

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/SR/SM/2020-21/9347]**

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**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of

Krishan Kumar Khadaria  
(Address: B/11, 1102/2, Oberoi Sky Garden  
3<sup>rd</sup> Cross Lane, Lokhandwala Complex  
Andheri (West), Mumbai – 400053)

In the matter of Nouveau Global Ventures Ltd.

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**BACKGROUND**

1. A department (in short **OD**) of Securities and Exchange Board of India (in short **SEBI**) conducted an investigation in the scrip of Nouveau Global Ventures Ltd. (in short **NGVL / company**) for the period December 01, 2010 to March 28, 2013 (in short Investigation Period). OD observed that Krishan Kumar Khadaria (in short **Noticee**) made transactions during the Investigation Period and failed to make disclosure under regulation 13(1) of SEBI (Provision of Insider Trading) Regulations, 1992 (in short **PIT Regulations, 1992**), regulations 13(3), 13(4) & 13(4A) read with (in short r/w) 13(5) of PIT Regulations, 1992 r/w regulation 12(2) of SEBI (Provision of Insider Trading) Regulations, 2015 (in short **PIT Regulations, 2015**) and regulations 29(1) & 29(2) r/w 29(3) of SEBI (Substantial Acquisition of Shares and takeovers) Regulations, 2011 (in short **SAST regulations, 2011**). Hence, OD observes that Noticee is alleged to have violated the said provisions of PIT Regulations, 1992 r/w PIT Regulations, 2015 and SAST Regulations, 2011.

**APPOINTMENT OF ADJUDICATING OFFICER**

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Adjudication Order in respect of Krishan Kumar Khadaria in the matter of Nouveau Global Ventures Ltd.

2. Based on the examination, OD initiated adjudication proceedings against the Noticee. In this regard, it prima facie appeared to the Competent Authority that the Noticee has violated provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011 and he was satisfied that there are sufficient grounds to adjudge under section 15A(b) of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) for the alleged violations of the Noticee appointed Ms. Sangeeta Rathod (undersigned) as Adjudicating Officer (in short AO), under section 15-I of the SEBI Act, 1992 r/w rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**), to inquire into and adjudge, under section 15A(b) of the SEBI Act, 1992, the alleged violations of provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011. The same was conveyed to me vide communique dated February 28, 2020.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A Show Cause Notice no. SEBI/HO/EAD-10/E&AO/SR/SM/OW/9825/4/2020 dated March 18, 2020 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against him for the alleged violations of provisions under regulation 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011 and why penalty be not imposed on the Noticee under section 15A(b) of the SEBI Act, 1992 for the alleged violations as specified in the SCN. The SCNs were sent to the Noticee through speed post acknowledgement due (SPAD) and the same was delivered to the Noticee. Proof of delivery is on record. Vide e-mail dated June 27, 2020, Noticee requested for a period of 15 days citing the Covid-19

pandemic. Acceding the request of the Noticee, vide hearing notice dated June 30, 2020, Noticee was advised to reply to the SCN by July 20, 2020 and an opportunity of hearing was granted to the Noticee on July 22, 2020. The said hearing was sent through digitally signed e-mail at krishankhadaria@gmail.com. However, no reply received from the Noticee. Vide e-mail dated August 28, 2020, Noticee was advised to reply to the SCN by September 11, 2020 and another opportunity of hearing was scheduled on September 17, 2020. Noticee vide e-mail dated September 15, 2020 replied to the SCN attaching a letter dated September 15, 2020 and confirmed that the authorized representative (AR) will attend the hearing scheduled on September 17, 2020. The AR attended the hearing through online i.e. webex and telephone and reiterated the submissions made by the Noticee in the aforesaid e-mail. The AR requested for additional time to submit additional information and acceding the request of the Noticee, time given till September 24, 2020 to submit the information/documents. Hearing minutes are on record. Noticee vide e-mail September 28, 2020 submitted the additional information. Proof of delivery of all the outgoing e-mails mentioned herein from the Adjudicating Officer, is available on record.

