

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. RA/JP/ 295 - 303 /2018]**

**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

In respect of:

1. Anjaneya Holdings Pvt. Ltd. (PAN: AAGCA6352A)
2. N Essence Holdings Ltd. (PAN: AACCN9945L)
3. Sansar Exim Pvt. Ltd. (PAN: AAKCS7730C)
4. Tulja Enterprises Pvt. Ltd. (PAN: AACCT6526B)
5. Chamundeshwari Merchantile Pvt. Ltd. (PAN: AADCC0511E)
6. Verve Properties & Investment Pvt. Ltd. (PAN: AABCV0940Q)
7. Ingenious Finance & Investment (PAN: AAACI2843L)
8. Nitin S Kasliwal (PAN: AAQPK8114M)
9. Jyoti N Kasliwal (PAN: AEYPK1612E)

(In the matter of S Kumars Nationwide Ltd.)

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had during the course of examination of shareholding in the shares of S Kumars Nationwide Limited (hereinafter referred to as the **S Kumars / Company**) had observed that the entities namely- (1) Anjaneya Holdings Pvt. Ltd., (**the Noticee No. 1**), N Essence Holdings Ltd, (**the Noticee No. 2**), Sansar Exim Pvt. Ltd., (**the Noticee No. 3**), Tulja Enterprises Pvt. Ltd., (**the Noticee No. 4**), Chamundeshwari Merchantile Pvt. Ltd., (**the Noticee No. 5**), Verve Properties & Investment Pvt. Ltd., (**the Noticee No. 6**), Ingenious Finance & Investment, (**the Noticee No. 7**), Nitin S Kasliwal, (**the Noticee No. 8**) and Jyoti N Kasliwal, (**the Noticee No. 9**) or all the aforesaid Noticee may be collectively referred as

**'Noticees/ You'**, have failed to make disclosures regarding creation / invocation / release of certain pledge transactions and off market sale/purchase of shares in the Company; and thereby allegedly violated regulation 29(2) read with 29(3), regulation 31(1), 31(2) read with 31(3) of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and Regulation 13(3), 13(4), 13(4A) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

## **APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide order dated March 01, 2016, to inquire into and adjudge under section 15 A (b) of the SEBI Act the aforesaid alleged violation of provisions of the SAST Regulations and PIT Regulations.

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

3. Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2016/14603/1 dated May 20, 2016 (hereinafter referred to as "**SCN**") was served upon the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed upon them under sections 15 A (b) of the SEBI Act for the alleged violations.
4. The observations and the details of transactions (viz. creation / invocation / release of pledge and off market sale/purchase of shares in the Company) has been shown under the SCN at page 4-9. It was alleged in the SCN that during the period March 01, 2012 to April 30, 2014, the Noticees being the Promoters of the Company (Noticee No. 8 is the Promoter as well as Director of the Company) had indulged in pledge related transactions and off market transfers

in the scrip, but failed to make the required disclosures / made belated disclosures regarding pledge transactions / change in their shareholding and thereby allegedly violated SAST Regulations and PIT Regulations as mentioned in table below:-

| Noticees      | Violations  |
|---------------|---|
| Noticee No. 1 | Regulation 29(2) read with 29(3) and Regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(3) and Regulation 13(4A) read with 13(5) of PIT Regulations. |
| Noticee No. 2 | Regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 3 | Regulation 31(1) read with 31(3) of SAST Regulations.   |
| Noticee No. 4 | Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 5 | Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 6 | Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 7 | Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 8 | Regulation 31(2) read with 31(3) of SAST Regulations and Regulation 13(4), 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 9 | Regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(4A) read with 13(5) of PIT Regulations.   |

5. It was stated in the SCN that National Stock Exchange of India Ltd. (**NSE**) vide its e-mail dated December 22, 2014, January 2, 2015, January 3, 2015 and February 5, 2015 had confirmed that no disclosures in respect to pledge related transactions and off market transfers were made by the Noticees under SAST Regulations and PIT Regulations. Copy of said e-mails were attached along with SCN as Annexure II.
6. The aforesaid provisions of law alleged to have been violated by the Noticees are mentioned below;

#### PIT Regulations

##### **Continual Disclosure**

**13(3)** Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting

*rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

**13(4)** *Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

**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 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.*

**13(5)** *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

### **SAST Regulations**

#### **Disclosure of acquisition and disposal.**

**29(1)** *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons*

*acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*

**29(2)** *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.*

**29(3)** *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,-*  
*(a) every stock exchange where the shares of the target company are listed; and*  
*(b) the target company at its registered office.*

#### **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(2)** *The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares 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.*

7. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticees liable for monetary penalty under section 15A(b) of the SEBI Act.

