

TUMUS ELECTRIC CORPORATION LTD.

CIN-L31300MP1973PLC001186

Corp Office: 1207-A, P J Towers, Dalal Street, Fort, Mumbai - 400 001, India
Tel: 022-22721981, Email: compliance.tumus@gmail.com

24th August, 2015

To,
Department of Corporate Relations
BSE Limited
1207/A, P.J.Towers,
Dalal Street, Fort,
Mumbai - 400 001

Subject: Disclosure under Clause 36 of Equity Listing Agreement

Ref: Tumus Electric Corporation Limited - Scrip Code: 504273

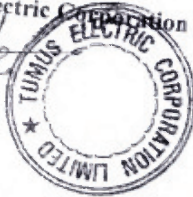
Dear Sir/Madam,

Kindly note that the company has received today Adjudication Order dated August 20, 2015 from Securities and Exchange Board of India (SEBI) with respect to the adjudication proceedings conducted against the company. Copy enclosed.

Kindly make a note of the same.

For Tumus Electric Corporation Limited

Rupesh Parde
Director
DIN: 06909495





भारतीय प्रतिभूति
और विनिमय बोर्ड
**Securities and Exchange
Board of India**

By Regd. Post with A. D.

E&AO/RA/JP/23478/2015

August 20, 2015

Tumus Electric Corporation Ltd.
1207, A.P.J. Towers
Dalal Street
Mumbai- 400 001

Sub: Adjudication Order in the matter Non Disclosures.

Please find enclosed herewith a copy of Adjudication Order dated August 20, 2015 passed in respect of adjudication proceedings conducted against you in the captioned matter.

2. The same is being forwarded to you in terms of provisions of rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995.


RACHNA ANAND
ADJUDICATING OFFICER



Encl. As above

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/JP/04/2015]

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:

Tumus Electric Corporation Ltd.

PAN: AAAC T848104

(A Listed Company at BSE Ltd.)

Address: 1207, APJ Towers, Dalal Street, Mumbai-400 001

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') while examining the Draft Letter of Offer filed by Mr. Uttam Bagri (Acquirer) to acquire 26% shares of the Noticee, observed that the Tumus Electric Corporation Ltd. – a Company listed at BSE Ltd. (**BSE**) and Madhya Pradesh Stock Exchange Ltd. (**MPSE**) (hereinafter referred to as '**the Noticee / TECL**') had failed / delayed in complying with the provisions of regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating



Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') vide order dated April 22, 2015, to inquire into and adjudge under section 15 A (b) of the SEBI Act for the violation of aforesaid provisions of the SAST Regulations and communication of order appointing the undersigned as Adjudicating Officer was forwarded vide communiqué dated April 29, 2015.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. E&AO/RA/JP/13506/2015 dated May 13, 2015 (hereinafter referred to as "SCN") was served upon the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed upon it under sections 15 A (b) of the SEBI Act for the alleged violation of regulation 8(3) of SAST Regulations.

4. It was alleged in the SCN that SEBI while examining the Draft Letter of Offer filed by Mr. Uttam Bagri (Acquirer) to acquire 26% shares of the Noticee, observed that the Noticee being listed at BSE and MPSE, had failed / delayed in complying with the provisions of regulation 8(3) of SAST Regulations in disclosing the changes of holdings of the persons referred to under regulation 8 (1) and also holdings of promoters or person(s) having control over the company, pertaining to the period of year 1997-98 to 2011-12. Details of alleged non-disclosure / delayed disclosures by the Noticee under regulation 8(3) of SAST Regulations etc. were provided to the Noticee along with SCN and are also shown in a table below :-

Serial Number	Regulation to be Complied with by the Noticee	Due Date for Compliance	Actual Date of Compliance	Delay (Number of Days)
1.	8(3)	24.11.1997	02.01.2013	5518
2.	8(3)	30.04.1998	02.01.2013	5361
3.	8(3)	24.11.1998	02.01.2013	5153
4.	8(3)	30.04.1999	02.01.2013	4996
5.	8(3)	24.11.1999	02.01.2013	4788
6.	8(3)	30.04.2000	02.01.2013	4630
7.	8(3)	30.04.2001	02.01.2013	4265
8.	8(3)	30.04.2002	02.01.2013	3900

9.	8(3)	30.04.2003	02.01.2013	3535
10.	8(3)	30.04.2004	02.01.2013	3169
11.	8(3)	30.04.2005	02.01.2013	2804
12.	8(3)	30.04.2006	02.01.2013	2439
13.	8(3)	30.04.2007	02.01.2013	2074
14.	8(3)	30.04.2008	02.01.2013	1708
15.	8(3)	30.04.2009	02.01.2013	1343
16.	8(3)	30.04.2010	02.01.2013	978
17.	8(3)	30.04.2011	02.01.2013	613

5. The alleged provisions of SAST Regulations are produce as under;

SAST Regulations

8(1) Every person, including a person mentioned in regulation 6 who holds more than fifteen percent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st march.

