

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. ORDER/BD/BM/2019-20/5786-5788**

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 & UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

- 1. M/s Vijay Solvex Limited (PAN: AAACV6864A)**
- 2. Shri Dinesh Gupta (PAN: CBSPG7838R)**
- 3. Shri Gaurav Enclave Private Limited (PAN: AACCG8028M)**

In the matter of Vijay Solvex Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') examined into the alleged irregularity in the trading in the shares of Vijay Solvex Limited (hereinafter referred to as VSL) and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act, 1992') and various Rules and Regulations made there under during the period from January 01, 2008 to March 31, 2018 by Vijay Solvex Limited (VSL/company), Dinesh Gupta and Gaurav Enclave Private Limited (hereinafter referred to as Noticee 1-3/Noticees).
2. On examination of the stock holding pattern of the company during the examination period it was revealed that the shareholding of the promoter

shareholding increased from 58.48% at the end of quarter December 2017 to 67.48% at the end of quarter March 2018.

3. It was observed that the name of promoter namely Kundan Lal was not mentioned in the promoters list for Quarter ended June 2017 onwards. Upon analysis of the off-market transactions, it is observed that the Promoter transferred 15,000 shares in off-market to one entity viz Dinesh Gupta. Noticee 1 allegedly failed to disclose the name of the new promoter under the appropriate category and also failed to disclose to the stock exchange in time bound manner. Consequent to the acquisition of 15,000 shares as mentioned above, the Noticee 2 was required to disclose his shareholding to the company within seven days of becoming promoter. However, he allegedly failed to disclose as required under provision of law.
4. Further, the receipt of 8,900 shares in off-market by Noticee 3 on June 06, 2009 which resulted in total shareholding of 1,61,600 shares (5.05% of the total share capital of the company) crossed the threshold of 5%. However, the Noticee 3 failed to disclose as required under SAST and PIT 2015.
5. It was therefore, alleged that Noticee 1 has violated of Regulation 31(1)(b) of LODR 2015 read with SEBI Circular No: CIR/CFD/CMD/13/2015 dated November 30, 2015 r/w Sections 21 and 31 of Securities Contract Regulation Act, 1956 (SCRA), Noticee 2 has violated Regulation 7(1)(b) of SEBI(Prohibition of Insider Trading) Regulations 2015 (hereinafter referred to as PIT 2015) and Noticee 3 has violated Regulation 7 (1), 7 (2) of SAST 1997 read with Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as SAST 1997) and Regulation 13 (1) of SEBI(Prohibition of Insider Trading) Regulations 1992 (hereinafter referred to as PIT 1992) read with Regulation 12 of PIT 2015

APPOINTMENT OF ADJUDICATING OFFICER

6. SEBI has, therefore, initiated adjudication proceedings and I have been appointed as Adjudicating Officer vide Order dated March 29, 2019 under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of SEBI Act 1992 and Section 23H of SCRA and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “Adjudication Rules 1995”) and Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as Adjudicating Rules 2005) to inquire and adjudge under Section 23 H of SCRA and Section 15 A(b) of the SEBI Act, 1992 for the alleged violations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. A common Show Cause Notice (hereinafter referred to as “SCN”) bearing ref. no. EAD-7/BJD/BKM/20101/1-3/2019 dated August 06, 2019 was issued to the Noticees under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules 1995 & 2005 and penalty be not imposed under Section 23 H of SCRA against Vijay Solvex Ltd, under Section 15A(b) of SEBI Act, 1992 against Dinesh Gupta and Gaurav Enclave Private Limited for the violations alleged to have been committed by the Noticees. Vide letter dated September 11, 2019 Noticees filed the replies to the SCN. Vide letter dated November 26, 2019 Noticee 2 filed the additional reply.
8. Vide e-mail dated September 11, 2019 Noticee 1 sought for inspection which was allowed and conducted on October 09, 2019.
9. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, Noticees were granted an opportunity of personal hearing on November 22, 2019 and November 25, 2019 which were attended by the Noticees. Based on the request

during the hearing Noticee 2 was allowed to file additional reply by November 26, 2019. Accordingly, vide e-mail dated November 26, 2019 filed the additional reply.

