BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/MKG/AO/172/2018-19]

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

Polsons Traders LLP
[PAN: AAPFP5427M]

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination in the scrip of Kisan Mouldings Limited (hereinafter referred to as '**KML/Company**'), which is listed on BSE. It was observed that Polsons Traders LLP (hereinafter referred to as the '**Noticee**) who is promoter of the Company, was allotted 11.17 lakhs shares of the Company through preferential allotment (at a price of Rs. 21.00) on April 16, 2016 In this regard, it was observed that the Noticee had failed to make relevant disclosures to the Company as required under the relevant provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide communication order dated May 24, 2018, appointed the undersigned as Adjudicating Officer under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**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**') to inquire into and

adjudge under Section 15A(b) of SEBI Act, the alleged violation of the provisions of law by Noticee.

Show Cause Notice, Reply and Personal Hearing

3. A show-cause notice (hereinafter referred to as '**SCN**') no. SEBI/EAD/KS/MKG/17407/2018 dated June 18, 2018 was issued to the Noticee under rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty not be imposed upon it under section 15A(b) of SEBI Act respectively for the alleged violations specified in the said SCN. The Noticee was given 15 days of time to make its submission in respect of the allegations made in the SCN.

4. It is observed from the SCN that the Noticee, who is Promoter of KML was allotted 11.17 lakhs shares of the Company through preferential allotment (at a price of Rs. 21.00) on April 16, 2016, (thereby increasing its shareholding from 3.99% to 9.49%). As value of said transaction was above Rs. 10 lakhs and the Noticee is promoter of the company (as per BSE email dated October 17, 2017), the Noticee was required to make disclosure to Company under Regulation 7(2)(a) of PIT Regulations however, it is alleged that the Noticee has failed to make disclosure to the Company.

5. The SCN was duly served on the Noticee on June 22, 2018. The Noticee, vide email and letter dated July 07, 2018, sought time till July 31, 2018 for filing reply to the aforesaid SCN. Considering the principles of natural justice, an opportunity of personal hearing was provided to the Noticee on July 26, 2018 vide hearing notice dated July 12, 2018. Further, vide aforesaid hearing notice, the Noticee was also advised to file its reply to the SCN by July 23, 2018. The Noticee vide email dated July 25, 2018 submitted reply to the SCN dated July 25, 2018 and *inter-alia* made the following submissions:

Kindly refer to the notice no. SEBI/EAD/KS/MKG/17407/2018 dated June 18, 2018 (hereinafter referred to as 'the said SCN') received by Poisons Traders LLP (hereinafter referred to as 'we'/'our'/'us'/'Noticee 1') issued for alleged violations of SEBI (Prohibition of Insider Trading)

Regulations, 2015, (hereinafter referred to as 'PIT Regulations') while dealing in the scrip of Kisan Mouldings Ltd. (hereinafter referred to as 'KML').

It has been alleged in the SCN that we were a part of Promoter group of KML. Further it has been alleged that we have failed to disclose change in shareholding as required under PIT Regulations for the shares allotted to us during the investigation period. In view of the same, it has been alleged that we have violated Regulation 7(2)(a) of PIT Regulations.

We have further been called upon to show cause as to why an inquiry be not held against us in terms of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with Section 15-1 of the SEBI Act, 1992 and penalty be not imposed under Section 15A (b) for the alleged violation.

Our reply to the said notice is as under:-

i. *At the outset and without prejudice to anything stated hereinafter, we deny all the allegations and findings made against us in the said notice except to the extent specifically admitted by us. Nothing contained in the said notice may be deemed to be admitted by us by reason of nontraverse or otherwise, save and except what is expressly admitted herein. We deny all the statements, submissions, contentions, allegations and averments contained in the said notice that are contrary to and/or inconsistent with what is stated herein below.*
ii. *It has been alleged that we were holding 3.99% of share capital of KML as on quarter ending March 2016 which increased to 9.49%% as on quarter ending June 2016.*
iii. *It has further been alleged that the above transaction triggered the disclosure requirement under Regulation 7(2)(a) of PIT Regulations as value of the said transaction was above Rs. 10 lakhs, and we were required to make disclosure to the Company in the prescribed format. Upon failure to make such disclosure, it has been alleged that we have violated the said provisions of Regulation 7(2)(a) of PIT Regulations, and therefore liable to penalty under Section 15A (b) of SEBI Act.*
iv. *Regulation 7(2)(a) of the PIT Regulations reads as under:*

"Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified"

v. *We submit and say that we were allotted 11,17,000 number of shares through a preferential allotment in consideration to conversion of unsecured loan given by us to the Company forming part of the Promoter contribution under CDR package, pursuant to a special resolution passed by the shareholders of KML through postal ballot on March 15, 2016. Post allotment, our shareholding increased from 3.99% of share capital to 9.49% of share capital.*
vi. *We submit and reiterate that we were allotted shares by shareholders of KML by passing a special resolution through the postal ballot held on 15th March, 2016. We submit and say that as per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the explanatory statement forwarded to shareholders u/s 102 of The Companies Act, 2013 inter alia includes shareholding pattern of KML before and after the preferential issue, the identity of the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any.*
vii. *We submit that as is observed from Annexure 1, the notice of the Postal Ballot includes the shareholding pattern as per Regulation 31 of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 (LODR) before and after the preferential issue, identity of the proposed allottees including Poisons Traders LLP (page 5-8 of the notice of the Postal Ballot), percentage of the post preferential issue capital that may be held by Poisons Traders LLP etc. We submit and reiterate that this notice of Postal Ballot was sent to all the shareholders and was also submitted by KML to the stock exchange i.e. BSE Limited.*
viii. *We submit and reiterate that the required information that Poisons Traders LLP was being allotted shares, and the details of shareholding pattern of KML post preferential issue was in the public*

domain. We, therefore, submit and reiterate that we did not have any intention to conceal or hide our shareholding in KML from anyone.

ix. *We submit that the main purpose of disclosure stipulated as per PIT Regulations is that the small investor is immediately aware of any significant happening in a listed company so that he is able to take an informed decision. I submit and reiterate that, in our case, the information that Poisons Traders LLP would hold a certain percentage of share capital of KML was in the public domain even prior to the allotment of shares to us. Hence, there is no question of non-disclosure on our part.*

x. *We submit and reiterate that we have not filed the disclosures under the respective regulations in respective format but there has been no nondisclosure on our part. We further submit that due to non-filing of relevant disclosures, no gain or advantage has occurred to and no loss or harm has been caused to any investors. We submit and reiterate that not filing of relevant disclosures was due to the difference in understanding of the relevant regulations as interpreted by us and as interpreted by SEBI.*

xi. *We submit and reiterate that we did not have any malafide intention to hide the information and further the information was already available in public domain before we were allotted such shares. Hence, we submit that we did not have any intention to hide nor did we hide any information from general investors and as detailed above, neither Noticee had any unfair gain or advantage nor any loss or harm was caused to the investors.*

xii. *We submit and say that we always follow all the procedures, as stipulated by any regulatory authority, follow all rules/ regulations/ instructions etc. issued by any government agency, and our intention has never been to conceal any information. We have never been penalized by any regulatory authority and have got clean track record till date. Further, we submit and reiterate that in this case also our intention was not to conceal any information/ detail, as already explained above that the details are already in public domain, it was a procedural lapse on part of us to not to disclose the information in formats specified under PIT Regulations.*

Legal Submissions

xiii. *The judgements passed by Hon'ble Courts/ Hon'ble SAT for levying penalty are as follows:*

a. ***Case of Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002)-***
The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case/'

b. ***Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579***
It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that :-Para 61:"We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd.., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mensrea has to be established".

c. ***Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)***
The Hon'ble Supreme Court held that:-'The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".

d. *SEBI in the case of Refex Industries Limited (formerly known as Refex Refrigerants Limited), wherein Hon'ble WTM did not issue any directions against the promoter and director and inter-alia held that*

"that the violation is un-intentional and not for consolidation that the violation is technical and venial in nature; and

e. *We would like to invite your kind attention to order May 11, 2017 passed by learned Adjudicating Officer, SEBI in the case of Jindal Cotex Limited, wherein considering the facts and circumstances of the case the Ld. Adjudicating officer levied a nominal monetary penalty of Rs One (1) Lakh only under Section 15A(b) for alleged violation of Regulation 13(1) of SEBI (PIT) Regulations, 1992 and Regulation 29(1) read with_29{3) of SEBI (SAST) Regulations, 2011.*

In view of the above circumstances and as the information was already in public domain and we did not have any intention to conceal information, your honor is kindly requested to take a lenient view in the matter and penalty stipulated under Section 15 A (b) of SEBI Act, 1992 may not be imposed. It is further requested that the present proceedings under Show Cause Notice dated June 18, 2018 may be dropped and we may be discharged from the same and an order may be passed accordingly.

