

Ref: BSE/SEC-02/

August 23, 2017

The General Manager

Dept. of Corporate Services
Bombay Stock Exchange Limited
Floor 25th P.J. Towers
Dalal Street
Mumbai - 400 001.

Dear Sir,

Sub: SEBI Order against the Promoter of the Company

Ref: BSE Scrip Code: 532994

NSE: Stock Code: Archidply

The SEBI vide Adjudication Order no. PJJAK/AO-2/2017 dated 22.08.2017 has imposed a penalty of Rs. 11 lakhs jointly and severally on the promoters of the Company for acquiring the 12349 shares of the Company through off market transaction between March 2009 and December 2009 in violation of Regulation 11(2) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The copy of the order enclosed.

This is for your information and record.

Thanking you.

Yours faithfully,

For **Archidply Industries Limited**



(Rajneesh Sharma)
Company Secretary

Encl: a/a

CC: The Listing Department
National Stock Exchange of India Ltd.

Exchange Plaza,
Plot no. C/1, G Block,
Bandra-Kurla Complex
Bandra (E)
Mumbai - 400 051

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.: PJ/JAK/AO-2/2017]
UNDER SECTION 15 H(ii) 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. M/s Assam Timber Products Private Limited,
2. M/s Vanraj Suppliers Private Limited,
3. M/s Ravi Marketing Services Private Limited,
4. M/s The Mysore Chipboards Limited,
5. Mr. Deen Dayal Daga,
6. Mr. Shyam Daga,
7. Mr. Rajiv Daga,
8. Mrs. Usha Daga,
9. Mrs. Sangeetha Bharadia,
10. M/s Shree Shyam Tea Private Limited and
11. Deen Dayal Daga HUF

In the matter of M/s Archidply Industries Limited

FACTS OF THE CASE IN BRIEF

1. The promoter/promoter group entities of M/s Archidply Industries Limited(hereinafter referred to as AIL) i.e. Assam Timber Products Private Limited(hereinafter referred to as ATPPL) and Vanraj Suppliers Private Limited(hereinafter referred to as VSPL)(both the entities acting in concert among themselves and with other promoter group entities as mentioned above, for the purpose of the said acquisition) had allegedly acquired shares of AIL through off market transactions between March 2009 and December 2009 which is in violation of Regulation 11(2) of SEBI

(Substantial Acquisition of Shares and Takeovers) Regulations, 1997(hereinafter referred to as SAST Regulations), consequently, making them liable for monetary penalty under section 15H(ii) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act').

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer, vide order dated April 13, 2015, under section 19 of the SEBI Act read with section 15-I of the SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Rules') to inquire into and adjudge under section 15H(ii) of SEBI Act, for the aforesaid alleged violation committed by the aforesaid entities.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. EAD/PJ/JAK/OW/17832/2015/1-11 dated June 30, 2015 hereinafter referred to as 'SCN') was issued to the Noticees under rule 4 of the Rules to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under section 15H(ii) of SEBI Act for the alleged violations committed by the Noticees.
4. Reply to the said SCN not received. As principle of natural justice, the noticees were granted personal hearing on December 29, 2015 vide hearing notice dated December 07, 2015. Reminder for reply to the SCN was also sent along with the hearing notice. The Noticees vide email dated December 21, 2015 sought postponement of the said hearing. The noticees were granted another opportunity of personal hearing on January 11, 2016 vide hearing notice dated December 30, 2015. Vide letter dated January 06, 2016 reply to the SCN received .
5. Mr. Shyam Daga, Promoter & Managing Director of AIL and one of the Noticees and Authorized Representative for other noticees, Mr. Rajneesh Sharma, Company Secretary of AIL and Mr. Ajai Achuthan, Senior Associate, Bharucha & Partners attended the hearing on January 11, 2016.

6. During the hearing, Mr. Shyam Daga, Mr. Rajneesh Sharma and Mr. Ajai Achuthan reiterated the submissions made vide letter dated January 06, 2016. They submitted that they would like to submit additional submissions in the case latest by January 13, 2016. Vide letter dated January 13, 2016 reply to the SCN received .
7. The noticees were granted another opportunity of personal hearing on June 28, 2017. Mr. Shyam Daga and Mr. Rajneesh Sharma attended the hearing on June 28, 2017 and reiterated the submissions made vide letter dated January 06, 2016 and also submitted that they would like to submit further submissions in the case latest by June 29, 2017. Vide letter dated June 29, 2017 reply received .