4. The allegations in the said SCN as follows:

*“The Company was listed at Bombay stock Exchange (BSE) during the period of investigation. During investigation, OD observed that Noticee was the promoter and director of the Company during the investigation period. OD observed the following transactions made by the Noticee during the period of investigation wherein Noticee either did not make the disclosures or not within the prescribed time as specified in the aforesaid provisions of PIT Regulations, 1992 and SAST Regulations, 2011 for:*

<b>Date of transaction</b>	<b>Pre-transaction holding No. of shares (% of shareholding)</b>	<b>Transaction quantity (buy/sale) (mode of transaction)</b>	<b>Post-transaction holding No. of shares (% of shareholding)</b>	<b>Transaction value</b>	<b>Disclosure Requirement</b>	<b>Disclosure made</b>
09.11.11	6521000 (3.51%)	6264191 (buy) Off-market	12785191 (6.89%)	-	Reg. 13(1), 13(4) & 13(4A) of PIT Regulations, 1992 and Reg. 29(1) of SAST Regulations 2011	Not made
25.11.11	12785191 (6.89%)	6264191 (sale) Off-market	6521000 (3.51%)	-	Reg. 13(3), 13(4) and 13(4A) of PIT Regulations, 1992 and Reg. 29(2) of Takeover Regulations 2011	Not made
18.01.12	6521000 (3.51%)	6264191 (buy) Off-market	12785191 (6.89%)	23,240,207.82	Reg. 13(1), 13(4) & 13(4A) of PIT Regulations, 1992 and Reg. 29(1) of SAST Regulations, 2011	Disclosure made on 25.01.2012 under PIT Regulations. 1992 and on 24.01.12 under SAST Regulations, 2011

OD observed that on 09.11.2011, Noticee purchased the 6264191 shares for which the shareholding of the Noticee crossed 5% i.e increased from 6521000 shares (3.51%) to 12785191 shares (6.89%) and the said shares is more than 25,000 shares. OD observed that Noticee was required to make disclosure for the same under regulation 13(1) of PIT Regulations, 1992 to NGVL and under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) r/w 29(2) of SAST Regulations, 2011 to NGVL and BSE within the prescribed time as specified in the said Regulations. However, OD observed from the replies received from NGVL and BSE that Noticee did not make any disclosures to NGVL and BSE for the said transaction and hence it is alleged that Noticee violated the provisions of regulation 13(1) of PIT Regulations, 1992 to NGVL and under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) r/w 29(2) of SAST Regulations, 2011.

*Further, it was observed by OD that on 25.11.2011, Noticee sold 6264191 shares for which the shareholding of the Noticee reduced from 12785191 shares (6.89%) to 6521000 shares (3.51%) i.e changed by more than 2% and the said shares is more than 25,000 shares. Since the Noticee was holding more than 5% shareholding of NGVL, Noticee was required to make disclosure for the same under regulations 13(3) r/w 13(5) of PIT Regulations, 1992 to NGVL and under regulations 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(2) r/w 29(3) of SAST Regulations, 2011 to NGVL and BSE within the prescribed time as specified in the said Regulations. However, OD observed from the replies received from NGVL and BSE that Noticee did not make any disclosures to NGVL and BSE for the said transaction and hence alleged that Noticee violated the provisions of regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(2) r/w 29(3) of SAST Regulations, 2011.*

*It was further observed by OD that on 18.01.2012, Noticee purchased the 6264191 shares for which the shareholding of the Noticee crossed 5% i.e increased from 6521000 shares (3.51%) to 12785191 shares (6.89%) and the said shares is more than 25,000 shares. OD observed that Noticee was required to make disclosure for the same under regulation 13(1) of PIT Regulations, 1992 to NGVL and under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) r/w 29(2) of SAST Regulations, 2011 to NGVL and BSE within the prescribed time as specified in the said Regulations. However, OD observed from the replies received from NGVL and BSE that Noticee did not make any disclosures to NGVL and BSE for the said transaction within the prescribed time as specified in the said Regulations and hence, it is alleged that Noticee violated the provisions of regulation 13(1) of PIT Regulations, 1992 and under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) r/w 29(2) of SAST Regulations, 2011.*

