. Following allegations were levelled against the Noticees in the SCN.

4. As per Order WTM/PS/89/CFD/NOV/2015 dated November 10, 2015 in the matter of Tea Time Limited, it is alleged that the Noticee No. 1 and its promoters i.e. Noticees No. 2 to 13 delayed the compliance with the requirement of minimum public shareholding ('MPS'). It is alleged that the amended provisions of rules 19 and 19A of the SCRR came into force with effect from June 04, 2010, offering a time period of three years (i.e., on or before June 03, 2013) for a listed company to maintain public shareholding of atleast 25%. However, in the extant case, compliance with the MPS norms was only on September 9, 2015 i.e. there was a delay of more than 26 months.
5. In view of the above, it is alleged that the Noticees have delayed in complying with the MPS requirements and thereby violated rule 19(2)(b) and 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of SCRA and the aforesaid Regulations are reproduced as under;

Listing Agreement

40A

- (i) *The issuer Company agrees to comply with the requirements specified in rule 19(2) and rule 19A of the Securities Contracts (Regulation) Rules, 1957.*
- (ii) *Where the issuer company is required to achieve the minimum level of public shareholding specified in rule 19(2)(b) and/or rule 19A of the Securities Contracts (Regulation) Rules, 1957, it shall adopt any of the following methods to raise the public shareholding to the required level:-*
 - (a) *issuance of shares to public through prospectus; or*
 - (b) *offer for sale of shares held by promoters to public through prospectus; or*
 - (c) *sale of shares held by promoters through the secondary market in terms of SEBI circular CIR/MRD/DP/05/2012, dated February 1, 2012; or*
 - (d) *Institutional Placement Programme (IPP) in terms of Chapter VIIIA of SEBI(Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended.*

- (e) *Rights issues to public shareholders, with promoter/promoter group share-holders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue;*
- (f) *Bonus issues to public shareholders, with promoter/promoter group share-holders forgoing their entitlement to equity shares, whether present or future, that may arise from such issue;*
- (g) *any other method as may be approved by SEBI, on a case to case basis.*

SCRA

Conditions for listing

21 Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

SCRR

Requirements with respect to the listing of securities on a recognized stock exchange.

19 (2)

(b) (i) At least twenty five per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document; or

(ii) At least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document if the post issue capital of the company calculated at offer price is more than four thousand crore rupees:

Provided that the requirement of post issue capital being more than four thousand crore rupees shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, if it satisfies the conditions prescribed in clause (b) of sub-rule 2 of rule 19 of the Securities Contracts (Regulation) Rules, 1956 as existed prior to the date of such commencement:

Provided further that the company, referred to in sub clause (ii), shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India.

Continuous Listing Requirement.

19A. (1) Every listed company [other than public sector company] shall maintain public shareholding of at least twenty five per cent.:

Provided that any listed company which has public shareholding below twenty five percent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.

Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.

6. Noticees submitted common reply vide letter dated July 02, 2016 in the matter, which inter alia stated as under:

- 1. Our Company was originally engaged in the business of exporting tea to the Middle East Countries mainly Iraq and Libya. Later due to the political uncertainties in Iraq and lack of other profitable business markets the performance of the Company started deteriorating and the business of the Company had to be discontinued.*
- 2. During such time some of the Public Shareholders of the Company created pressure on the Promoters to buy their shareholdings as they wanted to exit and were not getting the opportunity to exit at their expected price. Hence, the Promoters under the pressure of such shareholders purchased some of the shares which increased their shareholding to 81.42% (i.e. beyond the maximum limit of 75%). The Promoters were under the impression that they shall dilute their shareholding as per SEBI/Stock Exchange norms once the performance of the Company stabilizes as they were confident about the prospects of improvements in the business scenario.*

3. *On the contrary, the performance of the Company continued to deteriorate and finally the business of the Company was completely suspended making the Company almost dormant.*
4. *Due to the continued suspension of the business operations there was no Senior Level Employee or Company Secretary/Compliance Officer to look after the periodical listing compliances and there were lapses by the Company in complying with the listing requirements, consequent to which the trading in the shares of the Company was suspended by BSE. However, the Company is presently complying with all listing requirements and is in the process of getting the suspension revoked at BSE.*
5. *Amidst such conditions, SEBI on June 4, 2010 amended Regulation 19 and introduced Regulation 19A of SCRR which mandated the Listed Companies to maintain a Minimum Public Shareholding of 25% and in case of shareholding less than same to enhance it to 25% within a period of three years thereof in the manner prescribed by SEBI.*
6. *The methods prescribed by SEBI for increasing the Public Shareholding were not feasible for us in view of following:*