CONSIDERATION OF ISSUES

8. I have carefully perused the written and oral submissions of the Noticees and the documents available on record. The issues that therefore arise for consideration in the present case are:
 - a. *Whether the Noticees had violated the provisions of Regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997?*
 - b. *Does the violations, if any, attract monetary penalty under Section 15H(ii) of SEBI Act?*
 - c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

FINDINGS

9. Before moving forward, it is pertinent to refer to the relevant provisions of Regulation 11(2) of SAST Regulations. Regulation 11(2) of SAST Regulations states as :

No acquirer, who together with persons acting in concert with him holds, fifty five per cent. (55%) or more but less than seventy five per cent. (75%) of the of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he

Adjudication Order in the matter of M/s Archidply Industries Limited *Page 3 of 14*

makes a public announcement to acquire shares in accordance with these Regulations.

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy-five per cent (75%)', the words and figures 'ninety per cent (90%)' were substituted.

Provided further that such acquirer may, [notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him up to five per cent. (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).

10. The charges leveled against the Noticees and my findings thereon are as under :

It is alleged that the promoter/promoter group entities of AIL i.e. Assam Timber Products Private Limited(ATPPL) and Vanraj Suppliers Private Limited(VSPL)(both the entities acting in concert among themselves and with other promoter group entities, for the purpose of the said acquisition) had acquired share of AIL through off market transactions between March 2009 and December 2009 which is violation of Regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. The promoter group holding of AIL as on March 31, 2009 was

68.32%. The shareholding pattern of AIL during March 2009 and December 2009 is as under:

Sr. No.	Quarter ending	% promoter group holding during the quarter ending	Increase/(Decrease) (%)
1.	March 2009	68.32	"
2.	June 2009	70.19	1.87
3.	September 2009	70.78	0.59
4.	December 2009	70.80	0.02

11. It is noted that SEBI vide letter dated November 27, 2013 advised AIL to furnish the details of the increase in the holding of shares / voting rights of the promoter group and provide comments as to how the provisions of Regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 were complied with. AIL vide letter dated November 29, 2013 submitted the details of increase in holding of promoter group during the period from March 2009 to December 2009, as per which two of the promoter/promoter group entities i.e. ATPPL and VSPL acquired the shares through open market.

12. Details of increase in holding of promoter group entity i.e. VSPL during March 2009 and December 2009 is as under:

Shareholding of entity before acquisition		Shares / voting rights acquired		Date of acquisition	Cumulative holding of entity after acquisition		Cumulative holding of promoter group	
No.	%	No.	%		No.	%	Pre-acquisition	Post-acquisition
3707663	16.85	5000	0.03	20.04.2009	3712663	16.88	68.32	68.35
Total		5000						

13. Details of increase in holding of promoter group entity i.e. ATPPL during March 2009 and December 2009 is as under:

Shareholding of entity before acquisition		Shares / voting rights acquired		Date of acquisition	Cumulative holding of entity after acquisition		Cumulative holding of promoter group	
No.	%	No.	%		No.	%	Pre-acquisition	Post-acquisition
3940000	17.91	12000	0.05	06.05.2009	3952000	17.96	68.35	68.40
		13050	0.06	07.05.2009	3965050	18.02	68.40	68.46
		60000	0.27	16.05.2009	4025050	18.29	68.46	68.73
		40000	0.18	20.05.2009	4065050	18.47	68.71	68.91
		15600	0.07	21.05.2009	4080650	18.54	68.91	68.98
		65770	0.30	22.05.2009	4146420	18.84	68.98	69.28
		55500	0.25	25.05.2009	4201920	19.09	69.28	69.53
		6225	0.03	03.06.2009	4208145	19.12	69.53	69.56
		20860	0.09	05.06.2009	4229005	19.21	69.56	69.65
		25000	0.11	10.06.2009	4254005	19.32	69.65	69.76
		3750	0.02	12.06.2009	4257755	19.34	69.76	69.78
		29025	0.13	15.06.2009	4286780	19.47	69.78	69.91
		18442	0.08	17.06.2009	4305222	19.55	69.91	69.99
		11043	0.05	18.06.2009	4316265	19.60	69.99	70.04
		12600	0.06	22.06.2009	4328865	19.66	70.04	70.10
		15819	0.07	23.06.2009	4344684	19.73	70.10	70.17
		8623	0.04	29.06.2009	4353307	19.77	70.17	70.21
		1199	0.01	30.06.2009	4354506	19.78	70.21	70.22

		40070	0.18	03.07.2009	4394576	19.96	70.22	70.40
		60000	0.27	06.07.2009	4454576	20.23	70.40	70.67
		11500	0.05	08.07.2009	4466076	20.28	70.67	70.72
		9974	0.05	13.07.2009	4476050	20.33	70.72	70.77
		5100	0.02	17.11.2009	4481150	20.35	70.77	70.79
Total		541150	2.44					

