

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/MC/CB/2019-20/4647- 4648]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of –

1. **Jagdish Kumar Arora (PAN: AAPPA8546E)** having address at – Vatsalya, Mandori, Kerwa Dam Road, Bhopal – 462 003 (Madhya Pradesh)
2. **Som Distilleries Pvt. Ltd. (PAN: AACCS0397P)** having address at – 23, Zone-II, Maharana Pratap Nagar, Bhopal – 462 011 (Madhya Pradesh)

In the matter of *Som Distilleries and Breweries Limited*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted investigation in the scrip of Som Distilleries and Breweries Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”). Investigation *prima facie* revealed violation of Regulations 13(4A) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) by Jagdish Kumar Arora (hereinafter be referred to as, the “**Noticee 1**”) and Som Distilleries Pvt. Ltd. (hereinafter be referred to as, the “**Noticee 2**”) for not making relevant disclosures under PIT Regulations upon change in their shareholding in the Company. Noticee 1 and Noticee 2 shall hereinafter be collectively referred to as, the “**Noticees**”.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Ms. Rachna Anand, General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be 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 be referred to as, the “**Adjudication Rules**”) *vide*

order dated July 13, 2017 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the aforesaid alleged violation. Subsequently, the undersigned was appointed as the Adjudicating Officer on May 10, 2018 which was communicated *vide* order dated May 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/EAD5/MC/CB/18428/1-2/2018 dated June 29, 2018 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticees 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 against them under Section 15A(b) of the SEBI Act for alleged violations of Regulations 13(4A) read with 13(5) of the PIT Regulations.
4. The allegations levelled against the Noticees in the SCN are summarized as below:
 - a) Investigation revealed that the Noticees were promoters of the Company during January 03, 2011 to February 28, 2013 (hereinafter be referred to as, the “**Investigation Period**”).
 - b) During the Investigation Period, the shareholding of the Noticees in the Company increased on account of acquisition of shares by them in the manner mentioned as under:

Name of the Promoter / Noticee	Date of Acquisition	Number of shares acquired
Jagdish Kumar Arora	16/09/2011	52298
	07/10/2011	15401
	21/10/2011	18948
	04/11/2011	13300
	11/11/2011	5664
	18/11/2011	12872
	25/11/2011	8552
	02/12/2011	4033
	09/12/2011	3761
	16/12/2011	12789
	23/12/2011	12220
	30/12/2011	10972
	06/01/2012	11828
	13/01/2012	9437
	20/01/2012	20734
	27/01/2012	13634
	03/02/2012	17170

	10/02/2012	18874
	17/02/2012	19505
	24/02/2012	13378
	02/03/2012	21788
	09/03/2012	12347
	16/03/2012	11831
	18/05/2012	5964
	29/06/2012	13503
	06/07/2012	31458
	13/07/2012	17823
	20/07/2012	23573
	27/07/2012	23555
	03/08/2012	19191
	10/08/2012	19527
	17/08/2012	21127
	24/08/2012	15617
	31/08/2012	29027
	07/09/2012	19878
	14/09/2012	4387
	21/09/2012	4607
	28/09/2012	10986
	05/10/2012	7530
	01/12/2012	3304
	07/12/2012	9769
	14/12/2012	3356
	21/12/2012	2720
	04/01/2013	3335
	11/01/2013	4886
	18/01/2013	2700
	25/01/2013	3880
	01/02/2013	4729
Som Distilleries Pvt Ltd	15/02/2013	21414
	22/02/2013	18409
	25/02/2013	16552

- c) Regulation 13(4A) read with 13(5) of the PIT Regulations requires that if there has been a change in the shareholding of any promoter or part of promoter group of a listed company and such change exceeds Rs. 5 lakh in value or 25000 shares or 1% of the total shareholding or voting rights in the company, a disclosure in Form D of such change is to be filed with the company and stock

exchange where the company is listed within 2 working days of receipt of intimation of allotment of shares or acquisition / sale of shares as the case may be.

