BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO:Order/KS/VC/2019-20/6967-6968)

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of:

Sr. No.	***Entity Name***	***PAN***
1	***Sanjay Kumar***	***AGZPK9556G***
2	***Atin Jain***	***AQEPJ7037Q***

In the matter of

Cityon Systems (India) Ltd.

FACTS OF THE CASE

1. Based on references received from Bombay Stock Exchange (**BSE**) and from the Office of the Deputy Director of Income Tax (Investigation)-II, Kanpur dated May 19, 2016, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of Cityon Systems (India) Ltd.

(hereinafter referred to as '**CSIL**'/'**Company**') during the period of December 17, 2014 to June 13, 2016 (hereinafter referred to as the "**Investigation Period**").

2. The company was incorporated as "Cityon Systems (India) Private Limited" on April 27, 2004. It deals in merchandise ranging from iron, steel and chemicals to hardware and software. The registered address of the company is 215, Delhi Chambers, Delhi Gate, Delhi - 110002. The company is listed on BSE SME ITP Platform from December 17, 2014.

3. During the course of investigation, it was observed by SEBI that Mr. Sanjay Kumar (hereinafter referred to as '**Noticee 1**'), one of the promoters of the Company during the investigation period, had transferred 25,000 shares of CSIL to one Mr. Atin Jain (hereinafter referred to as "**Noticee 2**"; Noticee 1 and Noticee 2 hereinafter collectively referred to as '**Noticees**') by way of off-market transfer on March 17, 2015. Upon enquiry by SEBI to ascertain the value of this transaction, Noticee 1, vide email dated December 22, 2018, and Noticee 2, vide email dated December 26, 2018, have confirmed that no consideration was paid for transfer of shares by Noticee 1 to Noticee 2 as the said transfer of 25,000 shares was a loan by Noticee 1 to Noticee 2 for 3-4 years. In this regard, it is also observed from the Email dated December 26, 2018 of Noticee 2 that he had taken the said shares for business purposes.

4. It is further observed that, pursuant to above off market transfer, Noticee 2 sold 11,100 shares of CSIL on market during the investigation period. Therefore, it is alleged that, the transfer of 25,000 shares was carried out without

receipt/payment of any consideration and the same is in violation of Section 16 of Securities Contracts Regulation Act, 1956 (hereinafter referred to as '**SCRA**') read with SEBI Notification SO 184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.

5. It is further alleged that, since the transfer of shares by Noticee 1 was not in the nature of a gift or transfer to family member and, therefore, considering the prevailing market price at the date of transfer by Noticee 1, the value of the said off market transaction (@ Rs. 382 i.e. the previous day's close price, as no trading had taken place on March 17, 2015), amounts to Rs. 95,50,000/- . In view of this, Noticee 1 was required to disclose the details of this transaction to both CSIL and to BSE under Regulations 13(4A) read with 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**"). However, it is observed from the reply dated December 12, 2018 of CSIL and as confirmed by BSE, vide Email dated December 26, 2018, that no disclosure was made by Noticee 1 in respect of the abovementioned transaction under Regulations 13(4A) read with 13(5) of the PIT Regulations. In view of this, it is alleged that the Noticee 1 has violated the provisions of Regulations 13(4A) read with 13(5) further read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

6. The undersigned was appointed as the Adjudicating Officer, vide Order dated August 08, 2019, under Section 19 read with 15-I of Securities and Exchange

Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Adjudication Rules**') and Section 23-I(1) of SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**SCRA Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act and Section 23H of SCRA, the violation of the relevant provisions of PIT Regulations and SCRA read with SEBI Notification SO 184(E) dated March 01, 2000, alleged to have been committed by the Noticees while dealing in the scrip of CSIL.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

7. A Show Cause Notice ref. SEBI/HO/EAD-8/KS/VC/25366/2019 dated September 24, 2019 (hereinafter referred to as '**SCN'**) was issued to the Noticees under the provisions of Rule 4(1) of the SEBI Adjudication Rules and Rule 4(1) of SCRA Adjudication Rules, to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on them under Section 23H of SCRA and on Noticee 1 under Section 15A(b) of the SEBI Act for alleged violations of the relevant provisions of law.

