

ORDER UNDER RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 IN THE MATTER OF ADJUDICATION PROCEEDINGS AGAINST SHRI PRAMOD JAIN AND SHRI NAVNEET MOHAN MITTAL

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') vide order dated December 13, 2002, appointed Shri. S.V. Krishna Mohan as the Adjudicating Officer to inquire into and adjudge under Section 15I read with Section 15H(ii) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act'), the alleged violation of Regulations 10 and 12 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'Takeover Regulations') by Shri Pramod Jain and Shri Navneet Mohan Mittal (hereinafter referred to as 'the noticees') pursuant to the acquisition of shares of the company Gujarat Foils Ltd (hereinafter referred to as 'GFL') on 03.10.97. It is alleged that the noticees acquired the shares of the target company without making mandatory public announcement and public offer in terms of the provisions stated above. Subsequently, vide order dated September 30, 2004 I was appointed as the Adjudicating Officer in the place of Shri Krishna Mohan.

FACTS OF THE CASE

2. It was noted from the records that the noticee had entered into a Memorandum of Understanding (hereinafter referred to as MOU) with the erstwhile promoters of GFL namely Shri Kishore H. Patel, Shri Naresh H. Patel and their investment companies viz. Rutvi Investments Pvt. Ltd., Bindi Investments Pvt. Ltd. and Kanig Investments Pvt. Ltd. to acquire 39.02% of the shareholding of GFL. In this regard it is noted that the erstwhile promoters held 39.02% shares in the GFL.
3. A letter dated 12. 02 .99 was received by SEBI from the office of the Deputy Director of Income Tax (Investigations, Ahmedabad) stating inter-alia that a search and seizure action, under Section 132 of the Income Tax Act, 1961 was undertaken by the Income Tax Department at the business and residential premises of Shri Kishore H. Patel and others. Statement of Shri Kishore H. Patel and Shri Navneet Mohan Mittal were recorded during the said search and they stated that the management of GFL had been handed over to Shri Navneet Mittal and Shri Pramod Jain with effect from 01.10.97 and they are in charge of the affairs of GFL. It was also stated that the entire process had been done in violation of the provisions of SEBI Takeover Regulations, 1997.

SHOW CAUSE NOTICE

4. A show cause notice dated January 6, 2003 was issued to the noticee calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the SEBI (Procedure for Holding Enquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 and why penalty, if any, should not be imposed on them under Section 15H(ii) of the SEBI Act, 1992 for violating Regulations 10 and 12

of the Takeover Regulations, 1997 (read with Regulation 14(1) and 14(3) of the Takeover Regulations.

5. One of the noticees Shri Pramod Jain vide his letter dated January 15, 2003 stated that the noticees had filed an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'Tribunal') against the Order dated November 15, 2002 passed by SEBI in the matter. In view of the same the noticees requested that the inquiry proceedings, as contemplated in the Show Cause Notice may be kept in abeyance till the disposal of the said appeal.
6. Vide letter dated January 16, 2003, the noticee was informed that the appointment of the adjudicating officer was made vide order dated December 13, 2002 which was not under appeal. The noticee was further informed that the present proceeding was an independent adjudication proceeding and could not be kept in abeyance till the disposal of the noticee's appeal in the absence of a specific order by the competent authority.
7. The noticee vide its letter dated January 29, 2003 requested for 30 days time. Though no reply was received from the noticee, he was advised to attend the adjudication proceedings on February 28, 2003. The noticee vide his letter dated February 27, 2003 sought an adjournment of the hearing. Considering the request made by the noticee he was advised to attend the hearing on March 28, 2003.
8. The noticee vide his letter dated March 19, 2003 informed that by an order dated March 17, 2003 in appeal No. 11 of 2003 filed by the noticee against the order dated December 13, 2002 passed by SEBI, the Hon'ble Tribunal had admitted the said appeal and granted stay of the impugned order. The noticee submitted that in view of the same, the proposed enquiry could not be made at the stage and the same ought to have been adjourned sine die. Subsequently, vide letter dated March 24, 2003 the noticee was advised to submit a copy of the said order which was submitted vide letter dated March 26, 2003.
9. Vide order dated September 30, 2004, the undersigned was appointed as the adjudicating officer in the matter. Subsequently, the noticee was granted an opportunity of hearing on September 20, 2005. Vide letter dated September 15, 2005, the noticee requested for an adjournment and considering the request made by the noticee the hearing was adjourned to October 3, 2005. On the said date Shri Umesh Ved, the authorized representative of Shri Pramod Jain attended the hearing and made submissions.