SL.	PRESCRIBED METHOD	OUR VIEWS
(a)	<i>Issuance of Shares to Public through Prospectus</i>	<i>Not viable because of lack of Investor Interest in Company due to suspension of business operations and no prospects for growth.</i>
(b)	<i>Offer for sale of shares held by Promoters to Public through Prospectus</i>	<i>Again not viable because of reasons indicated above.</i>
(c)	<i>Sale of Shares held by Promoters through Secondary Market i.e. OFS through Stock Exchange</i>	<i>Not feasible (i) because of suspension of trading of our shares at the Stock Exchange and (ii) again no expectation of adequate Public response to same.</i>
(d)	<i>Institutional Placement Programme</i>	<i>Not feasible as there was no hope of any Institutional Investor interest in our Company because of its business dormant nature.</i>
(e)	<i>Rights Issues to Public Shareholders</i>	<i>Not viable due to the suspended business of the Company and hence there would be no proper avenue for the utilization of funds raised through rights issue.</i>
(f)	<i>Bonus Issue to Public Shareholders</i>	<i>Bonus Issue could be made to Public Shareholders but the same would benefit only the existing public shareholders of the Company and not the Public at large.</i>
(g)	<i>Any other method as may be approved by SEBI on case to case basis</i>	<i>As the Company was not having any visible business growth plans, voluntary delisting of shares from Stock Exchanges was also being considered by it. But it would require considerable time because of (i) Revocation of suspension of trading needs to be done prior to delisting and ii) approval of SEBI would be</i>

		<i>required for adopting such mean to increase Public Shareholding.</i>
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7. *The Company was unable to decide on whether to go for Bonus Issue or Voluntary Delisting and in between the period of three years elapsed. SEBI passed an Interim Order dated June 04, 2013 against the Company, its Promoters and Directors for not complying with MPS norms within the scheduled time and imposed stringent restrictions on them.*
8. *The Company was then given an opportunity of personal hearing on July 31, 2014 before Mr. Prashant Saran, SEBI Whole Time Member. However, the said Personal Hearing was deferred till further notice as communicated through E-Mail on July 15, 2014. The Company was under the impression that it would submit its written reply to the Interim Order cum SCN once it attends the personal hearing before the SEBI Whole Time Member and explains to him the scenario that led to non-compliance with MPS norms.*
9. *The Personal Hearing opportunity was next given on July 03, 2015 when the undersigned appeared and made the oral submissions reiterating the circumstances, as stated in this submissions that lead to non-compliance of MPS norms. The Company was asked to submit written submissions on same within a week's time and accordingly the Company submitted it vide its letter dated July 09, 2015 as directed.*
10. *The Company in its aforesaid written submissions ad inter-alia assured SEBI that it would enhance its Public Shareholding to the minimum level of 25% within the period of next 45 days by way of Bonus Issue to Public Shareholders only as the Company had no other options available that was viable and could be completed in the shortest span of time.*
11. *As assured, the Company initiated the Bonus Issue process immediately. The Bonus issue of 230,919 Equity Shares to the Public Shareholders (in the ratio of 93:200) was approved by the Board and the Shareholders at their respective Meetings held on July 17, 2015 and August 17, 2015.*
12. *The Company received the in-principle listing approval for the aforesaid Bonus Shares from BSE on August 27, 2015 and proceeded to fix the Record date for allotment of Bonus Shares as September 8, 2015 in terms of the Listing Agreements. The final listing approval for the Bonus Shares has been accorded by BSE w.e.f. February 09, 2016. Copy of Notice released by BSE on its Website for same is enclosed as ANNEXURE – 1.*
13. *The allotment of Bonus Shares was completed on September 9, 2015 consequent to which the Public Shareholding was increased as follows:-*

