ADJUDICATION ORDER NO. EAD-3/ORDER/JS/SP/2018-19/1390

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:
Falcon Tyres Ltd (Pan: AAACF7258E)
In the matter of:
Falcon Tyres Ltd.
CIN: L25114KA1973PLC002455

BACKGROUND

1. Securities and Exchange Board of India (**'SEBI'**) during the course of investigations, had observed that the total number of paid up capital of Falcon Tyres Ltd. ("**Falcon/Company/Noticee**"), was listed at Stock Exchange, Mumbai ("**BSE**"), increased from 3,40,85,532 shares to 7,74,72,580 shares due to allotment of shares on preferential basis to certain entities by Falcon on April 26, 2012 ('**period of investigation or IP**'). It was alleged that Falcon have failed to disclose the change in share capital to BSE for the quarter ended June 2012. The details of the alleged violation of Falcon are as follows:

Noticee Name	**Alleged Violation**	**Violation of Provisions**
Falcon Tyres ltd.	Failed to disclose the increase in share paid up capital for the quarter ended June 2012	Clause 35 of Listing Agreement

2. In view of the above, SEBI initiated adjudication proceedings against Falcon to inquire and adjudge under Section 23E Securities Contracts (Regulation) Act, 1956 ("**SCRA**") for the alleged violation as mentioned above.

APPOINTMENT OF ADJUDICATING OFFICER

3. Adjudicating Officer was appointed vide order dated May 17, 2017 under Section 23-I of the SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure For Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (**'SCRA Adjudication Rules'**) to inquire into and adjudge under Section 23E of SCRA.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (SCNs) dated October 04, 2017 was issued to Falcon, in terms of provisions of Rule 4 of SCRA Adjudication Rules, to the address available in our

record i.e. "*KRS Road, Metagalli, Mysore- 570 016, Karnataka*", the address from which Falcon have communicated during the investigations. The SCN was duly delivered to the address on October 09, 2017. Also, a copy of the SCN along with its annexures was emailed to feeback@falcontyre.com.

5. Since, Falcon, failed to file reply to the SCN, vide letter dated November 07, 2017, Falcon was once again informed to file reply to the SCN within 14 days of the receipt of the letter. However, Falcon have failed to file reply to the SCN. Subsequently, vide letter dated February 02, 2018, Falcon was informed to file reply to the SCN on or before February 14, 2018 and to appear for the personal hearing on February 23, 2018. The letter dated February 02, 2018 was duly delivered to the address of Falcon.

6. Since, Falcon failed to file reply to the SCN and also to appear for the personal hearing, vide letter dated March 20, 2018, Falcon was once again informed to file reply to the SCN latest by April 02, 2018 and also to appear for the personal hearing on April 05, 2018. The letter to Falcon dated March 20, 2018 was duly delivered to the address of Falcon on March 24, 2018. Falcon, once again failed to file reply to the SCN and also to appear for the personal hearing.

7. As a last and final opportunity, Falcon, vide letter dated June 12, 2018, was once again informed to file reply to the SCN on or before June 22, 2018 and to appear for the personal hearing on June 26, 2018. It is pertinent to note that all the SCN/letters were issued to the same address from which Falcon had communicated during the earlier proceedings of investigations. Subsequently, the letter dated June 12, 2018 was also uploaded at SEBI website under the heading "Unserved Notices/SCNs".

8. On the date of hearing, Falcon, once again failed to reply to the SCN and to appear for the personal hearing. It is observed that Falcon was granted enough opportunity to file reply to the SCN and to appear for personal appearing, however, Falcon failed to make submissions or appear for personal hearing. Thus, the matter is proceeded in terms of Rule 4(7) of the SCRA Adjudication Rules, based on the information available on records.