8. In response to the SCN, a letter dated June 06, 2016 was received on behalf of all Noticees *inter-alia* seeking time of six weeks to respond the SCN. Vide another letter dated August 03, 2016, further, time of four weeks was sought by the Noticees to submit reply towards the SCN. Thereafter, the attorney of the Noticees vide letter dated October 13, 2016 stated that the Noticees are in the process of filing settlement applications under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 (hereinafter referred to as “**Settlement Regulations**”) in respect of action / allegation levelled under the SCN and requested to keep the instant adjudication proceedings in abeyance. Intimation from SEBI regarding filing / registration of settlement application by the Noticees was received on December 02, 2016 and May 08, 2017.
9. Thereafter, the settlement application in respect of Noticee No. 2-9 was rejected by SEBI and the undersigned was intimated about the same on July 27, 2017. Upon rejection of the settlement applications, an opportunity of hearing on October 11, 2017 was provided to the Noticee No. 2-9 vide hearing notice dated September 08, 2017 *inter-alia* stating that as no reply is received from them, hence, their reply if any, may be filed on or before October 04, 2017. In respect of said notice of hearing, the attorney of the Noticee No. 2-9 vide letter dated October 09, 2017 requested for an adjournment of hearing for three weeks attributing the reasons of being occupied before the Hon’ble Securities Appellate Tribunal (**Hon’ble SAT**) during that time and also intimated that they are in the process of filing reply towards the SCN.
10. Another opportunity of hearing was provided to the Noticee No. 2-9 on November 01, 2017 vide hearing notice dated October 10, 2017 and it was clearly stated in said hearing notice that as no reply is received from them, hence, the same may be submitted on or before October 27, 2017.
11. The hearing on November 01, 2017 was attended by the Attorney / Authorized Representative of the Noticee No. 2-9 and during the course of hearing they stated that a reply dated October 27, 2017 towards the SCN has been sent by them to SEBI and they reiterate as stated in the said reply. A common reply

dated October 27, 2017 on behalf of all the Noticees (Noticee No. 1-9) was received by the undersigned on November 01, 2017.

12. The settlement application in respect of Noticee No. 1 was rejected by SEBI and the undersigned was intimated about the same on November 16, 2017. Upon rejection of the settlement application of Noticee No. 1, an opportunity of hearing on November 28, 2017 was provided to the Noticee No. 1 vide hearing notice dated November 16, 2017. In respect of said notice of hearing, the attorney for the Noticee No. 1 vide letter dated November 24, 2017 had requested to consider the same submissions as made under their common reply dated October 27, 2017 and during the hearing on November 01, 2017; and did not avail said opportunity of hearing.
13. The core submissions made by the Noticees in their common reply dated June 06, 2016, October 27, 2017 and during the course of hearing on November 01, 2017 towards the SCN, are mentioned below;

*Reply of the Noticees*

- i. At the outset and without prejudice to anything stated hereinafter and as more fully set out hereunder, our clients submit that they did not deliberately refrain from making disclosures under the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ("Insider Trading Regulations") or the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("Takeover Regulations"). As more fully set to hereinafter, some of the events requiring disclosure such as invocation of pledge and consequent changes in shareholding were not known to the knowledge of the Noticees until much after the occurrence of the event.
- ii. The Company was once the leading textile and apparel manufacturing company in the country with a turnover of Rs.17 Billion and 4 manufacturing units located at Dewas MP, Bharuch, Gujarat and Mysore, Karnataka. It had a distribution network of more than 30,000 dealers and a presence in all retail formats and market segments. However, from the year 2011-12 onwards, the Company suffered setbacks in its businesses and incurred severe losses. Much of this was on account of failure of overseas acquisitions to generate revenue and cash flows.
- iii. In view of the distress faced by the Company, the Noticees also faced financial distress and hence they were unable to engage the services of professionals including Company

Secretaries and Chartered Accountants to ensure timely disclosures and many of the staff members left the Company. That delay in making disclosures to the stock exchanges regarding invocation of pledge and/or transfer of shares by lenders was not intentional or malafide. Furthermore, they did not make any gains on account of such delay in disclosure and the interest of investors was not adversely affected on account of such delay because news regarding invocation of pledge and sale of shares by lenders was widely reported in the media.

- iv. They did not deliberately refrain from making disclosures under the Takeover Regulations or the Insider Trading Regulations and they were unaware of the invocation of pledge by the Financial Institutions and Private Equity Investors in most of the cases as no prior notice was sent by them to the promoters or the Company.
- v. With reference to para 3 of the said Show Cause Notice, they have not been provided with copies of any report relating to the examination conducted by SEBI for the period March 1, 2012 to April 30, 2014. In the absence of the same, they are unable to make any submissions regarding the findings of SEBI's examination. Therefore, a copy of the said report and all other relevant documents and records relied on by SEBI be provided to them.
- vi. With reference to para 4 of the said Show Cause Notice, they have informed the Company and the BSE/ NSE regarding the encumbrances created over the shares of the Company owned by them, but, since they were not informed in most of the cases by Banks and Financial Institutions when such encumbrance were invoked, they could not inform the Company or the Stock Exchange regarding the same.
- vii. With reference to paras 5 to 14 of the said Show Cause Notice, that the particulars as set out in the table therein are substantially correct, but, SEBI has failed to consider the circumstances under which the said alleged defaults occurred and these are as under: -
  - (a) They did not create any pledge or security over their shares in the Company to avail any loan in their individual capacity; rather, they pledged their equity holdings in the Company to the lenders who advanced loans to the Company. The pledge was created over and above the primary security given by the Company on its fixed assets and current assets to the lenders and the lenders unilaterally invoked and sold the pledged shares to recover their dues from the Company.
  - (b) They have not sold any shares of the Company held by them in the open market, nor they are involved in any off-market transfers; if at all such transfers were done by the lenders while invoking the pledge and unilaterally.
  - (c) As a result of the invocation of pledge by various lenders, our shareholding in the Company has eroded from 49% to 3.59% and suffered huge losses. No pecuniary benefit has accrued to us.



