

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/SM/2020-21/9348]

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

**Nouveau Global Ventures Ltd.
401/A, Pearl Arcade
Dawood Baug lane
Off J. P. Road, Opp. P.K. Jewellers
Andheri (West), Mumbai - 400058
(Pan no. – AABCN0827A)**

In the matter of Nouveau Global Ventures Ltd.

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. (hereinafter also referred to as **Noticee/NGVL**) for the period December 01, 2010 to March 28, 2013 (in short Investigation Period). OD observed that certain entities executed transactions in the scrip of NGVL during the Investigation Period and failed to make disclosures under regulation 13(6) of SEBI (Provision of Insider Trading) Regulations, 1992 (in short **PIT Regulations, 1992**), read with (in short r/w) regulation 12(2) of SEBI (Provision of Insider Trading) Regulations, 2015 (in short **PIT Regulations, 2015**)

APPOINTMENT OF ADJUDICATING OFFICER

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(6) of PIT Regulations, 1992 r/w 12(2) of PIT Regulations, 2015 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(6) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015. This 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/9825/5/2020 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(6) of PIT Regulations, 1992, r/w regulation 12(2) of PIT Regulations, 2015 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 nouveauglobal@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 platform 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 the period of investigation, OD observed the following transactions made by the entities as mentioned the table below, Noticee wherein Noticee either did not make the disclosures or not within the prescribed time as specified in the under regulation 13(6) of PIT Regulations, 1992 to BSE. From the replies received from NGVL, the details of disclosures made under regulation 13(6) of PIT Regulations, 1992 by NGVL, entity wise, are as follows:*

Sr. No	Date of transaction	Date on which disclosure was made to NGFL	Required Date of Disclosure to BSE	Actual date of disclosure to BSE
<i>Rajat Commercial Enterprises Pvt Ltd.</i>				
1	17.01.2012	18.01.2012	20.01.2012	25.01.2012
2	18.01.2012	19.01.2012	23.01.2012	25.01.2012
<i>Krishan Kumar Khadaria</i>				
1	18.01.2012	19.01.2012	23.01.2012	25.01.2012
<i>Mumbadevi Finance & Investment Pvt Ltd</i>				
1.	15.11.2011	16.11.2011	18.11.2011	21.11.2011
<i>Kenex Builders Pvt Ltd.</i>				
1.	16.07.2012	17.07.2012	19.07.2012	No disclosure made by NGVL to BSE
<i>Asha Khadaria</i>				
1	17.01.2012	19.01.2012	23.01.2012	25.01.2012
<i>Attribute Shares & Securities Pvt Ltd.</i>				
1.	15.11.2011	16.11.2011	18.11.2011	21.11.2011
<i>Forever Flourishing Finance & Investment Pvt Ltd</i>				
1.	15.11.2011	16.11.2011	18.11.2011	21.11.2011

- *Copy of reply received from the Company (placed at Annexure – B) and from BSE (placed at Annexure - C) are enclosed herewith in a CD.*
- *OD observed that Noticee failed to make disclosures regarding change in shareholding of Kenex Builders Pvt Ltd w.r.t its transaction dated 16.07.2012 under Regulation 13(6) of PIT Regulations, 1992, to BSE. Further, OD observed that Noticee did not make the disclosures within the prescribed time as specified under regulation 13(6) of PIT Regulations, 1992 w.r.t the transactions of Rajat Commercial Enterprises Pvt Ltd, Krishan Kumar Khadaria, Mumbadevi Finance & Investment Pvt Ltd., Asha Khadaria, Attribute Shares & Securities Pvt. Ltd. and Forever Flourishing Finance & Investment Pvt Ltd. to BSE as mentioned in the above table.*

Hence, it is alleged that Noticee violated the provision of regulation 13(6) of PIT Regulations, 1992.

- In view of the above, it is alleged that Noticee violated the provision of regulation 13(6) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015....The alleged violations of regulation 13(6) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015, if proved makes you liable for penalty under section 15A(b) of the SEBI Act, 1992. the Noticee is called upon to show cause as to why an inquiry should not be held against it, in terms of rule 4 of Adjudication Rules, 1995 r/w section 15-I of the SEBI Act, 1992 and why penalty, if any, should not be imposed on it under the provision of section 15A(b) of the SEBI Act, 1992 for violation of regulation 13(6) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015..”