6. The Authorized representative of the Noticee Mr. Balveer Singh Choudhary (hereinafter referred to as "AR") attended the hearing on scheduled date and time. During the hearing, AR reiterated the contents of the reply of the Noticee dated July 25, 2018 and agreed to made additional submissions by July 27, 2018. Vide letter dated July 28, 2018 the Noticee made additional submissions and *inter alia* submitted following:

i. *This is with reference to the above captioned Show Cause Notice (hereinafter referred to as The said SCN'/ the said notice') dated June 18, 2018 issued against M/s Poisons Traders LLP (hereinafter referred to as 'we'/ 'us'/'our'/'Poisons') and hearing in the matter held on 26th July, 2018. We would like to thank you for the patient hearing granted to our Authorised Representative.*
ii. *We have submitted our reply dated 25th July, 2018 via email and the same, in original, was submitted during the course of hearing as well.*
iii. *At the outset and for the sake of brevity, we repeat and reiterate whatever is said in our reply dated 25th July, 2018 as if the same are set out herein* extenso *and reproduced herein.*
iv. *Further, during the hearing held before the Learned Adjudicating Officer on 26th June, 2018, a written submission has been sought from us regarding the submission made during the course of hearing. In this respect, our submissions are made in the following paragraphs :*

a. *Our Authorized representative submitted that Regulation 7(2) (a) only stipulates disclosures when there is a* trading *in scrips and no disclosures are stipulated when there is an* 'allotment' of *shares.*
b. *We submit that Regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT regulations") reads as under :*

"Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired, or disposed of within two trading days of such transaction if the value of the securities *traded*, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a *traded* value in excess of ten lakh rupees or such other value as may be specified"

c. *We reiterate that Regulation 7(2)(a) casts an obligation to the Promoter, Director and employee on the disclosure of securities acquired or disposed of within two (2) trading days to the Company if the value of the securities* traded *whether in one (1) transaction or a series of transaction exceeds Rs. Ten (10) lakhs over any calendar quarter. However, the regulation never stipulates anything about the* allotment *of shares.*

d. *In case we are able to draw an analogy with Regulation 29(3) of SEBI (Substantial Acquisition of shares & Takeovers) Regulations, 2011 (hereinafter referred to as 'SAST Regulations'), it is submitted that Regulation 29(3) casts an obligation on Acquirer to disclose wherever there is an allotment or purchase of securities. The Regulation 29(3) of SAST Regulation is reproduced hereunder:*

> *"The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two (2) working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*
> *(i) every stock exchange where the shares of the target company are listed; and*
> *(ii) the target company at its registered office."*

e. *It is observed from the above that Regulation 29 (3) of SAST regulations casts an obligation on the disclosures specified in sub regulation (1) and (2) to be made on receipt of* intimation of allotment of shares or acquisition *of shares or voting rights.*

f. *We further submit that if the intention of PIT Regulations was to stipulate any disclosure whenever there was an* allotment *of securities, the same would have been explicitly mentioned in Regulation 7(2) (a) of PIT Regulations as is the case with Regulation 29(3) of SAST Regulation. However, Regulation 7(2) (a) of PIT Regulations stipulates disclosure only when there is* trading in shares. *This contention is also at par with the current objective of not making multiple disclosures.*

g. *We further submit that in the case of* ***Ravi Mohan & Ors v. SEBI*** *dated 16th December, 2015, Hon'ble SAT had examined the issue under which the appellants were contemplated under Regulation 7(2) of SAST Regulations & held as follows:-*