- (d) To the best of our knowledge, the Company has declared the pledge of shares and invocation thereof, whenever the same was within its knowledge. Furthermore, news regarding sale of shares by the lenders was widely reported by the press and therefore, in the public domain.
- (e) There was no malafide intention in not making prescribed disclosures and if at all, these were technical and administrative lapses.
- (f) That as a result of the financial distress faced by the Company, they were unable to engage the services of professionals including Company Secretaries and Chartered Accountants to ensure timely disclosures. Furthermore, many staff members left the Noticees and there were not enough persons to take care of the secretarial work.
- (g) The Company has been referred to the erstwhile Bureau of Industrial and Financial Reconstruction ("BIFR") and a provisional liquidator has been appointed.
- viii. Since disclosures have now been made by them, they ought to be given the benefit of the doubt and they may not be held to have violated Regulations 29(2) & (3), 31(1) to (3) of the Takeover Regulations and Regulations 13(3), (4A) & (5) of the Insider Trading Regulations. Copies of the disclosures made are annexed hereto and collectively marked as **Annexure A**.
- ix. That delay in disclosures were not malafide or intentional and had no adverse effects on the price of the scrip or the interest of investors and were only the result of unforeseen and adverse financial distress suffered by the Company. Therefore, no penalty should be imposed upon them.
14. After taking into account the allegations, replies of the Noticees and other evidences / material available on records, I hereby, proceed to decide the case on merit.

### **CONSIDERATION OF ISSUES AND FINDINGS**

15. The issues that arise for consideration in the present case are :
- a) Whether the Noticee(s) had failed / delayed in making the required disclosures in violation of provisions of regulation 29(2) read with 29(3), regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(3), 13(4), 13(4A) read with 13(5) of the PIT Regulations as alleged against the respective Noticee(s) under the SCN?

- b) If yes, then, whether said violation attracts monetary penalty under sections 15 A (b) of the SEBI Act?
- c) If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (3) of the Adjudication Rules?

#### **ISSUE NO. 1**

**Whether the Noticee(s) had failed / delayed in making the required disclosures in violation of provisions of regulation 29(2) read with 29(3), regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(3), 13(4), 13(4A) read with 13(5) of the PIT Regulations as alleged against the respective Noticee(s) under the SCN?**

16. I have carefully perused the allegations, submissions of the Noticees and the evidences / material available on records. The facts / details of pledge transactions (viz. number of shares, date of creation / invocation / release of pledged shares etc.) as alleged in the SCN, are not in dispute by the Noticees. Moreover, the Noticees in their reply dated October 27, 2017 at para 12 had specifically admitted that the particulars as set out in the tables at SCN are substantially correct.
17. The regulation 13(3) of the PIT Regulations requires any person who holds more than 5% shares or voting rights in any listed company to disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, if there has been change in such holdings from the last disclosure made under Regulation 13(1) or under this sub-regulation; and such change exceeds 2% of the total shareholding or voting rights in a company within two working days.
18. Similarly, regulation 29(2) of the SAST Regulations requires any acquirer holding shares or voting rights entitling him for five percent or more of shares or voting rights in a target company to disclose the number of shares or voting rights held and change in shareholding or voting rights, if there has been change

in such holdings from the last disclosure and such change exceeds two percent of the total shareholding or voting rights in a target company, even if such change results in shareholding falling below five percent.

19. Regulation 13 (4) and 13 (4A) of the PIT Regulations requires that any person who is a director or officer of a listed company or Promoter / Promoter group, shall disclose to the company and the stock exchange, if there has been a change in such holdings of such person from the last disclosure and the change exceeds ` 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.
20. Further, regulation 31 (1) and 31 (2) of the SAST Regulations, requires Promoter of every target company to disclose details of shares encumbered by him, invocation of such encumbrance or release of such encumbrance.
21. After the analysis of the records, the details of disclosures / non-disclosures / delayed disclosures about creation / invocation / release of pledged shares by the Noticees and other off market transactions (viz. date, name of the Noticee(s), transaction type, counterparty name, number of share/percentage of shareholding and the provisions of SAST Regulations / PIT Regulations) violated by the Noticee(s), are shown in tables below in respect of each Noticees.

**Details of pledge transactions / off market transactions in respect of Noticee No. 1 / Anjaneya Holdings Pvt. Ltd.**

| Date       | Client Name                 | Transaction Type  | Counterparty Name         | No. of shares (% of shareholding ) | Disclosure Requirement  |
|------------|-----------------------------|-------------------|---------------------------|------------------------------------|---|
| 02/04/2012 | Anjaneya Holdings Pvt. Ltd. | Pledge Revocation | IDBI Bank Ltd             | 2,75,00,000 (9.25%)                | Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg. |
| 03/04/2012 | Anjaneya Holdings Pvt. Ltd  | Pledge Creation   | JM Financial Products Ltd | 5,50,00,000 (18.49%)               | Not disclosed to exchanges under reg. 31(1) r.w. 31(3) of SAST Reg. |
| 31/07/2012 | Anjaneya                    | Inter             | Prime                     | 1,50,000                           | Not disclosed under reg.  |