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

- a) Delay in issuance of SCN is almost a decade and its difficult to dig old records, Delay is totally unreasonable. Noticee has cited judgements of 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.
- b) 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. Breach is venial in nature and no loss to investors has occurred.
- c) Out of the all the transactions mentioned in the SCN, only in case of Kernex no disclosure has been made. As regards, the rest of them, disclosures have been made, albeit with delay, therefore the allegation cannot be regarding non-disclosure but only delay in disclosure. The delay is maximum of four days.
- 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. Vs 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)

6. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other material 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(6) of PIT Regulations, 1992, r/w regulation 12(2) of PIT Regulations, 2015?
- 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?

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 by company to stock exchanges.

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations "(1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

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;

FINDINGS:

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:

8. Issue (a): Whether the Noticee violated the provisions of regulation 13(6) of PIT Regulations, 1992, r/w regulation 12(2) of PIT Regulations, 2015?

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 Noticee regarding delay is not acceptable to me.

b) Considering the submissions of the Noticee as regards, the allegation of failure of Noticee to make requisite disclosures within prescribed time, I note that regulations 13(6) of PIT Regulations, 1992 specifies that the listed company is required to make disclosures within two working days of receipt of disclosure from the entities transacting in its shares in forms prescribed for disclosures made under regulations 13(1), 13(2), 13(2A), 13(4), 13(3), 13(4) and 13(4A) of PIT Regulations, 1992 to the BSE. It is alleged that being a listed company, Noticee has failed to do so in case of transactions dated November 15, 2011, January 17, 2012, January 18, 2012 and July 16, 2012 executed by various entities namely, Mumbadevi Finance & Investment Pvt Ltd(15.11.2011), Attribute Shares & Securities Pvt Ltd. (15.11.2011), Forever Flourishing Finance & Investment Pvt Ltd. (15.11.2011), Asha Khadaria(17.1.2012), Rajat Commercial Enterprises Pvt Ltd(17.1.2012, 18.1.2012),,, Krishan Kumar Khadaria(18.1.2012), and Kenex Builders Pvt Ltd.(16.07.2012).

c) I note from the record that Noticee was a listed company at the time of the said alleged violations. Further, I note from the reply of BSE that Noticee did not make disclosures under the provisions of regulation 13(6) of PIT Regulations, 1992 within two working days in case of transactions dated November 15, 2011, January 17, 2012, and January 18, 2012 executed by Mumbadevi Finance & Investment Pvt Ltd(15.11.2011), Attribute Shares & Securities Pvt Ltd. (15.11.2011), Forever Flourishing Finance & Investment Pvt Ltd. (15.11.2011), Asha Khadaria(17.1.2012), Rajat Commercial Enterprises Pvt Ltd(17.1.2012, 18.1.2012), Krishan Kumar Khadaria(18.1.2012), within two days of receipt of information from the said entities. This is also an admitted position in so much as Noticee admitting having made disclosure beyond the time of two working days i.e. after the prescribed time was over. As regards, transaction dated July 16,

2012 by Kenex Builders Pvt Ltd., the said entity had sent relevant information to the Noticee but Noticee failed to make the disclosures within two working days of the same to BSE.

d) In view of the above, I conclude that the allegations levelled by OD against Noticee regarding its failure to make disclosures within the prescribed time, upon receipt of information regarding disclosures made to Noticee under regulations 13(1), 13(2), 13(2A), 13(4), 13(3), 13(4) and 13(4A) of PIT Regulations, 1992 of the specific instances mentioned in the SCN, thereby stand established.

9. 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 within the time prescribed in Regulations on the part of the Noticees attract the imposition of monetary penalty under section 15A(b) of the SEBI Act, 1992, 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.

10. 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. There is no material on record to show that failure is repetitive in nature. I find that the Noticee failed to make disclosures under regulations 13(6) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015 and is liable for penalty under section 15A(b) of the SEBI Act, 1992.
- 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. 4,00,000/- (Rupees Four Lakh only) will be commensurate with the violations as alleged in the SCN which stand established.

ORDER

11. 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. 4,00,000/- (Rupees Four Lakh only) upon the Noticee under section 15A(b) of the SEBI Act, 1992 for violations of regulations 13(6) of PIT Regulations, 1992 r/w regulation 12(2) of PIT Regulations, 2015.

12. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:
- By _____ using _____ the _____ web _____ link
<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai
13. 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
- Case Name
Name of the 'Payer/Noticee'
Date of Payment
Amount Paid
Transaction No.
Bank Details in which payment is made
Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)
14. 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.
15. 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