8. The details in respect of alleged violations by the Noticees are as given below:

   a. *It was observed from the Shareholding pattern of the Company that Noticee 1 is one of the promoters of the Company. Further, it is also observed that his shareholding in the Company had reduced from 2,00,400 shares (1.17%) to*

1,75,400 shares (1.02%) from quarter ended December 2014 to quarter ended March 2015. In this regard, it was observed by SEBI that Noticee 1 had transferred 25,000 shares to Noticee 2 through off-market on March 17, 2015. Upon enquiry by SEBI to ascertain the value of this transaction, Noticee 1, vide email dated December 22, 2018, and Noticee 2, vide email dated December 26, 2018, have confirmed that no consideration was paid for transfer of shares by Noticee 1 to Noticee 2.

b. *Further it was stated by both the Noticees that the 25000 shares were actually a loan to Noticee 2 for 3-4 years. In this regard, it is also observed from the Email of Noticee 2 that he had taken the shares for business purposes. However, it is alleged that both the Noticees have not provided any document in support of their contention.*

c. *It is also observed that, pursuant to above off market transfer, Noticee 2 sold 11,100 shares of CSIL on market during the investigation period. In view of this, it is further alleged that the replies submitted by the Noticees are not tenable. In this regard, it is also alleged that, as the transfer of 25,000 shares was carried out without receipt/payment of any consideration, the same is in violation of Section 16 of SCRA read with SEBI Notification G.S.R 184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.*

d. *It is further alleged that since the transfer of shares by Noticee 1 was not in the nature of a gift or transfer to family member and, therefore, considering the prevailing market price at the date of transfer by Noticee 1, the value of the said off market transaction (@ Rs. 382 i.e. the previous day's close price, as no trading took place on March 17, 2015), amounts to Rs. 95,50,000.00/- . In view of this, as the value of the transaction was more than Rs 5 lakh, it is alleged that the same was required to be disclosed by Noticee 1 to CSIL and to BSE under Regulations*

13(4A) read with 13(5) of the PIT Regulations. However, it is observed from the reply dated December 12, 2018 of CSIL and as confirmed by BSE, vide Email dated December 26, 2018, that no disclosure was made by Noticee 1 in respect of the abovementioned transaction under Regulations 13(4A) read with 13(5) of the PIT Regulations. In view of this, it is alleged that the Noticee 1 has violated the provisions of Regulations 13(4A) read with 13(5) further read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

9. I note that the SCN could not be delivered to Noticee 1 at the address available with SEBI. Thereafter, the SCN was delivered to Noticee 1 by way of hand delivery on December 09, 2019. Thereafter, Noticee 1, vide his letter dated December 21, 2019, made preliminary submissions and requested for inspection of documents. The said request of Noticee 1 was forwarded to the concerned department of SEBI vide letter dated December 30, 2019. I note from the material available on record that the inspection of documents was conducted by Mr. Vikas Bengani, authorized representative of Noticee 1, on January 09, 2020.

10. Thereafter, vide letter dated January 17, 2020, Noticee 1 was advised to submit his reply to the SCN on or before January 27, 2020. Further, Noticee 1 was also provided with an opportunity of personal hearing on January 30, 2020. I note that Noticee 1, vide his letter dated January 27, 2020 submitted his reply to the SCN. I note that Noticee 1, vide his letter dated December 21, 2019, submitted that:

    a. *In the communication of appointment order of Adjudication Officer, there is no mention of any specific grounds on the basis of which the Competent Authority*

prime facie found sufficient grounds to adjudicate the alleged violations made by me under Section 15A (a) of SEBI Act, 1992 and Section 23H of the SCR Act, 1956. Thus, the said communication is ambiguous in as much as no sufficient grounds has been specifically find any mention in the said Communication. Thus, the appointment of the Ld. Adjudicating Officer has been made without application of judicious mind and on this ground alone, the SCN dated 24-09-2019 is invalid, illegal and non-est.