CONSIDERATION OF EVIDENCE AND FINDINGS

10. It is noted that on the basis of the letter dated 12.02.99 received by SEBI from the Deputy Director of Income Tax (Investigations, Ahmedabad), mentioned above in paragraph 3 of this order, simultaneous proceedings had been initiated against the noticee and a few others under Section 11B of the SEBI Act 1992 read with regulations 44 and 45 of the said Regulations. A show cause notice was issued to the acquirers, including the noticee, calling upon them to show cause as to why one or more or all action(s) under regulation 44 and regulation 45(6) of the Takeover Regulations and Section 11 of the SEBI Act, 1992 should not be initiated against them for the violations of Regulation 10 and 12 and also for furnishing false information to SEBI. The show cause notice stated, inter-alia, that-

- (i) the MOU entered into on 03.10.97 to acquire 39.02% shares of the Target company at a consideration of Rs 32 lacs and to acquire the management and affairs of GFL, was signed by the erstwhile promoters and the acquirers. The acquirers failed to make a public announcement within 4 working days of entering into the said agreement in terms of Regulations 10 and 12 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulations 14(1) and 14(3) of the said Regulations respectively.
- (ii) the acquirers acquired control over the three investment companies, Rutvi Investments Pvt. Ltd., Bindi Investments Pvt. Ltd. and Kanig Investments Pvt. Ltd. without making a public announcement to the shareholders of GFL in terms of the said Regulations. These three companies were having 11.94% stake in GFL.

11. Subsequently SEBI vide Order dated November 15, 2002 required the noticees to make an open offer in terms of the regulations. The said order was challenged by the noticees before the Securities Appellate Tribunal and the main contention of the noticees was that as per the MOU dated 3.10.97 the noticees were to acquire the entire stake of the promoters of the target company (i.e. 39.02%) and to acquire management of its affairs. But since it was an unenforceable agreement on plain paper and not signed by all the persons willing to sell shares in the target company, it was not acted upon.

12. The Hon'ble Tribunal, after consideration of the materials presented before it held that:

“13. On a meaningful understanding of regulations 10, 12 and 22(16), it cannot be said that the code is triggered on a mere agreement to acquire shares without that agreement being acted upon. Supposing for a moment parties resile from the agreement and there is no change in the control over the target company at the instance of the acquirer, it cannot be said that there will be a compulsion of law that the alleged acquirer will be forced to make a public announcement to acquire shares of the target company.”

13. The Hon'ble Tribunal further observed that:

“16. We looked at the files and sought the assistance of both counsel as to when the appellant had crossed the threshold of 10%. It is borne out from records that the appellant acquired only 9.98% shares in October 1997 and the acquisition did not cross the threshold of 10%. It also appears that the appellant did not acquire any control or voting rights in the three investment companies.....

17. On a further perusal of the records, we find that on 18.5.2001 the appellant acquired 17.69% shares of the target company at a price of Rs.3/- per share. It appears from the records that the appellant had submitted a report to SEBI under regulation 3(4). Therefore we find that there is no case made out by the appellant. Once the records show that 17.69% shares has been acquired by the appellant from the shareholders of the target company, there is a clear violation of regulation 10 on 18.5.2001. As such, the provisions of regulation 10 are triggered with the trigger date as 18.5.2001.”

14. Hence it is seen that while disposing of the appeal, the Hon’ble Tribunal had directed the noticees to make public announcement. It is further noted from the records that in compliance with the order of the Tribunal, the noticees made a public announcement on March 3, 2005 for the acquisition of 13, 14,010 equity shares representing 20% of total equity shares of GFL at a price of Rs. 3.68 per share. As stated by the noticees the offer opened on April 27, 2005 and closed on May 16, 2005.

15. On the basis of the Order dated January 28, 2005, passed by the Hon’ble Tribunal, and the facts and evidence available on record, it is evident that the noticees had complied with the directive issued to them by the Tribunal. Thus, as the subject mater has already been considered by the Hon’ble Tribunal, it is felt that no further directions are required in this adjudication proceedings and hence the present adjudication proceedings are disposed of.

16. In terms of the provisions of Rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 copies of this order are sent to the noticees and to the Securities and Exchange Board of India.

PLACE: Mumbai

Biju. S

DATE: February 28, 2008

Adjudicating Officer