BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: EAD-12/AO/SM/ 172-176/2017-18]

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

S.No	Name of the Entity
1	M/s. Eriez Finance and Investment Limited (PAN No. AAACZ0643B)
2	M/s. 20 Microns Ltd (ISIN No. INE144J01027)
3	M/s. Marfatia Stock Broking Private Limited (PAN No. AADCM6730B)
4	Mr. Togadia Hareshbhai Madhabhai (PAN No.AJNPT0318G)
5	M/s. Viking Industries Private Limited (PAN No.AACCV3221B)

In the matter of M/s 20 Micron Ltd

Facts Of The Case:

1. Securities and Exchange Board of India ("SEBI") had conducted investigation into the alleged irregularity in the trading and dealing in the shares of M/s. 20 Microns Ltd for the period from September 01, 2011 to March 01, 2013 and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 ("the Act"), Securities Contract (Regulation) Act, 1956 ("SCRA") and the various Rules, Regulations and Guidelines made there under as detailed below:
   a) M/s. Eriez Finance and Investment Ltd ("Eriez") had failed to provide disclosures with regard to the shares held under regulation 13 (4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992") read with Section 12 (2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations, 2015") and also failed to provide the details of pledged shares as required under Regulation 31(1) read with 31(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations");

b) M/s. 20 Microns Ltd ("the company"/ "TML") had made incorrect disclosure with regard to the shares held under the promoter category in the shareholding pattern disclosed to the stock exchanges and thereby violated clause 35 of Listing Agreement read with Section 21 of SCRA;

c) Mr. Togadia Hareshbhai Madhabhai ("Togadia") and M/s. Viking Industries Pvt Ltd ("Viking") had executed significant quantity of self-trades in the scrip of TML thereby violated Regulations 3(a),(b),(c),(d), 4(1), 4(2) (a) & (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("FUTP Regulations").

d) M/s. Marfatia Stock Broking Private Ltd ("Marfatia") had acted as broker to Togadia who had executed significant quantity of self-trades in the scrip of TML and thereby violated clause A(2) of the Code of Conduct for Stock Brokers as specified in Schedule II read with Regulation 9 of SEBI (Stock Brokers and Sub-brokers) Regulations, 1992 ("Broker Regulations");

2. During the investigation the following was observed:

3. TML is a company which was incorporated on June 29, 1987 and is into the business of production of white minerals offering products. The shares of the company are listed on the Bombay Stock Exchange Ltd (hereinafter referred to the BSE) and the National Stock Exchange (hereinafter referred to as the NSE). It was observed that the price of the scrip had moved from an open of Rs.57.90 on September 02, 2011 to Rs.163.95 on November 05, 2012 (price rise period) and moved from Rs.162.45 on November 06, 2012 to Rs. 32.20 on March 01, 2013 (price fall period) on the BSE.

4. During the investigation period, it was observed from the shareholding pattern that Eriez had acquired certain shares of TML during the period August 16, 2011 to September 29, 2011. The details of the said purchase of shares is as under:

Trade Date	Traded Quantity	Trade Rate (WAP)	Total Purchase Price
16/08/2011	10000	52.32	523200
17/08/2011	15000	49.79	746850
29/08/2011	20000	53.6	1072000
19/09/2011	40000	56.65	2266000

27/09/2011	89120	54.85	4888232
29/09/2011	42500	52.09	2213825

5. Pursuant to acquisition of the said shares, the Eriez, being the promoter of TML, was required to make necessary disclosures but had failed to do so for the above stated purchases.

6. Further, it was observed that Eriez had pledged following shares of TML:

Sr. No	Number of Shares pledged	Date when pledge was created	Date of release of Pledge
1.	7,00,000	07/10/2011	02/04/2012
2.	1,63,265	08/10/2012	11/02/2013
3.	1,63,625 (Due to Stock Split 1:2 on 29/01/2013) shares have doubled i.e. 1,63,265*2 = 3,26,530 which was released on 11/02/2013	29/01/2013 (Creation of pledge due to stock split)	11/02/2013
4.	256072	08/02/2013	11/02/2013