b. *I deny and refute that I have violated the provision of SCRA and PIT Regulations as alleged in the SCN.*

Further, vide letter dated January 27, 2020, Noticee 1 contended that:

a. *My Authorized Representative has completed the inspection of the documents on 09-01-2020. It is to be noted that I was given access to only those documents which are already annexed with the SCN. Therefore, I was not provided a complete copy of the Investigation Report which includes recommendation etc. but provided few pages only. I was further not provided sufficient grounds on basis of which Ld. WTM found prima facie case against me. Therefore, principle of Natural Justice not followed in the present matter.*

b. *In continuation to my earlier letter dated 21-12-2019, I am making further submissions to the allegation made in the SCN as follows:*

- *I refute and deny that I have violated the provisions of Section 16 of SCRA read with SEBI Notification G. S. R. 184 (E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA. I say and submit that I had given a loan of 25000 shares to Mr. Atin Jain and he had not denied and disputed to the said fact to the SEBI that he had received the said shares as a loan. Since both the parties were known to each other, they had executed*

this loan transaction. The right and title of these shares are still with me. I am not at all concerned with the selling of 11,100 shares of the Company in the market by Mr. Atin Jain as Mr. Atin Jain never refused me to return back the entire shares. The said shares were given on loan as Mr. Atin Jain require it for his business purposes. Therefore, the aforesaid transaction is not a sell transaction but a loan transaction and thus don't fall under the category of spot delivery transactions wherein transaction has to settle within a prescribed period of time.

- *Since the aforesaid transaction is not a sell transaction, I therefore did not understand it necessary to report to the Company as well as the Exchange. If I had filed a disclosure of sell then it would be a wrong reporting. I have no intention of wrong reporting therefore I restricted myself not to disclose the aforesaid transaction to the Exchange. Therefore, I have not violated the provisions of PIT Regulations.*

c. *Without prejudice to whatever stated herein above it is further submitted that in the SCN, there is no allegation against me that I had derived any benefit by not disclosing the aforesaid loan transaction. There is no allegation against me of manipulation of price in the scrip of the Company. The aforesaid transaction belongs to the year 2015 and a considerable time already lapsed. The main purpose of reporting was to inform the general investors. The Company made discloser through filing of shareholding pattern. There is no loss caused to the Investor. Therefore, I request your goodself to take a lenient view and dispose- off the SCN without imposing a monetary penalty against me.*

11. Vide letter dated January 17, 2020, Noticee 1 was provided with an opportunity of personal hearing on January 30, 2020. I note that Mr. Vikas Bengani,

Authorized representative (**AR**) of Noticee 1, vide his Email dated January 29, 2020, requested for postponement of personal hearing. In accordance with the request of AR of Noticee 1, the said hearing granted to Noticee 1 on January 30, 2020 was postponed to February 06, 2020 and the same was informed to the AR of Noticee 1 vide Email dated February 02, 2020. The AR of Noticee 1 appeared for personal hearing on the given date and reiterated the submissions made by Noticee 1 vide his letters dated December 21, 2019 and January 27, 2020.

12. The SCN was delivered to Noticee 2 at his address. Vide letter dated October 23, 2019, Noticee 2 denied the allegations mentioned in the SCN and requested for inspection of documents. Vide letter dated November 07, 2019, the said request of Noticee 2 was forwarded to the concerned department of SEBI and the said inspection was completed on January 07, 2020. Thereafter, vide letter dated January 17, 2020, Noticee 2 was advised to submit his reply to the SCN on or before January 27, 2020. Vide letter dated January 23, 2020, Noticee 2 submitted his reply to the SCN wherein he contended that:

    a. *In this regard, at the outset and without prejudice to anything stated hereinafter, I deny all the allegations and findings made against me in the said notice, except to the extent specifically admitted by me. Further, I state that nothing contained in the SCN may be deemed to be admitted by me by reason of non-traverse or otherwise, save and except what is expressly admitted herein. Additionally, I deny all the allegations and averments contained in the SCN that are contrary to and/or inconsistent with what is stated herein below.*

b. *On the subject matter of the present proceedings at the outset, SEBI had granted inspection of document on 07.01.2020 which was duly availed by my authorised representative. During the said inspection, SEBI provided inspection of only Show cause notice and its annexures. However, by my letter dated 23.10.2019, I had requested for certain documents, the same are stated as under:*