SL.	CATEGORY	PRE BONUS ISSUE HOLDING		POST BONUS ISSUE HOLDING	
		NOS.	%	NOS.	%
A.	<i>Promoters</i>	21,76,400	81.42	21,76,400	74.95
B.	<i>Public</i>	4,96,600	18.58	7,27,519	25.05
	TOTAL	26,73,000	100.00	29,03,919	100.00

14. *The Company had apprised and kept updated SEBI about each and every development that was taking place during Bonus Issue vide its Letters dated July 23, 2015, August 19, 2015 and September 9, 2015.*
15. *The Bonus Issue, as assured, by the Company was completed within the indicated period consequent to which SEBI on November 10, 2015 revoked the directions issued by it vide Interim Order dated June 04, 2013 against the Company, its Promoters and Directors with immediate effect.*
16. *We do realize there has been a considerable delay in complying with the MPS norms but the delay was unintentional as the Company's suspended business operations and trading at BSE restricted it from adopting the prescribed means of Public Shareholding.*
17. *In spite of the delay, the Company or its Promoters has never taken any disproportionate gain or unfair advantage (by way of corporate benefits like dividend, bonus shares, split etc.) or has caused loss to any investor.*
18. *In view of the foregoing submissions, we would like to kindly request you not to impose any Penalty on the Noticees and to dispose of the present adjudication proceedings against the Noticees sympathetically.*
19. *We further request you to provide us with an opportunity of personal hearing at a date convenient to you so that this matter can be further explained in details and your queries, if any, can be addressed.*
7. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F(a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

“Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and 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.”

8. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticees on September 5, 2017 vide notice dated August 14, 2017. Hearing on September 5, 2017 was attended by the authorized representative (AR) of the Noticees and AR reiterated as submitted in its reply dated July 2, 2016 and the same reply is once again being submitted during the course of hearing i.e. on September 5, 2017 and we don't have any other material documents for submissions in this regard.
9. The key submissions / same reply submitted once again during the course of hearing i.e. on September 5, 2017, are being mentioned below:
 - (a) *As the operations of the Company were suspended there was no Corporate Employee or a Company Secretary/Compliance Officer to look after its periodical Stock Exchange Listing Compliances consequent to which the trading in the shares of the Company was suspended by BSE for non-compliances.*
 - (b) *However at present, the suspension in trading of the Company's shares at BSE stands revoked with effect from June 01, 2017 and the Company is regularly complying with all applicable listing requirements in a timely manner. Notice released by BSE towards revocation is enclosed here with as Annexure A.*
 - (c) *Amidst such conditions, SEBI on June 4, 2010 amended and introduced Rule 19A of SCRR Regulations for maintenance of Minimum Public Shareholding of 25% in all listed companies and in case of shareholding less than same to enhance it to 25% within a period of three years thereof in the manner prescribed by SEBI.*
 - (d) *The methods initially prescribed by SEBI in the year 2010 for increasing the Public Shareholding were not feasible in our case on account of (a) non-availability of any trading platform due to suspension of trading of our shares at BSE; (b) dormant and suspended business of the Company with no scope/prospects for growth. The non-feasibility of each of the methods in light of these conditions.*

- (e) *Thereafter, SEBI vide its Circular dated February 08, 2012 introduced 'Institutional Placement Programme' as another method for achieving the MPS requirements within the time frame as stipulated in the SCRR Regulations. The same was again not feasible in our case as there was no Institutional Investor Interest in our Company because of its business dormant nature.*
- (f) *Subsequently further additional methods were prescribed by SEBI vide its Circular dated August 29, 2012 for compliance with MPS norms. These were 1) Rights Issue to Public Shareholders, 2) Bonus Issue to Public Shareholders and Any other method as may be approved by SEBI on case to case basis.*
- (g) *The company was evaluating the options for Bonus Issue and Voluntary Delisting as these were the only options available to the Company but unable to finalize the one during the period of intervening 9 months (i.e. September 2012 – May 2013). Unfortunately the period of said 9 months and the deadline of June 4, 2013 elapsed and SEBI thereon passed an Interim Order dated June 4, 2013 against the Company, its Promoters and Directors for not complying with MPS norms and imposed stringent restrictions on them which has resulted into considerable loss to its Promoters and Directors.*
- (h) *The company was then given an opportunity of personal hearing on July 31, 2014 before Mr. Prashant Saran, SEBI Whole Time Member. However, the said Personal Hearing was deferred till further notice by SEBI through an E-mail dated July 15, 2014. The Company was under the impression that it would submit its written reply to the Interim Order cum SCN during the personal hearing before the SEBI Whole Time Member and will explain the scenario that led to non-compliance.*
- (i) *The Personal Hearing opportunity was next given on July 03, 2015 when the Undersigned appeared and made the oral submissions reiterating the circumstances leading to non-compliance of MPS norms and subsequently written submissions on same was submitted by the Company vide its letter dated July 9, 2015.*
- (j) *The Company in its aforesaid written submissions had inter-alia assured SEBI that it would enhance its Public Shareholding to the minimum level of 25% within the period of next 45 days by way of Bonus Issue to Public Shareholders only as the Company had no other options available that was viable and could be completed in the shortest span of time.*
- (k) *The Company initiated the Bonus Issue process immediately and completed the same (including their listing with BSE) by September 10, 2015. The Bonus Issue was made for*