10. During the hearing held on November 22, 2019 and November 25, 2019 the Authorized Representative (AR) representing on behalf of Noticees reiterated the submissions made by them vide letters submitted earlier in reply to the SCN.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

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

- a. Whether the Noticee 1 has violated Regulation 31(1) (b) of LODR 2015 read with SEBI Circular No: CIR/CFD/CMD/13/2015 dated November 30, 2015 r/w Sections 21 and 31 of SCRA?*
- b. Whether the Noticee 2 has violated Regulation 7(1)(b) of PIT 2015?*
- c. Whether the Noticee 3 has violated Regulation 7 (1), 7 (2) of SAST 1997 read with Regulation 35 of SAST 2011 and Regulation 13 (1) of PIT 1992 read with Regulation 12 of PIT 2015?*
- d. Does the violation, if any, on the part of the Noticees attract monetary penalty under 23 H of SCRA against Noticee 1 and Section 15 A(b) of the Act as against Noticee 2-3?*
- e. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992 and Section 23 H of SCRA?*

12. Before proceeding further, I would like to refer to the relevant provisions of the LODR 2015, PIT Regulations and SAST which read as under:

Regulation 31(1)(b) of LODR 2015

The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –

(b) on a quarterly basis, within twenty one days from the end of each quarter

Regulation 7(1)(b) of PIT 2015

Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter or member of the promoter group shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

Regulation 7(1) of SAST 1997:

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.]

Regulation 7(2) of SAST 1997:

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.*

Regulation 13(1) of PIT 1992

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.*

Non-disclosure of name of the Promoter and disclosure in public category incorrectly

13. I find from the analysis of the off-market transactions that 15,000 shares of VSL were transferred in off-market to Dinesh Gupta. By virtue of the aforesaid receipt of shares, the name of Dinesh Gupta had to be reported to the stock exchange under the promoter and promoter group category. However, his name was not shown in the Promoter and promoter shareholder category.

14. Vide letter dated September 11, 2019 VSL, inter alia, submitted as under:

- (i) Late Sh. Kundan Lal was part of promoter group and holding 15,000 equity shares and his shareholding was shown under promoter category till March 2017. After the death of Late Sh. Kundan Lal, his shareholding was transmitted to his son Mr. Dinesh Gupta on April 21, 2017. After transmission, the shareholding of Dinesh Gupta was shown under public category in the shareholding pattern filed by the company to the stock exchange for the quarter ended June, September, December, 2017 and March 2018 because Dinesh Gupta was not holding any shares of the company earlier and also he was not a part of promoter group of the company.
- (ii) However, during the course of periodic audit, it was observed that Dinesh Gupta should be a part of promoter group of the company in view of reason that his father was part of promoter group of the company. When this mistake comes to our knowledge, we have rectified the same and shareholding of Dinesh Gupta have been included under promoter category with effect from Quarter ended June, 2018 and his shareholding now shown under promoter category since then.
- (iii) The Non-disclosure of name of Dinesh Gupta in the shareholding pattern filed for the quarter ended June, September, December, 2017 and June 2018, under the “promoter and Promoter Group” was due to inadvertence and without any wrong intention on the part of the company. Once it had come to our knowledge, we immediately rectified the mistakes on the apart of the

company as the same was not done with a view to defraud public at large and as soon as it came to the knowledge of the company the same was immediately rectified and correct disclosure was filed in the shareholding pattern for the quarter ended June 2018 onwards.

(iv) The investors at large have not suffered any loss in view of such non-disclosures. It may kindly be requested to take lenient view on the same and the present proceedings may kindly be dropped.”

15. According to Regulation 31(1)(b) of LODR 2015 the listed entity has to submit a statement showing holding of securities and shareholding pattern separately for each class of securities to the stock exchange(s), on a quarterly basis, within twenty one days from the end of each quarter.

16. SEBI Circular No: CIR/CFD/CMD/13/2015 dated November 30, 2015, inter alia, states that the shares which are held by persons other than Promoter and Promoter Group would be classified under the category ‘Public Shareholding’.

17. I find that Late Kundan Lal was part of promoter group and holding 15,000 shares representing 0.47% of the paid up share capital of the company and his shareholding was shown under promoter category till March 2017. After the death of Late Sh. Kundan Lal, his shareholding was transmitted to his son Dinesh Gupta being legal heir on April 21, 2017.

18. As per Regulation 2(w) of LODR 2015 "promoter" and "promoter group" shall have the same meaning as assigned to them respectively in clauses (za) and (zb) of sub-regulation (1) of regulation 2 of the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as ICDR 2009).