7. It was alleged that Eriez, being the promoter entity of TML , had failed to make the necessary disclosures within seven working days regarding the creation/release of pledge from the date of creation/ release of pledge of the abovementioned shares. Eriez had stated that it was unaware of the pledge created for 1,63,265 equity shares by JM Financial Products Pvt Ltd ("JMFP") on October 08, 2012 which was later doubled to 3,26,530 shares due to stock split in the ratio of 1:2 on January 29, 2013 and its subsequent release on February 11, 2013. With respect to the shares pledged on February 08, 2013 and released on February 11, 2013, Eriez stated that it had not pledged any shares. In reply to the query regarding the same by SEBI to JMFP, it had provided details of shares of TML pledged by Eriez along with a copy of loan agreement entered into between JMFP and Eriez. JMFP had also provided details of client reports and log of emails sent to Eriez intimating it about the said pledge / release of shares. Therefore, it was alleged that Eriez, by failing to disclose about the pledged shares to TML and the stock exchange, had violated the provisions of Regulation 31(1) read with Regulation 31(3) of the SAST Regulations.

8. The quarterly shareholding pattern of promoter group of TML as appearing on BSE website vis a vis actual acquisition / sell was analyzed and details of the same are as under:

Quarter Ended	Increase in shareholding as per BSE website (%)	Actuals as per acquisitions / sell and as per disclosures provided
June 30, 2011 to September 30, 2011	301177 (2.10%)	330893 (2.31%)
September 30, 2011 to December 31, 2011	216910 (1.51%)	286610 (2.00%)
December 31, 2011 to March 31, 2012	1500198 (1.05%)	No acquisition / sell during this quarter
March 31, 2012 to June 30, 2012	No change in shareholding	
June 30, 2012 to September 30, 2012	323572 (2.26%)	411301 (2.87%)
September 30, 2012 to December 31, 2012	1238729 (1.96%)	1151000 (1.40%)

9. From the above table, it was observed that there was a difference in the actual purchases by the promoter group of TML as compared to the shareholding pattern appearing on BSE website.

10. Vide email dated November 15, 2014, TML has stated that

    (a) "Mr*. Chandresh Parikh, promoter of the company, informed us that the shares purchased by him, from time to time, were in Pool Account of Broker and afterwards when he came to know the fact he instructed the Broker to transfer / credit the shares in his demat account. This is the reason why there is difference in purchase disclosure and actual credit in demat account. Eriez Finance and Investment Limited, promoter of the company, informed that the difference of shares between the quarters was because Eriez had purchased the shares in earlier quarters (for which Eriez has provided disclosure to the Stock Exchanges) but the brokers transferred the shares to Eriez's Demat Account (from Pool Account of Broker) on receipt of consideration from Eriez.*

    (b) *Eriez has taken margin funding facility and for which the shares were kept as margin in pool account of Broker. This will cause difference in quarterly shareholding pattern provided by the Company and actual share held by aforesaid promoters.*"

11. Further, vide email dated September 24, 2014, TML had also forwarded details of disclosures filed by its promoter group. It was alleged that TML was well aware of the acquisitions made by its promoter group entities and therefore should have made the requisite changes in its

shareholding pattern. Thus, it was alleged that TML, by making incorrect disclosures to the stock exchange with respect to the shares held under the promoter category, has violated the provisions of Section 21 of the SCRA read with Clause 35 of the Listing Agreement.

SELF- TRADES

12. It was observed that certain entities had executed trades which were self-trades in nature. Considering the repetitive nature of self-trades (quantity of more than 10000 shares more than two count of trades executed for 2 or more days) the following suspected entities were shortlisted during the relevant period:

Self-Trades (NSE):

Entity Name	Total Self-Trade Volume	Total Self-Trade count	No. of days on which self-trades done	% of self-trades qty. to market vol.	Net LTP contribution by self-trades
Viking Industries Pvt.	137982	6	2	0.12	0.15
Togadia Hareshbhai Madhabhai	22852	10	5	0.02	-0.15

13. It was observed that for the self-trades executed by Viking, the brokers on the buy and sell side were different and for the self-trades executed by Togadia, the broker on the buy as well as the sell side was Marfatia. It was, therefore, alleged that by entering into self-trades which are fraudulent in nature, Togadia and Viking have created artificial volumes in the scrip of TML thereby violating the provisions of Regulation 3(a), (b), (c) & (d), 4(1), 4(2)(a) & (g) of the FUTP Regulations. Also, Marfatia, by executing such fraudulent trades for its client,Togadia, is alleged to have violated the provisions of Clause A(2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 9 of the Broker Regulations.