*Demat statements of the Noticee are placed at Annexure-B, reply received from BSE is placed at Annexure-C and reply received from the Company placed at Annexure-D, enclosed herewith in a CD.*

*In view of the above, it is alleged that Noticee violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 read alongwith regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011.”*

5. Reply of the Noticees vide e-mails dated September 14, 16 and 24, 2020 are as follows:

- a) Noticee submitted that the alleged non-disclosures was merely procedural and technical in nature with no wrongful/malafide intention or any ulterior motive behind the same.
- b) As regard to the allegation for the transaction dated 09.11.2011, Noticee submitted that Noticee had filed disclosure under regulation 3(3) of the Takeover Regulation and the same was in public domain. Noticee had no intention of hiding the same. A copy of the same is provided as Exhibit A. With regard to the allegation of non-disclosures regarding changing of shareholding pattern in the Company, the same was reported to BSE in quarterly shareholding pattern in December 2011 and hence the same was reflected in the concerned quarter. As regards the allegations for the transactions made on 25.11.2011 and 18.01.2012 the change in shareholding in NGVL was duly reported to BSE and the same was reflected in the shareholding pattern of the concerned quarter. The copies of the shareholding pattern provided by the Noticee as Exhibit-B. For the transaction on 18.01.2012 the disclosure were made to BSE on 24.01.2012 and 25.01.2012 in little late and same was in public domain.
- c) Noticee submitted that the alleged non-disclosures neither resulted in any loss to the retail investors nor was any unfair advantage gained by the Noticee, NGVL and other person. There was no resultant adverse effect on the market or the investors at all regarding the alleged violations. The same was only a procedural lapse, and devoid of any ulterior motive. Noticee did not have any intention to conceal the information from investors or give any wrong information regarding the matter, neither did have any unfair gain or advantage nor any loss or harm was caused to the investors with the incorrect disclosure of the said information.

The information was reflect in the shareholding pattern of filed by NVGL and hence it had been public knowledge and the same cannot be concealed. The non-disclosure of the information related to the change in the shareholding was merely procedural and logistical. Noticee had no intention conceal or delay the same and it was just a procedural and technical shortcoming and nothing more. Noticee denied the violations alleged in the SCN.

d) Noticee referred some case laws which concluded that if the breach is merely technical and unintentional, penalty may not be levied are as follows:

- i. Hon,ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Pvt. Ltd.
- ii. Adjudication order dated May 11, 2017 in respect of Anand Karbhari in the matter of Jindal Cortex Ltd.
- iii. WTM order dated February 02, 2017 in the matter of Refex Industries Ltd.
- iv. Reliance Industries Ltd. Cs SEBI (SAT Appeal No. 39/2002)
- v. Akbar Badrudin Jiwani vs. Collector of Customs, Bombay (AIR 1990 SC 1579)
- vi. Hindustan Steel Ltd. vs. State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563) (PP: can you please see if any of these need to be rebutted or are they already done??)

e) Noticee replied that the said transactions made in the year 2011-12 and after nine years, the adjudication proceedings were initiated, it is difficult to get such old records after a longtime. In this regard, Noticee cited the case law of Hon,ble Securities Appellate Tribunal in the matter of Ashok Shivilal Rupani & Anr. Vs. SEBI, Ashlesh Gunvantbhai Shah &ors. Vs. SEBI, ICIC Bank Limited vs. SEBI, Adjudication Officer, Securities and Exchange Board of India vs. Bhavesh Pabari.

6. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other evidences available on record, I hereby proceed to decide the case on merit.

## **CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS**

7. The issues arising for consideration in the instant proceedings before me are:-

- a. **Whether the Noticee violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 read alongwith regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations?**
- b. **Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?**
- c. **If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?**

8. Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations, 1992 read alongwith PIT Regulations, 2015:

### ***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.***

(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.