|            |                            |   |                           |                   |   |
|------------|----------------------------|---|---------------------------|-------------------|---|
|            | Holdings Pvt. Ltd.         | depository/Off-market transfer (credit)     | Broking Company           | (0.05%)           | 13(4A) r.w. 13(5) of PIT Reg.   |
| 31/07/2012 | Anjaneya Holdings Pvt. Ltd | Inter depository/Off-market transfer(debit) | Prime Broking Company     | 3,00,000 (0.10%)  | Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.  |
| 27/08/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                           | JM Financial Products Ltd | 50,00,000 (1.68%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.  |
| 28/08/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                           | JM Financial Products Ltd | 36,09,400 (1.21%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under 29(2) r.w. 29(3) of SAST Reg.<br>iii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.<br>iv. Not disclosed under 13(3) of PIT Reg. |
| 29/08/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                           | JM Financial Products Ltd | 8,47,699 (0.29%)  | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.  |
| 24/09/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                           | JM Financial Products Ltd | 20,00,000 (0.67%) | i. 43 days delay in making disclosure to NSE under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT  |
| 31/10/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                           | JM Financial Products Ltd | 12,98,068 (0.44%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.  |
| 01/11/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                           | JM Financial Products Ltd | 17,50,000 (0.59%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.   |
| 02/11/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                           | JM Financial Products Ltd | 54,00,000 (1.82%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under 29(2) r.w. 29(3) of SAST Reg.<br>iii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.<br>iv. Not disclosed under 13(3) of PIT Reg. |
| 06/11/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Revocation                           | JM Financial Products Ltd | 68,69,833 (2.31%) | Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST  |

|            |                            |                   |                                  |                      |   |
|------------|----------------------------|-------------------|----------------------------------|----------------------|---|
| 18/12/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | IL and FS Financial Services Ltd | 16,31,000 (0.55%)    | <ul style="list-style-type: none"> <li>i. 18 days delay in making disclosure to NSE under reg. 31(2) r.w. 31(3) of SAST Reg.</li> <li>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.</li> </ul>   |
| 19/12/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | IL and FS Financial Services Ltd | 10,00,000 (0.34%)    | <ul style="list-style-type: none"> <li>i. 17 days delay in making disclosure to NSE under reg. 31(2) r.w. 31(3) of SAST Reg.</li> <li>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.</li> </ul>   |
| 20/12/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | IL and FS Financial Services Ltd | 22,40,000 (0.75%)    | <ul style="list-style-type: none"> <li>iii. 14 days delay in making disclosure to NSE under reg. 31(2) r.w. 31(3) of SAST Reg.</li> <li>i. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.</li> </ul>  |
| 26/12/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | IDBI Bank Ltd                    | 4,05,45,970 (13.63%) | <ul style="list-style-type: none"> <li>i. Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.</li> <li>ii. Not disclosed under 29(2) r.w. 29(3) of SAST Reg.</li> <li>iii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.</li> <li>iv. Not disclosed under 13(3) of PIT Reg.</li> </ul> |
| 29/01/2013 | Anjaneya Holdings Pvt. Ltd | Off-market Credit | Jyoti N Kasliwal                 | 17,46,000 (0.59%)    | Not disclosed under reg. 13(4A) r.w. 13(5) of PIT   |
| 26/02/2013 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | IL and FS Financial Services Ltd | 1,34,29,000 (4.52%)  | <ul style="list-style-type: none"> <li>i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST</li> <li>ii. Not disclosed under 29(2) r.w. 29(3) of SAST Reg.</li> <li>iii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.</li> <li>iv. Not disclosed under 13(3) of PIT Reg.</li> </ul>          |
| 02/05/2013 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | JM Financial Products Ltd        | 4,35,000 (0.15%)     | <ul style="list-style-type: none"> <li>i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.</li> <li>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.</li> </ul>  |
| 09/05/2013 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | India Debt Management Pvt. Ltd.  | 65,00,000 (2.19%)    | <ul style="list-style-type: none"> <li>i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST</li> <li>ii. Not disclosed under 29(2) r.w. 29(3) of SAST Reg.</li> <li>iii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT</li> </ul>  |

|            |                            |                   |                           |                   |  |
|------------|----------------------------|-------------------|---------------------------|-------------------|--|
|            |                            |                   |                           |                   | Reg.<br>iv. Not disclosed under 13(3) of PIT Reg.  |
| 04/06/2013 | Anjaneya Holdings Pvt. Ltd | Pledge Revocation | JM Financial Products Ltd | 2,90,000 (0.10%)  | Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST   |
| 29/07/2013 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | IDBI Bank Ltd             | 53,80,038 (1.81%) | i. Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.   |
| 25/04/2014 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation | Bank of India             | 85,50,000 (2.87%) | i. Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST<br>ii. Not disclosed under 29(2) r.w. 29(3) of SAST Reg.<br>iii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg.<br>iv. Not disclosed under 13(3) of PIT Reg. |

22. It was also alleged in the SCN that Noticee No. 1 had failed to disclose pledge revocation took place on June 26, 2013 details of which are given below;

|            |                            |                   |           |                   |  |
|------------|----------------------------|-------------------|-----------|-------------------|--|
| 26/06/2013 | Anjaneya Holdings Pvt. Ltd | Pledge Revocation | SICOM Ltd | 15,39,600 (0.52%) | Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST |
|------------|----------------------------|-------------------|-----------|-------------------|--|

23. However, from Annexure A provided by the Noticee along with reply dated October 27, 2017 (at page 17) it is noted that said pledge was revoked on July 02, 2013 instead of June 26, 2013 and disclosure to that effect was made October 10, 2013 (within 7 working days).