230,919 Equity Shares to the Public Shareholders only in the ratio of 93:200 which increased their shareholding as follows:

SL.	CATEGORY	PRE BONUS ISSUE HOLDING		POST BONUS ISSUE HOLDING	
		NOS.	%	NOS.	%
A.	Promoters	21,76,400	81.42	21,76,400	74.95
B.	Public	4,96,600	18.58	7,27,519	25.05
	TOTAL	26,73,000	100.00	29,03,919	100.00

- (l) On compliance with MPS norms by the Company, SEBI on November 10, 2015 revoked the directions issued by it vide Interim Order dated June 4, 2013 against the Company, its Promoters and Directors with immediate effect and referred the matter for the adjudication proceedings.
- (m) We wish to further reiterate that the Promoters of the Company have not taken any benefit or advantage by way of any corporate benefits because of their shareholdings in excess of MPS norms as:-
- i) No dividend was declared/paid by the Company;
 - ii) No Bonus Shares were issued by the Company;
 - iii) No Right Shares were issued by the Company;
 - iv) No special resolution was passed by the Company for approving any corporate decision in terms of The Companies Act, 1956/2013; and
 - v) No loss was caused to any investor of the Company or the public at large.
- (n) The delay in compliance with the MPS norms was unintentional and beyond the control of the Company. Moreover, this default was made for the first time by the Company and was not repeated ever thereafter.
- (o) The company has been non operational since 2005 and did not have adequate resources to comply with the violations made in respect of the MPS norms. However, the company and its Promoters did not have any mala fide intention to take advantage of their excess holdings in beyond the MPS limits.
- (p) In view of above, we would therefore kindly request your honor to take a sympathetic view in the matter and not to impose any Penalty on the Noticees and to dispose of this adjudication proceedings accordingly.

10. After taking into account the allegations, replies of the Noticees and other evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the present case are :

- a) *Whether the Noticees had failed / delayed in complying with the MPS norms as specified in rule 19(2)(b) and 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of SCRA?*
- b) *If yes, then, whether said violation attracts monetary penalty under sections 23 E and 23H of the SCRA?*
- c) *If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 23J of the SCRA read with rule 5 (2) of the Adjudication Rules?*

12. I have carefully perused the allegations, submissions of the Noticees and the evidences / material available on records. The facts / details as alleged in the SCN are not in dispute by the Noticees.

13. Here I note that the promoter's shareholding was 81.42% during period quarter ended June 2010 to quarter ended June 2013 from the shareholding pattern as available from the BSE website. From the admission of the Noticees and from the material available on records, it is observed that the Company as well as the promoters (the Noticees) did not comply with the MPS requirements as required under rule 19(2)(b) and 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of SCRA. Rule 19(2)(b) and 19A of the SCRR came into force with effect from June 04, 2010, offering a time period of three years (i.e., on or before June 03, 2013) for a listed company to maintain public shareholding of atleast 25%. However, in the extant case, compliance with the MPS norms was only on September 9, 2015 i.e. there was a delay of more than 26 months.