- d) However, it was alleged that the Noticees delayed in filing of disclosures in Form D in terms of Regulation 13(4A) read with 13(5) of the PIT Regulations and thereby, violated the same. The alleged non-compliance with disclosure requirements under Regulation 13(4A) read with 13(5) of the PIT Regulations by the Noticee was confirmed by BSE *vide* e-mail dated April 22, 2015 and by Company *vide* e-mail dated March 19, 2015. Instances of alleged delay in receipt of disclosures under PIT Regulations are tabulated as under:

Name of the Promoter / Noticee	Date of Acquisition	Number of shares acquired	Due date of disclosures by promoters	Date of reporting to exchange by promoter	Difference in days
Jagdish Kumar Arora	16/09/2011	52298	21/09/2011	05/10/2011	14
	07/10/2011	15401	11/10/2011	18/10/2011	7
	21/10/2011	18948	25/10/2011	08/11/2011	14
	04/11/2011	13300	04/11/2011	16/11/2011	12
	11/11/2011	5664	15/11/2011	21/11/2011	6
	18/11/2011	12872	22/11/2011	30/11/2011	8
	25/11/2011	8552	29/11/2011	30/11/2011	1
	02/12/2011	4033	06/12/2011	12/12/2011	6
	09/12/2011	3761	13/12/2011	28/12/2011	15
	16/12/2011	12789	20/12/2011	22/12/2011	2
	23/12/2011	12220	27/11/2011	29/12/2011	32
	30/12/2011	10972	03/01/2012	09/01/2012	6
	06/01/2012	11828	10/01/2012	12/01/2012	2
	13/01/2012	9437	17/01/2012	24/01/2012	7
	20/01/2012	20734	24/01/2012	27/01/2012	3
	27/01/2012	13634	31/01/2012	31/01/2012	0
	03/02/2012	17170	07/02/2012	10/02/2012	3
	10/02/2012	18874	14/02/2012	17/02/2012	3
	17/02/2012	19505	21/02/2012	27/02/2012	6
	24/02/2012	13378	28/02/2012	01/03/2012	2
	02/03/2012	21788	06/03/2012	07/03/2012	1
	09/03/2012	12347	13/03/2012	14/03/2012	1
	16/03/2012	11831	20/03/2012	20/03/2012	0
	18/05/2012	5964	22/05/2012	18/06/2012	27
	29/06/2012	13503	03/06/2012	12/07/2012	39
	06/07/2012	31458	10/07/2012	20/07/2012	10

	13/07/2012	17823	17/07/2012	31/07/2012	14
	20/07/2012	23573	24/07/2012	31/07/2012	7
	27/07/2012	23555	31/07/2012	09/08/2012	9
	03/08/2012	19191	07/08/2012	14/08/2012	7
	10/08/2012	19527	17/08/2012	24/08/2012	7
	17/08/2012	21127	21/08/2012	24/08/2012	3
	24/08/2012	15617	28/08/2012	05/09/2012	8
	31/08/2012	29027	04/08/2012	11/09/2012	38
	07/09/2012	19878	11/09/2012	14/09/2012	3
	14/09/2012	4387	18/09/2012	26/09/2012	8
	21/09/2012	4607	25/09/2012	04/10/2012	9
	28/09/2012	10986	02/10/2012	11/10/2012	9
	05/10/2012	7530	09/10/2012	11/10/2012	2
	01/12/2012	3304	05/12/2012	14/12/2012	9
	07/12/2012	9769	11/12/2012	21/12/2012	10
	14/12/2012	3356	18/12/2012	26/12/2012	8
	21/12/2012	2720	25/12/2012	02/01/2013	8
	04/01/2013	3335	08/01/2013	12/01/2013	4
	11/01/2013	4886	15/01/2013	18/01/2013	3
	18/01/2013	2700	22/01/2013	28/01/2013	6
	25/01/2013	3880	29/01/2013	05/02/2013	7
	01/02/2013	4729	05/02/2013	15/02/2013	10
Som Distilleries Pvt Ltd	15/02/2013	21414	19/02/2013	28/02/2013	9
	22/02/2013	18409	26/02/2013	11/03/2013	13
	25/2/2013	16552	27/02/2013	14/03/2013	15

- e) It was alleged that the aforesaid delayed disclosure under PIT Regulations by the Noticees was in violation of Regulation 13(4AA) read with 13(5) of the PIT Regulations read with Regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015, text of which is mentioned as below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

13. (4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub

regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

- (5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*
- (a) the receipts of intimation of allotment of shares, or*
 - (b) the acquisition or sale of shares or voting rights, as the case may be.*

SEBI (Prohibition of Insider Trading) Regulations, 2015

12. (2) Notwithstanding such repeal, -

- (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*
 - (b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations*
- f) The Noticees were informed that the alleged violations, if established, would make them liable for imposition of monetary penalty under Section 15A(b) of the SEBI Act.