14. In this order wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.

Appointment of Adjudicating Officer

15. SEBI initiated adjudication proceedings against the Entities and appointed Shri D.S. Reddy as Adjudication Officer ("AO") vide order dated April 24, 2015 in terms of Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995

(hereinafter referred to as “AO Rules”) read with section 15-I of the Act to inquire and adjudge under Sections 15A(b), 15HA and 15 HB of the Act and in terms of Rule 3 of Securities Contract (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as “SCRA AO Rules”) read with section 23-I of SCRA to inquire and adjudge under Section 23A(a) of SCRA for the aforesaid alleged contravention of provisions of law by the Entities. Subsequent to transfer of the case, I have been appointed as AO vide order dated May 18, 2017 to inquire and adjudge under the provisions as enumerated above.

Show Cause Notice, Reply and Personal Hearing:

16. A common show cause notice (hereinafter referred to as 'SCN') dated January 13, 2016 was issued to Entities under the provisions of Rule 4 (1) of the Rules by the erstwhile AO to show cause as to why an inquiry should not be initiated against the Entities and penalty should not be imposed under Sections 15A(b), 15HA and 15 HB of the Act and Section 23A(a) of SCRA for the alleged violations as stated above.

ERIEZ

17. Eriez had acknowledged the receipt of SCN vide letter dated January 28, 2016 and sought extension of time and legible copy of Annexure 2 to file its reply. In response, vide letter dated March 24, 2017 then AO had granted Eriez an opportunity of inspecting documents and the said inspection was carried out by Eriez on May 09, 2017.

18. Pursuant to the transfer of the case, I granted Eriez an opportunity of personal hearing on January 9, 2018 in terms of Rule 4(3) of AO Rules and on the said date, the hearing was attended by Eriez’s Authorized representatives Ms. Rinku Valanju, Advocate and Mr. Nilesh Doshi Vice President of Eriez. The ARs made their submissions and also filed a detailed reply to SCN vide letter dated January 8, 2018.

19. Vide its replies, Eriez inter-alia submitted that it was making disclosures regularly under various regulations and have never defaulted on the same. However, in respect of non-disclosures under PIT Regulations, the disclosures were made with delay since the company secretary was not aware about the amendment and continued to follow the old norms and practices. Further, with regard to SAST violations, it is submitted that non-disclosure of pledge

related details was due to the fact that JM Financial with whom Eriez was having trading account, demat account and exposure on trading account based on loan facility availed, had converted lien into pledge for selective transactions for the first time for the reasons best known to them and JM Financial had accordingly disclosed as encumbrance in the shareholding patter for the quarter ended December 2011 without the knowledge of Eriez. It is also submitted that there is no correlation between the purchases of Eriez through JM Financial and marking of the pledge by JM Financial and pledge marked by JM Financial are random and unilateral and their conduct qua Eriez was inconsistent.

TML

20. TML acknowledged receipt of SCN vide letter dated January 28, 2016 and requested for extension of time to reply. Vide letter dated April 5,2016 requested for breakup details of disclosure details available under SAST on BSE website for the period December 2013 (since the number of shares mentioned in point no.7 of the SCN is not matching with the disclosure details available on BSE website). In connection with the clarification sought by TML, the erstwhile AO vide letter dated March 24, 2017 advised SEBI to provide clarification on the increase in the shareholding of the promoter and the promoter group for the period September 30, 2012 to December 31, 2012.

21. Pursuant to the transfer of the case, I, in terms of Rule 4(3) of AO Rules granted an opportunity of hearing to TML on January 9, 2018 vide notice dated November 22, 2017. In response, vide letter dated December 26, 2017, TML requested to adjourn the hearing since they did not got any clarification on the shareholding from SEBI. However, on the said date of hearing, the AR of TML, Ms. Rinku Valanju, Advocate appeared before me and requested for a week's time to file the reply. Further, during the course of hearing, the AR was provided with the details of shares acquired by Eriez and the basis of arriving at the shareholding details. Vide email dated January 15, 2018, the AR had requested for a week's time and subsequently submitted its reply to SCN vide letter dated January 23, 2018.

22. Vide its replies, inter-alia stated that quarterly disclosures of shareholding pattern were made based on the disclosures made by the promoters on acquisition/ disposal of shares and on the report submitted by Registrar and Share Transfer Agent ("RTA"). In the instant cases also alleged disclosures were made as per the disclosures received from RTA from time to time and from the promoters from time to time.

