

**BEFORE THE ADJUDICATING OFFICER SECURITIES
AND EXCHANGE BOARD OF INDIA [ADJUDICATION**

ORDER NO. : Order/GR/RK/2020-21/10029]

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
Embassy Property Development Pvt. Ltd.
(PAN:AAACD6927A)

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (“**SEBI**”) received a letter dated September 19, 2019 from Vistara ITCL (India) Ltd. (“**Vistara**”), a SEBI registered Debenture Trustee in which Vistara had provided a list of companies from which it had not received till that date the Half Yearly Communication (“**HYC**”) as per Regulation 52(4) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, (“**LODR Regulations**”) for the half year ended March 31, 2019. The aforesaid list of companies included Embassy Property Development Pvt. Ltd. (“**Noticee/Company**”). In view of the aforesaid information, SEBI conducted an examination and had observed *prima facie* violation of Regulation 52(1), 52(4) and 52(5) of LODR Regulations by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer (“**AO**”) vide order dated June 10, 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, **Rules**) to enquire into and adjudge under Section 15A(b) the alleged violations of Regulations 52(1), 52(4) and 52(5) of LODR Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice dated August 28, 2020 (hereinafter, “**SCN**”) was issued by the AO to the Noticee under Rule 4 of the 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 the violations as specified in the SCN and reproduced herein below:

(a) Failure to submit financial results of the company for the half year ended March 31, 2019 to the exchange, which is not in compliance of Regulation 52(1) of the LODR Regulations.

(b) Failure to disclose the line items as specified under the Regulation 52(4) of LODR Regulations to the exchange.

(c) Failure to submit the certificate signed by the Debenture Trustee taking note of the contents prescribed under Regulation 52(4) of LODR Regulations to the exchange, thereby non-compliance with Regulation 52(5) of LODR Regulations.

4. In response to this, the Noticee vide its email dated September 09, 2020 requested for some more time to file their reply to the SCN. Hence, vide email dated September 11, 2020, the Noticee was asked to submit its reply to the SCN latest by September 21, 2020 and also an opportunity of personal hearing was provided to the Noticee on September 24, 2020.

5. The Noticee submitted its reply to the SCN vide its email dated September 18, 2020, which is summarized as below:

“Embassy Office Parks REIT (REIT) was India’s first REIT. The Noticee (EPDPL) is a sponsor to the REIT with 14.9% stake and holds equity investment in the manager to the REIT. As it was India’s first REIT, EPDPL had various accounting aspects to be addressed before closing the books of accounts

and need to carry out various technical evaluations with regards to the method of accounting of the investment of Embassy Office Parks REIT in its books. EPDPL had to take decisions on the relationship between Embassy Office Parks REIT and itself, to established whether the investment should be carried at cost or carried at fair value;

The accounting treatment would have substantial impact on the statement of profit and loss of EPDPL and hence required a long deliberation on the accounting treatment. Hence there was delay in submissions of results to the stock exchange as well as delay in submission of limited review financials to National Stock Exchange of India Limited (Exchange);

Due to aforesaid circumstances we were constrained to finalise the books of accounts only during September 2019 and were able to file the Audited Statement of accounts on September 12, 2019 and Certificate under Regulation 52(5) on November 11, 2019 to the Exchange.”

6. Subsequently, hearing in the matter was conducted on September 24, 2020. The said hearing was attended by the Authorized Representatives ('AR') of the Noticee in which they reiterated their submissions made vide its earlier replies.
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 Regulation 52(1), 52(4) and 52(5) of the LODR Regulations?
 - 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 LODR Regulations, which reads as under:

Regulation 52(1)

“The listed entity shall prepare and submit un-audited or audited financial results on a half yearly basis in the format as specified by the Board within forty-five days from the end of the half year to the recognised stock exchange(s).

Provided that in case of entities which have listed their equity shares and debt securities, a copy of the financial results submitted to stock exchanges shall be provided to Debenture Trustees on the same day the information is submitted to stock exchanges.”

Regulation 52(4)

“The listed entity, while submitting half yearly / annual financial results, shall disclose the following line items along with the financial results:

(a) credit rating and change in credit rating (if any);

(b) asset cover available, in case of non-convertible debt securities;

(c) debt-equity ratio;

(d) previous due date for the payment of interest / dividend for non-convertible redeemable preference shares / repayment of principal of non-convertible preference shares / non-convertible debt securities and whether the same has been paid or not; and,

(e) next due date for the payment of interest/ dividend of non-convertible preference shares /principal along with the amount of interest / dividend of non-convertible preference shares payable and the redemption amount;

(f) debt service coverage ratio;

(g) interest service coverage ratio;

(h) outstanding redeemable preference shares (quantity and value);

(i) capital redemption reserve/ debenture redemption reserve;

(j) net worth;

(k) net profit after tax;

(l) earnings per share:

Provided that the requirement of disclosures of debt service coverage ratio, asset cover and interest service coverage ratio shall not be applicable for banks or non-banking financial companies registered with the Reserve Bank of India.

