

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/AO/21-27/2014]

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

Name of the Noticees	Order No.
Unilever PLC	ASK/AO/21/2014
Brooke Bond Group Limited	ASK/AO/22/2014
Unilever Overseas Holdings AG	ASK/AO/23/2014
Unilever UK & CN Holdings Limited	ASK/AO/24/2014
Brooke Bond South India Estates Limited	ASK/AO/25/2014
Unilever Overseas Holdings BV	ASK/AO/26/2014
Brooke Bond Assam Estates Limited	ASK/AO/27/2014

In the matter of M/s Hindustan Unilever Limited.

FACTS OF THE CASE IN BRIEF

1. An open offer was made by Unilever PLC along with Unilever N.V to the shareholders of M/s Hindustan Unilever Limited (**HUL**) to acquire 22.5% of shares of HUL through a public announcement dated April 30, 2013 for acquisition of 487,004,772 equity shares of the face value of ₹ 1 each representing 22.5% of the equity share capital at a price of ₹ 600 per fully paid up equity share.
2. Securities and Exchange Board of India (“**SEBI**”) examined the letter of offer pertaining to the aforesaid open offer and alleged that the promoters of HUL namely (1) Unilever PLC (2) Brooke Bond Group Limited (3) Unilever Overseas Holdings AG (4) Unilever UK & CN Holdings Limited (5) Brooke Bond South India Estates Limited (6) Unilever Overseas Holdings B V and (7) Brooke Bond Assam Estates Limited("**Noticees**") had violated regulations 8 (1) & 8 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (**SAST Regulations, 1997**) for the years 2006, 2008, 2009 & 2010 and regulation 30(2) read with regulation 30(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**SAST Regulations, 2011**") for the year 2013.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Piyooosh Gupta was appointed as Adjudicating Officer vide order dated July 08, 2013 under section 15-I of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (**‘Rules’**) to inquire into and adjudge under section 15A(b) of the SEBI Act the alleged violation of regulations 8(1) & 8(2) of SAST Regulations, 1997 and regulations 30(2) read with 30(3) of

SAST Regulations, 2011. Consequent upon the transfer of Shri Piyooch Gupta, I have been appointed as Adjudicating Officer vide order dated November 08, 2013.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice(s) dated November 29, 2013 (“**SCN**”) were issued to the Noticees under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A (b) of the SEBI Act for the alleged violation specified in the SCN. It was alleged in the SCN that Noticees had violated regulations 8(1) & 8(2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 & 2010 and regulations 30(2) read with 30(3) of SAST Regulations, 2011 for the year 2013.

5. In response to the SCN, the Noticee submitted reply vide letter dated December 17, 2013. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on January 22, 2014 vide notice dated December 19, 2013. Mr. Kunal Thakore from Talwar Thakore & Associates appeared as Authorized Representative (AR) on behalf of the Noticees. The AR reiterated the submissions already made by the Noticees vide reply dated December 17, 2013 and sought time till January 27, 2014 for filing additional written submissions. Vide letter dated January 28, 2014, the Noticees filed written submissions reiterating the submissions already on record. The Noticees also submitted the details of disclosures made under 8(1) & (2) of SAST Regulations and also the details of shareholding by the promoters in HUL.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have carefully perused the oral and written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

- a. Whether the Noticees had violated the provisions of regulations 8(1) & (2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 and 2010 and regulation 30(2) read with 30(3) of SAST Regulations, 2011 for the year 2013?
- b. Does the violation, if any, attract monetary penalty under section 15A (b) 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?

7. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 1997 & 2011 which read as under:-

SAST Regulations, 1997

Continual Disclosures

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 holding as on 31st March.

(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 persons acting in concert with him, in that company to the company.

SAST Regulations, 2011

Continual Disclosures

30 (1),.....

(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.*

FINDINGS

8. The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticees have violated the provisions of regulations 8(1) & (2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 and 2010 and regulation 30(2) read with 30(3) of SAST Regulations, 2011 for the year 2013?

9. It was alleged in the SCN that the Noticees who were promoters of HUL during the relevant period had not complied with the provisions of regulations 8(1) & (2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 & 2010 and regulation 30(2) read with 30(3) of SAST Regulations, 2011 for the year 2013. The details of such non-compliance on the part of the Noticees as extracted from the Draft Offer Letter were made available to the Noticees along with the SCN as Annexure I. The table below shows the details of such non-compliance.