Sr. No.	*Particulars*
i.	*Copy of Complete investigation report*
ii.	*Copy of statement of all person recorded during course of investigation conducted by SEBI*
iii.	*Details of complaint(s) received by SEBI and stock exchange with respect to my dealings in the scrip of City on System.*
iv.	*Details of alerts /triggers generated by stock exchange/SEBI w.r.t dealing in scrip of Cityon System.*

c. *It is pertinent to mention that the aforesaid documents were not provided to me during inspection of documents and no reason was stated for not providing the same. Hence, I understand that the said documents were not relied upon by SEBI in issuing caption SCN against me.*

d. *I humbly state that, I had taken 25,000 shares of CSIL in off market from Noticee No. 1 i.e. Sanjay Kumar as a loan for business purpose. The said shares were given to me on returnable basis for four years i.e. after four years I had to return the said shares.*

e. *I and Noticee no. 1 i.e. Sanjay Kumar had executed loan agreement on 16.03.2015.*

f. *The aforesaid loan transaction was entered by me in order to participate in the tenders of government construction work which required a handsome wealth to*

get solvency certificate. There was no other motive to buy shares of CSIL in off market.

g. *It is pertinent to mentioned that Noticee No. 1 i.e. Sanjay Kumar was required to make disclosure under Regulation 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992.*

h. *It is further pertinent to mention that under the present facts and circumstances of the case as enumerated above, I am not required to make any disclosure under SEBI Takeover Regulations and/or SEBI Insider Trading Regulation on account of execution of transactions as mentioned in the SCN or otherwise.*

i. *Thus, it is evident that I have not violated Section 16 of Securities Contract (Regulation) Act ("SCRA") read with SEBI Notification G.S.R. 184 (E) dated 01.03.2000, Section 13 and 18 r/w Section 2(i) of SCRA, as alleged in the SCN as the same does not cover loan transactions.*

j. *Additionally, I would like to state that I am a retail and ordinary investor. I don't understand nitty gritty of the market. I am not aware about technicalities which govern the securities market.*

k. *Further, I would like to state that since off market transfer was only for the loan purposes no consideration was paid to him.*

l. *Without prejudice to what is stated aforesaid, I request your kind selves that before drawing adverse inferences against me, if any, please provide me the documents that you may desire to rely upon since the documents as already furnished to me and the loan agreement as enclosed hereto are consistent and supports my aforesaid submissions.*

m. *I would like to submit that off market transaction are not illegal per se. In this regard, I would like to draw your kind attention to the Order of Hon'ble Securities*

Appellate Tribunal in the case of Rajendra G Parikh vs. SEBI (Appeal No 44 of 2009), wherein it was observed as under:

[Ref Para 4 on Page 7 of the said Order]

"Apart from the bald allegation made in the show cause notice, there is not an iota of material on record to show that these persons formed a cartel or that the promoters of the company were in a way linked with the persons to whom the shares had been transferred in off market transactions. He has not referred to any material which could substantiate these findings nor could it be pointed out to us the learned counsel appearing for the Board. Merely because promoters transferred the shares to them in off market transaction is no around to hold that there was a link between the two. Off market transactions are not per se illegal. (emphasis supplied)

13. I note that, vide letter dated January 17, 2020, Noticee 2 was provided with an opportunity of personal hearing on January 30, 2020. I note that the letter dated January 17, 2020 was duly delivered at the address of Noticee 2 and in response to the same, Noticee 2 submitted his reply dated January 23, 2020 which has been reproduced above. However, Noticee 2 has failed to appear for personal hearing on the said date. Thereafter, vide letter dated February 10, 2020, Noticee 2 was provided with a final opportunity of personal hearing on February 26, 2020. I note that Noticee 2, vide his letter dated February 24, 2020, requested to take his submissions dated January 23, 2020 on record and the same have been reproduced in the previous paragraphs. However, Noticee 2 again failed to appear for the personal hearing. Therefore, I am proceeding on the basis of replies of Noticee 2.