#### **Details of pledge transactions of Noticee No. 2 / N Essence Holdings Ltd.**

| Date       | Client Name            | Transaction Type  | Counterparty Name | No. of shares     | Disclosure Requirement   |
|------------|------------------------|-------------------|-------------------|-------------------|--|
| 04/04/2012 | N Essence Holdings Ltd | Pledge Creation   | IDBI Bank Ltd     | 92,25,000 (3.10%) | Not disclosed to exchanges under reg. 31(1) r.w. 31(3) of SAST Reg.    |
| 03/03/2014 | N Essence Holdings Ltd | Pledge Invocation | IDBI Bank Ltd     | 92,25,000 (3.10%) | i. Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg. |

|            |                        |                   |                                 |                   |   |
|------------|------------------------|-------------------|---------------------------------|-------------------|---|
|            |                        |                   |                                 |                   | ii. Not disclosed under Reg 13(4A) r.w. 13(5) of PIT Reg.   |
| 04/03/2014 | N Essence Holdings Ltd | Pledge Invocation | India Debt Management Pvt. Ltd. | 32,00,000 (1.08%) | i. Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under Reg 13(4A) r.w. 13(5) of PIT Reg. |

**Details of pledge transactions of Noticee No. 3 / Sansar Exim Pvt. Ltd.**

| Date       | Client Name         | Transaction Type | Counterparty Name | No. of shares       | Disclosure Requirement  |
|------------|---------------------|------------------|-------------------|---------------------|---|
| 04/04/2012 | Sansar Exim Pvt Ltd | Pledge Creation  | IDBI Bank Ltd     | 1,24,25,000 (4.18%) | Not disclosed to exchanges under reg. 31(1) r.w. 31(3) of SAST Reg. |

**Details of pledge transactions of Noticee No. 4 / Tulja Enterprises Pvt. Ltd.**

| Date       | Client Name                 | Transaction Type  | Counterparty Name                | No. of shares     | Disclosure Requirement  |
|------------|-----------------------------|-------------------|----------------------------------|-------------------|---|
| 30/01/2013 | Tulja Enterprises Pvt. Ltd. | Pledge Invocation | IL and FS Financial Services Ltd | 17,50,000 (0.59%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under Reg 13(4A) r.w. 13(5) of PIT Reg. |
| 26/02/2013 | Tulja Enterprises Pvt. Ltd. | Pledge Invocation | IL and FS Financial Services Ltd | 20,82,500 (0.70%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under Reg 13(4A) r.w. 13(5) of PIT Reg. |

**Details of pledge transactions of Noticee No. 5 / Chamundeshwari Mercantile Pvt. Ltd.**

| Date       | Client Name                         | Transaction Type  | Counterparty Name                | No. of shares    | Disclosure Requirement  |
|------------|-------------------------------------|-------------------|----------------------------------|------------------|---|
| 28/03/2013 | Chamundeshwari Mercantile Pvt. Ltd. | Pledge Invocation | IL and FS Financial Services Ltd | 9,42,500 (0.32%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under Reg 13(4A) r.w. 13(5) of PIT Reg. |

**Details of pledge transactions of Noticee No. 6 / Verve Properties & Investment Pvt. Ltd.**

| Date       | Client Name                   | Transaction Type  | Counterparty Name                | No. of shares     | Disclosure Requirement  |
|------------|-------------------------------|-------------------|----------------------------------|-------------------|---|
| 21/11/2012 | Verve Properties & Investment | Pledge Invocation | IL and FS Financial Services Ltd | 26,50,000 (0.89%) | i. Disclosed in BSE under reg. 31(2) r.w. 31(3) of SAST Reg. but same has not been disclosed in NSE<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg. |

### **Details of pledge transactions of Noticee No. 7 / Ingenious Finance & Investment**

| Date       | Client Name                    | Transaction Type  | Counterparty Name                | No. of shares     | Disclosure Requirement   |
|------------|--------------------------------|-------------------|----------------------------------|-------------------|--|
| 21/11/2012 | Ingenious Finance & Investment | Pledge Invocation | IL and FS Financial Services Ltd | 26,50,000 (0.89%) | i. Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg. |

### **Details of pledge transactions of Noticee No. 8 / Nitin S Kasliwal**

| Date       | Client Name      | Transaction Type  | Counterparty Name                | No. of shares     | Disclosure Requirement  |
|------------|------------------|-------------------|----------------------------------|-------------------|---|
| 28/03/2013 | Nitin S Kasliwal | Pledge Invocation | IL and FS Financial Services Ltd | 14,57,500 (0.49%) | i. Not Disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under Reg 13(4A) and 13(4) r.w. 13(5) of PIT Reg. |

### **Details of pledge transactions of Noticee No. 9/ Jyoti N Kasliwal**

| Date       | Client Name      | Transaction Type  | Counterparty Name         | No. of shares     | Disclosure Requirement   |
|------------|------------------|-------------------|---------------------------|-------------------|--|
| 03/04/2012 | Jyoti N Kasliwal | Pledge Creation   | JM Financial Products Ltd | 17,47,000 (0.59%) | Not disclosed to exchanges under reg. 31(1) r.w. 31(3) of SAST Reg.  |
| 06/11/2012 | Jyoti N Kasliwal | Pledge Revocation | JM Financial Products Ltd | 17,47,000 (0.59%) | The disclosure is available on BSE website on 14/12/2012. NSE has received the disclosure on 28/12/2012.<br><br>Delay of at least 36 working days in making disclosure under reg. 31(2) r.w. 31(3) of SAST |



|            |                  |                   |                                  |                   |  |
|------------|------------------|-------------------|----------------------------------|-------------------|--|
|            |                  |                   |                                  |                   | Reg.   |
| 29/01/2013 | Jyoti N Kasliwal | Offmarket Debit   | Anjaneya Holdings Pvt. Ltd.      | 17,46,000 (0.59%) | Not disclosed under reg. 13(4A) r.w. 13(5) of PIT  |
| 26/02/2013 | Jyoti N Kasliwal | Pledge Invocation | IL and FS Financial Services Ltd | 14,64,000 (0.49%) | i. Not disclosed to exchanges under reg. 31(2) r.w. 31(3) of SAST Reg.<br>ii. Not disclosed under reg. 13(4A) r.w. 13(5) of PIT Reg. |

24. I have also perused the undisputed Annexure II of the SCN (copy of e-mail dated December 22, 2014, January 2, 2015, January 3, 2015 and February 5, 2015 of the NSE) and observed that the NSE vide aforesaid e-mails had confirmed that no disclosures or belated disclosures in respect to pledge related transactions and off market transfers (as shown in tables above) were made by the Noticees to NSE under SAST Regulations and PIT Regulations.