14. Noticees in its reply has submitted that the *As the operations of the Company were suspended there was no Corporate Employee or a Company Secretary/Compliance Officer to look after its periodical Stock Exchange Listing Compliances consequent to which the trading in the shares of the Company was suspended by BSE for non-compliances. The methods initially prescribed by SEBI in the year 2010 for increasing the Public Shareholding were not feasible in our case on account of (a) non-availability of any trading platform due to suspension of trading of our shares at BSE; (b) dormant and suspended business of the Company with no scope/prospects for growth. The non-feasibility of each of the methods in light of these conditions. Thereafter, SEBI vide its Circular dated February 08, 2012 introduced 'Institutional Placement Programme' as another method for achieving the MPS requirements within the time frame as stipulated in the SCRR Regulations. The same was again not feasible in our case as there was no Institutional Investor Interest in our Company because of its business dormant nature. Subsequently further additional methods were prescribed by SEBI vide its Circular dated August 29, 2012 for compliance with MPS norms. These were 1) Rights Issue to Public Shareholders, 2) Bonus Issue to Public Shareholders and Any other method as may be approved by SEBI on case to case basis. The plea as mentioned in the replies of the Noticees while belatedly complying with MPS norm, cannot be considered an absolute defence to absolve them from the mandatory liability imposed under the SCRR, though same can be considered as mitigating factors.*

15. Here I also note that Noticees enhanced its Public Shareholding to the minimum level of 25% by way of Bonus Issue to the Public Shareholders (18.58% pre bonus issue holding to 25.05% post bonus issue holding) only in September 9, 2015, when SEBI has already mentioned that the companies could raise the public shareholding to the required level by way of bonus issue to public shareholders *vide its Circular dated August 29, 2012 for compliance with MPS norms.*

16. It is also noted from the records that the Whole Time Member of SEBI vide interim order No. WTM/PS/08/CFD/JUNE/2013 dated June 04, 2013 and final order No.

WTM/PS/89/CFD/NOV/2015 dated November 10, 2015 observed the same as noncompliance / belatedly complied with MPS norms.

17. The Noticees has argued that the Company was suspended and that there was no Corporate Employee/ Company Secretary/Compliance Officer to look after its periodical Stock Exchange Listing Compliances also the methods initially prescribed by SEBI in the year 2010 and February 08, 2012 for increasing the Public Shareholding were not feasible. While I have considered the argument of the Noticees that it could not increase the Public Shareholding on account of its scrip being under suspension by methods prescribed by SEBI in the year 2010 and February 2012 however, I cannot overlook the fact that the Noticees took three years to come out with a Bonus issue and comply with the MPS Norms. Nothing stopped the Noticees from complying with the MPS norms by issue of Bonus Issue while its scrip was under suspension of trading this clearly shows that there was no intent to comply with the MPS Norms.

18. I cannot ignore the following observations made by the Hon'ble Securities Appellate Tribunal in the matter of **Gillette Limited vs. SEBI (Appeal no. 65 of 2013) decided on July 03, 2013:**

"24.In our opinion, the Appellant seems to have overlooked, whether deliberately or inadvertently, the fact that the underlying philosophy behind the requirement of a minimum public holding of 25% is prevention of concentration of shares in the hands of a few market players by ensuring a sound and healthy public float to stave off any manipulation or perpetration of other unethical activities in the securities market which would unfortunately be their refragable consequence of the reins of the market being in the hands of a few".

19. In view of aforesaid observations and the admitted position by the Noticees, it is concluded that the all the Noticees had failed to meet the MPS requirement within stipulated time under rule 19(2)(b) and 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of SCRA, and admittedly, they had

complied belatedly the same only on September 9, 2015. Therefore, violation of rule 19(2)(b) and 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of SCRA stands established against the Noticees.

20. Needless to say that the case of Noticee(s) in the matter of *Global Infrastructure Holding Ltd. vs. Adjudicating Officer of SEBI* decided by the Hon^{ble} SAT, lays down the general requirement to consider factors enshrined under section 15J of the SEBI Act while imposing monetary penalties. The same is a statutory requirement under section 23J of the SCRA / rule 5 of the Adjudication Rules; and is being considered in the next Issue of this order.

