

ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/DSR/RG/ 631- 646/2017]

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. Gopichand Idandas [PAN: AAHPG0387M]**
- 2. Sunil G Duseja [PAN: AAUPS7413F]**
- 3. R. Sekar [PAN: N.A]**
- 4. S. R. Kumar [PAN: NA.]**
- 5. S.R. Asaithambi [PAN: N.A.]**
- 6. Heeralal Constructions pvt. Ltd [PAN: AAACH2181A]**
- 7. Hoondi Bai [PAN: N.A]**
- 8. Sushil G. Duseja [PAN: AAUPS7412E]**
- 9. Anchal Sunil Duseja [PAN: AAFPD5041B]**
- 10. Rita Gopichand [PAN: N.A.]**
- 11. Pushpa Mahesh [PAN: N.A.]**
- 12. Dharampal Anand [PAN: N.A.]**
- 13. Amita Sawhney [PAN: N.A.]**
- 14. Deepak Sawhney [PAN: N.A.]**
- 15. Alidoss Tejmal [PAN: N.A]**
- 16. Asha Harish Chand [PAN: N.A.]**

In the matter of

GEE GEE GRANITES LIMITED

- 1. The Hon'ble Securities Appellate Tribunal (SAT), in Appeal No. 385 of 2014, vide order dated November 20, 2015, while setting aside the adjudication order dated August 26, 2014, remanded the case for passing fresh order on merits and in accordance with law in the matter of Gee Gee Granites Ltd. (hereinafter referred to as the Company / GGGL).**

2. The Hon'ble SAT observed that in the impugned order the Adjudicating Officer did not consider the arguments advanced by the said appellants to the effect that they formed an independent promoter group, while holding the them guilty of the violation of the provisions of Regulation 30(2) read with Regulation 30(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the SAST Regulations, 2011) in the matter of GGGL.

Notice, Reply & Personal Hearing:

3. I have been reappointed as the Adjudicating Officer under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act, 1992) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the Adjudication Rules) to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992 the alleged violation of the abovementioned provisions of law by the noticees.
4. As the order has been set aside by the Hon'ble SAT , the common show cause notice dated May 20, 2014 (hereinafter referred to as the SCN) issued to the 16 Noticees (1) Gopichand Idandas, (2) Sunil G. Duseja (3) R. Sekar (4) S. R. Kumar (5) S.R. Asaithambi (6) Heeralal Constructions(7) Late Hoondi Bai (8) Sushil G. Duseja (9) Anchal Sunil Duseja, (10) Rita Gopichand, (11) Pushpa Mahesh (12) Dharampal Anand, (13) Amita Sawhney, (14) Deepak Sawhney (15) Alidoss Tejmal and (16) Asha Harish Chand (hereinafter collectively referred to as the Noticees) stand for the purpose of the present proceeding .
5. Accordingly, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, vide notice dated May 09, 2017, an opportunity of personal hearing was granted only to the Noticees (Appellants in Appeal No. 385 of 2014)viz. Shri Gopichand Idandas, Shri Sunil G. Duseja, Heeral Constructions Pvt. Ltd, Shri Sushil G. Duseja and Aanchal S. Duseja on May 26, 2017. The Authorized Representative (AR) attended the personal hearing on the scheduled date and made oral submissions. Further, the AR requested for one week time to submit additional submissions in the matter. Accordingly, the Noticees were granted time till June 02, 2017 to make their

additional submissions. Thereafter, vide email dated June 01, 2017, all the five Noticees viz. Shri Gopichand Idandas, Shri Sunil G. Duseja, Heeral Constructions Pvt. Ltd, Shri Sushil G. Duseja and Aanchal S. Duseja made their additional submissions in the matter.