S.No.	Regulation	Due date of compliance	Actual date of compliance	Delay (no. of days)	Sl No. as per Annexure I to SCN
1.	8(1) &(2)	06.06.2006	15.06.2006	9	15&16
2.	8(1) &(2)	21.04.2008	05.05.2008	14	27&28
3.	8(1) &(2)	24.04.2008	05.05.2008	11	29&30
4.	8(1) &(2)	30.11.2009	04.12.2009	4	37&38
5.	8(1) &(2)	23.11.2010	24.12.2010	31	43&44
6.	30 (2) read with 30(3)	09.04.2013	16.04.2013	4	51

10. In response to the said allegations in the SCN, the Noticees have made the following submissions:

- That serial numbers 15, 29, 37 and 43 in Annexure I of the SCN were acknowledged as delays in error under regulation 8(1) as well whereas the actual delays were solely under Regulation 8(2) which have already been acknowledged in serial numbers 16, 30, 38 and 44.
- The Noticees have admitted that there had been delay in making disclosures and that the non-compliance has been inadvertent in nature without any intention to conceal any information or gain any advantage.
- There was no change in the promoter holding between March 2005 to April 2013 and therefore, there was no unfair benefit attained by the promoters nor was any harm caused to the investors or public at large due to the delayed disclosure.

11. I note that regulation 8(1) of SAST Regulations, 1997 mandates every person holding more than 15% shares or voting rights in a company, to file disclosure of shareholding as on 31st March every year to the company within 21 days from the year ending 31st March. Thus, it is

very clear that the periodicity of disclosure under regulation 8(1) is annual and the due date for filing such disclosure is on or before April 21 every year.

12. In the instant case, I note that the Noticees had made disclosures under regulation 8(1) of SAST Regulations, 1997 for the due dates of 06.06.2006, 24.04.2008, 30.11.2009 and 23.11.2010 with a delay of 09, 11, 4 and 31 days respectively. As mentioned above, I find that there was no disclosure obligation under regulation 8(1) of SAST Regulations, 1997 on the part of the Noticees with reference to the said due dates. As such, I do not think it is necessary for me to deal with the said disclosures. Accordingly, the allegation of non-compliance on the part of the Noticees with regulation 8(1) of SAST Regulations, 1997 in respect of items at serial numbers 15, 29, 37 & 43 in Annexure I to SCN does not stand established.

13. I find that the Noticees have admitted that there was a delay in compliance of regulation 8(1) of SAST Regulations, 1997 for the year 2008, regulation 8(2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 & 2010 and regulation 30(2) read with 30(3) of SAST Regulations, 2011 for the year 2013.

14. I find that all the Noticees have admitted non-compliance with regulation 8(1) for the year 2008. However, I note that regulation 8(1) requires only such persons holding more than 15% shares or voting rights to make disclosures of shareholding as on 31st March every year. In this context, I note from the material available on record and also from the submissions made by the Noticees that only Noticee No.1. i.e, Unilever PLC was holding more than 15% shares in HUL during the relevant period and accordingly was under obligation to file

annual disclosures in compliance with regulation 8(1) of SAST Regulations, 1997. I note that Noticee No.1 had filed annual disclosure under regulation 8(1) for the year ending March 31st 2008 on 05.05.2008 as against due date of 21.04.2008 i.e, with a delay of 14 days as mentioned at serial no. 27 of Annexure to the SCN. Thus, I find that Noticee No. 1 only had not complied with regulation 8(1) of SAST Regulations, 1997 for the year 2008 within the due date. Since the holding of Noticees 2-7 as on March 31 2008 was less than the limit of 15%, the said Noticees were under no obligation to make disclosure under regulation 8(1) of SAST Regulations, 1997. Accordingly, the allegation of violation of regulation 8(1) with reference to the due date of 21.04.2008 against the Noticees No. 2-7 does not stand established.

15.As regards compliance under regulation 8(2) of SAST Regulations, 1997, all the Noticees being part of the promoter group were under obligation to file disclosures regarding their shareholding to the company 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. As admitted by the Noticees, they have filed the necessary disclosures under regulation 8(2) with delay, the details of which are as shown in the table below:

S.No	Regulation	Due date of compliance	Actual date of compliance	Delay (days)
1.	8((2)	06.06.2006	15.06.2006	9
2.	8(2)	21.04.2008	05.05.2008	14
3.	8(2)	24.04.2008	05.05.2008	11
4.	8(2)	30.11.2009	04.12.2009	4
5.	8(2)	23.11.2010	24.12.2010	31

16.I further note that under regulation 30 (2) read with 30(3) of SAST Regulations, 2011 the Noticees were under obligation to file

disclosures regarding their shareholding to the company as well as the stock exchanges within 7 working days from the financial year ending March 31. As admitted by the Noticees, I note that the Noticees have filed the necessary disclosures under regulation 30 (2) read with 30(3) of SAST Regulations, 2011 with delay, the details of which are as shown in the table below:

S.No.	Regulation	Due date of compliance	Actual date of compliance	Delay (days)
1.	30 (2) read with 30(3)	09.04.2013	16.04.2013	4

17. Thus, I find that all the Noticees No.1-7 have failed to comply with regulation 8(2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 and 2010 and regulation 30 (2) read with 30(3) of SAST Regulations, 2011 for the year 2013.