TOGADIA

23. Togadia acknowledged receipt of SCN and filed his reply vide letter dated July 25, 2016.

24. Pursuant to the transfer of the case, I, in terms of Rule 4(3) of AO Rules granted an opportunity of hearing to Togadia on January 9, 2018 vide notice dated November 22, 2017 and the same was returned undelivered. However, the said notice was served through email by digital signature to his address "haresh.togadia12@gmail.com". On the said date of hearing, the AR of Togadia, Mr.P K Ramesh appeared before me and reiterated the submissions made vide letter dated July 25, 2016 and also sought time till January 22, 2018 to make additional submissions, if any. Accordingly he submitted his reply vide letter dated January 25, 2018.

25. Vide his replies, inter-alia, submitted that there was no intent to deliberately enter in trades to effect self-trades as alleged. It is natural when trading is taking place through internet there could be instances of non-cancellation of pending orders due to oversight or technical issues as there was no forthcoming guidance from the dealer which is otherwise available for telephonic orders.

MARFATIA

26. Vide letter dated January 27, 2016, Marfatia acknowledged the receipt of SCN sought time till February 18, 2016 to file its reply. However, vide letter February 17, 2016 sought additional time till February 28, 2016 and vide letter dated February 22, 2016 sought inspection of documents with regard to self-trade of Togadia. In response, vide letter dated May 03, 2016, soft copy of the trade and order log details were provided in the compact disc(CD) and advised to file its reply on or before May 16, 2016. In response, vide letter dated May 13, 2016 sought time till June 15, 2016 and vide letter dated June 14, 2016 sought further time till June 20, 2016. Accordingly, filed its reply vide letter dated June 18, 2016.

27. Pursuant to the transfer of the case, I, in terms of Rule 4(3) of AO Rules granted an opportunity of hearing to TML on January 9, 2018 vide notice dated November 22, 2017. In response, vide letter dated January 3, 2018, Marfatia authorized Ms. Rinku Valanju, Advocate to attend the hearing on its behalf. On the said date of hearing, the AR of Mafartia appeared before me and reiterated the submissions made vide letter dated June 18, 2016 and also made additional submissions vide letter dated January 8, 2018.

28. Vide his replies, inter-alia, submitted that in the alleged trades they acted purely as a stock broker, by facilitating trading for our clients, and providing a trading platform who opted for internet trading and have not gained from price rise or fall in the said scrip. The self-trades were occurred due to non-cancellation of unexecuted orders without any mala-fide intention by Togadia. Further, it is stated that alleged self-trades were a meagre 0.31% compared with the total shares of 83,52,960 traded by Togadia using the terminal of Marfatia.

VIKING

29. SCN which was returned undelivered and was served through Marfatia and the same was acknowledged and extension of time to file reply was sought by Viking vide letter dated January 28, 2016. Further, vide letter dated February 26, 2016 Viking sought for trade log/order log details of self-trades and the same was provided vide letter dated May 03, 2016 with an advise to file reply by May 16, 2016. However, the said letter of erstwhile AO was returned undelivered. Pursuant to the email sent by erstwhile AO in this regard, Viking vide email dated May 05, 2016 provided an alternate address for forwarding the CD and the CD was sent vide letter dated June 08, 2016 with an advise to file reply by July 08, 2016. Accordingly, Viking filed its reply vide letter dated August 01, 2016.

30. Pursuant to the transfer of the case, I, in terms of Rule 4(3) of AO Rules granted an opportunity of hearing to Viking on January 9, 2018 vide notice dated November 22, 2017. In response, vide letter dated December 27, 2017, Viking authorized Ms. Rinku Valanju, Advocate to attend the hearing on its behalf. On the said date of hearing, the AR of Viking appeared before me and reiterated the submissions made vide letter dated August 01, 2016 and also made additional submissions vide letter dated January 8, 2018.

31. Vide its replies, Viking, inter-alia, by citing various case laws of SEBI AO's and orders of Hon'ble SAT, submitted that mere occurrence of self-trades is not illegal in the absence of proof of mala-fide intention to defraud. Further, submitted that quantity of self-trades were extremely miniscule to have created any false or misleading appearance of trading and by taking into account the SEBI policy dated May 16, 2017 on self-trades, the violation of provisions of PFUTP Regulations do not stand established.