25. I have meticulously gone through the Annexure A enclosed by the Noticees along with their common reply dated October 27, 2017 {containing 97 pages (paginated as 6-102)} and observed that in respect of transactions for which disclosures were not made (as shown in tables above), the Noticees had made such disclosures only on October 26, 2016 i.e. after delay of around 2 ½ to 4 ½ years of the respective transactions.

26. Further, it is also noted that for certain transactions as shown in table below, no proof of making disclosures upon change of more than 2% shareholding from the last disclosures (in a Quarter) / pledge transactions has been provided by the Noticee No. 1.

| Date       | Client Name                | Transaction Type | Counterparty Name         | No. of shares (% of shareholding) | Disclosure Requirement  |
|------------|----------------------------|------------------|---------------------------|-----------------------------------|---|
| 03/04/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Creation  | JM Financial Products Ltd | 5,50,00,000 (18.49%)              | Not disclosed to exchanges under reg. 31(1) r.w. 31(3) of SAST Reg. |
| 31/07/2012 | Anjaneya                   | Inter            | Prime Broking             | 3,00,000                          | Not disclosed under reg. 13(4A)                                     |

|            |                            |   |                                  |                      |   |
|------------|----------------------------|---|----------------------------------|----------------------|---|
|            | Holdings Pvt. Ltd          | depository/ Off-market transfer(de bit) | Company                          | (0.10%)              | r.w. 13(5) of PIT Reg.                            |
| 27/08/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | JM Financial Products Ltd        | 50,00,000 (1.68%)    | Not disclosed under 29(2) r.w. 29(3) of SAST Reg. |
| 28/08/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | JM Financial Products Ltd        | 36,09,400 (1.21%)    |   |
| 31/10/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | JM Financial Products Ltd        | 12,98,068 (0.44%)    | Not disclosed under 29(2) r.w. 29(3) of SAST Reg. |
| 01/11/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | JM Financial Products Ltd        | 17,50,000 (0.59%)    |   |
| 02/11/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | JM Financial Products Ltd        | 54,00,000 (1.82%)    |   |
| 26/12/2012 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | IDBI Bank Ltd                    | 4,05,45,970 (13.63%) | Not disclosed under 29(2) r.w. 29(3) of SAST Reg. |
| 26/02/2013 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | IL and FS Financial Services Ltd | 1,34,29,000 (4.52%)  | Not disclosed under 29(2) r.w. 29(3) of SAST Reg. |
| 09/05/2013 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | India Debt Management Pvt. Ltd.  | 65,00,000 (2.19%)    | Not disclosed under 29(2) r.w. 29(3) of SAST Reg. |
| 25/04/2014 | Anjaneya Holdings Pvt. Ltd | Pledge Invocation                       | Bank of India                    | 85,50,000 (2.87%)    | Not disclosed under 29(2) r.w. 29(3) of SAST Reg. |

27. In respect to the non disclosures, the Noticees had contended that since they were not informed or were not knowing as to when such pledged shares were invoked by the lenders as the lenders invoked pledge unilaterally; and hence, they could not inform the Company or the Stock Exchange regarding such invocation of pledge.

28. I do not agree with the aforesaid contention regarding “knowledge/intimation” of invocation of pledge transactions on the two following grounds. Firstly, as per the bare reading of regulation 31 (3) of the SAST Regulations, the disclosures are required to be made “*within seven working days from the creation or invocation or release of encumbrance*”. The said regulation clearly stipulates the mandatory requirement of disclosures to be made from the day of creation / invocation / release of pledge and does not leave any scope of “*knowledge / intimation*” as prior condition for the person who is required to make such disclosures. Had the

“knowledge / intimation” been the intent of the statute then, it would have been very well incorporated in the SAST Regulations itself.

29. Secondly, while making / creating pledge of shares by the borrower, certain terms / condition as well as the timeline of invocation of pledged shares in case of breach in making payment/loan are pre fixed between the borrower and the lender. Needless to say that if such time line towards the pledged shares are there, then, the borrower (the Noticees) are supposed to know the day / timeline after which invocation of pledged share may take place by the lender upon breach of payment.
30. Thirdly, the manner of creation / invocation of pledge has been laid down in regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as ‘**DP Regulations**’). For the purpose of invocation, regulation 58 (8) and 58 (9) warrants hereunder;

*(8) Subject to the provisions of the pledge document, the pledgee may invoke the pledge and on such invocation, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.*

*(9) After amending its records under sub-regulation (8) the depository shall immediately inform the participants of the pledger and pledgee of the change who in turn shall make the necessary changes in their records and inform the pledger and pledgee respectively.*

31. It is clear from the aforesaid provision of the DP Regulations that it is the duty of the Depository towards the Participant and in turn of Participants towards the pledger / pledgee, to immediately inform about such invocation. The intent of the statute in respect of word “immediately” should be construed in true sense and it is expected that such invocation have been informed to the pledger / pledges immediately.
32. Therefore, if the argument advanced by the Noticees is accepted, then, the very purpose of aforesaid SAST Regulations would be defeated. Hence, the

submission of the Noticees regarding “intimation / knowledge” of invocation of pledge, is not acceptable.