18. It is pertinent to note that timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. I am also of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance and not delay. Therefore, I hold that :

- Noticee No. 1 has violated regulation 8(1) of SAST Regulations, 1997 for the year 2008, regulation 8(2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 and 2010 and regulation 30 (2) read with 30(3) of SAST Regulations, 2011 for the year 2013.
- Noticees 2-7 have violated regulation 8(2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 and 2010 and regulation 30 (2) read with 30(3) of SAST Regulations, 2011 for the year 2013.

(b) Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?

19. In this context I would like to quote the observations of Hon'ble Securities Appellate Tribunal in the matter of *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* and Hon'ble Supreme Court in the matter of *SEBI Vs. Shri Ram Mutual Fund*.

20. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal 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. We cannot therefore subscribe to the view that the violation was technical in nature”*.

21. Further, the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *“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”*.

22. As the violation of the statutory obligation under regulation 8(1) of SAST Regulations, 1997 for the year 2008 by Noticee No.1, Unilever PLC, regulation 8(2) of SAST Regulations, 1997 for the years 2006, 2008, 2009 & 2010 and regulation 30(2) read with 30(3) of SAST Regulations, 2011 for the year 2013 by all Noticees have been established, I hold that the Noticees are liable for monetary penalty under section 15A(b) of SEBI Act, which reads as under:-

Penalty for failure to furnish information, return, etc.

15A. *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.

(c)

(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?

23. While determining the quantum of penalty under section 15A(b), 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.”*

24. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticees, the details of the

shareholding of the Noticees and timely disclosure thereof, were of significant importance from the point of view of investors as that would have prompted them to buy or sell shares of the company. The disclosures obligations under SAST Regulations are critical and an important component of the legal regime governing substantial acquisition of shares and takeovers. In the absence of these timely disclosures, the investors will be deprived of important information at the relevant point of time. It is also evident that the Noticees have committed the defaults on more than one occasion and as such, the default on the part of the Noticees is repetitive in nature.

ORDER

25. After taking into consideration all the facts and circumstances of the case, I hereby impose monetary penalty on the Noticees as under:

Name of the Noticees	Nature of violation/s	Penalty
Unilever PLC	Regulation 8(1) & (2) of SAST Regulations, 1997 and Regulation 30(2) read with 30(3) of SAST Regulations, 2011	₹. 8,00,000/- (Rupees Eight Lakh Only)
Brooke Bond Group Limited	Regulation 8(2) of SAST Regulations, 1997 and Regulation 30(2) read with 30(3) of SAST Regulations, 2011	₹. 7,00,000/- (Rupees Seven Lakh Only)
Unilever Overseas Holdings AG	Regulation 8(2) of SAST Regulations, 1997 and Regulation 30(2) read with 30(3) of SAST Regulations, 2011	₹. 7,00,000/- (Rupees Seven Lakh Only)
Unilever UK & CN Holdings Limited	Regulation 8(2) of SAST Regulations, 1997 and Regulation 30(2) read with 30(3) of SAST Regulations, 2011	₹. 7,00,000/- (Rupees Seven Lakh Only)

Brooke Bond South India Estates Limited	Regulation 8(2) of SAST Regulations, 1997 and Regulation 30(2) read with 30(3) of SAST Regulations, 2011	₹. 7,00,000/- (Rupees Seven Lakh Only)
Unilever Overseas Holdings BV	Regulation 8(2) of SAST Regulations, 1997 and Regulation 30(2) read with 30(3) of SAST Regulations, 2011	₹. 7,00,000/- (Rupees Seven Lakh Only)
Brooke Bond Assam Estates Limited	Regulation 8(2) of SAST Regulations, 1997 and Regulation 30(2) read with 30(3) of SAST Regulations, 2011	₹. 7,00,000/- (Rupees Seven Lakh Only)

The above mentioned penalties will be commensurate with the violation committed by the Noticees.

26. The Noticees 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 General Manager, Division of Corporate Restructuring, SEBI, SEBI Bhavan, Plot No. C- 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
27. 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: January 31, 2014.
PLACE: MUMBAI

A. SUNIL KUMAR
ADJUDICATING OFFICER