Consideration of issues, Evidences and Findings

32. I have carefully perused the charges levelled against the entities in the SCN and written submissions made in response to SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

i. **A. Whether Eriez had violated provisions of PIT Regulations and SAST Regulations?**
B. Whether TML had violated provisions of listing agreement read with SCRA?
C. Whether Togadia and Viking had violated FUTP Regulations?
D. Whether Marfatia had violated Broker Regulations?

ii. **Does the violation, if any, on the part of the entities attract monetary penalty under Section 15A(b), 15 HA,15HB of the Act and Section 23A(a) of SCRA ?**

iii. **If so, what would be the quantum of monetary penalty that can be imposed on the entities taking into consideration the factors mentioned in Section 15J of the Act and Section 23J of SCRA?**

33. Before proceeding further, I would like to refer to the relevant provisions of the PIT Regulations, 1992, PIT Regulations, 2015, SAST Regulations, FUTP Regulations, Section 21 of SCRA , Clause 35 of listing agreement and Broker Regulations which are read as under:

Relevant provisions of FUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a)*buy, sell or otherwise deal in securities in a fraudulent manner;*

(b) *use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*

(c) *employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*

(d) *engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized*
stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices
(1) *Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

(2) *Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
(a)*indulging in an act which creates false or misleading appearance of trading in the securities market;*
(b) .....
(c).....
(g) *entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*

Relevant provisions of Broker Regulations:

Stock brokers to abide by Code of Conduct.

9. *The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.*

Schedule II
Code Of Conduct For Stock Brokers
[Regulation 9(f)]

A. General
(2) Exercise of due skill and care*: A stock broker, shall act with due skill, care and diligence in the conduct of all his business.*

Relevant provisions of SCRA:

Conditions for listing.

21. *Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

Listing Agreement

35. *The issuer company agrees to file with the exchange the following details, separately for each class of equity shares / security in the formats specified in this clause, in compliance with the following timelines, namely:-*

(a) One day prior to listing of its securities on the stock exchanges.

(b) On a quarterly basis, within 21 days from the end of each quarter.

(c) Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital.

Relevant provisions of PIT Regulations, 1992:

Continual disclosure.

13(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 shareholdings 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. 5,00,000 in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

13(5) *The disclosure mentioned in sub-regulations (3) and (4) 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

Relevant provisions of SAST Regulations:

Disclosure of encumbered shares.

31(1) *The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*

31(3)*The disclosures required under sub-regulation (1) and sub- regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,-*

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

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

Findings:

Whether Eriez had violated provisions of PIT Regulations and SAST Regulations?

34. With regard to Eriez's PIT Regulation violations, from the analysis of the material available on record, SCN and the reply, it was observed that Eriez at the relevant time acquired 2,36,620 (1.65%) shares during the period August 16, 2011 to September 29, 2011. As per the amendment to PIT Regulations on August 16, 2011, the Eriez was required to make disclosures to the Company and the stock exchange if there has been a change in the shareholding of the promoter from the last disclosure made under listing agreement or sub-

Regulation (2A) and if the change exceeds Rs.5,00,000 in value of 25,000 shares or 1% of total shareholding or voting rights whichever is lower. Pursuant to amendment, Eriez was supposed to make disclosure for its following acquisitions in terms of Regulation 13(4A) read with 13(5) of PIT Regulations 1992 . However, Eriez had made the disclosures with delay as stated below:

S.No.	Date of acquisition	No. of shares acquired	Disclosure to be made as per the Regulation	Date of making the disclosure	Delay in no. of days
1	16-08-2011	10000	Within two working days from the date of acquisition	September 29,2011	More than two days as required under Regulations
2	17-08-2011	15000			
3	29-08-2011	20000			
4	19-09-2011	40000			
5	27-09-2011	89120			
6	29-09-2011	42500			

35. Reply of the Eriez that its company secretary was not aware about the amendment which came into effect from August 16, 2011 and continued to follow the old norms and practices, can't be accepted and could be considered only as acceptance of delayed disclosure. Hence, I conclude that Eriez has violated Regulation 134(A) read with 13(5) of PIT Regulations 1992.