5. The SCN was served upon the Noticees by way of *Speed Post with Acknowledgment Due* at their addresses, acknowledgments of which are available on record.

6. The Noticees submitted their replies towards the SCN *vide* letter dated July 23, 2018. Relevant submissions of the Noticees are summarized as under:
- Alleged acquisitions have transpired more than 5 years ago when mode of sending the said disclosure to stock exchanges was hard copies through registered post. Delay in receipt of information by Stock Exchange is surely attributable to delays by Department of Posts.
 - There have been no other instances of non-compliance or delayed compliance by the Noticees except the instances of delays mentioned in the SCN.
 - Promoter and Promoter Group along with Persons acting in concert, in this case, had disclosed that “*promoters along with persons acting in concert are in the process of increasing their shareholding while keeping it to less than 25% of the equity capital*” *vide* letter dated November 24, 2011. Thus, it was never the intention of the Promoter, Promoter Group and Persons-acting in concert to suppress any information from the purported acquisition.
 - SCN has failed to demonstrate impact or harm if any that alleged non-compliance has had on the market or public shareholders of the Company.
 - Noticees cited reference to the order of the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the “**SAT**”) in the matter of **HB Stockholdings Limited** to submit that the SCN has been issued after lapse of almost 5 years, which had impaired their ability to defend themselves and deprived of their right to present a proper defence.
 - Noticees, therefore, submitted that an opportunity of personal hearing be provided to them to explain the submissions in the instant case.
 - Noticee 1 also submitted that the following dates pertaining to acquisition of shares or due date of disclosure for acquisition of shares were alleged erroneously in the SCN:

Date of Acquisition	No. of shares acquired	Due date of disclosure	Actual date of disclosure	Delay
November 04, 2011	13300	November 06, 2011 (erroneously mentioned in the SCN as November 04, 2011)	November 16, 2011	10 days
December 23, 2011	12,220	December 25, 2011 (erroneously mentioned in the SCN as	December 27, 2011	2 days

		November 27, 2011)		
August 31, 2012	29,027	September 03, 2012 (erroneously mentioned in the SCN as August 04, 2012)	September 11, 2011	8 days

7. Thereafter, an opportunity of personal hearing was granted to the Noticees on August 27, 2018 *vide* Notice of Hearing dated August 07, 2018. The hearing scheduled on March 18, 2019 was later rescheduled to September 26, 2018 at the request of the Noticees.
8. The hearing scheduled on September 26, 2018 was attended by Ms. Purti Minawala and Mr. Kunal Mehta who were appointed as authorized representatives by the Noticees (hereinafter collectively be referred to as, the “**Authorized Representatives**”). During the hearing, the Authorized Representatives reiterated their submissions dated July 23, 2018 and submitted that the delay alleged in the SCN was not on account of any *mala fide* intention on the part of the Noticees.
9. The Authorised Representatives of the Noticees, *vide* e-mail dated October 09, 2018 intimated that the Noticees have filed applications for Settlement in the instant adjudication proceedings and requested to keep the proceedings in abeyance till outcome of the Settlement Application. On June 28, 2019, it was informed by SEBI that Noticees have withdrawn settlement applications filed in the instant matter.
10. A Notice of Hearing dated August 06, 2019 was served upon the Noticees wherein, it was informed that an opportunity of hearing has been provided to them on August 19, 2019, which was rescheduled to August 22, 2019 at their request.
11. The hearing scheduled on August 22, 2019 was attended by Mr. Sanjay Asher and Mr. Nakul Sethi, who were appointed as authorized representatives by Noticees. During the hearing, Mr. Sanjay Asher and Mr. Nakul Sethi reiterated the written submissions dated August 18, 2018 of Noticees and sought time until August 26, 2019 to file additional submissions. Noticees’ request of seeking time to file additional submissions was acceded to.

