BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/MG/2019-20/5211]

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

In respect of

Transnational Growth Fund Limited
(PAN: AAACT0610Q)

In the matter of Apoorva Leasing Finance and Investment Company Limited

---

BACKGROUND OF THE CASE

1. The Bombay Stock Exchange (herein after referred to as '**BSE**') vide letter dated January 11, 2017, informed Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') that shareholding of one Transnational Growth Fund Limited (hereinafter referred to as '**Noticee/ by Name'**), in the scrip of Apoorva Leasing Finance and Investment Company Limited (hereinafter referred to as '**Apoorva/ Company/ Target Company**') has reduced substantially. However, the Noticee has not made required disclosures in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**'). Thereafter, the SEBI conducted an examination, in the scrip of Apoorva, which is listed on the BSE.

2. SEBI observed that the Noticee was holding more than 5% paid up share capital of Apoorva in the calendar quarter ending on September 30, 2016. Further, the Noticee has disposed of more than 2% paid up share capital of the Target Company on November 08, 2016. The aforesaid disposal of shares was required to be disclosed by the Noticee, to the Company and BSE, within two days of disposal, in terms of Regulation 29(2) of the SAST Regulations. However, SEBI observed that the Noticee made the required disclosure with delay on September 21, 2018. In view of the same, SEBI has initiated adjudication proceedings under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**'), against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide order dated May 24, 2019 under section 19 read with section 15I(1) of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with section 15I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice SEBI/EAD/AA/MKG/16618/2019 dated June 28, 2019 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The details in respect of the alleged violation by the Noticee are as given below:

SEBI observed that the Noticee has sold 21,71,000 of the Target Company (10.86% of paid up share capital of the Company) on November 8, 2016.

Date of transaction	***% of holding pre transaction***	***No. of shares sold***	***% of holding post transaction***	***Due date of disclosure required under 29(2) read with 29(3)***	***Actual date of disclosure***	***No. of days delayed***
November 08, 2016	*10.86*	*21,71,000*	*0*	*November 10, 2016*	*September 21, 2018*	*680*

As the Noticee was holding more than 5% paid up share capital of the Target Company prior to, aforesaid disposal and it has disposed off shares amounting to more than 2% of paid up share capital of the Company, the Noticee was required to make disclosure to the Company and stock exchange in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations by November 10, 2016. However, in this regard, it is alleged that the Noticee has made disclosure, on September 10, 2018, which is after a delay of 680 days. Therefore, in view of the above observations, it is alleged that Noticee has violated provisions of Regulation 29(2) read with 29(3) of SAST Regulations. The Noticee was given 15 days' time to file reply to the SCN.

6. The SCN issued to the Noticee was duly served upon the Noticee; however, no reply to the SCN was received. Thereafter, the Noticee was granted an opportunity of personal hearing on August 08, 2019 vide hearing notice dated July 22, 2019, in the interest of principles of the natural justice. The Authorized Representative (herein after referred to as '**AR**') of the Noticee vide its letter dated August 05, 2019 informed that they are considering filing of an application for settlement with SEBI in the matter and sought for an extension of four weeks for hearing opportunity. The Noticee was granted another opportunity of personal hearing on September 17, 2019 vide email dated August 08, 2019. The AR vide

email dated August 20, 2019 informed that the Noticee has filed an application for settlement with SEBI on August 19, 2019 and requested to keep instant proceedings in abeyance till disposal of the application for settlement. The AR vide email dated September 12, 2019 again requested to keep the matter in abeyance. Thereafter, the Noticee was granted final opportunity of hearing on October 01, 2019 vide email dated September 24, 2019. The AR attended the hearing on the scheduled date and made their submissions. Further, the AR was granted time till October 09, 2019 to file written submissions in the matter. The Noticee, vide email dated October 09, 2019, submitted reply to the SCN and *inter alia* made the following submissions:

i. *The Noticee submitted that the counterparty of the impugned sell trade Noticee viz. Varima Exports Private Limited had made requisite disclosure to the Stock Exchange with respect to the transaction within time and therefore the information regarding transaction was available in public domain.*
ii. *That the transaction of the Noticee was a bulk deal and the information relating to the said bulk deal was disseminated on the website of the BSE. Therefore, a separate disclosure requirement in terms of Regulation 29(2) of SAST Regulations was merely a procedural requirement.*
iii. *That the scrip is highly illiquid at the relevant time and therefore no prejudice caused to any of the investor/shareholder.*
iv. *That the Application for settlement dated August 09, 2019 filed by the Noticee, in the instant matter, is returned by SEBI.*
v. *That the noncompliance by the Noticee was on the account of unawareness of the relevant provisions of SAST Regulations.*
vi. *That the said noncompliance was purely technical & procedural and not intentional.*
vii. *That the Noticee has not made any gains or unfair advantage by not disclosing. Further, no investors or group of investors have suffered any loss due to noncompliance of the Noticee.*
viii. *That there is no complaint from any investors against the Noticee in this regard.*
ix. *That the said noncompliance is not repetitive in nature.*
x. *That the Noticee is first time offender and it has a clean track record.*

xi. The Noticee prayed that the present proceedings be disposed off with a minimal/nominal token penalty. The Noticee cited few SEBI AO orders in support of its request of minimum penalty.