(4) Any person who is a director or officer 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 and his



dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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.

### **PIT Regulations, 2015**

#### **Repeal and Savings.**

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(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;

### **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 acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.*

*(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within 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.*

### **FINDINGS:**

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

**Issue (a): Whether the Noticee violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 read alongwith regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations**

a) Before proceeding with the consideration of issues, there is need to address the preliminary issue raised by the Noticee regarding delay in initiation of the adjudication proceedings in the instant matter. In this regard, I note that 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. Further, 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. (Vaman Madhav Apte and Ors. v. SEBI, SAT Appeal 449 of 2014 decided on 04.03.2016). As regards, it is pertinent to refer to observations of the Hon'ble SAT in the matter of Bipin R Vora vs SEBI dated March 22, 2006, "*As regards the plea of delay and laches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case,*

*generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".* After the initiation of the instant proceeding, the undersigned was appointed as Adjudicating Officer and the same was conveyed to me vide communique dated February 28, 2020 and the SCN was issued on March 18, 2020. I thereby opine that contentions of those Noticees regarding delay are not acceptable to me.

- b) It is alleged in the SCN that Noticee purchased the 6264191 shares for which the shareholding of the Noticee crossed 5% i.e increased from 6521000 shares (3.51%) to 12785191 shares (6.89%) and the said shares is more than 25,000 shares and failed to make disclosure for the same under regulation 13(1) of PIT Regulations, 1992 to NGVL and under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) r/w 29(2) of SAST Regulations, 2011 to NGVL and BSE within the prescribed time as specified in the said Regulations. Hence it is alleged that Noticee violated the provisions of regulation 13(1) of PIT Regulations, 1992 to NGVL and under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) r/w 29(2) of SAST Regulations, 2011. Further, it is alleged that on 25.11.2011, Noticee sold 6264191 shares for which the shareholding of the Noticee reduced from 12785191 shares (6.89%) to 6521000 shares (3.51%) i.e changed by more than 2% and the said shares is more than 25,000 shares. For the said transaction Noticee failed to make disclosure for the same under regulations 13(3) r/w 13(5) of PIT Regulations, 1992 to NGVL and under regulations 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(2) r/w 29(3) of SAST Regulations, 2011 to NGVL and BSE within the prescribed time as specified in the said Regulations. Hence, it is alleged that Noticee violated the provisions of regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(2) r/w 29(3) of SAST Regulations, 2011. Further, it

was alleged that on 18.01.2012, Noticee purchased the 6264191 shares for which the shareholding of the Noticee crossed 5% i.e increased from 6521000 shares (3.51%) to 12785191 shares (6.89%) and the said shares is more than 25,000 shares. For the said transactions, Noticee failed to make disclosure for the same under regulation 13(1) of PIT Regulations, 1992 to NGVL and under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) r/w 29(2) of SAST Regulations, 2011 to NGVL and BSE within the prescribed time as specified in the said Regulations. Hence, it is alleged that Noticee violated the provisions of regulation 13(1) of PIT Regulations, 1992 and under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) r/w 29(2) of SAST Regulations, 2011.

- c) From the material available on record, I note that the Company was listed at Bombay stock Exchange (BSE) during the period of investigation and Noticee was the promoter and director of the Company during the investigation period. It is noted that Noticee purchased 6264191 shares on November 09, 2011 and sold 6264191 shares on November 25, 2011 through off-market and the said shares were more than 25,000 shares. Further, the Noticee has bought 6264191 shares in an off-market transaction on January 18, 2012. As per regulation 13(4) of PIT Regulations, 1992 any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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. Further as per regulation 13(4A) of PIT Regulations, 1992, 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. Further as per regulation 13(5) of PIT Regulations, 1992 the disclosure mentioned in sub-regulations 13(4) and 13(4A) shall be made within two working days of the receipts of intimation of allotment of shares, or the acquisition or sale of shares or voting rights, as the case may be. Further it is also noted that the regulation 29(1) of the SAST Regulations 2001 requires 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, to disclose their aggregate shareholding and voting rights. Further, 29(2) of the SAST Regulations 2001 requires any acquirer 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, to disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights. Further 29(3) of the SAST Regulations 2001 requires the said disclosures to be made within two working days of receipt of intimation/allotment/acquisition to the Stock Exchange(BSE) and Company(NGVL).