> *27. It is relevant to note that while inserting regulation 7(1 A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1 A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1 A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1 A) has to be made within two days of the events specified in regulation 7(2). On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting rights in excess of the limits prescribed under regulation 7(1 A). As a result, even though regulation 7(1 A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1 A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1 A) has to be discharged within two days of the events specified under regulation 7(2). Since regulation 7(2) as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1 A), the question of discharging that obligation arising under regulation 7(1 A) read with regulation 7(2) does not arise at all.*

> *28 ... Thus, by 2002 amendment it is made dear that although discourse of purchase or sale referred to under regulation 7(1 A) has to discharged within two days of purchase or sale, of shares referred to therein, by amending regulation 7(2) it is provided that two days*

time to make disclosure under regulation 7(1 A) shall commence on the happening of events specified under regulation 7(2). Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1 A), the question of complying with regulation 7(1 A) within two days of sale of shares does not arise at all.

29 Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1 A) has to be discharged in the manner specified under regulation 7(1 A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1 A), SEB1 is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1 A) within the stipulated time, have violated regulation 7(1 A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants.

33. For all the aforesaid reasons, the issues raised in these appeals are answered as follows:-

a) ……

Disclosure obligation under regulation 7(1 A) has to be discharged in accordance with regulation 7(1 A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1 A), appellants herein cannot be said to have failed to comply with regulation 7(1 A) within the time stipulated under regulation 7(1 A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained

……."

b) We submit that the ratio of the above judgment applies with equal force to the facts of the present case. In similar footing, the intention of Regulation 7(2)(a) in PIT Regulation was to disclose only trading and not the allotment of shares.

v. *We submit and reiterate that since the information of allotment is already in public domain, a specific disclosure under Regulation 7(2)(a) is not required.*

vi. *In the circumstances, your honor is kindly requested to take a lenient view in the matter, benefit of doubt may be granted to us and penalty stipulated under Section 15 A (b) of SEBI Act, 1992 may not be imposed.*

7. Vide letter dated August 04, 2018 the Noticee made additional submissions and *inter alia* submitted following:

i. *This is in reference to the notice no. SEBI/EAD/KS/MKG/17407/2018 dated June 18, 2018 (hereinafter referred to as 'the said SCN') received by Poisons Traders LLP (hereinafter referred to as 'we'/'our'/'us'/'Noticee 1) issued for alleged violations of SEBI (Prohibition of Insider Trading) Regulations, 2015, (hereinafter referred to as 'PIT Regulations') while dealing in the scrip of Kisan Mouldings Ltd. (hereinafter referred to as 'KML').*

ii. *It has been alleged in the SCN that we were a part of Promoter group of KML. Further it has been alleged that we have failed to disclose change in shareholding as required under PIT Regulations for the shares allotted to us during the investigation period. In view of the same, it has been alleged that we have violated Regulation 7(2)(a) of PIT Regulations.*

iii. *With reference to the above SCN, we have already appeared on 26th July, 2018 at SEBI. Further, as stipulated, we have also submitted our Written Submission in addition to the reply.*

iv. *In addition to the submissions made vide our reply dated 25lh July, 2018, during the course of personal hearing on 26lh July, 2018 and written submission dated 28lh July, 2018, we would like to invite your kind attention to an Informal Guidance issued by SEBI dated April 28, 2017 bearing no. ISD/OW/9966/1/2017 in which you have specifically mentioned in Para No. 4 Point (i) that disclosure may not be necessary if such transaction is already in public domain. The same is reproduced as below :-*

"in cases, wherein the person getting allotment of shares has no role in the transaction in question anil relevant information or disclosure of such transaction is already in the public domain, for e.g., in case of bonus shares received pursuant to amalgamation /demerger etc, a separate disclosure may not be necessary"

v. *Giving due consideration to the abovementioned guidance, we hereby state that in our case, we have received shares amounting to Rs. Ten(10) Lakhs or above pursuant to a Preferential Allotment made by Kisan Mouldings Limited. The fact that we were the allottees of such Preferential Allotment was already in public domain. As per SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009, the explanatory statement forwarded to shareholders u/s 102 of The Companies Act, 2013 includes shareholding pattern of KML before and after the preferential issue, the identity of the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any.*

vi. *It is stated that the essential crux of disclosure stipulated as per PIT Regulations is that the small investor is immediately aware of any significant happening in a listed company so that he is able to take an informed decision. We submit and reiterate that, in our case, the information that Poisons Traders LLP would hold a certain percentage of share capital of KML was in the public domain even prior to the allotment of shares to us. Hence, there is no question of non-disclosure on our part.*

vii. *Henceforth, we kindly request you to give due consideration to the said Informal Guidance. Further, as the information was already in public domain and we did not have any intention to conceal information, your honor is kindly requested to take a lenient view in the matter and penalty stipulated under Section 15 A (b) of SEBI Act, 1992 may not be imposed. It is further requested that the present proceedings under Show Cause Notice dated June 18, 2018 may be dropped and we may be discharged from the same and an order may be passed accordingly.*

Consideration of Issues, Evidence And Findings

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

I. **Whether Noticee has violated Regulation** 7(2)(a) **of PIT Regulations?**

II. **Does the violation, if any, attract monetary penalty under Sections 15 A (b) of SEBI Act.**

III. **If so, what should be the quantum of monetary penalty?**

9. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations which read as under:

Relevant provisions of PIT Regulations:

Disclosure of interest or holding by directors, officers and substantial shareholders in a listed companies-

7. (2) Continual Disclosures.

(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

Issue I: Whether Noticee has violated Regulation 7(2)(a) of PIT Regulations?

Findings:

10. Upon perusal of the reply of the Noticee and documents available on record, I find that it is not in dispute that the Noticee was allotted 11.17 lakhs shares of the Company through preferential allotment (at a price of Rs. 21.00) on April 16, 2016, (thereby increasing its shareholding from 3.99% to 9.49%) and the value of allotted shares was more than Rs. 10 Lakh.

11. I note from the submissions of the Noticee that it was allotted the said shares through a preferential allotment in consideration to conversion of unsecured loan given by the Noticee to the Company, pursuant to a special resolution passed by the shareholders of KML through postal ballot on March 15, 2016. The explanatory statement sent with aforesaid postal ballot contained information like shareholding pattern of KML before and after the preferential issue, the identity of the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any. Further, the Noticee also submitted that the postal ballot was sent to all the shareholders and to the BSE. Thus, the required information regarding preferential issue was in the public domain and the Noticee did not have

any intention to conceal or hide its shareholding from anyone. The Noticee also submitted that since the information that Polsons would hold a certain percentage of share capital of KML was in the public domain even prior to the allotment of shares to Polsons therefore, there is no question of non-disclosure on its part. In this regard, I note that in terms of Regulation 7(2)(a) of PIT Regulations there is an independent and separate statutory obligation of making disclosure by the every promoter, employee and director of every listed company and information disseminated by the Company through postal ballot does not absolve of the Noticee from making the relevant disclosure under the aforementioned regulation. I note that in the matter of E-Ally Consulting (India) Pvt. Ltd. & Ors . Vs SEBI (Appeal No 203 of 2014 decided on August 06, 2014), wherein similar contentions were raised by the appellant in the case relating to violation of Regulation 30 (1) and 30 (2) of the SAST Regulations, 2011, Hon'ble SAT had observed that: "*We see no merit in the above contentions. Obligations to make disclosures under Regulation 30 (1) and 30 (2) read with Regulation 30 (3) of SAST Regulations, 2011 is mandatory and is independent of the obligation to make the disclosures under the listing agreement. Similarly, fact that proper advise was not there or that the delay was unintentional/ without any fraudulent intention or there is no complaint from investors does not absolve appellants from their obligation to make the disclosures under SAST Regulations, 2011*." In this context, I would also like to rely on observation of Hon'ble SAT in Premchand Shah and Others V. SEBI (Appeal no. 192 of 2010 dated February 21, 2011), wherein it was held that ".…….When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.…… Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments …… ". Therefore, the contentions of the Noticee that it did not have any intention to conceal/hide or there was no question of non-disclosure on its part are devoid of any merit.

12. It is submitted by the Noticee that it has not made any gains or unfair advantage by not making the purported disclosures, no loss was caused to the investors. Further,

the Noticee has submitted that it didn't has any malafide intention to hide the information. In this regard, I note that Hon'ble SAT through various judgments, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT Regulations. In the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 order dated October 14, 2014), Hon'ble SAT observed that *"……. obligation to make 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 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 disclosures."* (Emphasis supplied).

13. The Noticee further, submitted that Regulation 7(2)(a) casts an obligation on the Promoter, employee and Director on the disclosure of securities acquired or disposed of if the value of the securities traded whether in one transaction or a series of transaction exceeds Rs. 10 lakhs over any calendar quarter. Further, the Noticee argued that the regulations under consideration never stipulates anything about the allotment of shares. In this regard I would like to rely on the observation of Hon'ble Supreme Court of India in the matter of Sri Gopal Jalan & Company vs. Calcutta Stock Exchange association Ltd. (Date of Judgment May 09, 1963), wherein the apex court of India has observed that *"…….'allotment' means the appropriation out of the previously unappropriated capital of a company, of a certain number of shares to a person. Till such allotment the shares do not exist as such. It is on allotment in this sense that the shares come into existence.".* I note from Regulation 2(1)(l) of PIT Regulations that *"trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly*. I note that allotment, a stage where securities are created and come into existence, is preceded by a subscription in contrast to a purchase of already created securities. From the above definition of trading as defined in PIT Regulation and reproduced

above I find that the “subscription” is also included. Therefore, on a conjoint reading of the meaning of allotment in light of the definition of ‘trading’, I find it difficult to agree with the argument of the Noticee that “Allotment” does not trigger disclosure obligation(s) under consideration.

14. The Noticee further submitted that SEBI issued an Informal Guidance dated April 28, 2017 bearing no. ISD/OW/9966/1/2017 wherein SEBI specifically mentioned that disclosure may not be necessary if such transaction is already in public domain. The same is reproduced as below :-

> *"in cases, wherein the person getting allotment of shares has no role in the transaction in question and relevant information or disclosure of such transaction is already in the public domain, for e.g., in case of bonus shares received pursuant to amalgamation /demerger etc., a separate disclosure may not be necessary"*

In this regard I note that in the aforesaid informal guidance, SEBI has mentioned that only in cases, wherein the person getting allotment of shares has no role in the transaction in question, a separate disclosure may not be necessary. However, in the instant case the facts are different from the facts covered under the informal guidance. The present matter arises on account of preference shares wherein consideration for allotment is necessary. In this regard, I note that, in terms of Regulation 77(1) of Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (herein after referred to as “ICDR Regulations”) allottee has to pay full consideration of specified securities at the time of allotment. The relevant text of Regulation 77(1) of ICDR is reproduced below:

> ***Payment of consideration.***
> *77. (1) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities:*

Therefore, it is difficult to agree with the contention of the Noticee.

15. I also note from records that Company vide email dated October 27, 2017 replied to SEBI confirming non receipt of any disclosure in terms of PIT Regulations from the Noticee for the aforesaid preferential allotment made to the Noticee.

16. I also note that the Noticee in its reply has relied , *inter alia*, on the following Orders and same was considered:-

a) Case of Reliance Industries Ltd. v SEBI (SAT Appeal No. 39/2002)-
b) *Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579*
c) *Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)*

17. In view of the above, I note that the Noticee who was promoter of the Company at the relevant time has transacted in the shares of the company and he was required to make disclosers to the Company in Calendar quarter of April - June, 2017 in terms of Regulation 7(2)(a) of PIT Regulations but has failed. In this regard I would be guided by the ruling of the Hon'ble Supreme Court of India in the matter of SEBI v/s 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……".*

18. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act which reads as under:

SEBI Act

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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

19. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:

Factors to be taken into account by the adjudicating officer.

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

20. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the

Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticee.

ORDER

21. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 2,50,000 (Rupees Two Lakh Fifty Thousand only) on the Noticee viz. Polsons Traders LLP under the provisions of Section 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

22. The amount of penalty shall be paid either by way of demand draft in favour 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.

23. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA I), 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 payment is made:	

7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

24. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Polsons Traders LLP and also to the Securities and Exchange Board of India.

Date: August 28, 2018
Place: Mumbai

K SARAVANAN
ADJUDICATING OFFICER