CONSIDERATION OF ISSUES AND FINDINGS:

14. I have taken into consideration the facts and circumstances of the case, the material available on record and the replies submitted by the Noticees. I note that the allegations levelled against the Noticees are as follows:

Noticee	Alleged Violation(s)	Penal Provision(s)
Noticee 1	Section 16 of SCRA read with SEBI Notification SO 184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA	Section 23H of SCRA
	Regulations 13(4A) read with 13(5) further read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015	Section 15A(b) of SEBI Act
Noticee 2	Section 16 of SCRA read with SEBI Notification SO 184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA	Section 23H of SCRA

In view of the above, the issues for consideration before me are:-

a. Whether the Noticees, by off-market transaction of 25,000 shares of CSIL between them, have violated the provisions of Section 16 of SCRA read with SEBI Notification SO 184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA?

b. Whether Noticee 1, by not making disclosure regarding the off-market transaction, has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations?

c. If yes, whether the Noticees are liable for penalty?

d. What should be the quantum of penalty that should be imposed on the Noticees?

15. Before moving forward, the relevant extracts of the provision of law, allegedly violated by the Noticees, are mentioned as under-

SCRA

Definitions.

2. In this Act, unless the context otherwise requires,—

(i) "spot delivery contract" means a contract which provides for,-

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

Section 13:- Contracts in notified areas illegal in certain circumstances.

If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or area, and thereupon every contract in such State or area which is entered into after the date of the notification otherwise than between members of a recognized stock exchange in such State or area or through or with such member shall be illegal:

Section 16:-Power to prohibit contracts in certain cases.

(1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal."

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. *(1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.*

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in

spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

"Spot Delivery Contract" is defined under section 2(i) (a) of SCRA Act, 1956 as "a contract which provides for, actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality."

Notification No. SO 184(E), dated 1-3-2000

"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992 and Notification No. 183 (E), dated 1st March, 2000 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange:

Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognized stock exchange shall be entered into in accordance with,—

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973) by the Reserve Bank of India;

(c) the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).”

PIT Regulations

Disclosure of interest or holding in listed companies by certain persons Continual disclosure.

(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 54[(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.

Before moving forward, I note that both the Noticees had conducted inspection in the present matter. Thereafter, while submitting their final replies, both the Noticees contended that they were not provided with certain documents. In this regard, I note that all the documents, relied upon by me in the present matter were already provided to the Noticees along with the SCN. Further, an inspection of the said documents was also provided to the Noticees.

16. In this regard, I note that Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had made the following observations:

"*A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.*"

17. I also note that Noticees, in their respective replies, have submitted that they were not provided with the complete investigation report, In this regard, I note that the relevant pages of the investigation report, which were relied upon for the purpose of SCN dated September 24, 2019 had been provided to the Noticees along with the SCN. In this regard, I note that the Hon'ble SAT, in its

order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had made the following observations:

"*Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied.*"

Therefore, I note that there is no obligation on the AO to provide the investigation report. Despite that, a copy of relevant pages of investigation report was provided to the Noticees along with the SCN. Therefore, I am unable to accept the contention of the Noticees.

18. Apart from the above the Noticees have:

    a. Not disputed the facts of the matter (except for advancing argument on the purpose of the transaction which has been adequately dealt with in the order)

    b. Not raised any objection on the documentary evidences relied upon and supplied to them except to the extent dealt with herein above.

Thus, I am convinced that the principles of natural justice have been adequately complied with. Having settled the preliminary issue(s), now I proceed to deal with the allegations in the ensuing paragraphs.

a. Whether the Noticees, by the off-market transaction of 25,000 shares of CSIL between them, have violated the provisions of of SCRA read with Section 13, Section 16 and Section 18 of SCRA read with Section 2(i) of SCRA and SEBI Notification dated March 01, 2000?