14. It was also noted that SEBI vide letter dated April 21, 2014 advised AIL to provide evidence which could prove that the above mentioned acquisitions were open market purchases. AIL vide its letter dated April 25, 2014 submitted the copy of the contract notes, where in it informed that the acquisitions were made through open market. Further vide email dated June 13, 2014 confirmed that out of 23 transactions by ATPPL, 3 were off-market (a total of 7349 shares i.e. 3750 on June 12, 2009, 2400 on June 23, 2009 and 1199 on June 30, 2009) transactions. As per the submissions made by AIL, out of 546150 shares acquired by the 2 entities i.e. ATPPL and VSPL, the above mentioned 3 transactions were off-market transactions which is in violation of Regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Details of the off-market transactions of promoter group entity i.e. ATPPL is as under:

Shareholding of entity before acquisition		Shares / voting rights acquired		Date of acquisition	Cumulative holding of entity after acquisition		Cumulative holding of promoter group	
No.	%	No.	%		No.	%	Pre-acquisition	Post-acquisition
4254005	19.32	3750	0.02	12.06.2009	4257755	19.34	69.76	69.78
4342284	19.72	2400	0.01	23.06.2009	4344684	19.73	70.16	70.17

4353307	19.77	1199	0.01	30.06.2009	4354506	19.78	70.21	70.22
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15. For the above allegations the noticees has submitted its reply dated January 06, 2016 in which they stated that:

1. *It has been alleged that the Noticees have violated Regulation 11(2) of the Takeover Regulations on the following dates:*

- a) *20 April 2009 – VSPL's acquisition of 5,000 equity shares constituting 0.023% of the share capital of the Target Company resulting in a marginal increase in the promoter group shareholding in the Target Company from 68.32% to 68.34%;*
- b) *12 June 2009 – ATPPL's acquisition of 3,750 equity shares constituting 0.017% of the share capital of the Target Company resulting in a marginal increase in the promoter group shareholding in the Target Company from 69.76% to 69.78%;*
- c) *23 June 2009 – ATPPL's acquisition of 2,400 equity shares constituting 0.011% of the share capital of the Target Company resulting in a marginal increase in the promoter group shareholding in the Target Company from 70.16% to 70.17%; and*
- d) *30 June 2009 – ATPPL's acquisition of 1,199 equity shares constituting 0.005% of the share capital of the Target Company resulting in a marginal increase in the promoter group shareholding in the Target Company from 70.21% to 70.22%.*

2. *It is submitted that the aforementioned acquisitions total to 12,349 equity shares and barely constitute 0.056% of the total share capital of the Target Company. Admittedly, by no means, the said acquisitions resulted in any change in control of the Target Company. Further, for that matter the mere acquisition of 0.056% cannot be termed as a 'substantial' acquisition of equity shares of the Target Company..*

3. The Takeover Regulations came into force on 20 February 1997, which was based on the recommendation of a committee constituted under the Chairmanship of Justice P.N. Bhagwati, former Chief Justice of India, to review the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1994 (**Bhagwati Committee**). The object of the Takeover Regulations has been briefly set out by the Bhagwati Committee in para 1.1 of its report. For your reference, the relevant extract in this context from the report is extracted below.

1 The Approach of the Committee

1.1 The Committee was of the view that the Regulations for substantial acquisition of shares and takeovers should operate principally to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers. While on the one hand the Regulations should not impose conditions, which are too onerous to fulfill and hence make substantial acquisitions and takeovers difficult, at the same time, they should ensure that such processes do not take place in a clandestine manner without protecting the interests of the shareholders. A balance must necessarily be struck between the two considerations. The objective of the Regulations should therefore be to provide an orderly framework within which such processes could be conducted. The Regulations should also help in evolving good business standards as to how fairness to shareholders can be achieved, as maintenance of such standards is of importance to the integrity of the financial markets, and they should not concern themselves with issues of competition, or financial or commercial advantages or disadvantages of a takeover. The committee also noted that the process of substantial acquisition of shares and takeovers is so intertwined with the warp and weft of the industry, especially in the wake of economic reforms, that it would be unrealistic to make Regulations in this area without taking into account the ground realities of the Indian Industry'.

The approach of Bhagwati Committee while introducing the Takeover Regulations was to provide an orderly framework for regulating substantial acquisition of shares. Subsequently, SEBI introduced the concept of Adjudication Order in the matter of M/s Archidply Industries Limited

consolidation of shareholding by shareholders holding 55% or more and less than 75% voting rights in a target company, by only making an open offer. Further, this was rationalised by providing a one-time creeping acquisition of 5% by introducing the second proviso to Regulation 11(2) of the Takeover Regulations subject to such acquisition being made on the market and not breaching the threshold of 75% of the share capital in the target company. Evidently, it appears that the intent of SEBI permitting the one-time creeping acquisition of 5% was in line with the 5% creeping acquisition limit provided under 11(1) of the Takeover Regulations, as it did not consider the same as a substantial acquisition of shares which requires the acquirer to make an open offer. In the instant case, per se, the impugned acquisitions fall within the 5% limit prescribed under the second proviso to Regulation 11(2) of the Takeover Regulations, except that the said acquisitions were off-market. Considering the said acquisitions were only 0.056% of the total share capital of the Target Company, by no means it could be stated as a substantial acquisition of shares.