Provided further that the requirement of this sub-regulation shall not be applicable in case of unsecured debt instruments issued by regulated financial sector entities eligible for meeting capital requirements as specified by respective regulators.”

Regulation 52(5)

“The listed entity shall within seven working days from the date of submission of the information required under sub-regulation (4), submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents”

Prior to May 07, 2019, the aforesaid sub-regulation 5 of Regulation 52 of SEBI (LODR) Regulations, 2015 read as “While submitting the information required under sub-regulation (4), the listed entity shall submit to stock exchange(s), a certificate signed by debenture trustee that it has taken note of the contents”.

FINDINGS

10. The first issue for consideration is whether the Noticee has violated Regulation 52(1), 52(4) and 52(5) of the LODR Regulations.
11. It may be noted that Regulation 52(1) of SEBI (LODR) Regulations provides for submission of the financial results within forty-five days from the end of the half year. Further, Regulation 52(4) provides for disclosure of certain line items along with the half yearly / annual financial results, while Regulation 52(5) provides for submission of a Certificate signed by the Debenture Trustee taking note of the contents prescribed under Regulation 52(4).
12. From the fact of the case, I observe that in pursuance of the reference of Vistra, SEBI sought information from Exchanges (NSE and BSE) regarding the compliance status of the Noticee with respect to Regulation 52(1), 52(4) and 52(5) of LODR Regulations for the half year ended March 31, 2019. From the submissions of the NSE vide its email dated October 11, 2019, it was observed that the company has not complied with provisions of Regulation 52(1), 52(4) and 52(5) of LODR Regulations.
13. The Noticee in its reply has submitted that the Noticee was a sponsor to the REIT ("Embassy Office Parks REIT") with 14.9% stakes. The Noticee further submitted that as it was India's first REIT, the Noticee had various accounting aspects to be addressed before closing the books of accounts and there was a need to carry out various technical evaluations with regards to the method of accounting of the investment of the REIT in its books. Hence, the Noticee finally submitted that because of these reasons, there was a delay in submissions of results to the stock exchange.
14. In this regard, I note that the procedural difficulties faced by the company in closing their books of accounts and carrying out technical evaluations with regards to the method of accounting etc. is their internal matter which does not absolve the Noticee from filing the said disclosures under LODR Regulations. In this regard, I further note that a listed entity is required to comply with the relevant Regulations/directions issued by SEBI from time to time. In the instant matter, the provision of said Regulation does not give any relaxation

from complying with the same for any procedural challenges like this. Therefore, I do not accept this contention of the Noticee.

15. I further note that it is crucial to mention here that financial statements are important because they contain significant information about a company's financial health. They are the barometer of a company's operations. Investors depend on the truth and fairness in the financial statements to make informed decisions. Moreover, it is not only investors, but a lot of stakeholders like operational creditors and lending institutions like banks that need to gauge the profitability and track record before opening up lines of credit to a company.
16. Further, timely disclosure of relevant information by listed companies is essential for maintaining transparency about the affairs of the Company which helps in eliminating information asymmetry. Moreover, correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. In this context, I would like to rely on observation of Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)* wherein it was held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*
17. Further, from the submissions of the Noticee, I observe that the Noticee has admitted that it had failed to make the aforesaid disclosures on time and hence the Noticee had not denied the fact that it has violated the provisions of Regulation 52(1), 52(4) and 52(5) of LODR Regulations.
18. Based on the aforesaid findings, I conclude that the Noticee has violated the provisions of Regulations 52(1), 52(4) and 52(5) of LODR Regulations.
19. 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”.

20. 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 52(1), 52(4) and 52(5) of the LODR Regulations. 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”.*

21. 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.

22. 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 thereby has violated Regulations 52(1), 52(4) and 52(5) of the LODR Regulations.

ORDER

23. 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 Rules, I hereby impose a penalty of **Rs 3,00,000/-** (Rupees Three lacs only) on the Noticee viz. Embassy Property Development 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.
24. 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.**

25. 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.

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| 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 | |

26. 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.
27. 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 : December 29, 2020

Place : Mumbai

G Ramar

Adjudicating Officer