19. The first issue for consideration is whether the Noticees have violated the provisions of Section 13, 16 and 18 read with Section 2(i) of SCRA and SEBI Notification dated March 01, 2000. I find that in accordance with the provisions contained in Section 13 of SCRA a transaction in securities, in an area, is said to be illegal which is entered into other than between the members of recognized stock exchange or through or with such members(s). The effect of this provision is that if a transaction in securities has to be validly entered into, such a transaction has to be either between the members of a recognized stock exchange or through a member of a stock exchange or with a member of a recognized stock exchange. Further, on a conjoint reading of Section 16, Section 18 of SCRA and SEBI notification dated March 01, 2000 no person shall, save with the permission of Central Government, enter into any contract for sale or purchase of securities other than spot delivery contracts except as is permissible under the Act and bye laws and regulations of a recognized stock exchange.

20. Further, in terms of the definition of a spot delivery contract as defined under Section 2(i)(a) of the SCRA, 1956, such contracts will be completed on the actual delivery of shares and payment of consideration either on the same day or on the next day of the contract.

21. I note that Notification SO 184(E) dated March 1, 2000 issued by SEBI under section 16(1) of SCRA,1956 provides that in order to prevent undesirable speculation in securities market in the whole of India, declares that no person in the territory to which SCRA extends, shall, save with the permission of the board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under SCRA, 1956 or the SEBI Act, 1992, and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange. Thus, the legal position is amply clear that every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract.

22. In the present matter it is observed from records that 25,000 shares of CSIL were transferred from the account of Noticee 1 to Noticee 2, through off-market, on March 17, 2015. I further note that, upon enquiry by SEBI to ascertain the value of this transaction, Noticee 1, vide email dated December 22, 2018, and Noticee 2, vide email dated December 26, 2018, confirmed that no consideration was paid for the said transfer of shares.

23. In this regard, I note that the Noticees have contended that the said transfer of shares was a loan from Noticee 1 to Noticee 2 for a period of 3-4 years.

Thereafter, Noticee 2, vide his letter dated January 23, 2020, submitted a copy of an unregistered agreement of loan between the Noticees for the purported 25,000 shares of CSIL. I note from the said copy of loan agreement that it is made on a Rs. 100/- Indian Non-Judicial Stamp paper and the same has not been registered. Further, the Noticees have claimed that as per the said loan agreement, the said loan of 25000 shares was given by Noticee 1 to Noticee 2 for getting solvency certificate from concerning authority of State Government enabling Noticee 2 to participate in the tenders of government construction works. In return for the said loan, Noticee 2 had agreed to share 8% of any such profit, acquired from the work done by him.

24. I further note from the said loan agreement that the said transfer was done for the object of Noticee 2 to get solvency certificate from the concerning authority of State Government. However, I note from records that Noticee 2, on the contrary, had sold 6,300 shares and 4,800 shares on March 23, 2015 and on April 06, 2015 respectively. I note from records this fact has not been disputed by the Noticees.

25. In view of the above, I am unable to accept the argument of the Noticees that the said shares were transferred by Noticee 1 to Noticee 2 as a loan for 3-4 years as the said term is already over. Further, there is nothing on record to suggest that Noticee 2 has returned the said shares to Noticee 1. On the contrary the terms of the agreement and the conduct of the Noticees only fortifies the view that transaction in question is not a “spot transaction”. In any case I find the said agreement to be of least help to the Noticees as the

transaction is not fitting in the definition of “spot transaction” as mentioned above.

26. To sum up, since the transaction entered into by the Noticees is an off-market transaction, it has to be in conformity with the provisions relating to spot delivery contract. In order to be a “legal transaction”, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e. actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day. In the present matter, I note that the consideration for transfer of shares has not been made within the prescribed time period for certain reasons cited by the Noticees in order for the transfer of shares to qualify as a spot delivery contract.

