

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : Order/GR/RK/2020-21/10089]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of

Fortis Healthcare Holdings Pvt. Ltd.

(PAN: AAACF6715A)

FACTS OF THE CASE IN BRIEF

1. In respect of Fortis Healthcare Ltd. (hereinafter referred to as '**Target company**'), a Draft letter of offer ("**DLOF**") was filed with Securities and Exchange Board of India ("**SEBI**"), by managers to the open offer viz. HSBC Securities and Capital Markets (India) Pvt. Ltd., HDFC Bank Ltd., Citibank Global Markets India Pvt. Ltd. And Deutsche Equities India Pvt. Ltd. (collectively referred to as "**Merchant Bankers/MB**"). On perusal of the DLOF, *prima facie* non-compliances with the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**') by the erstwhile promoter of the target company viz. Fortis Healthcare Holdings Pvt. Ltd.

(hereinafter referred to as '**Noticee**') were observed by SEBI. Accordingly, it was alleged that the Noticee had violated the provisions of Regulations 29(2) read with 29(3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer ('**AO**') vide order dated September 02, 2020, under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter, "**SEBI Act**") and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, '**Adjudication Rules**') to enquire into and adjudge under Section 15A(b) the alleged violations of Regulations 29(2) read with 29(3) of SAST Regulations, 2011 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated October 27, 2020 (hereinafter, "**SCN**") was issued by the AO to the Noticee under Rule 4 of the Adjudication Rules, calling it to show cause as to why an inquiry should not be held against it and penalty be not imposed on it under Section 15A(b) of the SEBI Act for failure on behalf of the Noticee to make requisite disclosures within the stipulated timeline under Regulations 29(2) read with 29(3) of SAST Regulations, 2011.

4. In response to this, the Noticee vide its letter dated November 17, 2020 requested to keep the proceedings on hold as both the promoters of the Noticee has been sent to judicial custody since October 10, 2019. Further, vide the same letter, the Noticee requested to be provided with copy of several documents including copy of order appointing Adjudicating Officer, copy of SEBI's internal delegation of powers and copy of investigation report prepared by SEBI.
5. Subsequently, in this regard, the Noticee was informed that all the relied upon information and documents to substantiate the allegations in respect of it, have already been provided to it along with the SCN and there are no other information and records being relied upon in respect of it in the present matter. Further, vide hearing Notice dated December 02, 2020, an opportunity of personal hearing was provided to the Noticee.
6. However, the Noticee failed to appear for the said hearing and vide its letter dated December 11, 2020, it filed its preliminary reply to the SCN, which is summarized below:
- "we repeat and reiterate the submissions made vide our letter dated November 17, 2020. Please note that the promoters of FHHPL continue to be in judicial custody. As such FHHPL does not have a board of directors presently.*
- It is submitted that a detailed reply on merits cannot be filed with SEBI without obtaining requisite approval from the board of directors. The undersigned does not have instructions from the board of directors / promoters for proceeding further in regard to the present proceedings. It is further submitted that these are circumstances which are beyond the control of the undersigned of FHHPL.*

It is understood from the captioned SCN that FHHPL has indeed disclosed the change in shareholding that occurred owing to invocation of pledge on its shares and it is not SEBI's contention that FHHPL has failed to disclose the change in its shareholding of Fortis Healthcare Limited ("FHL"). The only allegation against FHHPL appears to be that the format of disclosure was not in the manner specified under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations"). Subject to para 3 above and based on records, FHHPL denies having violated any law.

Accordingly, it is requested that in view of due disclosure being made to the public and the investor being informed, the inquiry proceedings initiated against FHHPL be concluded without any further action."

7. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticee.

ISSUES FOR CONSIDERATION AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are:
- a. Whether the Noticee has violated the provisions of Regulations 29(2) read with 29(3) of SAST Regulations, 2011?
 - b. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act?

- c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?

9. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 2011 which reads as under:

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to, —

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

(b) the target company at its registered office.