8(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purpose of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by person acting in concert with him, in that company to that company.

8(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

Note:- In regulation 8(1), prior to the amendment which took effect from October 28, 1998, the percentage was "ten percent" and after October 28, 1998, it was amended to "fifteen per cent".

6. The said SCN was sent through Regd. Post AD at the two available address of the Noticee viz. (Corporate Office at 501, Chambers, 5th Floor, Behind Metro

Cinema, Marine Lines, Mumbai-400 020 and Regd. Office at *Rani Baug, P B Chorhata, Reva (MP) – 486001*) but, the same was returned undelivered by Postal Department with remarks "Incomplete Address and Company Closed" respectively. As the Noticee / TECL is listed with BSE, therefore, vide communique dated July 13, 2015, BSE was advised to serve the SCN upon the Noticee. Accordingly, BSE vide letter dated July 15, 2015 informed of service of SCN upon the Noticee and had enclosed evidence of such service.

7. In response to the SCN, the Noticee through letter dated July 15, 2015 besides intimating its new address, had requested for two weeks' time to file reply towards the SCN and also requested for an opportunity of hearing.
8. As no reply was filed by the Noticee within the stipulated time or within the time as sought by it, for the purpose of inquiry, the Noticee was granted an opportunity of hearing on August 14, 2015 vide hearing notice dated August 04, 2015. In the meantime, the Noticee filed its reply dated July 30, 2015 (received on August 04, 2015). The hearing on August 14, 2015 was attended by the authorised representative of the Noticee namely- Mr. Nahar Singh Mahala Advocate and Mr. Manish Mourya – company secretary, and the submissions made by them were recorded. As the Noticee did not produce copy of its Income Tax Permanent Account Number (PAN) either along its reply or during the course of hearing which was specifically asked under the SCN as well as aforesaid notice of hearing, an e-mail dated August 17, 2015 was sent to the Noticee (at its e-mail ID- compliance.tumus@gmail.com) seeking copy of PAN on priority basis but not later than by August 19, 2015. On same i.e. August 17, 2015 day, the Noticee provided the copy of its PAN through e-mail.
9. The submissions towards the SCN as made by the Noticee in its aforesaid reply dated July 30, 2015 and during the course of hearing, are mentioned below;



- (a) The submissions / disclosures under regulation 8(3) are dependent on submission under regulation 8 (1) & 8 (2) of SAST Regulations.
- (b) SEBI prescribed format of regulation 8(3) available under SEBI website link <http://www.sebi.gov.in/takeover/takeover78.html> (attached as Annexure I) - which heads as "Format for informing details of shareholding {obtained u/r 8(1) & 8(2) from acquire (s)} by target company to stock exchanges, in terms of Regulations 8(3) of SAST Regulations".
- (c) SEBI has in its Adjudication Order (ASK/AO/14/2014) dated January 30, 2014 (attached as Annexure II) has found that the disclosures under regulation 8(1) and 8(2) by the erstwhile promoters were made on January 02, 2013. In light of the above, the summary of deadlines of submission for 8(3) would be as under:

Date of 8(1) and 8(2) declarations by erstwhile promoters (per SEBI order)	Date of 8(3) declarations by company to BSE	Delay in submission to BSE	Date of 8(3) declarations by company to MPSE	Delay in submission to MPSE
January 02, 2013	January 02, 2013 (by Hand Delivery)	NIL	January 04, 2013 by Speed post (Annexure III)	NIL

- (d) The company is currently listed only at the BSE and it has ceased to be listed at the MPSE due to the SEBI exit order dated June 09, 2015.
- (e) The current promoters have taken over as promoters of the company in the year 2013. The violations refer to the years 2011 and prior.