36. With regard to Eriez's violations of SAST Regulations regarding non-disclosure of shares encumbered (including invocation and release) by it, I am not inclined borrow the argument of Eriez, which states that

    (a) "*it was having loan account, trading account and demat account with the group cos. of JM Financial and was given exposure in the trading account on the basis of loan facility from JM Financial Products Pvt Ltd and hence J M Financial had lien over the shares purchased by Eriez*

    (b) *JM Financial took advantage of the lien, created / released the pledge unilaterally without Eriez;s knowledge" and hence it was not obliged to make disclosure under Regulation 31(1) read with 31(3) of SAST Regulations*.

37. The intent of Regulation 31(1) read with 31(3) of SAST Regulations is to make public at large aware of the status of shares encumbered by the promoters of the company. In the current

scenario, Eriez itself has mentioned that JM Financial was having lien on the shares purchased by Eriez that means Eriez has accepted that shares of TML held by it were encumbered and hence it was under an obligation to make disclosures in this regard. Also, I note that the shares acquired by Eriez were already considered in the quarterly disclosure of shareholding pattern on stock exchange. Hence the absence of disclosure of encumbrance created by Eriez in the instant matter lead to misleading appearance.

38. Eriez has argued that JM has unilaterally created pledge on the shares and didn't kept it informed, On this I rely on the statement of JM which has claimed that it has kept Eriez informed (through email) about the invocation/revocation of pledge. I note that in the matter Eriez was aware of the fact that JM was having lien on the shares purchased by it, therefore it was obligated to make disclosure in this regard.

39. I also would like to rely on Hon'ble SAT ruling in Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI, wherein the Hon'ble SAT has observed that, "the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

40. Hence, I conclude that Eriez has violated Regulations 31(1) read with 31(3) of SAST Regulations.

B. Whether TML had violated listing agreement read with SCRA?

41. From the perusal of SCN and the reply of TML, I find that allegation on TML was that it made wrong Share holding pattern (SHP) disclosure during the following quarters:
    a) During the quarter ended September 2011, TML made a short reporting of 0.21% in SHP and that is due to reportedly non-disclosure of 29,716 shares purchased by Eriez.
    b) For the quarter ended December 2011 and September 2012, there was a short disclosure 0.49% and 0.61% respectively in SHP and TML's response was that it had made the disclosure on the basis of date received from its R&TA and the difference was due to non-reporting of 69,700 shares and 87,729 shares respectively by RTA.
    c) For the quarter ended December 2012, TML contended that actual difference was 0.62% as against 1.96% as stated by SEBI and submitted SHP download from BSE for quarters ended September 2012 and December 2012 in support thereof. The error was due to the fact SEBI has considered 11, 00,000 shares acquired by promoters

which was already considered by TML. As far the difference in SHP of 0.30% was with regard to non-reporting of net of 1, 01,000 shares purchased and 50,000 shares sold by the promoters during the quarter.

42. TML has stated that wrong disclosure of SHP was owing to non-receipt of disclosures from promoters and receipt of incorrect data from RTA. In my view, the periodic disclosures under Clause 35 of listing agreement serve a very important purpose of informing the market and the investors about the shareholding of the promoter group entities. Hence the aforesaid filing of incorrect disclosure by TML has resulted in giving a wrong picture of the shareholding of promoter entities to the market. The shareholding pattern indicates a different shareholding of the promoter group than the actual holding which was incorrect and therefore misleading to the general investors. I consider this reply of TML as an admission of charges levelled against it and held it guilty of making wrong disclosures under clause 35 of listing agreement,

43. Further, in my view, the periodic disclosures under Clause 35 of listing agreement serve a very important purpose of informing the market and the investors about the shareholding of the promoter group entities. In view of the same, the aforesaid filing of incorrect disclosure by TML has resulted in giving a wrong picture of the shareholding of promoter entities to the market. The shareholding pattern indicates a different shareholding of the promoter group than the actual holding which was incorrect and therefore misleading to the general investors. By making wrong disclosures under clause 35 of listing agreement, TML has violated section 21 of SCRA read with clause 35 of the listing agreement.

Whether Togadia and Viking had violated FUTP Regulations?

44. Allegations against Togadia and Viking was that they had indulged in self-trades. The alleged self-trades executed by them are :

Entity Name	**Total Self-Trade Volume**	**Total Self-Trade count**	**No. of days on which self-trades done**	**% of self-trade qty. to his total trades during the self-trade days.**	**Net LTP contribution by self-trades**
Viking Industries Pvt. Ltd-BSE	137982	6	2	0.12	0.15
Togadia Hareshbhai Madhabhai - NSE	22852	10	5	0.02	-0.15

45. There is no dispute about the self-trades executed by the Entities, however, I have to take into account intention behind the self-trade, quantum and its impact on the market.