6. Upon perusal of the file, I find that three Noticees viz. Shri S.R. Asaithambi (demand draft No. 311630 dated October 10, 2014), Shri S. R. Kumar (demand draft No. 760424 dated October 08, 2014) and Shri R. Sekar (demand draft No. 157464 dated October 11, 2014) have already paid a sum of ₹ 3,00,000 (Rupees three Lakh Only) towards the monetary penalty imposed vide the adjudication order dated August 26, 2014 .
7. Also, as mentioned in the Adjudication Order dated August 26, 2014, I find that one of the noticees Ms. Hoondi Bai expired on June 16, 2012 and the certificate of death (as submitted by the Authorized Representative vide email dated August 08, 2014) has been taken on record. Therefore, the proceedings against Ms. Hoondi Bai stand abated. I note that the Noticees viz. Pushpa Mahesh, Dharampal Anand, Amita Sawhney, Deepak Sawhney, Alidoss Tejmal and Asha Harish Chand have not submitted any replies to the SCN. Ms. Rita Gopichand submitted reply dated August 07, 2014 .Now, I would be proceeding further on the basis of the material available on record and also in light of the observations of the Hon'ble SAT in the matter.

Consideration of Issues, Evidence and Findings

8. I have carefully perused the charges leveled against the Noticees in the SCN, written submissions made by the Noticees and the material as available on record. The issues that arise for consideration in the present case are:

a. Whether the Noticees have violated the provisions of Regulation 30(2) read with Regulation 30(3) of the SAST Regulations, 2011?

b. Whether the Noticees are liable for monetary penalty prescribed under Section 15 A(b) of the SEBI Act for the aforesaid violation?

c. If so, what should be the quantum of monetary penalty?

9. Before proceeding further, I would like to refer to the relevant provisions of law, which read as under:

Relevant provisions of the SAST Regulations, 2011:

Continual disclosures.

30(2) *The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—*

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

10. I find from the SCN that the Noticees, being promoters of GGGL were under an obligation to disclose their aggregate shareholding as on March 31, 2012 to the stock exchanges i.e. BSE and MSE and to GGGL on April 12, 2012 for the year 2012. However, it was observed that the said disclosures were made by the Noticees only on July 31, 2012, i.e. with a delay of 110 days. It was, therefore, alleged in the SCN that the Noticees, by making the said disclosure belatedly, had violated the provisions of Regulation 30 (2) read with Regulation 30 (3) of the SAST Regulations, 2011.

11. Vide separate but identical letters dated August 07, 2014, Shri Gopichand Idandas, Shri Sunil G. Duseja, Heeral Constructions Pvt. Ltd, Shri Sushil G. Duseja, Aanchal S. Duseja and Ms. Rita Gopichand had submitted their replies to the SCN. The Noticees had stated that *“as a part of the promoter group we accept responsibility that there was a delay in filing the said regulations 30(2) read with 30(3) from our side since the company was in suspension during the said time and was slowly coming out of the same”*.

12. Further, vide separate but identical letters dated June 01, 2017, the Noticees viz. Shri Gopichand Idandas, Shri Sunil G. Duseja, Heeral Constructions Pvt. Ltd,

Shri Sushil G. Duseja and Aanchal S. Duseja, submitted their respective additional submissions in the matter. The said Noticees stated that GGGL was in the business of Granites and the said company was formed by coming together of various heterogeneous groups as 'Promoter Group' to run the business. The configuration of the different heterogeneous groups forming the promoter group is as below:

Particulars	No. of People
Duseja Family including Hoondibai (Who has expired)	5 + 1
R Sekar, S R Kumar and S R Asaithambi (All Brothers)	3
Sawhneys	2
Different Individuals	6

13. The Noticees further stated that sometime in 1998 due to recession, the business of the company couldn't survive and most of the heterogeneous groups who were part of the Promoter Group were not interested in running the business and were there only for name sake as part of the Promoter Group. For the said reason, the relation between the said groups soured. The only heterogeneous group, namely, Shri Gopichand Idandas, Shri Sunil G. Duseja, Heeral Constructions Pvt. Ltd, Shri Sushil G. Duseja, Aanchal S. Duseja and Late. Ms. Hoondi Bai actively took part in the affairs of the company as Promoters in order to revive the company and run the business. Even though the said Noticees wanted to remove the other Groups from the Promoter Group, they were unable to do the same as no such provision was available either in the Listing Agreement or any of the SEBI Guidelines. The Noticees state that only recently, the Listing Regulations (LODR) have the provision of re-classification of promoters under Regulation 31(1)(A). Despite the efforts of the said Noticees, the company failed to revive and it was referred to BIFR in 1999. Further, the Noticees submit that after some years, by making constant efforts, the Noticees, by way of bringing their own funds in the Company, could clear all the pending dues to the Banks and got the company out of BIFR in 2005. However, in 2006 the Company was suspended by BSE due to non-compliances and non-payment of listing fees. The said suspension was revoked by the exchange in the year 2012. As the business of the Company could not revive much, the Noticees viz. Shri Gopichand Idandas, Shri Sunil G.