21. It is not out of place to mention that the present proceeding arose from a single cause of action or single allegation/breach (i.e. noncompliance / belated compliance of MPS norms in a listed company which is a listing condition or a continuous listing requirement for a listed company under rule 19(2)(b) and 19A of the SCRR). For the aforesaid violation, two provisions of the SCRA viz. 23E and 23H are alleged against the Noticees where the monetary penalties can be imposed upon them. I have carefully perused both the provisions which are also reproduced as under;

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding to twenty-five crore rupees.*

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

22. Upon perusal of aforesaid provisions, it is observed that for the violation of “listing condition / continuous listing requirement”, monetary penalty has been prescribed

under section 23E of the SCRA which is exclusively/specifically provided for such kinds of breach. Further, from the bare perusal of section 23H of the SCRA, it is clear that the same is a residuary provision and is prescribed for the remaining kinds of violation for which no separate penalty has been provided in the SCRA.

23. Here, I cannot ignore the material legal issue that if for a specific violation a specific provision of penalty has been stipulated, then, for the same violation, another residuary provision cannot be attracted. Accordingly, I am of the view that for the aforesaid established violation of non-compliance / belated compliance of MPS norms by the Noticees, the Noticees are liable to be penalized only under section 23E of the SCRA.

24. As regards, to imposition of penalty under section 23E, it is to state that section 21 (condition for listing) of the SCRA mandates a listed company to comply with the conditions of the listing agreement with the stock exchange. Therefore no liability can be fixed upon Noticee No. 2 to 13 in the instant case.

25. Thus, the aforesaid concluded violation of rule 19(2)(b) and 19A of the SCRR and Clause 40A of the Listing Agreement read with Section 21 of SCRA by the Noticee No. 1 makes liable for penalty under sections 23 E of the SCRA.

26. While determining the quantum of penalty under section 23E of the SCRA, it is important to consider the factors stipulated in section 23J of the SCRA read with rule 5(2) of the Adjudication Rules, which reads as under:-

“23J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 23-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.*”

27. Though, no specify disproportionate gains or unfair advantage made by the Noticee No. 1 or the specific loss suffered by the investors due to such non / delayed compliance of MPS requirement or the repetition of the default, is shown on records. However, it is relevant to consider the importance of such MPS norm which in fact has been explained / made observation by *the Hon'ble Securities Appellate Tribunal in the matter of Gillette Limited vs. SEBI (Appeal no. 65 of 2013) decided on July 03, 2013* in para 18 above of this order. Further, it would be appropriate to refer here the observations made by the Hon“ble SAT in the following cases:

- a) In the matter of ***Komal Nahata Vs. SEBI decided on January 27, 2014:-***
“Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.” The present provisions of SCRR are equally important as of Takeover and PIT Regulations, hence, the aforesaid principle is applicable for the violation of SCRR too.
- b) In the matter of ***Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 :-*** *“... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”*

28. Besides aforesaid observations, it is relevant to mention here the objectives of said mandatory SCRR provisions which required the availability of a minimum

portion/number of shares of the listed securities with the public to ensure that there is a reasonable depth in the market and the prices of the securities are not susceptible to manipulation. Moreover a dispersed shareholding structure is also essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices

29. Therefore, taking into consideration the facts / circumstance of the case, the fact of enormous delay in complying with the MPS norm requirements, importance of such MPS requirements and considering mitigating factor / efforts made by the Noticee No. 1 in order to comply with MPS requirements, I am of the view that a justifiable penalty needs to be imposed upon the Noticee No. 1 / M/s Tea Time Limited to meet the ends of justice.

ORDER

30. After taking into consideration all the aforesaid facts and circumstances of the case, the mitigating factors mentioned above, I, hereby impose a penalty of ₹13,00,000/- (Rupees Thirteen Lakh only) on the Noticee No. 1 / M/s Tea Time Limited, in terms of the provisions of Section 23E of the SCRA. I am of the view, that the said penalty would commensurate with the violations committed by the Noticee No. 1 / M/s Tea Time Limited.

31. The Noticee No. 1 / M/s Tea Time Limited 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 e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India

Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

32. The Noticee No. 1 / M/s Tea Time Limited shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID - tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

33. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

DATE: SEPTEMBER 11, 2017

PLACE: MUMBAI

RACHNA ANAND

ADJUDICATING OFFICER