46. I note that the main defense put forth by Togadia is that he forgot to cancel the unexecuted orders which has resulted in the appearance of self-trade. Further, he submitted that he had not received any warning from the Exchange or the broker and the downloadable alerts in case of certain transaction by the broker, as per the circular of BSE, were not available during the period of investigation. He also submitted that self-trade quantity is negligible and miniscule and without any malafide intention. I also note that LTP contribution of his alleged self-trades was negligible as well (Rs-0.15).

47. In the case of Viking, the main defense put forth by the entity is that self-trade quantity is negligible and miniscule and without any malafide intention. Viking's claim of negligible quantity is ascertained from the data which shows that self-trade of 137982 shares to total volume of 11, 40,142 shares traded by Viking during the self-trade in the scrip of TML. Apparently, from such negligible percentage in the scrip, it is difficult to arrive at the conclusion that these self-trades were executed by Viking with an 'intent' to create misleading appearance of trading in the securities. Even though it was alleged that there was a net LTP contribution of Rs.0.15 there is nothing on record to suggest how these self-trades had manipulated the market.

48. I note that volume transacted in self-trades is one of the important factors to determine the manipulative intention, if any, of a person on the issue of self-trades. If the self-trades of the Entities are considered in that background then it would be difficult to hold in the present matter that there was any manipulative intent on the part of the Entities to engage in intentional self-trades as such percentage / volume of self-trades of the Entities the scrip of TML was miniscule as compared to the total trading in the said scrip during the relevant period.

49. With what has been stated above, it is difficult to arrive at the conclusion that these self-trades were executed by the Entities with an intent to create misleading appearance of trading in the securities market. It is important to note here that the motive behind executing fraudulent self-trades can either be to artificially raise the volume in a scrip / or to manipulate the price of a scrip by way of creating misleading appearance of trading so as to induce others to deal in the particular scrip.

50. I also note that there are no adverse observations regarding other forms of market manipulation i.e. synchronized trading, reversal trading or executing orders away from last traded price or creation of new high prices by way of first trades etc. against the Entities in the investigation Report. Also, the instances of self-trades by Entities are not of such magnitude that can be said to have affected the rest of the market volume, if considered in the light of the amount of transactions that the Entities had been doing on the various segments of the exchanges platform.

51. There is no evidence in the SCN to suggest any fraudulent intention behind the execution of self-trades by Entities. I also note from the submission made by the Entities that these self-trades had occurred due to non-cancellation of unexecuted orders and margin call. Further, the volume of self-trades being miniscule, considering the fact and circumstance of the case and also taking into account the recent SEBI policy dated May 15, 2017, it is concluded that the violation of Regulation 3 (a) (b) (c) and (d), 4 (1) & 4 (2) (a) and 4 (2) (g) of the PFUTP Regulations *does not stand established against the Entities*.

Whether Marfatia had violated Broker Regulations?

52. The main allegation against Marfatia is that it was the broker on buy side as well as sell side during the execution of self-trades by Togadia.

53. I note that in the absence of any alerts, a broker who is having a large client base probably could not anticipate any foul play by the client when all other parameters showing normalcy when 246 clients who had traded through Marfatia in shares of TML during the investigation period and a total turnover of Rs.239 cr was registered through by various clients who had traded in the scrip of TML.

54. I also note that Togadia is not related to Marfatia except the professional relationship. It is not in dispute that there was no default on the part of the Togadia in meeting with the market obligations. There is nothing on record that there was any instance of remiss in the conduct of Togadia that might have aroused suspicion that it is doing anything suspicious. There is nothing on record to suggest that Marfatia was in any manner involved in any manipulation. I also rely on the order of Hon'ble SAT in the appeal no. 176/2011 in the matter of SMC Global Securities Limited, wherein, SAT has held that

"*due skill, care and diligence can only mean that broker shall act in such a way that a person of ordinary prudence would act in the normal circumstances in carrying out activities and functions relating to its business and remain careful and diligent so that nothing untoward happens in the market or over the activities with it*"

55. Further, these self-trades have not caused any losses to an investor or group of investors as there was no default from our side to complete the above two transactions.