33. The Noticees also submitted that news regarding sale of shares by the lenders was widely reported by the press and therefore, the same was in the public domain. The aforesaid submission would not support the Noticees as the disclosures under Regulation 29(2) read with 29(3), Regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(4) and 13(4A) read with 13(5) of PIT Regulations are required to be made mandatorily to the Company as well as to the Stock Exchanges. I am of the view that if a well-defined procedure is prescribed for making disclosures, then, it should be made in that manner only and therefore plea that such sale of shares by the lenders was in public domain, is not acceptable at all.

34. In this context, I would also like to refer the judgment of the Hon'ble SAT in case of ***Premchand Shah & Others*** v. ***SEBI*** (Appeal No. 192 of 2010) decided on February 21, 2011, wherein, it was held as-

*“..... When law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all. Both sets of regulations prescribe formats in which the disclosures are to be made and those are then put out for the information of the general public through special window(s) of the stock exchange which did not happen in this case”.*

35. Further, the Noticees had contended that there was no malafide intention in not making disclosures and these were technical / administrative lapses. The Noticees also contended that they did not make any pecuniary gains by failing to disclose the invocation of pledge by lenders or no loss was caused to the investors. The aforesaid contention are not accepted as the requirement of disclosures are mandatory in nature. The correct and timely disclosures under SAST Regulations / PIT Regulations are 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.

36. Here, I find it pertinent to refer to the judgment of Hon'ble SAT in the matter of *Akriti Global Traders Ltd. v. Securities and Exchange Board of India* (Appeal No. 78 of 2014 dated September 30, 2014) wherein it was held that - “.... firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon the intention of parties....”.

37. Further, the Hon'ble SAT in the matter of *Komal Nahata v. Securities and Exchange Board of India* (Appeal No. 5 of 2014 dated January 27, 2014) held that- “Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”

38. The Noticees also took a plea that they have not been provided with copies of any report relating to the examination conducted by SEBI for the period March 1, 2012 to April 30, 2014. The aforesaid plea is without any merit as all the relevant documents to respond the allegations have already been provided to them along with SCN. Moreover, as observed above, the transactions details are not disputed by the Noticees.

39. The submission of the Noticees that they did not create any pledge or security to avail loan in their individual capacity; rather, they pledged their equity holdings in the Company to the lenders who advanced loans to the Company, has no relevance in view of the above observations. Needless to say that the transactions / pledge were made by the Noticees in respect of their individual shareholding in the Company and accordingly, being the Promoters of the Company / S Kumars (Noticee No. 8 was Promoter as well as Director of the

Company), they were required to make disclosures as stipulated under SAST Regulations and PIT Regulations.

40. Further, the Noticees submitted that due to financial distress faced by the Company they were unable to engage the services of professionals including Company Secretaries / Chartered Accountants to ensure timely disclosures; and that the Company has been referred to BIFR and provisional liquidator has been appointed. The aforesaid submissions are without any merit as their individual disclosure requirement is independent of Company's financial situation or pending before BIFR.

41. In light of the observations made regarding non disclosures / belated disclosures at pre para / tables, it is concluded that the Noticees had failed to make the required disclosures in respect of pledge transactions / off market transactions and made disclosures very belatedly; and accordingly the Noticee had violated the provisions of laws as shown in table below;

| Noticees      | Violations  |
|---------------|---|
| Noticee No. 1 | Regulation 29(2) read with 29(3) and Regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(3) and Regulation 13(4A) read with 13(5) of PIT Regulations. |
| Noticee No. 2 | Regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 3 | Regulation 31(1) read with 31(3) of SAST Regulations.   |
| Noticee No. 4 | Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 5 | Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 6 | Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 7 | Regulation 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 8 | Regulation 31(2) read with 31(3) of SAST Regulations and Regulation 13(4), 13(4A) read with 13(5) of PIT Regulations.   |
| Noticee No. 9 | Regulation 31(1), 31(2) read with 31(3) of SAST Regulations and Regulation 13(4A) read with 13(5) of PIT Regulations.   |

## **ISSUE No. 2 & 3**

**Whether said violation attracts monetary penalty under sections 15 A (b) of the SEBI Act? AND What would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (3) of the Adjudication Rules?**

42. As the violation of regulation 29(2) read with 29(3), regulation 31(1), 31(2) read with 31(3) of SAST Regulations and regulation 13(3), 13(4), 13(4A) read with 13(5) of PIT Regulations stood established against the Noticees and after taking into account the facts and circumstance of the case, I am of the view that this is fit case to impose monetary penalty against the Noticees for the aforesaid violations.

43. I have taken into account the well-known judgment of the Hon'ble Supreme Court in the matter of **SEBI v Shri Ram Mutual Fund** [2006] 68 SCL 216, wherein it was held that- *"In our considered opinion, penalty is attracted as soon as contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of parties committing such violations becomes wholly irrelevant."*

44. It is relevant here to mention the judgment of the Hon'ble SAT in case of Millan Mahendra Securities Pvt. Ltd. vs. SEBI (Appeal No. 66/2003 decided on November 15, 2006) wherein it was observed that *the purpose of the SAST Regulation is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market, and therefore, it cannot be subscribed to the view that the violations are technical in nature.*

45. Thus, the aforesaid violation committed by the Noticees makes them liable for penalty under Section 15 A (b) of SEBI Act, 1992 which read as follows:

**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;

46. While determining the quantum of penalty under sections 15 A (b), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads 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.”*

47. No specify disproportionate gains or unfair advantage made by the Noticees or the specific loss suffered by the investors due to such non / delayed disclosures is available on records; and repetition of the default is not shown on records. However, it is noted that there was non disclosure / huge delay in making the required disclosures (viz. delay of around 2 ½ years to 4 ½ years). It is also noted that there were 23 instances as mentioned in table above wherein the Noticee No. 1 had failed to make disclosures or made belated disclosures and in respect of Noticee No. 2-9, there were 1-4 instances of such non disclosures/belated disclosures. Further, I cannot ignore to mention that the



main objective of the SAST Regulations / PIT Regulations is to achieve fair treatment by *inter alia* mandating timely disclosures to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies. 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.