12. The Noticee, *vide* letter dated August 27, 2019 filed additional submissions in the instant matter, which are summarized as under:

- a) There is a long delay of five years in initiation of proceedings against the Noticees from the purported acquisitions when the mode of sending the disclosure to stock exchanges was hard copies through registered posts.
- b) Promoters of the Company should not be held liable for a lacuna in the abilities of the human resources employed by them or lack of due care exercised in fulfilling his duties with respect to filing of applicable forms within prescribed timelines.
- c) The SCN has failed to lay down the impact or grave harm or disadvantage, if any, that the alleged non-compliance has had on the market or the public shareholders of the Company or any undue profit or gains which have been derived by the Company.
- d) All the requisite disclosures except for the disclosures under PIT Regulations had been made and inability of Noticees to make requisite disclosures within prescribed timeline is a breach of technical provision of law and cannot be regarded as a breach of substantive provisions of law.
- e) Noticee placed reliance on the observations of Hon'ble SAT in the matters of ***HB Stockholdings, P. G. Electroplast Limited, Piramal Enterprises Limited, Yogi Sungwon (India) Limited*** and of the Hon'ble Supreme Court of India in the matter of ***Hindustan Steel v. State of Orissa***.

13. Before considering the issues to be examined in this matter, I find it relevant to examine whether the Noticees' ability to defend themselves and their right to present a proper defence were impaired because of delay in initiation of adjudication proceedings. I note that the SCN alleged that the Noticees had failed to make timely disclosures relating to acquisition of shareholding in the Company, which were required under Regulation 13(4A) of the PIT Regulations during the Investigation Period. Facts relating to allegations are clear and passage of time has no bearing on the ability to present correct picture as to whether there was a delay in compliance of Regulation 13(4A) of the PIT Regulations. I also find it relevant to refer to the observation of the Hon'ble SAT in the matter of ***Vaman Madhav Apte v. SEBI*** (Appeal No. 449 of 2014 dated March 04, 2016) where it held, "*Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the*

impugned order is liable to be quashed and set aside is without any merit, because, firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws”.

14. I also note that material pertaining to information relating to Noticees’ acquisition of shareholding in the Company and date of disclosures made under relevant regulations, which had been relied upon in the instant adjudication proceedings were supplied to the Noticees to enable them to defend themselves and present a proper defence. Therefore, I do not agree the submission of the Noticee that there was a delay in initiation of adjudication proceedings, which impaired its ability to defend itself and present a proper defence.

15. Since inquiry in the instant matter is concluded, I proceed to decide the case on merit, taking into account the allegations levelled against the Noticee in the SCN, submissions of the Noticee towards the SCN and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

16. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticees failed to make disclosures required under Regulations 13(4A) read with 13(5) of the PIT Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A (b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue No. I Whether the Noticees failed to make disclosures required under Regulation 13(4A) read with 13(5) of the PIT Regulations as alleged in the SCN?

- 17.** It is noted that the facts relating to Noticees' acquisition of shareholding in the Company, as produced in paragraph 4 hereinabove, are not in dispute by the Noticees. The Noticees have pointed out errors in calculation of delay in 3 instances which are taken note of. The Noticees have further submitted that the mode of sending the disclosure to stock exchanges was hard copies through registered posts and that delay in receipt of information by stock exchange is attributable to delays by Department of Posts. I note that the Noticees have not produced any documentary evidence to substantiate their claim that the delay was attributable to Department of Posts. Even if the submission of the Noticees is accepted, for the sake of assumption, it is relevant to note that there are 20 instances (in case of Noticee 1) and 3 instances (in case of Noticee 2) where the delays in disclosure is more than 7 days, which points towards the facts that delays in disclosure by the Noticees could not have been solely on account of delay by Department of Posts.
- 18.** The Noticees have also submitted that they, as promoters of the Company, should not be held liable for lacuna in the abilities of the human resources employed by them or lack of due care exercised in fulfilling his duties with respect to filing of applicable forms within respective timelines. However, this submission of the Noticee cannot be accepted on account of Noticee's vicarious liability for the actions of its staff.
- 19.** The Noticees have also submitted that the promoters and promoter group of the Company had disclosed that "*promoters along with persons acting in concert are in the process of increasing their shareholding while keeping it to less than 25% of the equity capital*" vide letter dated November 24, 2011. Therefore, the information relating to acquisition of shareholding by the Noticees was already in public domain and they never intended to suppress any information from purported acquisition. They have also submitted that all requisite disclosures other than those under PIT Regulations were made by the Noticees and their inability to make requisite disclosures within prescribed timeline under PIT Regulations cannot be regarded as a breach of substantive provisions of law and is a technical breach.