It is submitted that the scheme of the Takeover Regulations is not a penal Regulation and as the Bhagwati Committee stated it is 'to provide an orderly framework'. Therefore, default per se must not be the dominant guiding principle for imposition of penalty. It is the consequences of the default that weighs in taking the decision to impose penalty and its quantum. In the instant case, the alleged violations are at best technical and venial and have not caused any loss to the investors and no unfair gain to the Noticees.

16. Additional submissions were also submitted by the noticees (i.e. after the date of the hearing dated January 11, 2016) vide letter dated January 13, 2016 which are as follows:

It is submitted that the Impugned Acquisitions were made by the ATPPL and VSPL and the remaining 9 entities have only been issued show cause notices by virtue of they being part of the promoter group, as defined under the Takeover Regulations. It is submitted that the remaining 9 entities have not acquired any equity shares of the Target Company during the investigation period.

17. Additional submissions were also submitted by the noticees (i.e. after the date of the hearing dated June 28, 2017) vide letter dated June 29, 2017 which are as follows:

The off market purchase made by Assam Timber Products P Limited (ATPPL) and Vanraj Suppliers P Limited (VSPL) of 12,349 equity shares constitute a meagre 0.056% of the total paid up equity share capital of the Company. The off market purchase of 12349 shares made by ATPPL & VSPL is within the 5% limit prescribed under the second proviso to Regulation 11(2) of the Takeover Regulation and the same has been reported to stock exchange. The aforesaid off market purchases were made by ATPPL & VSPL at the market price prevalent at the relevant time. The purchase of shares from market were made by the ATPPL and VSPL and the remaining 9 promoter entities have only been issued show cause notices by virtue of they being part of the promoter group. It is submitted that the remaining 9 entities have not acquired any equity shares of the Target Company during the investigation period.

18. I have perused the material available on record and the replies submitted by the noticees in support of its contentions. I find that the noticees acquired these shares through off market transactions and thereby allegedly violated provisions of the Takeover Regulations, the allegations made against the Noticees stand established resulting in violation of Regulation 11(2) of SAST Regulations.

19. In view of the above, I would like mention here that the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...*".

20. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15H(ii) of the SEBI Act. The provisions of section 15H(ii) of SEBI Act is mentioned hereunder:-

If any person, who is required under this Act or any rules or regulations made there under, fails to,-

(ii) make a public announcement to acquire shares at a minimum price;

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

21. While imposing monetary penalty under section 15H(ii) of SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

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.”

22. Based on the material available on record, it is not possible to quantify the disproportionate gain or unfair advantage enjoyed by an entity or the losses suffered by the investors but the violation was repetitive in nature.

Further, the following mitigating factors, brought out during the submissions, have also been taken into account :

- a. The Noticees have always been in control of the Target Company and the said impugned acquisitions did not result in any change of control or management;
- b. The impugned acquisitions are insignificant i.e. 12,349 equity shares, out of 2,20,00,000 equity shares i.e. 0.056% of the total paid up share capital of the Target Company, at the relevant time;
- c. The impugned acquisitions were well within the 5% limit prescribed under the second proviso to Regulations 11(2) of the Takeover Regulations,

except for being off market transactions;

- d. The impugned acquisitions were made by the Noticees at the market price prevalent at the relevant time.
- e. The Noticees have an impeccable track record. Never in the past has any action been taken against the promoters by any regulatory authority including SEBI;
- f. It is not the case that the Noticees have exited from the Target Company at the cost of the public shareholders; and
- g. The Noticees have not willfully violated the provisions of Takeover Regulations.

23. I also note that the Hon'ble Securities Appellate Tribunal (SAT) vide its order dated November 20, 2015 held:

The obligation to make yearly disclosure under Regulation 8(2) and Regulation 30(2) of the SAST Regulations framed by SEBI in the year 1997 & 2011 respectively is on the promoter/promoter group. If the promoters of a listed company are individual promoters then the obligation is on the individual promoters and in case there is a 'promoter group' then the promoter group is required to make yearly disclosure. If the promoter group fails to disclose the shares or voting rights held by the promoters in the promoter group as also their PAC's within the time stipulated under the SAST Regulations, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's.

ORDER

24. After taking into consideration all the facts and circumstances of the case and material available on record, I hereby impose a monetary penalty of Rs.11,00,000/- (Rupees Eleven Lakhs Only) on the Noticees which, in my view, will be

commensurate with the default committed by them, which would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's.

25. 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-II), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.

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)	

26. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: August 22, 2017

Place: Mumbai

PRASAD JAGADALE
ADJUDICATING OFFICER