Duseja, Heeral Constructions Pvt. Ltd, Shri Sushil G. Duseja, Aanchal S. Duseja and Late. Ms. Hoondi Bai decided to sell their holdings to new investors as per the SAST Regulations. The new investors, as per the SEBI Guidelines, even initiated Open Offer to the existing shareholders of the company. However, it is submitted that the other heterogeneous groups who formed part of the promoter group of the company had filed false complaints with SEBI and the Merchant Banker with the intention to delay the open offer process. Various submissions were made by the Noticees viz. Shri Gopichand Idandas, Shri Sunil G. Duseja, Heeral Constructions Pvt. Ltd, Shri Sushil G. Duseja, Aanchal S. Duseja and Late. Ms. Hoondi Bai and pursuant to the said submissions, SEBI had given clearance to the Open Offer.

14. Further, the Noticees stated that post the Open Offer, the outgoing promoters (i.e. Shri Gopichand Idandas, Shri Sunil G. Duseja, Heeral Constructions Pvt. Ltd, Shri Sushil G. Duseja and Aanchal S. Duseja) received the present SCN alleging them of the delay of 110 days in compliance with the provisions of Regulation 30(2) read with Regulation 30(3) of the SAST Regulations, 2011. The Authorised Representative of the Noticees submitted that there was a delay in complying with the said provisions of SAST Regulations and the same was even confirmed by them vide their letter dated August 07, 2014. Also, the Noticees submitted that there has been no change in the holdings of the promoters from 1997 till the date of open offer. Therefore, the Noticees contend that the delay in filing by 110 days did not amount to any monetary benefit nor any other benefit to them.

15. I have carefully perused the allegations levelled against the Noticees in the SCN, the submissions made by the Noticees (Shri Gopichand Idandas, Shri Sunil G. Duseja, Heeral Constructions Pvt. Ltd, Shri Sushil G. Duseja and Aanchal S. Duseja) and the material as available on record. I find that the Noticees have made the disclosures as required under Regulation 30(2) read with Regulation 30(3) of the SAST Regulations, 2011 with a delay of 110 days for the year ending March 2012. The due date of compliance for the same being April 12, 2012 and the actual date of compliance by the promoter group being July 31, 2012.

16. I note that while remanding the present matter, the Hon'ble SAT has observed that *"Object of requiring the promoters of a listed company to make yearly*

disclosures is to inform the investors, the number and percentage of shares or voting rights held by the promoter/promoter group along with PACs at the end of each financial year and also at the record date of the company for declaration of dividend and it is not intended that every entity included within the meaning of 'promoter' should make yearly disclosure". The Tribunal further went on to state that ".....it is apparent that even in case of promoter group, the promoter group has to disclose the number and percentage of shares held by each promoter in the promoter group as also the number and percentage of shares held by the PAC of each promoter in the promoter group.....Since the expression 'promoter' in the Takeover Regulations includes the 'promoter group', it would have to be held that in a case of a 'promoter group' the obligation to make yearly disclosure is on the promoter group and not on each promoter in promoter group".

17. I note that the Hon'ble SAT also observed that *"the AO did not verify the correctness of the argument advanced by the appellant to the effect that they formed an independent promoter group"* on the basis of the submissions made by the Noticees. However, it may be noted that the Noticees had not taken such a plea in their written submissions dated August 07, 2014 filed before me.

18. I find that the issue in the present case is about delay in making the yearly disclosures by the promoter group. I note that for the purpose of disclosure obligations & compliances under the SAST Regulations, the Noticees were forming part of the promoter group and the aggregate shareholding of all the noticees was appearing under the head 'promoter and promoter group' on the website of BSE for the quarter ending June, 2012 and the same forms part of the Record. In view of this, the submission of the Noticees, that they were a part of a separate heterogeneous group, cannot be accepted. Moreover, the Noticees have not submitted any documentary evidence in this regard in support of their contention. I also note that the Noticees vide their letters dated August 07, 2014 and June 01, 2017 admitted the delay in making the necessary disclosures in terms of SAST Regulations 2011.