20. At this juncture, I find it relevant to refer to the order of the Hon'ble Securities Appellate Tribunal (hereinafter be referred to as, the "**Hon'ble SAT**") in the matter of **Premchand Shah & ors. v. SEBI** (Appeal No. 108 of 2010 dated February 21, 2011) wherein, it held, "*...when law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all. Both sets of regulations prescribe formats in which the disclosures are to be made and then put out for the information of the general public through special window(s) of the stock exchange which did not happen in this case. Non-disclosure of the information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take an informed decision while making the investments.*"
21. I also take note of the order of the Hon'ble SAT in the matter of **Ambaji Papers Pvt. Ltd. v. The Adjudicating Officer, Securities and Exchange Board of India** (Appeal No. 201 of 2013 dated January 15, 2014), wherein the Tribunal observed, "*...To this extent, the appellants, though inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless.*"
22. In light of the judicial precedents cited hereinabove, I am of the view that the Noticees had a statutory obligation to disclose acquisition of shareholding (as mentioned in paragraph 4 hereinabove) and therefore, a disclosure under other regulations / information disseminated to the stock exchanges does not absolve the Noticees of their obligation to make a timely disclosure under Regulation 13(4A) read with 13(5) of the PIT Regulations.
23. In view of the aforesaid, I am of the considered view that delays in making disclosures relating to acquisition of shareholding in the Company as required under Regulation 13(4A) read with 13(5) of PIT Regulations, although venial in nature, is a non-compliance of statutory obligation by the Noticee and hence, violations of Regulations 13(4A) read with 13(5) of the PIT Regulations stand established against the Noticees.

Issue No. II **If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?**

&

Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

24. Since failure of Noticees in compliance with Regulations 13(4A) read with 13(5) of the PIT Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act, text of which is reproduced as under:

SEBI Act

“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 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.”*

25. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- a) amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- b) amount of loss caused to an investor or group of investors as a result of the default;
- c) repetitive nature of the default.

26. It is noted that the Noticees have submitted that SEBI has failed to demonstrate any loss caused to minority shareholders, or impact on market or public shareholders of the Company and the delays in making disclosures were at best a breach of technical provision of law. However, I note that the Hon'ble SAT in the matter of ***Virendrakumar Jayantilal Patel v. SEBI*** (Appeal No. 299 of 2014 dated October 14, 2014) had observed that, *“obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make the disclosures within the*

stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make the disclosures.”

- 27.** Noticees have also submitted that the SCN has failed to lay down any undue profit or gains which have been derived by the Noticees. I also note from the material available on record that no amount of disproportionate gain or unfair advantage or amount of loss caused to investor or investor groups can be ascertained. I note that over a period of one and a half years, there have been nearly 50 instances of delays ranging from 1 days to 39 days, indicating a repetitive pattern of delay in filings during this period.
- 28.** From the material available on record, it is noted that in compliance with Regulation 13(4A) read with 13(5) of the PIT Regulations, there were 20 instances of delay, ranging from 8-39 days in case of Noticee 1 while there were 3 instances of delay, ranging from 9-15 days.
- 29.** The Noticee has placed reliance upon various judgments / orders of the Hon'ble Supreme Court and SAT with respect to imposition of penalty and intention of Noticees, which are taken on record.
- 30.** Therefore, taking into accounts the facts and circumstances of the instant matter and presence of mitigating factors as discussed above, I am of the view that a penalty of ₹10,00,000/- upon Noticee 1 and ₹2,00,000/- upon Noticee 2 will be commensurate with the violation of Regulation 13(4A) read with 13(5) of the PIT Regulations by them.

ORDER

- 31.** Accordingly, taking into account the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I impose a penalty of ₹10,00,000/- (Rupees Ten Lakh only) upon the Noticee 1, i.e. Jagdish Kumar Arora and ₹2,00,000/- (Rupees Two Lakh only) upon the Noticee 2, i.e. Som Distilleries Private Limited under Section 15A(b) of the SEBI Act for violation of Regulation 13(4A) read with 13(5) of the PIT Regulations.

32. 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.

33. Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. Noticees shall also provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

34. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date : September 27, 2019

Place : Mumbai

(Maninder Cheema)

Adjudicating Officer