- (f) *The previous promoters have already been penalized for the violations to the tune of ₹ 17 lac vide the said SEBI order dated January 30, 2014 and any penalty/action on the company would be a double jeopardy.*
- (g) *The company is a small Company with a net worth of less than ₹ 1 Crore as on date.*
- (h) *The new management had taken over the company/Noticee and they are complying with the requirements. We humbly submits to take a lenient view in the matter and no penalty be imposed upon us. We assures no to repeat such irregularities / noncompliance by the company in future.*
- (i) *In view of the above facts, circumstances and submissions, it is submitted that the company is not in default. Even if any default is held, the same is neither intentional nor deliberate, but purely inadvertent and that the same has already been dealt with. Hence, it is prayed that present proceedings be closed and SCN may please be withdrawn.*

10. After taking into account the allegations, reply of the Noticee and other evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the present case are :

- a) Whether the Noticee had failed / delayed in complying with the provisions of regulation 8(3) of SAST Regulations?
- b) If yes, then, whether said violation attracts monetary penalty under sections 15 A (b) of the SEBI Act?
- c) If yes, then, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (3) of the Adjudication Rules?



ISSUE NO. 1- Whether the Noticee had failed / delayed in complying with the provisions of regulation 8(3) of SAST Regulations?

12. I have carefully perused the allegations, submissions of the Noticee and the evidences / material available on records. The facts / details as alleged in the SCN, are not in dispute by the Noticee. The submissions of the Noticee towards the allegations are mentioned at para 9 above and same are not repeated for sake of brevity.
13. The main contention raised by the Noticee in its support is that making of disclosures under regulation 8(3) are dependent on submission/disclosures under regulation 8 (1) & 8 (2) of SAST Regulations. That means if the persons/promoters as referred in regulation 8(1) and 8 (2) of the SAST Regulations disclose their holding to the Company, then only the Company in turn is required to disclose such change or holding if any, to the stock exchange (s) within a period of 30 days. As per Noticee's aforesaid submissions / annexure attached therewith, the Noticee's contention that one of its promoter namely Mr. Ashok Jain who had acquired its shares, was supposed to make disclosures under regulation 8(1) & 8 (2) on April 21, 2002, however, he made such disclosures to it only on January 02, 2013 (as concluded by the Adjudicating Officer vide order No. ASK/AO/14/2014 dated January 30, 2014) and upon receipt of such disclosures, the Noticee in turn made the disclosures to BSE and MPSE on January 02, 2013 and January 04, 2013 respectively, therefore, there is no failure on its part in complying with regulation 8 (3) of SAST Regulations. Also, in its support, the Noticee relied upon the Format prescribed under regulation 8 (3) of the SAST Regulations.
14. I do not agree with the aforesaid submissions of the Noticee as nowhere in regulation 8(3) of the SAST Regulations, it is specified that these disclosures are dependent upon the disclosures under regulation 8(1) & 8(2) of the SAST Regulations. It is noted that the disclosures under regulation 8(3) are required to



be made by the company on yearly basis irrespective of change in shareholding of person / promoters.

15. At this juncture, I would like to refer to the judgement of the Hon'ble Securities Appellate Tribunal (SAT) in the case of Hybrid Financial Services Limited v. SEBI (Appeal No.119 of 2014 decided on June 12, 2014) wherein following has been observed:

"Arguments of the appellant that the delay in making disclosures occurred due to the incorrect, flawed and mistaken understanding and interpretation of Regulation 8(3) of SAST Regulations, 1997 is also without any merit because plain reading of Regulation 8(3) of SAST Regulations, 1997 makes it clear that the obligation to make disclosure by persons holding 15% and more shares is not only when there is change in shareholding but also when there is no change in the shareholding. Therefore, even if, there was no change in the shareholdings it was obligatory on the part of the appellant to make disclosures in each of the financial years... "

16. It is not the only case that the Noticee had failed to make disclosures of change in shareholding (which took place on April 2002 as submitted by the Noticee referring to the aforesaid adjudication order dated January 30, 2014), rather; it is the case that the Noticee had failed to make required disclosures under regulation 8(3) since 1997-98 onwards till 2011-12 (as on January 02, 2013 the required disclosures were made by the Noticee). The delay in making required disclosures year wise has been mentioned in table shown a para 4 above which remained undisputed. Form the above, it is clear that a continuous delay of around 15 years took place from the Noticee's end in making required disclosures.
17. The submission of the Noticee that it is currently listed only at the BSE only and it has ceased to be listed at the MPSE due to the SEBI exit order dated June 09, 2015, itself makes it clear that apart from BSE, the Noticee was also required to make said disclosures under regulation 8(3) to MPSE as well during the relevant period as the exit order of MPSE had come only on June 09, 2015.