CONSIDERATION OF ISSUES AND FINDINGS

9. After perusal of the material available on record, the following issues are for consideration viz.

   A. Whether Falcon have violated Clause 35 of Listing Agreement?

   B. Does the violation, if any, attract monetary penalty under Section 23E of SCRA?

   C. If yes, then, what would be the monetary penalty that can be imposed upon Falcon taking into consideration the factors stipulated in Section 23J of the SCRA read with Rule 5(2) of the SCRA Adjudication Rules?

ISSUE A- Whether Falcon have violated Clause 35 of Listing Agreement?

10. It is observed from the shareholding pattern of Falcon, the total paid up capital of Falcon for the quarter ended March 2012 was 3,40,85,532 shares. On April 26, 2012, Falcon allotted 4,33,87,048 shares on preferential basis to various entities. The details of allotment made by Falcon are as follows:

Sr. No.	Name of the allottees	No. of Equity shares allotted
1	Suncap Commodities Ltd	1,51,85,467
2	Regus Impex P Ltd	1,51,85,467
3	Salputri Commerce P ltd	1,30,16,114
	Total	4,33,87,048

11. Due to such allotment of shares on preferential basis, the total paid up capital of Falcon increased from 3,40,85,532 shares to 7,74,72,580 shares, which is more than 2% change. In this respect, the Clause 35 of Listing Agreement read as follows:

    "*The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause in compliance with the following timelines i.e. within 10 days of any capital restructuring of the company resulting in a change exceeding +/- 2% of the total paid-up share capital*".

12. The shareholding pattern disclosed by Falcon for the quarter ended June 2012 does not reflect the correct paid up capital and continues to disclose 3,40,85,532 shares as the total paid up capital of the Company despite allotment in April 2012.

13. BSE, vide email dated January 19, 2016 provided a copy of shareholding pattern filed by Falcon for the quarter ended June 2012, where Falcon continued to disclose the total paid up share capital as 3,40,85,532 shares and not the correct paid up capital i.e. 7,74,72,580 shares. It is observed that the correct paid up capital was disclosed only for the quarter ended September 2012. Thus, Falcon failed to comply with Clause 35 of the Listing Agreement.

14. During this proceedings, Falcon failed to file any response to the SCN or appear for the hearing. In this regard, it is pertinent to note that the Hon'ble Securities Tribunal ("SAT") in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) has, inter-alia, observed 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*". It is also pertinent to note that the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has also, inter alia, observed that: *"..... Appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...".*

15. Thus, it is held that Falcon failed to comply with Clause 35 of the Listing Agreement.

Issue B: Does the violation, if any, attract monetary penalty under Section 23E of SCRA?

16. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was 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."*

17. The aforesaid provisions read 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 twenty-five crore rupees.".

18. Given the above, it is concluded that the present case is a fit case for imposing penalty upon Falcon Tyres Ltd. under Section 23E of SCRA.

***Issue C*- If yes, then, what would be the monetary penalty that can be imposed upon Falcon taking into consideration the factors stipulated in Section 23J of the SCRA read with Rule 5(2) of the SCRA Adjudication Rules?**

19. 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 SCRA Adjudication Rules, which reads as follows:

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."

20. The material available on record has not quantified the amount of disproportionate gain or unfair advantage made by Falcon and the loss suffered by the investors as a result of the default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by Falcon as a result of default, nor has the same been alleged.

21. Therefore, taking into consideration the facts / circumstance of the case and above mitigating factors, it is determined that a justifiable penalty needs to be imposed upon Falcon.

ORDER

22. After taking into consideration all the facts and circumstance of the case, in exercise of the powers conferred under Section 23-I of SCRA read with Rule 5 of SCRA Adjudicating Rules, a penalty of **Rs. 1,00,000 (Rupees One Lakh only)** is hereby imposed under Section 23E of the SCRA upon the Noticee for violation of Clause 35 of Listing Agreement.

23. The Noticee shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details are as follows:-

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

24. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - II [EFD1-DRA-II], SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;
    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)

25. In terms of Rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to Falcon and also to SEBI.

Date: September 27, 2018 **Jeevan Sonparote**
Place: Mumbai **Adjudicating Officer**