19. I further find no merit in the contention of the Noticees that the scrip of GGGL was under suspension and no trading took place during the delayed period of disclosures in as much as the Noticees were under a statutory obligation to make the said disclosures. In the case of ***Comfort Fincap Ltd. vs. SEBI (Appeal No. 160 of 2014 decided on June 25, 2014)***, it was contended before the Hon'ble SAT that during the relevant period there was no trading in the shares on the stock exchange and hence, imposition of penalty for not making disclosure under Regulation 8(3) is unjustified. Rejecting that contention, the Hon'ble SAT held that making disclosure under Regulation 8(3) is mandatory and that obligation is not dependent on the actual trading on the stock exchange.

20. Also, in the case of ***Sincere Packers Limited Vs. SEBI (Appeal No. 426 of 2014 decided on March 30, 2015)***, the Hon'ble SAT observed that *"whether the trading had taken place or not once it is accepted that there is violation of Regulation of 8(3), then the appellants cannot escape penal liability"*. I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI***, the Hon'ble SAT vide Order dated September 30, 2014 had observed that: *".....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."*

21. Therefore, I conclude that the Noticees have committed a delay of 110 days in complying with the provisions of Regulation 30(2) read with Regulation 30(3) of the SAST Regulations, 2011. The said delay on the part of the Noticees viz. (1) Gopichand Idandas, (2) Sunil G. Duseja, (3) Heeralal Constructions pvt .Ltd, (4) Sushil G. Duseja, (5) Anchal Sunil Duseja, (6) Rita Gopichand, (7) Pushpa Mahesh, (8) Dharampal Anand, (9) Amita Sawhney, (10) Deepak Sawhney, (11) Alidoss Tejmal, and (12) Asha Harish Chand attract monetary penalty under Section 15A(b) of the SEBI Act, 1992.

22. Section 15A(b) of the SEBI Act, 1992 (as existed at the time of violation) reads as under:

15A. Penalty for failure to furnish information, return, etc.

If any person who is required under this Act or any rules or regulations made there under:-

(a).....

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

23. The disclosure made under Regulations 30 (2) read with Regulation 30 (3) of the SAST Regulations, 2011 by promoters are made public only through Stock Exchange. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of vital information. The disclosures made by companies listed on the stock exchanges are the means to attain such end and therefore timely dissemination of complete information is required. However, the Noticees have failed to comply with the timelines stipulated under Regulation 30 (2) read with Regulation 30 (3) of the SAST Regulations, 2011.

24. 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.”* Further, in the matter of **Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010)**, the Hon'ble SAT had observed *“Once it is established that the mandatory provisions of Takeover Code was violated the penalty must follow.”*

25. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of **SEBI v. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)**, *inter alia*, held: *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow.”*

26. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 which reads 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 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.*

27. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the default of the Noticees is not repetitive in nature.

ORDER

28. 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 (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I conclude that the present proceedings against Shri S.R. Asaithambi, Shri S. R. Kumar and Shri R. Sekar stand disposed of inasmuch as they have already paid a sum of ₹ 3,00,000/- (Rupees Three Lakh Only) towards the monetary penalty. Further, the proceedings against the Noticee viz. Hoondi Bai stand abated.

29. Further, I hereby impose a monetary penalty of ₹ 2,00,000/- (Rupees Two Lakh Only) on the Noticees viz. (1) Gopichand Idandas (2) Sunil G. Duseja (3) Heeralal Constructions pvt Ltd (4) Sushil G. Duseja, (5) Anchal Sunil Duseja (6) Rita

Gopichand (7) Pushpa Mahesh (8) Dharampal Anand (9) Amita Sawhney (10) Deepak Sawhney (11) Alidoss Tejmal and (12) Asha Harish Chand under Section 15A(b) of the SEBI Act, 1992 payable jointly and severally. In my view, the penalty is commensurate with the default committed by the Noticees.

- 30.** The amount of penalty shall be paid either by way of demand draft in favor 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. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " The Division Chief (Enforcement Department - DRA-III), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052.

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

- 31.** In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: June 30, 2017
Place: Mumbai

D.SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER