BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-5/SVKM/AO/39/2017-18]

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 BY ADJUDICATING OFFICER) RULES, 1995

In respect of

Narois Impex Private Limited

(**PAN: AADCN1076D**)

In the matter of Mahan Industries Limited

BACKGROUND IN BRIEF

1. Securities and Exchange Board of India (**SEBI**) conducted investigation into the irregular transactions in the shares of Mahan Industries Limited (hereinafter referred to as "**MIL/company**"). As on December 31, 2009, MIL had issued & paid-up capital of 71,50,000 shares of ₹10/- each. On January 4, 2010 MIL made a preferential allotment of convertible equity warrants for ₹30 crores. On January 15, 2010, MIL split its one share of ₹10/- each into 10 equity shares of ₹1/- each and as a result, company had issued & paid-up capital of ₹ 7,15,00,000/- divided into 7,15,00,000 shares of ₹1/- each and outstanding convertible equity warrants of ₹30 crores. On February 20, 2010, the Board of Directors of MIL decided that convertible warrants, where full amount of consideration was received by the company, shall be converted into equal number of shares of ₹1/- each. Accordingly, on February 20, 2010, MIL made allotment of 24,85,00,000 shares of ₹1/- each to the preferential allottees of the convertible equity warrants. Therefore, on February 20, 2010 MIL

had issued & paid-up capital of 32,00,00,000 shares of ₹1/- each and outstanding convertible preferential warrants worth ₹5,15,00,000/-

2. The details of the shares acquired by Narois Impex Private Limited (hereinafter referred to as "**Noticee**") pursuant to conversion of equity warrants into equity share of ₹1/- each by MIL on February 20, 2010 and its percentage to the issued capital of MIL as on that date was as under:

Name	No. of shares allotted	% of shares to the issued capital of the company (32,00,00,000 shares of ₹ 1/- each)
Narois Impex Pvt. Ltd.	1,66,75,000	5.21

3. Since the acquisition of shares by the noticee on February 20, 2010 entitled them to more than the threshold limits (5%) of shares or voting rights of MIL as stipulated under regulations 7(1) and 7(1A) read with regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **"SAST Regulations, 1997"**), Noticee was under obligation to make disclosure about its aggregate shareholding or voting rights in the MIL to MIL as well as to BSE within 2 days of transaction. Since no such disclosures, as stipulated by the afore-mentioned regulations, for the said transaction dated February 20, 2010 was made by the Noticee, it was alleged that the Noticee violated the provisions of regulations 7(1) and 7(1A) read with regulation 7(2) of SAST Regulations, 1997.

4. Further, since pursuant to conversion of equity warrants into equity share of ₹1/- each by MIL on February 20, 2010, noticee held 5% or more shares of MIL, Noticee was also under an obligation to make disclosure about their shareholding or voting rights in the MIL to MIL in Form A within 2 days of the transaction as stipulated by Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 **(PIT Regulations,**

1992). Since no such disclosure was made by the Noticee, it was alleged that the Noticee violated the provisions of regulation 13(1) of PIT Regulations, 1992.

5. During the course of investigation, Noticee was issued

i. summons no. WRO/NP/CF/MIL/0349/2013 dated February 22, 2013 under section 11C(3) of the SEBI Act to furnish certain information, as mentioned in the Annexure to the summons, before the Investigation Authority (**IA**) and

ii. summons no. WRO/NP/CF/MIL/0591/2013 dated March 08, 2013 under section 11C(5) of the SEBI Act to appear in person before the IA on March 20, 2013 to answer questions in relation to the investigation.

6. It was alleged that the noticee did not furnish complete information as required under the summons dated February 22, 2013 nor did it appear on the scheduled date and time before the IA as required under the summons dated March 08, 2013 in violation of the provisions of section 11C(3) and 11C(5) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**").

APPOINTMENT OF ADJUDICATING OFFICER

7. Shri A. Sunil Kumar was appointed as the Adjudicating Officer to inquire and adjudge under section 15A(a) and 15A(b) of the SEBI Act, 1992, the alleged violations of provisions of regulations 7(1) and 7(1A) read with regulation 7(2) of SAST Regulations, 1997; read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**SAST Regulations, 2011**), Regulation 13(1) of PIT Regulations, 1992 and Section 11C(3) and 11C(5) of the SEBI Act, 1992,

by the noticee. Subsequent to the transfer of Shri A. Sunil Kumar, the undersigned is appointed as Adjudicating Officer, in the present matter, vide order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. Show Cause Notice no. EAD-5/ADJ/ASK/AA/OW/28878/2014 dated October 01, 2014 (hereinafter referred to as "**SCN**") was issued to the noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') read with section 15I of SEBI Act, 1992 to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(a) and 15A(b) of SEBI Act, 1992 for the alleged violations specified in the SCN. Copies of the documents relied upon in the SCN were also provided to the Noticee along with the SCN.

9. The SCN was duly delivered to the noticee but no reply to the SCN was submitted by the noticee. Thereafter, Noticee was given opportunities of personal hearing on December 19, 2014, January 16, 2015 and January 28, 2015. Finally, the Noticee attended the personal hearing on January 28, 2015 through Ms. Rinku S Valanju, Advocate. During the course of hearing, she submitted a copy of the noticee's reply dated January 27, 2015 in response to SCN and reiterated the same. It was also submitted that the noticee is contemplating the option of filing consent application in the matter for settlement of the adjudication proceedings and sought time of 10 days for filing the same.

10. The summary of submissions of the noticee with respect to specific charges alleged in the SCN are as follows:

- *There is considerable delay of about 4 years in issuing the SCN as the conversion of the impugned convertible warrants pertain to February 2010 and SCN is issued in October 2014. Hence the same is in gross violation of principles of natural justice.*

- *Noticee was allotted 16,67,500 convertible equity warrants for ₹1,66,75,000/- of MIL on 04.01.2010. The said warrants got converted into 1,66,75,000 equity shares on 22.02.2010 constituting 5.21% of the issued capital of the company at the relevant time. As per company's notice dated 05.11.2009 to the shareholders our post preferential issue shareholding was to become 4.49% of total equity capital. However, it appears that instead of complete conversion of 3 crore warrants (Rs. 30 crores) the conversion of 24,85,00,000 warrants (Rs. 24.85 crores) took place in February 2010 and hence noticee's holding became 5.21% instead of 4.49% as planned earlier.. Further, the remaining 5,15,00,000 warrants got converted into equity shares in May 2010 and accordingly the noticee's holding got reduced to 4.49% as mentioned in the notice dated 05.11.2009. Hence our shareholding crossed 5% only for a brief period of 2 months and the disclosure for the same has been made to BSE on January 24, 2015.*

- *It has been alleged in the SCN that Shri Mitesh Chandrakant Shah and Shri Sagar Dinesh Patel were common directors of the Noticee and M/s Enakshi Impex Pvt. Ltd. (Enakshi) and shared a common address and thus they were person acting in concert in acquisition of MIL shares. It is pertinent to mention that there were other directors too and Mr. Mitesh Shah and Mr. Sagar Patel were not the only directors as stated in the notice.*

- *It did not act in concert with Enakshi as they did not share any common objective to acquire shares, there was no intention to gain control over the target company, there was no agreement or understanding, they did not directly or indirectly co-operate to acquire or agree to acquire shares or voting rights or control. Hence the noticee was not required to make any disclosure on the basis of abstract concept of PAC.*

- *Persons cannot become PACs by way of subscribing to preferential allotment. If a company allots warrants to several persons directly (or prescribed payment received from each of them), they cannot be deemed/treated as PAC. The allottees have privity with the company and no privity exists inter-se among themselves. It is not clarified as to who all were PAC, purpose of acting, how and in what way they were acting, objective of acting and what was the outcome of such acting in*

concert. Persons acting in concert may be transaction specific – in that event transaction need to be specified.

- *The noticee was required to make disclosure under SAST Regulations, 1997 and PIT Regulations, 1997 about its holding as on 22.02.2010. Noticee was not aware about its obligations to disclose its shareholding on conversion of warrants. This is unintended, inadvertent, minor and technical issues on our part. However, the company had made this disclosure to BSE in its quarterly disclosure for the quarter ended March 2010.*

- *The lapse was on account of partial conversion of convertible equitable warrants by the company and hence no fault can be found with the noticee's conduct. Noticee had no control of the said conversion.*

- *There was change in the management of the noticee which led to delay in submission of all the details.*

- *Noticee alongwith the reply also submitted various information / documents sought for by the Investigating Officer vide summons. It was also pointed out that the said documents were not relevant for the purpose of levying of charges relating to non-disclosures under SAST and PIT Regulations and nor it is shown that in the absence of these documents how the investigation process was hampered or adversely affected or delayed.*

Mitigating factors

a) The noticee has not violated any substantive provision of law.
b) The noticee is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law.
c) The noticee has not viewed the regulatory proceedings in a nonchalant manner.
d) The noticee has not made any unfair gain or advantage in any manner.
e) The lapse of non-disclosure on the part of the noticee is not repetitive in nature.

- *In view of the above, noticee has submitted that it has not violated provisions of SAST and PIT Regulations.*

- *Noticee also referred to para 22 of Bharjatiya Steel Industries v Commissioner of Sales Tax, U.P. {(2008) 11 SCC 617}.*

11. As per the records, the consent application filed by the noticee was rejected by SEBI. The undersigned, after being appointed as Adjudicating Officer in the present matter, also gave opportunities of hearing to the Noticee on July 21, 2015 and August 11, 2015. The hearing scheduled on August 11, 2015 was attended by the ARs who reiterated the submissions made vide letter dated January 27, 2015. Noticee made the following additional submissions in the personal hearing:

- *Mr. Mitesh Shah and Mr. Dinesh Patel were not the common directors as alleged in the SCN rather they became directors only on May 18, 2010 i.e. much after the acquisition of shares. In this regard, Form 32 filed with MCA was also submitted.*
- *Nothing much can be read into the common addresses of the noticee and Enakshi, as the definition of deemed PAC does not include persons having common address. There was no common objective/intention for acquisition of shares by the noticee as these acquisition were involuntary due to conversion and not by any active acquisition*

12. It was also admitted that summons dated February 22, 2013 were received by them and that they had submitted partial information vide letter dated March 02, 2013. However, as regards, the summons dated March 08, 2013 for personal appearance, the ARs requested for inspection of acknowledgement of the said summons. ARs also requested one week time for filing additional submissions from the date of completion of inspection.

13. Vide letter dated August 31, 2015 noticee made the additional submissions as regards the charges in the SCN. Summary of the same is as under:

- *There were change in the management of the company twice and hence there was a technical problem and the noticee company took time to submit certain details. However, the noticee has furnished substantial details and non-submission of certain details had no*

adverse effect on securities market/general investors. The details of change in the directors of the noticee company during January 2010 till December 2014 was also submitted.

- *Information called vide summons were irrelevant for the purpose of charge of PIT/SAST. SCN does not show/explain how the investigation of SEBI was hampered in the absence of non-submission of details by the noticee.*
- *Regulation 7(1A) of SAST Regulations, 1997 is not attracted in the present case, since the noticee does not fall under Regulation 11(1) and proviso to Regulation 11(2) of SAST Regulations, 1997 which is a condition for Regulation 7(1A) of SAST Regulations, 1997.*
- *The concept of PAC does not apply to the noticee and there was no evidence to prove that the noticee acted in concert with other entities for the purpose of substantial acquisition of shares as alleged or otherwise and all the characteristic of PACs are missing in the present case.*

14. Vide letter dated November 30, 2015, opportunity of inspection of acknowledgement of summons dated March 08, 2013 was provided to the noticee on December 08, 2015. Ms. Rinku Valanju, advocate, inspected the documents. After inspection, copy of the summons dated March 08, 2013 and proof of delivery issued by SEBI was also provided. No further submissions post the inspection was made by the noticee. Another opportunity of hearing, post inspection of documents was granted to the Noticee on January 07, 2016 which was attended by their advocate Ms. Rinku Valanju. As regards the violation of section 11C(5) of SEBI Act, 1992, it was acknowledged by the counsel that the said summons were served on the noticee.

15. Vide letter dated August 09, 2016, Noticee forwarded a copy of the order dated July 14, 2016 of Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of *Concord Realty Private Limited vs. SEBI* (Appeal No. 22 of 2016), having identical facts, same cause of action in the same scrip

wherein Hon'ble SAT had held qua the appellant therein that "….*failure to make disclosure during the period from February 20, 2010 till May 2010 cannot be attributed to the appellant, and therefore, the appellant cannot be held guilty of violating the 1997 Regulations and PIT Regulations. Consequently, penalty imposed under section 15A(b) of SEBI Act on ground that that the appellant has violated the 1997 Regulations and PIT Regulations cannot be sustained*." It was contended that the said order of Hon'ble SAT is applicable in their case also.

16. Considering that more than three months had lapsed since the conclusion of the hearing, Noticee was given opportunity of making additional written submissions, if any, vide letter dated April 11, 2017. Vide letter dated May 18, 2017 additional submissions were made by the noticee wherein they relied on the order dated July 14, 2016 of the Hon'ble SAT in the matter of *Concord Realty Private Limited vs. SEBI* (Appeal No. 22 of 2016), which had arisen out of the same set of facts in the same scrip as the matter in hand.

CONSIDERATION OF ISSUES AND FINDINGS

17. I have carefully perused the submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

a. Whether Noticee violated the provisions of regulations 7(1) and 7(1A) read with regulation 7(2) of SAST Regulations, 1997 and regulation 13(1) of PIT Regulations, 1992?
b. Whether Noticee violated the provisions of section 11C(3) and 11C(5) of SEBI Act, 1992?
c. Does the violation, if any, attract monetary penalty under section 15A(a) and 15A(b) of SEBI Act, 1992?

Issue I - Violation the provisions of regulations 7(1) and 7(1A) read with regulation 7(2) of SAST Regulations, 1997 and regulation 13(1) of PIT Regulations, 1992?

18. Relevant provisions of SAST Regulations, 1997 and PIT Regulations, 1992 are as under:

SAST Regulations, 1997

*"**Acquisition of 5 per cent and more shares or voting rights of a company.***

7 (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 or under second proviso to sub-regulation (2) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation. - For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be."

PIT Regulations, 1992

"Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure

***13.** (1) Any person who holds more than 5% shares or voting rights in any listed company shall*

disclose to the company in Form A, the number of shares or voting rights held by such person,
on becoming such holder, within 2 working days of :—
(a) the receipt of intimation of allotment of shares; or
(b) the acquisition of shares or voting rights, as the case may be."

19. Upon perusal of the submissions and documents available on record, I find that it is not in dispute that the noticee acquired 1,66,75,000 equity shares of MIL upon conversion of 16,67,500 convertible warrants by MIL on February 20, 2010. It is also not in dispute that the aforesaid allotted shares constituted 5.21% of the issued share capital of MIL at the relevant time and the requisite disclosure was not made by the noticee to the company and to the stock exchanges within the time prescribed under Regulation 7(1) read with Regulation 7(2) of SAST Regulation, 1997. The disclosure for the said acquisition was admittedly made by the noticee on January 27, 2015 post receipt of SCN.

20. It is the case of the Noticee that had the company converted all the 3 crore warrants (Rs. 30 crores) into equity shares as originally planned, its shareholding would have been 4.49% only which is less than 5%. But without notice to the Noticee, the company converted 24,85,00,000 warrants (Rs. 24.85 crores) instead of 3 crore warrants into equity shares in February 2010 which led to the shareholding of the Noticee to be 5.21% as against 4.49% as originally planned. Further, the remaining 5,15,00,000 warrants got converted into equity shares in May 2010 and accordingly the noticee's holding got reduced to 4.49% as mentioned in the notice dated 05.11.2009. Hence the shareholding of Noticee crossed 5% only for a period of 2 months.

21. Counsel for the Noticee has heavily relied on the order dated July 14, 2016 of the Hon'ble SAT in the matter of *Concord Realty Private Limited*

vs. SEBI (Appeal No. 22 of 2016), which had arisen out of the same set of facts in the same scrip as the matter in hand, wherein it was held as follows:

"6. …….. It is relevant to note that when the appellant applied for the convertible equity warrants of MIL it was known that as and when the warrants were converted into shares, the shareholding of the appellant would be below 5% and as such the appellant would not be required to make disclosure either under the 1997 Regulations or under the PIT Regulations. Therefore, on February 20, 2010 when the appellant received 1,69,50,000 shares from MIL, there was no reason for the appellant to believe that its shareholding in MIL would exceed 5%. Fact that as per notice dated November 5, 2009 MIL could issue shares in tranches does not mean that the appellant was given to understand that on account of MIL issuing shares in tranches, the shareholding of the appellant may exceed 5%. Apart from the above, there is no material on record to suggest that the appellant was made aware that its shareholding in MIL between February 20, 2010 till May 2010 exceeded 5%. In such a case, where the appellant had subscribed to the convertible equity warrants so as to hold shares on conversion below 5%, cannot be said have violated the regulations made by SEBI on ground that the appellant had failed to make disclosures, especially, when there was no reason for the appellant to believe that its shareholding had exceeded 5%.

7. …… In the present case, the appellant had subscribed to the convertible equity warrants with a view to have less than 5% shareholding and there is nothing on record to suggest that the appellant was informed or made aware that on account of partial conversion of convertible equity warrants on February 20, 2010 the shareholding of the appellant had exceeded 5% and hence, the appellant was required to make disclosures under the 1997 Regulations and PIT Regulations.

8. In these circumstances, in the facts of present case, in our opinion, failure to make disclosure during the period from February 20, 2010 till May 2010 cannot be attributed to the appellant and, therefore, the appellant cannot be held guilty of violating the 1997 Regulations and PIT Regulations. Consequently, penalty imposed under section 15A(b) of SEBI Act on ground that the appellant has violated the 1997 Regulations and PIT Regulations cannot be sustained." (Emphasis supplied).

22. The aforesaid order of Hon'ble SAT applies with full force to the present case which rests on the same set of facts and the Noticee is similarly situated. Had the company converted 3 crore warrants, the acquisition of the noticee would have been 4.49% but as the company had converted 24,85,00,000 warrants on February 20, 2010, the acquisition of noticee was 5.21%. Therefore, in view of the aforesaid order of the Hon'ble SAT against other entities arising out of the same set of facts, no fault can be attributed to Noticee and the charge for the violation of i) Regulation 7(1) read with regulation 7(2) of SAST Regulations, 1997, and ii) Regulation 13(1) of PIT Regulations, 1992 has to fall.

23. In so far as the obligation to make disclosure Regulation 7(1A) of SAST Regulations, 1997 is concerned, I agree with the submissions made by the Learned Counsel that the said provision is not attracted in the present case as the noticee does not fall either under Regulation 11(1) or under the second proviso to Regulation 11(2) of SAST Regulations, 1997 which is a condition precedent for invoking Regulation 7(1A) of SAST Regulations, 1997. I note that the said provision is applicable only in respect of those acquirers whose shareholding together with shareholding of persons acting in concert fall under Regulation 11(1) of SAST Regulations, 1997 i.e between 15% and 55% or under second proviso to Regulation 11(2) of SAST Regulations, 1997 i.e between 55% and 75%. In the instant matter, I find that the shareholding of the noticee post conversion of warrants into equity shares was 5.33% which is below the limits prescribed under regulation 11(1) or under second proviso to Regulation 11(2) of SAST Regulations, 1997. Therefore, the allegation of violation of Regulation 7(1A) of SAST Regulations, 1997 by the noticee is not established.

Issue -II -Whether Noticee violated the provisions of section 11C(3) and 11C(5) of SEBI Act, 1992

24. It would be appropriate here to refer to the aforesaid provisions of the SEBI Act, 1992 which reads as under:

Section 11C(3) and Section 11C(5) of the SEBI Act, 1992

Section 11C(3): *The Investigating Authority may require any intermediary or any person associated with securities market in any manner to furnish such information to, or produce such books, or registers, or other documents, or record before him or any person authorised by it in this behalf as it may consider necessary if the furnishing of such information or the production of such books, or registers, or other documents, or record is relevant or necessary for the purposes of its investigation.*

Section 11C(5): *Any person, directed to make an investigation under sub-section (1), may examine on oath, any manager, managing director, officer and other employee of any intermediary or any person associated with securities market in any manner, in relation to the affairs of his business and may administer an oath accordingly and for that purpose may require any of those persons to appear before it personally.*

25. It is not in dispute that the Noticee was issued summons dated February 22, 2013 under section 11C(3) of the SEBI Act to furnish certain information, as mentioned in the Annexure to the summons, before the Investigation Authority on March 04, 2013. It is also an admitted fact that the said summons was received by the Noticee and vide letter dated March 03, 2013 noticee submitted only part of the information as required by the said summons. It was further stated that other details sought vide the said summons would be submitted in due course of time. However, the same was never provided to IA.

26. It is also a matter of record that the Noticee was issued another summon dated March 08, 2013 under section 11C(5) of the SEBI Act to appear in person through its Managing Director before the Investigation

Authority on March 20, 2013 to answer questions in relation to the investigation which the noticee failed to do despite the said summons being duly received by them.

27. The noticee, while admitting the non-compliance with the summons, contended that information called for was irrelevant and non-submission of certain details had no adverse effect on securities market/general investors. Such contention is not acceptable. It is the prerogative of IA to decide what kind of information to be sought and from whom to seek information. It cannot be left to the vagaries of the noticee to decide that information sought by the IA is irrelevant and therefore he would not submit the same. Any non-compliance of the summons of the IA hampers the process of investigation. Had the Noticee made appearance before the investigating officer and answered his queries or if they had furnished the requisite information that was sought from them that would have helped the investigation. When IA summons a person to appear before him, it is the statutory duty of such person to appear before the IA and to answer the queries. It is well established that timely submission of information is very important for the purpose of effective investigation and non-cooperation by entities can be detrimental to the interest of investors and securities market on account of delay or hindrance in the investigation.

28. I note that in their reply dated January 27, 2015, Noticee has submitted for the first time the documents/information, including details relating to demat account statement and bank book and cash book, sought by the summons dated February 22, 2013 after a lapse of more than 2 years. However, I am of the considered opinion that the Noticee ought to have submitted this information/documents before the IA during the stage of the investigation in compliance with the Summons and not to

the Adjudicating Officer after receipt of the SCN and in the course of adjudication proceedings. Moreover, the fact that the noticee could make available the documents in the instant proceedings, also shows that the Noticee was in a position of providing those information/documents to IA but did not do so, reflecting the non-cooperative attitude of the Noticee. The documents sought especially details relating to demat account statement and bank book and cash book are very important to keep audit trail of the transactions and the Noticee by not submitting the same to IA cannot be said to be acting in compliance with summons issued.

29. The Hon'ble SAT has also recognized the importance of compliance of summons and personal appearance and in the matter of *DKG Buildcon Pvt. Ltd. v. SEBI* (Appeal No. 106 of 2006, Date of Decision: 07.01.2009), it has held: *"…By not responding to the summons, the representative(s) of the appellant did not appear before the investigating officer as a result whereof their statements could not be recorded. This, obviously, hampered the investigations. In the result, the inescapable conclusion is that the appellants were adamant in not furnishing the information sought from them though vital to the investigations and that they stonewalled the investigations as commented by the adjudicating officer. It is of utmost importance that every person from whom information is sought should fully co-operate with the investigating officer and promptly produce all documents, records, information as may be necessary for the investigations. If persons are allowed to flout the summons issued to them during the course of the investigations, the Board as the watchdog of the securities market will not be able to perform its duties in protecting the interests of the investors and safeguarding the integrity of the securities market."*

30. In this context, I would like to also refer to the order of the Hon'ble SAT in the matter of *Mr. Jalal Batra vs. SEBI* (Appeal no. 184 of 2010, date of decision: December 06, 2010) wherein it observed "....*We have observed time and again that it is of utmost importance that market players like the appellant should fully cooperate with the investigations that are carried out by the Board, the watchdog of the securities market. If market players and intermediaries avoid appearing before the investigating officer or furnish the necessary information sought from them, the Board as a market regulator will not be able to carry out its statutory functions and duties of protecting the integrity of the securities market and the investigations would be grossly hampered. Non co-operation with the market regulator has to be viewed seriously. We do not know what else would have come to light if the appellant had appeared before the investigating officer or if he had furnished the requisite information that was sought from him."*

31. In view of the aforesaid, I find that the Noticee did not comply with the summons dated February 20, 2013 and March 08, 2013 when it failed to submit information to IA as well as when it failed to make personal appearance through its Managing Director before IA as sought vide the said summons respectively. Therefore, I hold that the noticee has violated provisions of sections 11C(3) and 11C(5) of SEBI Act, 1992.

Issue III - Does the violation, if any, attract monetary penalty under section 15A(a) and 15A (b) of SEBI Act, 1992?

32. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of*

the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."

33. The noticee has relied on the observation made by Hon'ble Supreme Court of India in para 22 of *Bharjatiya Steel Industries v Commissioner of Sales Tax, U.P.* {(2008) 11 SCC 617} regarding absence of mens rea as a ground for non-levy of penalty. However, the reliance placed by the Noticee on the afore-mentioned case does not support its case as in the very same case the Hon'ble Supreme Court of India has also observed that *"Furthermore, the question as to whether mens rea is an essential ingredient or not will depend upon the nature of the right of the parties and the purpose for which penalty is sought to be imposed."* I am of the view that in the Shriram Mutual Fund case referred supra, the Hon'ble Supreme Court while interpreting the provisions of the SEBI Act, 1992 has made it abundantly clear that as soon as contravention of the statutory obligation as contemplated by the Act and the Regulation is established then the penalty has to follow and only the quantum of penalty is discretionary. It further held that "… *imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations."* In view of the same, the aforesaid judgment is of no assistance to the Noticee.

34. Since only the allegation of violation of Section 11C(3) and 11C(5) of SEBI Act, 1992 by the Noticee is established, for the aforesaid reasons the Noticee is liable for monetary penalty under section 15A(a) of SEBI Act, 1992 which, at the time of violation, read as under:

"15A. Penalty for failure to furnish information, return, etc. - *If any person, who is required under this Act or any rules or regulations made thereunder,-*
(a) to furnish any document, return or report to the Board, fails to furnish the same, 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;"

35. I have considered the factors mentioned in section 15J of SEBI Act, 1992 and I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. However, by not submitting complete details in response to summons, including those relating to Bank and demat statements which could have shown the fund flow and securities flow, and by not appearing before the IA through its Managing Director as summoned for answering queries / giving explanations/clarifications despite having received the summons hampers the investigation. Further, any delay or hurdle in investigation due to non-cooperation by any entity is detrimental to the interest of investors in securities market and the same cannot be viewed leniently. Noticee has submitted that there is delay of about 4 years in issue of the SCN which is in gross violation of principles of natural justice. Delay in initiating the proceedings by itself cannot be a ground for taking a lenient view more so when the Noticee itself has contributed for the same by way of non-cooperation and dilatory tactics.

ORDER

36. After taking into consideration all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose following penalty on the noticee i.e. Narois Impex Private Limited :

Penalty Amount	Violation
No penalty	Under section 15A(b) of SEBI Act since the alleged violation of Regulation 7(1) & 7(1A) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 is not established.
No penalty	Under section 15A(b) of SEBI Act since the alleged violation of regulation 13(1) of PIT Regulations, 19922011 is not established..
₹2,00,000/- (Rupees Two Lakh Only)	Under section 15A(a) of SEBI Act for violation of section 11C(3) of SEBI Act, 1992.
₹2,00,000/- (Rupees Two Lakh Only)	Under section 15A(a) of SEBI Act for violation of section 11C(5) of SEBI Act, 1992.
Total	**₹4,00,000/- (Rupees Four Lakh Only)**

37. I am of the view that the penalty imposed is commensurate with the violations committed by the Noticee. I also note that the Hon'ble SAT in the matter of *Concord Realty (supra)* has also upheld the aforesaid monetary penalty against the similarly placed entities for identical violations.

38. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or 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 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Chief General Manager, Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

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

39. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 30, 2017
Place: Mumbai

S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer