BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2018-19/1403-1406]

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:

1. **Economy Suppliers Private Limited**
2. **Embassy Sales Private Limited**
3. **Seabird Retails Private Limited**
4. **Seabird Distributors Private Limited**

In the matter of

PMC Fincorp Limited

1. During the examination, in the scrip of PMC Fincorp Limited (hereinafter referred to as 'the Company'), a company listed on the Bombay Stock Exchange (BSE), Securities and Exchange Board of India (SEBI) observed that during the period March 2012 to August 2014 there was change in shareholding of Economy Suppliers Private Limited (the Noticee No. 1), Embassy Sales Private Limited (the Noticee No. 2), Seabird Retails Private Limited (the Noticee No. 3) and Seabird Distributors Private Limited (the Noticee No. 4) (hereinafter individually referred to as the Noticee No. 1-4, respectively and jointly as the Noticees) in the Company.

2. Based on the information provided by BSE, SEBI observed that the change in the shareholding of the Noticees in the Company had triggered their obligations to make disclosures to the Company and BSE in terms of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as 'SAST Regulations') as described in the following table:

Sr. No.	Name of Shareholder	Change in Shareholding	Date of change in Shareholding	Obligation under PIT Regulations	Obligation under SAST Regulations
1	Economy Suppliers Private Limited	4.6% to 5.7%	March 30, 2013	13(1)	29(1) read with 29(3)
2	Embassy Sales Private Limited	4.97% to 5%	March 7, 2013	13(1)	29(1) read with 29(3)
3	Seabird Retails Private Limited	4.8% to 6.3%	March 30, 2013	13(1)	29(1) read with 29(3)
		6.2% to 9.4%	August 03, 2013	13(3)	29(2) read with 29(3)
		9.4% to 4.9%	September 28, 2013	13(3)	29(2) read with 29(3)
4	Seabird Distributors Private Limited	3.7% to 5.4%	March 30, 2013	13(1)	29(1) read with 29(3)
		5.4% to 7.6%	August 03, 2013	13(3)	29(2) read with 29(3)
		7.6% to 4.9%	September 28,2013	13(3)	29(2) read with 29(3)

3. SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the alleged violations by the Noticees and by a communication-order dated April 20, 2018 informed about appointment of undersigned as Adjudicating Officer to inquire and adjudicate the alleged violations by them under section 15A(b) of the SEBI Act. Accordingly, on receipt of records on May 29, 2018, a show cause notice no. EAD/SS/VS/18374/1-4/2018 dated June 28, 2018 (SCN) was issued to the Noticees in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudication Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') read with section 15I of the SEBI Act. By the SCN the Noticees were called upon to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed upon them under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The Noticees were required to submit their replies within a period of 14 days of receipt of the SCN.

4. The SCN sent at the last known addresses of the Noticees was duly served upon them. The Noticees, vide their respective letters dated July 23, 2018/July 24, 2018, requested additional time of 15/21 days from the date of the letter for the submission of reply to SCN. In the interest of natural justice read with rule 4(3) of the Adjudication Rules, the Noticees were given additional opportunity to file reply and also to avail the opportunity of personal hearing on August 20, 2018. The notice dated August 03, 2018 in this regard was duly served

upon the Noticees. The Noticees, vide their individual letter dated August 10, 2018, requested adjournment of hearing and sought further time to file their replies to the SCN. The request was considered and it was noted that the Noticees had delayed the filing of their replies without any valid reasons and they still had time to file their replies till August 20, 2018. Accordingly, such request was not acceded to and the Noticees were intimated about the same vide letter dated August 14, 2018 duly served upon the Noticees vide e-mail of the same date.

5. Subsequently, Noticees No. 3 and 4 vide their individual letters dated August 16, 2018 submitted that SEBI has not followed the procedure prescribed under SEBI Act/Rules/Regulations with respect to initiation of Adjudication proceedings against the Noticee and thereby the SCN so issued is invalid. The appointment of adjudicating officer to inquire and adjudge the matter is not proper as the Whole Time Member has failed to form an independent opinion that there are grounds for adjudging the matter under provisions of Chapter VIA of the SEBI Act, which is a pre-condition for appointment of an adjudicating officer. In this regard, they have relied upon a judgment passed by Hon'ble Delhi High Court in the case of *Amit Jain Vs. SEBI (W.P (C) 8394/2014),* wherein the Hon'ble Delhi High Court had set aside the similar proceedings initiated against the petitioner.

6. On the scheduled date of hearing on August 20, 2018, Mr. Mahipal Gupta appeared on behalf of Noticees No. 1 and 2 and conceded to make oral reply/submissions on their behalf and file post hearing written reply so that proceedings should not be further delayed. He submitted that it was the only transaction of these Noticees which was cause of action in the matter. The non-compliance for this solitary transaction had occurred for technical reasons. These Noticees are small Companies and had no expertise. It was their first time default and no substantial gain has been incurred by them. No harm has been caused to investors either. Suitable disclosures were made by the Company under clause 35 of the Listing Agreement. Hence, lenient view may be taken. He also requested for seven days' time to file written reply/submission and production of evidence in support of their submission, which was granted.

7. Thereafter, the Noticees No. 1 to 4 vide their individual letters, filed written reply/submission *inter alia* as under:

a. **Noticee No. 1,** vide its letter dated August 22, 2018, submitted that as on March 30, 2013, it held 20,42,459 shares representing 7.63% of the total share capital of the Company and not 4.6% as stated in the SCN. Pursuant to acquisition of 2,85,655 shares on March 30, 2013, its shareholding got increased by 1.07% of the total shares capital of the company. Further, post-acquisitions on March 30, 2013, total shareholding resulted to 8.70% and not 5.7% as stated in SCN. Therefore, since its shareholding was already beyond 5% and incremental change was merely of 1.07%; no disclosures under regulation 29(1) read with regulation 29(3) of SAST Regulations and regulation 13(1) of the PIT Regulations was required. In support of such submissions, the Noticee No.1 has furnished the transaction statement of its acquisitions.

b. **Noticee No. 2**, vide its letter dated August 23, 2018, contested the appointment of adjudicating officer to be invalid and placed reliance upon the case of *Amit Jain Vs. SEBI (W.P.(C) 8394/2014),* wherein the Hon'ble Delhi High Court has quashed the proceedings relating to such appointment of the adjudicating officer . It has further submitted that as on March 07, 2013 the Noticee's shareholding was already 5.15% of the total paid up equity share capital of the company and after the acquisition dated March 07, 2013, its shareholding changed to 5.22% of the total shareholding in the Company. Thus, in light of aforesaid, there is no violation of regulation 29(1) read with regulation 29(3) of SAST Regulations and regulation 13(1) of PIT Regulations. In support of such submissions, the Noticee No. 2 has also furnished the transaction statement of its acquisitions.

c. **Noticee No. 3,** vide its letter dated August 24, 2018, admitted that it inadvertently failed to disclose the alleged transaction as per the SCN under regulation 13(1) and 13(3) read with regulation 13(5) of PIT Regulation and regulation 29(1) and 29(2) read with regulation 29(3) of SAST Regulations. The shareholding of the Noticee was duly available in public domain on account of shareholding patterns filed under clause 35 of the Listing Agreement every quarter. Therefore, the public at large was not oblivious to the information relating to the change in shareholding pattern of Noticee No. 3.

d. **Noticee No. 4,** vide its letter dated August 25, 2018, submitted that it had no professional or advisor to advice upon the compliance to be made under various SEBI Rules and Regulations. Therefore, it was in a *bona-fide* belief that there is no requirement of any such disclosures when the shareholding of the Noticee crossed 5% or there is an increase of 2% from the last disclosure. Hence, the Noticee inadvertently failed to disclose the aforesaid alleged transaction under regulation 13(1) and 13(3) read with regulation 13(5) of PIT Regulations and regulation 29(1) and 29(2) read with regulation 29(3) of SAST Regulations. Further, the shareholding of the Noticee was duly available on public domain on account of shareholding pattern being filed under clause 35 of the Listing agreement. Therefore, the public at large was not oblivious to the information relating to the change in shareholding of the Noticee.

8. It is noted that the Noticees have availed the opportunity of filing replies and hearing. In the facts and circumstances of the case and considering the replies/submissions of the Noticees, the procedure of replies / hearing has been concluded and the matter is to be proceeded now in term of rule 5 of Adjudication Rules, I proceed accordingly. I have considered the allegations levelled in the terms of reference, the aforesaid submissions of the Noticees and the relevant material available on record. Before dealing with the allegations on merits, I deemed it appropriate to deal with the technical objection raised by the Noticees No. 2, 3 and 4 with regard to the appointment of Adjudication Officer in this matter. I note that the communication-order dated April 20, 2018 has been issued in accordance with the due authorization/delegation under the provision of the SEBI Act. In terms of rule 4(1) of the Adjudication Rules, on being appointed, the adjudicating officer has to issue the show cause notice. The content and procedure of issuance of SCN are determine in terms of the Adjudication Rules. The SCN in this case has been issued accordingly. I further note that vide an order dated July 31, 2018, the Division Bench of Hon'ble Delhi High Court has stayed the operation of the judgment of the single Bench of Hon'ble Delhi High Court in the matter of *Amit Jain Vs. SEBI.* I, therefore, reject the contention of these Noticees in this regard.

9. Coming to the merit of the case, I deem it appropriate to refer to the relevant provisions of PIT Regulations and SAST Regulations charged in this case which are reproduced as following:

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. (1) *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:-*

(a) *the receipt of intimation of allotment of shares; or*

(b) *the acquisition of shares or voting rights, as the case may be.*

Continual disclosure.

13 (3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

(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.*

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29. (1) *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*

(2) *Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the 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 two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

(a) *every stock exchange where the shares of the target company are listed; and*

(b) *the target company at its registered office.*

10. From the above provisions of PIT Regulations and SAST Regulations, it is noted that under regulation 13(1) of the PIT Regulations, a person who holds more than 5% shares in any listed company is obligated to make requisite disclosures to the company, 'on becoming such holder', in specified Form within 2 working days of acquisition of shares. Similarly, regulation 29(1) read with regulation 29(3) of SAST Regulation casts an obligation on any acquirer who acquires shares in any listed company and which aggregates to 5% or more in any listed Company to make requisite disclosures in specified Form within 2 working days of the occurrence of change in shareholding to the company and the concerned stock exchange.

11. In terms of regulation 13(3) read with regulation 13(5) of the PIT Regulations, a person who holds more than 5% shares in any listed company is under obligation to make disclosures in specified Form C to the company within 2 working days of acquisition or sale of shares, in case of any change in his shareholding and such change exceeds 2% of total shareholding or voting rights in the company. Similarly, regulation 29(2) read with regulation 29(3) of the SAST Regulations casts an obligation on any person who holds more than 5% shares in any listed company to make requisite disclosures in case of any change in his shareholding and such change exceeds 2% of total shareholding or voting rights in the company in specified Form within 2 working days of the occurrence of change in shareholding to company and the concerned stock exchange.

12. It is noted that the provisions of regulation 13(1) of PIT Regulations and regulation 29(1) read with regulation 29(3) of SAST Regulations are similar as regards threshold of trigger of obligation of an acquirer of shares and content of disclosures to the company. Similarly, provisions of regulation 13(3) read with regulation 13(5) of the PIT Regulations and provisions of regulation 29(2) read with regulation 29(3) of the SAST Regulations are similar as regards disclosure obligation of the acquirer is mandated to the company. In this regard, it is relevant to refer to the order of Hon'ble SAT in the matter of *Vitro Commodities Private*

Limited Vs. SEBI (Appeal No. 118 of 2013) wherein, in respect of regulation 13(1) of PIT Regulations and regulation 7(1) of the SAST Regulations,1997 which provided same obligation as the present regulation 29(1) of SAST Regulations, 2011, it held that - *"…. provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1)of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."* Considering the said *ratio decendi*, I am of the view that the aforesaid allegation of violations of regulation 13(1) of the PIT Regulations and regulation 29(1) read with regulation 29(3) of the SAST Regulations be considered as with respect to a single violation for the purpose of imposition of penalty on the Noticees, if they are found to have failed to make prescribed disclosures to the Company in this vase. Similarly, the alleged violation of regulation 13(3) read with regulation 13(5) of PIT Regulation and regulation 29(2) read with regulation 29(3) of SAST Regulations should be considered as single violation, if the allegations are established in this case.

13. I note that Noticees No. 1 and 2 have contended that on the date of their respective acquisition they were already holding more than 5% shares in the company and thus they were not under obligation to make the requisite disclosure under PIT Regulations and SAST Regulations as alleged in the SCN. I have perused the transaction statements (provided by NSDL-the depository) of these Noticees as relied upon by them. It is noted that as on March 28, 2013 Noticee No. 1 was holding 12,42,459 shares in the Company. On March 30, 2013, it had acquired 2,85,685 shares of the Company. Consequently, it was holding 15,28,114 shares of the Company as on March 30, 2013. It is a matter of record and undisputed fact that the total shareholding of the Company on relevant dates was 2,67,53,400 shares. Accordingly, on March 30, 2013 the shareholding of Noticee No. 1 in the Company changed from 4.6% to 5.7% and not from 7.63% to 8.70% as claimed. Noticee No.1, who became shareholder of more than 5% shares of the Company on March 30, 2013 was, thus, under obligation to make disclosures to the Company in specified Form A under regulation 13(1) of the PIT Regulations with in two working days from March 30, 2013. Similarly, in terms of regulation 29(1) read with regulation 29(3) of the SAST Regulations, the Noticee No. 1 was under obligation to disclose its aggregate shareholding within two days from March 30,

2013 to the Company and BSE. The Noticee has, however, failed to make any disclosure in this regard.

14. It is noted that only the acquisition dated March 07, 2013 of the Noticee No. 2 is the basis of the charge against it in these proceedings. From the transaction statement of the Noticee No. 2, it is noted that on March 07, 2013, it had acquired 19,470 shares of the Company. Consequent to this acquisition, its total shareholding in the Company increased from 13,11,089 (4.90%) on March 06, 2013 to 13,30,559 shares (4.97%) on March 07, 2013. Thus, this acquisition did not trigger the threshold of 5% under regulation 13(1) of PIT Regulations and regulation 29(1) read with regulation 29(3) of SAST Regulations as alleged in this case. Accordingly, the charge Noticee No. 2 as leveled in this case fails.

15. The Noticee No. 3 and Noticee No. 4 have admitted their transactions and their consequent failure to make disclosures as alleged in the SCN. They have submitted that the defaults by them was inadvertent and *bona fide*. It is noted that –

    a. On March 30, 2013, the shareholding of the Noticee No. 3 and 4 had changed from 4.8% to 6.3% and 3.7% to 5.4%, respectively pursuant to their individual acquisition and they became shareholder holding more than 5% shares in the Company. On becoming shareholder of more than 5% in a company they both were individually obligated to make requisite disclosure under regulation 13(1) of the PIT Regulations and regulation 29(1) read with regulation 29(3) of the SAST Regulations within 2 working days from March 30, 2013. However, the Noticees No. 3 and 4 have failed to make any such disclosure to the Company and BSE.

    b. Further, consequent to their acquisition on August 03, 2013, the shareholding of the Noticees No. 3 and 4 in the Company changed from 6.2% to 9.4% and 5.4% to 7.6%, respectively pursuant to their individual acquisitions. Subsequently, on September 28, 2013, consequent to their sale transactions, the shareholding of the Noticees No. 3 and 4 in the Company changed from 9.4% to 4.9% and 7.6% to 4.9% respectively pursuant to their individual sales of shares. They both were already holding more than 5% shares in the Company prior to their aforesaid transactions and consequent change in their shareholding exceeded 2% of total shareholding in the Company in their both the transactions. Thus, they were individually under obligation to make requisite disclosure under regulation 13(3) read with regulation

13(5) of the PIT Regulations and regulation 29(2) read with regulation 29(3) of the SAST Regulations within 2 working days from August 03, 2013 and September 28, 2013, respectively. The Noticees No. 3 and 4, however, failed to make any such disclosure to the Company and BSE.

16. In view of the above, I hold that the breach by the Noticees as found hereinabove attract the liability as prescribed under Section 15A(b) of the SEBI Act which provides as follows:

Penalties and Adjudication

Penalty for failure to furnish information, return, etc.

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

(a) …….

(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty 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*

17. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the Act, 1992 which reads as follows:-

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."

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;*

18. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. The Noticees No. 1, 3 and 4 have claimed that the default was

inadvertent. It is noted that these Noticees have been holding substantial number of shares in the Company. The acquisition and sale of substantial number of shares, as found in this case, would alert any person of reasonable prudence, holding substantial shares in the Company, to fulfill his compliance obligations. The Noticees No. 3 and 4 have also claimed that subsequent disclosures were made under clause 35 of Listing Agreement. However, they have not brought any evidence to show that the requisite disclosures were made by them subsequently within a reasonable time frame or that the requisite information was in public domain at the relevant times. The obligation under clause 35 of the erstwhile Listing Agreement is cast on the Company and the disclosures required therein would not absolve these Noticees from their obligations under the PIT Regulations and SAST Regulations which have different objective and purpose of timely disclosures in case of change of shareholding of the shareholder like these Noticees. The Noticees No. 1, 3 and 4 have not made the requisite disclosures till date and the Noticees No. 3 and 4 have committed repeated defaults as found hereinabove.

19. It is relevant to mention that timely disclosures to the company and the stock exchange as required under the PIT Regulations and SAST Regulations are of significant importance from the point of view of the investors and regulators. These Regulations are aimed at bringing out transparency in the transactions by any shareholder. In this regard, the Hon'ble SAT, in the matter of ***Milan Mahendra Securities Pvt. Ltd. vs. SEBI***–, vide its order dated April 15, 2005 held 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."* The complete failure as found in this case, had clearly defeated the purposes of the Regulations.

20. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose the monetary penalty on Noticees No. 1, 3 and 4 under Section 15A(b) of the SEBI Act as given in the following table:-

Name of Noticee	Amount of Penalty
Economy Suppliers Private Limited (Noticee No. 1)	₹ 1,00,000/- (Rupees One Lakh only)
Seabird Retails Private Limited (Noticee No. 3)	₹ 3,00,000/- (Rupees Three Lakh only)
Seabird Distributors Private Limited (Noticee No. 4)	₹ 3,00,000/- (Rupees Three Lakh only)

21. In my view, the aforesaid penalties are commensurate with the violation/s committed by the Noticees No. 1, 3 and 4 in this case.

22. The Noticee No. 1, 3 and 4 shall remit aforesaid 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 e-payment facility into Bank Account the details of which are as follows:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

23. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052" and also to e-mail id :- tad@sebi.gov.in

1	Case Name	
2	Name of the 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 Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: October 12, 2018
Place: Mumbai

Santosh Shukla
Chief General Manager &
Adjudicating Officer