56. In view of the above, allegation of violation of Clause A (2) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 9 of Stock Broker Regulations 1992 does not stand established against Marfatia.

57. Having concluded that Togadia is not guilty of violating the provisions of FUTP Regulations, the allegation against Marfatia that it had acted as broker for the alleged trades could not stand.

Issue II. Does the violation, if any, on the part of the Entities attract monetary penalty under Section 15 A(a), 15 HA and 15HB of the SEBI Act and Section 23A(a) of SCRA?

58. Having stated above that Eriez had violated Regulation 13(4A) read with 13(5) of PIT Regulations 1992 and Regulation 31(1) read with 31(3) of SAST Regulations, I held Eriez liable for penalty under section 15A(b) of the Act. Having stated above that TML had violated the provisions of Section 21 of SCRA read with Clause 35 of listing agreement, I held TML liable for monetary penalty under Section 23(A) of SCRA.

59. Having stated above that Togadia and Viking had not violated the provisions of FUTP Regulation, I am not levying any penalty on them.

60. Having stated above that Marfatia had not violated provisions of broker Regulations, I am not levying any penalty on it.

61. The penalty levied in terms of the penal provisions as stated below:

SEBI Act

Section 15A(b) of the Act reads as under:

Penalty for fraudulent and unfair trade practices.

Penalty for failure to furnish information, return, etc.

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

(a) to furnish any document, return or report ……..

(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 there for 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.

SCRA

Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made there under,—

(a) to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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 for each such failure;

Issue III : If so, what would be the quantum of monetary penalty that can be imposed on Eriez and TML taking into consideration the factors mentioned in Section 15J of the Act and Section 23 J of SCRA respectively?

62. While determining the quantum of penalty under Section 15A(b) of the Act and 23 A(a), it is important to consider the factors stipulated in Section 15J of the Act and Section 23J of SCRA respectively, which read as under:-

15J *- Factors to be taken into account by the adjudicating officer while adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

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

(c) the repetitive nature of the default.

Explanation

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

***23 J** - Factors to be taken into account by the adjudicating officer while adjudging the 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.

Explanation

For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

63. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Entities or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the default of the Entities are repetitive in nature. TML had reported wrong shareholding on three instances and Eriez has not reported details of invocation and revocation of encumbered shares on several instances. I note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decision. I, therefore, conclude that Eriez and TML, by failing to make the necessary disclosures as required under the SAST Regulation. PIT Regulations and Listing Agreement are liable for monetary penalties under the Act and SCRA.

ORDER

64. After considering all the facts, circumstances of the case and case laws mentioned above, I exercise the powers conferred upon me under Section 15-I of the Act and Section 23-I of SCRA and Rule 5 of Rules, AO Rules and hereby impose the following a monetary penalties which in my view are commensurate with the default committed by the entities:

Entity	Provisions of law violated	Penalty levied under Section	Quantum of penalty in Rs.
M/s. Eriez Finance and Investment Limited	Regulation 13(4A) read with 13(5) of PIT Regulations	Section 15A(b) of SEBI Act, 1992	2,00,000
	Regulation 31(1) read with 31(3) of PIT SAST Regulations		2,00,000
M/s. 20 Microns Ltd	Section 21 of SCRA read with Clause 35 of Listing Agreement	Section 23A(a) of SCRA, 1956	2,00,000

65. The amount of penalty shall be paid within 45 days of receipt of this order either by way of

(i) demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

(or)

(ii) by e-payment in the account of

"SEBI - Penalties Remittable to Government of India ",

A/c No. 31465271959,

State Bank of India, Bandra Kurla Complex Branch,

RTGS Code SBIN0004380

66. The entities shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No.SEBI/HO/GSD/ T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated should be forwarded to "The Division Chief (Enforcement Department - DRA- III), Securities

and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400052 and also to e-mail ID - tad@sebi.gov.in

Date	
Department of SEBI	
Name of Intermediary/ Other Entities	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount in Rs.	
Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	
Bank name and Account number from which payment is remitted	
UTR No	

67. In terms of Rule 6 of the Rules, copies of this order are sent to the entities and also to Securities and Exchange Board of India.

Date: February 14, 2018 **SAHIL MALIK**

Place: Mumbai **ADJUDICATING OFFICER**