48. I cannot lose sight that in a recent judgment, the Hon'ble SAT in case of *United Breweries (Holding) Ltd. vs. SEBI (decided on September 25, 2017 under Appeal No. 20/2016)* upheld the monetary penalty of ` 15 Lakh imposed upon the appellant for such non-disclosure of pledge related transactions. In view of aforesaid, a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

## ORDER

49. After taking into consideration all the aforesaid facts / circumstances of the case and the aforesaid mitigating factors, therefore, in exercise of the powers conferred upon me under section 15 I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby under section 15 A (b) of the SEBI Act, impose penalty upon the Noticees as shown in table below;

| Name of the Noticee                         | Amount of Penalty                                    | For Violations of  |
|---|--|--|
| Anjaneya Holdings Pvt. Ltd. (Noticee No. 1) | ` 15,00,000/- (Rupees Fifteen Lakh only)             | Regulation 29(2) read with 29(3), regulation 31(1), 31(2) read with 31(3) of SAST Regulations. |
|   | ` 15,00,000/- (Rupees Fifteen Lakh only)             | Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.                                   |
|   | <b>Total ` 30,00,000/- (Rupees Thirty Lakh only)</b> |  |
| N Essence Holdings Ltd. (Noticee No. 2)     | ` 2,00,000/- (Rupees Two Lakh only)                  | Regulation 31(1), 31(2) read with 31(3) of SAST Regulations.                                   |

|   |   |  |
|---|---|--|
|   | ` 2,00,000/- (Rupees Two Lakh only)               | Regulation 13(4A) read with 13(5) of PIT Regulations.        |
|   | <b>Total ` 4,00,000/- (Rupees Four Lakh only)</b> |  |
| Sansar Exim Pvt. Ltd. (Noticee No. 3)                   | ` 2,00,000/- (Rupees Two Lakh only)               | Regulation 31(1) read with 31(3) of SAST Regulations.        |
| Tulja Enterprises Pvt. Ltd.(Noticee No. 4)              | ` 2,00,000/- (Rupees Two Lakh only)               | Regulation 13(4A) read with 13(5) of PIT Regulations.        |
| Chamundeshwari Merchantile Pvt. Ltd. (Noticee No. 5)    | ` 2,00,000/- (Rupees Two Lakh only)               | Regulation 13(4A) read with 13(5) of PIT Regulations.        |
| Verve Properties & Investment Pvt. Ltd. (Noticee No. 6) | ` 2,00,000/- (Rupees Two Lakh only)               | Regulation 13(4A) read with 13(5) of PIT Regulations.        |
| Ingenious Finance & Investment (Noticee No. 7)          | ` 2,00,000/- (Rupees Two Lakh only)               | Regulation 13(4A) read with 13(5) of PIT Regulations.        |
| Nitin S Kasliwal (Noticee No. 8)                        | ` 1,00,000/- (Rupees One Lakh only)               | Regulation 31(2) read with 31(3) of SAST Regulations.        |
|   | ` 1,00,000/- (Rupees One Lakh only)               | Regulation 13(4), 13(4A) read with 13(5) of PIT Regulations. |
|   | <b>Total ` 2,00,000/- (Rupees Two Lakh only)</b>  |  |
| Jyoti N Kasliwal (Noticee No. 9)                        | ` 2,00,000/- (Rupees Two Lakh only)               | Regulation 31(1), 31(2) read with 31(3) of SAST Regulations. |
|   | ` 2,00,000/- (Rupees Two Lakh only)               | Regulation 13(4A) read with 13(5) of PIT Regulations.        |
|   | <b>Total ` 4,00,000/- (Rupees Four Lakh only)</b> |  |

50.I am of the view that the aforesaid penalty would commensurate with the violations committed by the Noticees.

51. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below;

| Account No. for remittance of penalties levied by Adjudication Officer |  |
|--|--|
| Bank Name  | State Bank of India                                |
| Branch   | Bandra-Kurla Complex                               |
| RTGS Code  | SBIN0004380  |
| Beneficiary Name   | SEBI – Penalties Remittable To Government of India |
| Beneficiary A/c No.  | 31465271959  |

52. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Enforcement Department – Division of Regulatory Action – I 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 at e-mail ID- [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

| Date | Department of SEBI | Name of Intermediary/ Other Entities | Type of Intermediary | SEBI Registration Number (if any) | PAN | Amount (in `) | 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 |
|------|--------------------|--------------------------------------|----------------------|-----------------------------------|-----|---------------|---|---|--------|
|------|--------------------|--------------------------------------|----------------------|-----------------------------------|-----|---------------|---|---|--------|

53. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

**Date: February 15, 2018**

**(RACHNA ANAND)**

**Place: Mumbai**

**GENERAL MANAGER &  
ADJUDICATING OFFICER**