18. The submission of the Noticee viz. the aforesaid promoter had already been penalized under adjudication proceeding and any penalty on the Noticee/company would be a double jeopardy, is not acceptable at all, as two separate requirement of disclosures viz. one from the promoter and another from the company, has been mandated under SAST Regulations which are independent of each other.
19. Other submission of the Noticee that default if any, is neither intentional nor deliberate, but purely inadvertent, cannot be accepted in the given facts / circumstance of the case and also keeping in view the settled legal position that the intention is not condition precedent for holding someone liable for such alleged failure / default / violation.
20. In view of the above failure / enormous delayed disclosures, it is concluded that the Noticee had violated regulation 8(3) of the SAST Regulations.

ISSUE NO. 2 - Whether said violation attracts monetary penalty under sections 15 A (b) of the SEBI Act?

21. After taking into account the facts and circumstance of the case including the fact of enormous delay of around 15 years in complying with regulation 8(3) of the SAST Regulations by the Noticee, I am of the view that this is the fit case to impose monetary penalty.
22. Further, it is worth to mention here that besides the leading case of *Shri Ram Mutual Fund* settled by the Hon'ble Supreme Court of India in the year of 2006, the Hon'ble SAT in case of *Gaylord Commercial Company Limited v. SEBI* (Appeal No.62 of 2014 decided on April 10, 2014) had clearly held by that once the violation of regulation 8(3) of SAST Regulations on account of failure to make disclosures within the time stipulated therein is established, then, liability to penalty arises under Section 15A (b) of SEBI Act, 1992.

23. Thus, the aforesaid violation by the Noticee makes him liable for penalty under Section 15 A (b) of SEBI Act, 1992 which read as follows:

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,-

(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;

ISSUE NO. 3- What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (3) of the Adjudication Rules?

24. While determining the quantum of penalty under sections 15HA and 15HB, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

“15J - Factors to be taken into account by the adjudicating officer

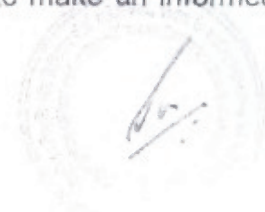
While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(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.”

25. Before arriving to the quantum of penalty in matter, it is necessary to refer the importance of such disclosures. The main objective of the SAST Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed

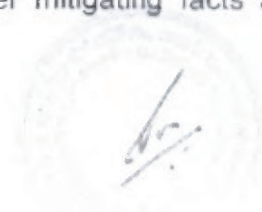


decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision.

26. Though, no specify disproportionate gains or unfair advantage made by the Noticee or the specific loss suffered by the investors due to such non / delayed disclosures or repetition of the default is shown on records to have been committed by the Noticee, however, it is relevant to mention here the following observations made by the Hon'ble SAT in case of *Gaylord case supra*;

"Argument that the appellant is a small company and has not violated any provisions in the past, that the delay in making disclosures has neither caused any loss to investors nor the appellant has gained any benefits on account of delay in making disclosures do not merit consideration, because, liability to pay penalty under Section 15A(b) of SEBI Act, 1992 has to be computed on the basis of each day during which the failure to comply with the regulation has continued and liability to pay such penalty is not dependent upon the fact as to whether such failure has occurred for the first time or not. Similarly, fact that no loss has occurred to the investors or that the appellant has not gained on account of delay in making disclosures would not be a ground for the appellant to escape penalty for failure to make disclosure within the stipulated time".

27. I have taken note that since the violation period pertains to 1997-98 to 2011-12, and the maximum penalty at that point of time was five thousand per day before amendment of section 15A (b) of SEBI Act in the year 2002, whereas the penalty for violation of regulation 8(3) from the date October 29, 2002 onwards is one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.
28. Therefore, taking into consideration the facts and circumstance of the case, the fact of enormous delay in making disclosures by the Noticee for around 15 years under regulation 8(3) of the SAST Regulations, and other mitigating facts as




prayed by the Noticee during the course of hearing (viz. the new management had taken over the company/Noticee and they are complying with the requirements and assurance given by it not to repeat such irregularities / noncompliance in future), I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

29. After taking into consideration all the facts and circumstances of the case and considering the case of *Hybrid supra* where penalties of eight lakh was upheld by the Hon'ble SAT, I hereby impose a penalty of ₹ 8,00,000/- (Rupees Eight Lakh only) under section 15 A (b) of the SEBI Act upon on the Noticee / Tumus Electric Corporation Ltd. I am of the view that the said penalty would be commensurate with the violations committed by the Noticee.
30. The Noticee shall pay the said amount of penalty by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Chief General Manager, Enforcement Department at the address:- SEBI Bhavan, Plot No. C4A, G Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051.
31. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: August 20, 2015

Place: Mumbai


RACHNA ANAND
ADJUDICATING OFFICER