- d) As seen from the reply of the Company and BSE, the Noticee did not make the disclosures under the provisions of regulations 13(1), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulations for the transactions made on November 09, 2011 and disclosures under the provisions of regulations 13(1), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulations for the transactions made on November 25, 2011. As regards, these two transactions Noticee has submitted that the said shareholding pattern at the end of the quarter ended December 2011 on BSE which reflects change in his shareholding. Noticee has also submitted copy of a letter inwarded at BSE which gives details of its proposed acquisition (prior intimation of his proposed acquisition) to be carried out between October 12, 2011 and November 12, 2011, however, evidentiary

proof of having made any disclosure as required by the aforementioned Regulations is not submitted by the Noticee. As regards, transaction dated January 18, 2012, Noticee has submitted that the said shareholding pattern at the end of the quarter ended March 2012 on BSE which reflects change in his shareholding, however, as seen from the reply of the Company and BSE, the Noticee did not make the disclosures under the provisions of regulations 13(1), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulations. Noticee has not submitted any evidentiary proof of having made such disclosures.

- e) In view of the above, it is concluded that Noticee failed to make disclosures to the Company for the transactions made on November 09, 2011 and November 25, 2011 and January 18, 2012 and failed to make disclosure within the prescribed time. to Company and BSE for the transactions made on November 09, 2011 and November 25, 2011 and January 18, 2012 by the Noticee, Therefore, charges levelled against Noticee regarding violation of provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 read alongwith regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011 stand established.

**10. Issue (b): Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?**

Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the said failure to make disclosure for the said transactions as prescribed in Regulations on the part of the Noticees attract the imposition of monetary penalty under section 15A(b) of the SEBI Act, 1992, respectively which is reproduced below:

***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,—*

*(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.*

**11. Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995?**

a) While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995 , which reads as under:-

***The SEBI Act, 1992***

**15J:** *"Factors to be taken into account by the adjudicating officer-*

*While adjudging quantum of penalty under section 23 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."*

b) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. I find that the Noticee failed to make disclosures under regulations 13(1) of PIT Regulations, 1992 and regulations 13(3),13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 read alongwith regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) and 29(2) r/w 29(3) of the SAST Regulations.

c) The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well

informed decision. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. vs. SEBI–, *“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.”*

- d) Therefore, taking into account the facts and circumstances of this matter and the above mentioned case laws, I am of the view that a penalty Rs. 3,00,000/- (Rupees Three Lakh only) each will be commensurate with the violations of regulations 13(1) of PIT Regulations, 1992 and regulations 13(3),13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 read alongwith regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) and 29(2) r/w 29(3) of the SAST Regulations committed by the Noticee.

## **ORDER**

12. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) upon the Noticee under section 15A(b) of the SEBI Act, 1992 for violations of regulations 13(1) of PIT Regulations, 1992 and regulations 13(3),13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992 read alongwith regulation 12(2) of PIT Regulations, 2015 and regulations 29(1) and 29(2) r/w 29(3) of the SAST Regulations.

13. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

- a. By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
- b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai

14. Details of Demand Draft made as given in format below shall 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 - 400 051."

and also to e-mail id :- [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

- a) Case Name
- b) Name of the 'Payer/Noticee'
- c) Date of Payment
- d) Amount Paid
- e) Transaction No.
- f) Bank Details in which payment is made
- g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

15. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

16. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules, 1995.

**Date: September 30, 2020**

**SANGEETA RATHOD**

**Place: Mumbai**

**ADJUDICATING OFFICER**