FINDINGS

10. The first issue for consideration is whether the Noticee has violated Regulations 29(2) read with 29(3) of SAST Regulations, 2011.
11. It may be noted that, in terms of Regulation 29(2) r/w Reg. 29(3) of the SAST Regulations, any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made and such change exceeds two per cent of the total shareholding or voting rights in the target company. The disclosure made in the context of the above said regulations shall be made to the stock exchanges and to the company as per the prescribed format within two working days of such acquisition or disposal of shares which has resulted in the change in shareholding or voting rights in the target company, as mentioned in para 9 above.
12. From the fact of the case, I observe that promoters shareholding in the target company was 20,64,67,427 (39.82%) as on July 18, 2017 in which Noticee's shareholding was 20,59,17,008 shares (39.71 %) in terms of disclosure made by the Noticee under Regulation 29(2) of SAST Regulations 2011 on July 20, 2017. Subsequently, pursuant to the sale of shares of the target company by the Noticee on July 19, 2017, July 25, 2017, July 26, 2017 and July 27, 2017, the shareholding of the Noticee and promoters in the target company decreased to 37.60 % and 37.71% respectively on July 27, 2017. Since, this change in shareholding was more than 2%,

it required disclosure to be made by the Noticee under Regulation 29(2) of SAST Regulation, 2011.

13. Hence, SEBI vide email dated February 17, 2020 and again vide reminder letter dated February 28, 2020 sought comments of the Noticee in this regard. In reply to this, the Noticee vide its letter dated March 05, 2020 *inter-alia* informed that 54,00,000 (1.04%) pledged shares were invoked by the lender on July 18, 2017 and July 19, 2017, and since intimation of invocation came only on August 11, 2017, the disclosure was made on August 14, 2017 by putting up a note for sale of shares between July 25, 2017 to August 10, 2017 in their another disclosure dated August 14, 2017 for sell of 54,62,411 (1.05%) shares on August 10, 2017.

Hence, the Noticee has contended that it has indeed disclosed the change in shareholding that occurred owing to invocation of pledge on its shares.

14. In this regard, I note that, the aforesaid disclosure made by the Noticee on August 14, 2017 was in respect of change in shareholding of the Noticee from 37.57% to 36.51% (i.e. transaction on August 10, 2017). However, the disclosure made on August 14, 2017 does not mention about the change in shareholding from 39.71 % to 37.60% (as explained in para 12), and there is just a note which mentions that '*due to sale from July 25, 2017 to August 10, 2017, the cumulative shareholding has been reduced by more than 2% and accordingly, this disclosure has been made*'.

15. I further note that, for the purpose of disclosure requirement, a particular format has been specified under the said Regulation, contains specific details about transactions of promoters of the company such as: *Name(s) of Acquirer along with the persons acting in concert ('PACs'), no. of shares acquired/sold, Pre and Post holding of the Acquirer along with PACs after the acquisition/sale of shares, date of transaction, equity share capital of target company before and after the acquisition/sale of shares* etc. Hence this mere note without the aforementioned details as specified in the format under the aforesaid Regulation can't be considered as a compliance with Regulation 29(2) of SAST Regulations 2011 for the change in shareholding of promoters from 39.82% to 37.71%.
16. Further, in this regard, I would like to rely upon observations of Hon'ble SAT in the matter of note that in the matter of *Premchand Shah and Others V. SEBI*, in which Hon'ble SAT vide its order dated February 21, 2011, held that -"*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner...Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments.*"
17. Based on the aforesaid findings, I conclude that the Noticee has violated the provisions of Regulations 29(2) read with 29(3) of SEBI SAST Regulations, 2011.
18. I further note that Hon'ble Supreme Court of India, in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} 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”.

19. In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulations 29(2) read with 29(3) of SEBI SAST Regulations, 2011. The provisions of Section 15A (b) of the SEBI Act, 1992 read as under:

SEBI Act 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 therefor in the Regulations, fails to file return or furnish the same within the time specified therefor 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”.*

20. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under: -

Factors to be taken into account by the adjudicating officer.

Section 15J - 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.

21. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticee is available on record. However, the facts of the case clearly bring out the default made by the Noticee. I note that the Noticee had failed to make timely disclosures in the prescribed format and has thereby violated Regulations 29(2) read with 29(3) of SEBI SAST Regulations, 2011.

ORDER

22. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Adjudication Rules, I hereby impose a penalty of **Rs 1,00,000/-** (Rupees One lac only)

on the Noticee viz. Fortis Healthcare Holdings Pvt. Ltd., in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

23. The Noticees 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → **Orders** → **Orders of AO** → **PAY NOW.**

24. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to “The Division Chief (Enforcement Department -DRA-3), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 –A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	

Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount	

25. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter-alia*, by attachment and sale of movable and immovable properties.
26. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date : January 11, 2021

G Ramar

Place : Mumbai

Adjudicating Officer