27. In this regard, I rely on the decision of the Hon’ble Supreme Court of India, while referring to Section 16 of SCRA, made the following observations in the matter of Bhagwati Developers Pvt. Ltd. vs. Peerless General Finance and Investment Company Ltd. and Ors. [(2013)9 SCC 584]:

“*From a plain reading of the aforesaid provision it is evident that in order to prevent undesirable stipulation in specified securities in any State or area the Central Government by notification is competent to declare that no person in any State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification. The Central Government in exercise of the aforesaid power issued notification dated 27th of June, 1969 and declared that in the whole of India "no person" shall "save with the permission of the Central*

Government enter into any contract for the sale or purchase of securities other than such spot delivery contract" as is permissible under the Act, the Rules, bye-laws and the Regulations of a recognized stock exchange. The Appellant, therefore, can come out of the rigors of Section 16 of the Act only when it satisfies that the transaction comes within the definition of "spot delivery contract".

"*According to the definition, a contract providing for actual delivery of securities and the payment of price thereof either on the same day as the date of contract or on the next day means a spot delivery contract.*"

28. From the above I note that no consideration, whatsoever, has been made for the said transfer of shares till date. The same fact has been admitted by the Noticees in their respective replies. Therefore, the said off-market transfer of 25,000 shares of CSIL cannot be considered as a 'spot delivery contract' in terms of the provisions of section 2(i) of the SCRA. Therefore, I hold that the Noticees, by entering into a transaction of shares outside a stock exchange and which is not a spot delivery contract, have contravened the provisions Sections 13, 16 and 18 read with section 2(i) of SCRA and SEBI Notification dated March 01, 2000.

b. Whether Noticee 1, by not making disclosure regarding the off-market transaction, has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations?

29. The second allegation in the present matter is that Noticee 1, by his failure to make disclosure regarding the off-market transaction discussed in the previous

paragraphs, has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.

30. I note from the shareholding pattern of CSIL that Noticee 1 was shown as a promoter of CSIL when the scrip was listed on BSE-Institutional Trading Platform on December 17, 2014. Similarly, he was also a promoter of CSIL as on quarter ended March 2015. I further note that Noticee 1 has not disputed the said fact.

31. I note that, in terms of the provisions of Regulation 13(4A) of PIT Regulations, any person, who is a promoter or part of promoter group of a listed Company, is required to disclose any change in his shareholding in the company from last disclosure if the change in his shareholding from the last disclosure exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. Further, in terms of Regulation 13(5) of PIT Regulations, the said disclosure is required to be made within two working days of acquisition or sale of shares.

32. In this regard, I note that Noticee 1 transferred 25,000 shares to Noticee 2 on March 17, 2015 by way of off-market transfer claiming it to be a 'loan transaction'. Therefore, the shareholding of Noticee 1 in the Company reduced by 25,000 shares. As no consideration had passed on between the Noticees SEBI has considered the value of the said shares based on the previous trading day. I note from the investigation report that the last traded closing price of Rs. 382 per share has been considered which rate if applied on the impugned

transaction results in a monetary value of Rs. 95,50,000/- and the same is above the threshold of Rs. 5 Lakh prescribed in Regulation 13(4A) of PIT Regulations. I note that Noticee 1 has not disputed this value of shares, as mentioned in the SCN. Therefore, Noticee 1, being the promoter of CSIL, was required to make disclosure under Regulation 13(4A) of PIT Regulations to both BSE and CSIL, in terms of Regulation 13(5) of PIT Regulations within two working days.

33. I note from the reply dated January 27, 2020 of Noticee 1 that Noticee 1 has admittedly not made any disclosure under Regulation 13(4A) read with 13(5) of PIT Regulations either to the Company or to BSE. Further, BSE, vide its email dated December 26, 2018 has confirmed that it had received no disclosure from Noticee 1 in this regard.

34. In this regard, I further note that Noticee 1 has contended that he did not sell the 25,000 shares and right and title of those shares are still with him. In this regard, I note that, in terms of Section 2(a) of the Depositories Act, 1996, a 'beneficial owner' is defined to mean '*a person whose name is recorded as such with the depository*'. Further, I note that, in terms of Section 10(3) of the Depositories Act, 1996, the beneficial owner shall be entitled to all the rights and benefits and be subjected to all the liabilities in respect of his securities held by a depository.