CONSIDERATION OF ISSUES

7. I have carefully perused the charges levelled against the Noticee, his reply and the documents/material available on record. The issues that arise for consideration in the present case are:

   (a) Whether the Noticee has violated Regulation 29(2) read with regulations 29(3) of SAST Regulations?
   (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
   (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee, after taking into consideration the factors mentioned in section 15J of the SEBI Act?

8. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations as below:

Relevant provisions of SAST Regulations:

Disclosure of acquisition and disposal

29.(1) ……...

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

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

9. The first issue for consideration is whether the Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulation. I note from the available records that prior to the selling of shares, of the Target Company, on November 8, 2016, the Noticee was holding 21,71,000 shares of the Target Company (10.86% of paid up share capital of the Company) i.e., more than 5% paid-up share capital of the company. Further, on November 8, 2016, the Noticee has sold 21,71,000 shares of the Target Company (10.86% of paid up share capital of the Company) which is more than 2% of paid-up share capital of the company.

10. A combined reading of Regulation 29(2) and Regulation 29(3) of SAST Regulations says that any person who is holding 5% or more than 5% of paid up share capital in the target company, shall disclose the number of shares held and change in shareholding to - (a) every stock exchange where the shares of the Target Company are listed; and (b) the Target Company at its registered office, within two working days, from receipt of intimation of the disposal of shares in the target company, when there is a change in its shareholding and such change exceeds 2% of total shareholding. Therefore, the Noticee was required to make disclosures in this regard to the stock exchange and Apoorva, within two working days from the transaction, in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations. Further, I note from the records that the Noticee has made required disclosure in the instant matter on September 21, 2018 i.e. after a huge delay of 680 days.

11. I note that the Noticee has not disputed facts of the matter and it has submitted that the noncompliance was unintentional, technical in nature and it has not made

any gains or unfair advantage by not disclosing. In the matter of Virendra kumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 order dated October 14, 2014), Hon'ble SAT observed that *"……. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."* Therefore, I am of the view that the importance of disclosure obligations cannot be undermined by saying that they are unintentional and merely technical in nature.

12. Further, the Noticee submitted that the counterparty of the impugned sell trade of the Noticee had made requisite disclosure to the Stock Exchange with respect to the transaction within time and the transaction being a bulk deal was also disseminated on the website of the BSE. Therefore, the information with respect to sell transaction of the Noticee was in the public domain. In this context, I would also like to rely on observation of Hon'ble SAT in Premchand Shah and Others V. SEBI (Appeal no. 192 of 2010 dated February 21, 2011), wherein it was held that *"…….When a law prescribes a manner in which a thing is to be done, it must be done only in that manner……. Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments …… ".* In view of the above, the argument of the Noticee is not acceptable.

13. I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and the penalty is imposed for the non-compliance with the mandatory obligation. The Hon'ble SAT

in its order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that "*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations ……. if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations*". Such obligations are created under respective regulations by SEBI in order to enable investors to take informed investment decisions. The purpose of these disclosures is to bring about transparency in the transactions of Directors/ Promoters/Acquirers and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs. SEBI (Appeal No. 209 of 2014 order dated August 11, 2014), observed *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

14. Therefore, I find that the allegation of the violation of Regulation 29(2) read with 29(3) of SAST Regulations by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

15. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act, which reads as under:

SEBI Act

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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

16. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the relevant factors as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. 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.

17. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the failure of the Noticee in making disclosures or the consequent loss caused to investors as a result of the default. The Noticee has failed to make required disclosures in terms of Regulation 29(2) read with 29(3) of SAST Regulation on one occasion as brought out above.

ORDER

18. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs. 2,00,000/- (Rs. Two Lakh only) on the Noticee viz. Transnational Growth Fund Limited in terms of the provisions of Section 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

19. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way, such as by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

20. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA- III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

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

22. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Transnational Growth Fund Limited and also to the Securities and Exchange Board of India.

Date: October 25, 2019 **Dr. ANITHA ANOOP**

Place: Mumbai **ADJUDICATING OFFICER**