35. Owing to the above legal position, I find that the rights and benefits (including the liabilities) of the transferred shares vest in Noticee 2 the moment the shares were transferred to the Demat Account of Noticee 2, as he becomes the

beneficial owner in the records of the depositories. The above view stands further buttressed from the fact and conduct of Noticee 2 that subsequently he had seamlessly sold 11,100 shares out of the above transferred in shares in two tranches viz., on March 23, 2015 and April 06, 2015.

36. Further, I note that Section 13(4A) of PIT Regulations is applicable in case of "any change" in shareholding of any entity, which is a promoter or part of promoter group, irrespective of mode of such change. In the present matter, as soon as the shares were transferred to the account of Noticee 2, the shareholding of Noticee 1 stands reduced by 25,000 shares and the same required disclosure under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations.

37. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI observed that-*

"*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/*

receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

38. I further note that Noticee 1 has contended that it has not made any disproportionate gain; no loss was caused to the investors and there was no wrong intention behind such violations. I note that these are not the allegations against Noticee 1. Further Noticee 1 has also submitted there was no allegation of manipulation in the scrip. In this regard, I would like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014*)*, wherein it was held 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*."

Further, Hon'ble SAT in its order dated August 04, 2015 in the matter Mr. Ankur Chaturvedi vs. SEBI made the following observations:

"*Similarly fact that there is no investor losses on account of the violations committed by the appellant and that the violations are not repetitive in nature cannot be a ground to escape penalty imposable section 15A(b)/15HB of the SEBI Act.*

12. As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty of Rs. 5 lac and Rs. 2 lac under section 15A(b)/15HB of the SEBI Act for violating the provisions of PIT Regulations and Model Code of Conduct respectively."

12. As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore

39. I also rely on observations of Hon'ble SAT in Premchand Shah and Others V. SEBI 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….."*

40. Therefore, I hold that Noticee 1, by his failure to make disclosure regarding off-market transfer of 25,000 shares of CSIL to Noticee, has squarely violated the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations further read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.

41. As the violation of the provisions of SCRA read with Notifications SO 184(E) dated March 01, 2000 by the Noticees have been established, I am of the view that it is a fit case to impose monetary penalty on the Noticees in terms of Section 23H of SCRA, which reads as under:

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Similarly, as the violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations further read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 by Noticee 1 has been established, I am of the view that it is a fit case to impose monetary penalty on Noticee 1 in terms of Section 15A(b) of SEBI Act, which reads as under:

Penalty for failure to furnish information, return, etc

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

(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.

42. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.

43. With regard to the mitigating factors, I noted that the investigation report has not quantified the profit earned or loss caused to general investors on account of the violations committed by the Noticees. Further, I note from records that the said violations are not repeated violations as the said provisions had been violated by the Noticees on one occasion only.

ORDER

44. After taking into consideration the facts and circumstances of the case, material/facts on record, the replies submitted by the Noticees and also the mitigating factors discussed in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 23-I of SCRA read with Rule 5 of SCRA Adjudication Rules and / or Section 15-I of the SEBI Act read with Rule 5 of SEBI Adjudication Rules, hereby impose penalties on the Noticees under Section 23H of SCRA and / or Section 15A(b) of the SEBI Act for the violation of the provisions of SCRA and / or PIT Regulations as per the details mentioned in the table below:-

Name of the Noticee	Violation	Penalty
Sanjay Kumar *(AGZPK9556G)*	Section 16 of SCRA read with SEBI Notification SO 184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA	Rs. 1,00,000/- (Rupees One Lakh only)
	Regulations 13(4A) read with 13(5) further read with Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015	Rs. 1,00,000/- (Rupees One Lakh only)
Atin Jain (*AQEPJ7037Q)*	Section 16 of SCRA read with SEBI Notification SO 184(E) dated March 01, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA	Rs. 1,00,000/- (Rupees One Lakh only)

I am of the view that the said penalty is commensurate with the violation(s) committed by the Noticees.

45. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

46. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

47. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Sanjay Kumar and Atin Jain and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: February 27, 2020

K SARAVANAN
CHIEF GENERAL MANAGER
AND ADJUDICATING OFFICER