19. "Promoter" and "Promoter Group" are defined in the ICDR Regulations 2009 in Regulation 2 (1) (za) and (zb) respectively. An heir who is also an immediate relative of the promoter will be part of the "promoter group".
20. Accordingly, as per above provisions, upon demise of Kundan Lal, his son Dinesh Gupta who is a legal heir and also recipient of 15,000 shares through transmission (operation of law) had to be shown under the promoter group category only.
21. As per the shareholding submitted by Noticee 1 to the exchange, the shareholding of Dinesh Gupta was shown in public shareholding incorrectly.
22. Thus VSL failed to disclose the name of Dinesh Gupta under the "Promoter and promoter Group" in the shareholding pattern filed for the quarter ended June, September, December, 2017 and June, 2018.
23. I note from the regulatory requirement that the Noticee 1 is required to submit statement showing holding of securities and shareholding pattern separately for each class of securities to the stock exchange(s). The two categories to be shown in the shareholding patterns prescribed under Regulations are "Promoter and Promoter Group" and another is "Public shareholding."
24. The Noticee 1 vide letter dated September 11, 2019 has admittedly submitted that it failed to disclose correctly the same to the stock exchange without any wrong intention on the part of the company.
25. The objectives of disclosure under the particular categories i.e. public shareholding, promoter shareholding, is to ensure and demonstrate the compliance of the norms of corporate governance. VSL as a corporate entity was supposed to be aware of

the requirement of legal compliances. By failing to manage the compliances in professional manner, Noticee 1 has not only demonstrated its casual approach towards regulatory requirements but in the process denied the right of investors to know about the material information about the company and put them at a serious risk of non-disclosure of material information.

26. Failure to disclose the shares transmitted in appropriate category in a time bound manner to the stock exchanges has adversely affected the trust and confidence of investors and also denied them to take informed decision.
27. In view of above, the allegation of violation of Regulation 31(1) (b) of LODR 2015 read with SEBI Circular No: CIR/CFD/CMD/13/2015 dated November 30, 2015 r/w Sections 21 and 31 of Securities Contract Regulation Act, 1956 stands established.

Failure to Disclose with the company

28. Regulation 7(1)(b) of PIT 2015, inter alia, states that every person upon becoming a promoter or member of the promoter group shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter. However, Noticee 1 failed to disclose with the company on receipt of the shares on demise of his father late Sh. Kundan Lal.
29. Vide letters dated September 11, 2019 and dated November 26, 2019, Noticee 2 submitted his reply to the SCN and the significant parts of the reply are reproduced as under:

"I am holding 15000 equity shares of the company and the same was registered in my name in the register of member of the company on April 21, 2017. The said shares were acquired by way of transmission.

I would like to further submit that my father Late Sh. Kundan Lal was part of promoter group and holding 15000 shares representing 0.47% of the paid up share capital of the economy and his shareholding was shown under promoter category till March 2017. After the death of my father Late Sh. Kundan Lal, his shareholding was transmitted to myself being legal heir on April 21, 2017. Due to lack of knowledge, the said disclosure was not filed on my behalf with the company.

30. Further, vide e-mail dated November 27, 2019 the Noticee 2 submitted as under:

"I have acquired shares of Vijay Solvex Limited on 21st April, 2017 and I was part of promoter group of Vijay Solvex Limited. The promoter of Vijay Solvex Limited is Data Family and myself belongs to Promoter Group of Vijay Solvex Limited. The submission of "Form B" in terms of Regulation 7(1)(b) is required to be submitted by the Director, KMPs and Promoter before 21st January, 2019.

After amendment in SEBI PIT Regulations, 2015 with effect from 21st January, 2019, the word "Promoter Group" were included. The provisions of regulation 7(1)(b) is reproduced as under:

Initial Disclosures

Disclosures by certain persons 7(1)(b) of PIT Regulations, 2015

Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter or member of the promoter group shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

Substituted for the word "promoter" by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2019 (w.e.f. January 21, 2019). Therefore in view of the above, disclosures under Regulation 7(1)(b) is not required to be filed by myself at that point of time."

31. I find that Regulation 7(1)(b) of PIT 2015 mandated promoter to file Form "B" upon becoming a promoter to disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter. By amendment on January 21, 2019 the obligation was extended to promoter group also to file Form "B" upon becoming a promoter to disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.
32. I note that Regulation 7(1)(b) of PIT 2015 as exists before January 21, 2019 did not include promoter group. In the instant case, consequent to the transmission of share on April 21, 2017, Noticee 2 (being legal heir of the erstwhile promoter) became part of the promoter group in 2017 and obligation on Noticee 2 consequent to his holdings as part of promoter group to inform to company was warranted for quarter ending June, September, December, 2017 and March 2018 whereas the amended regulation to include promoter group became effective since January 21, 2019. Penal liability is applicable as it exists at the time of occurrence of non-compliance or violation. Therefore, Regulation 7(1)(b) of PIT 2015 as amended January 21, 2019 cannot be applicable retrospectively to the Noticee 2. I also note that Noticee 2 upon knowing the requirement, filed appropriate disclosures to the company which were included in the shareholding pattern of the company from quarter ended June 2018 onwards.

33. In view of above, I conclude that the alleged violation Regulation 7(1) (b) of PIT 2015 against the Noticee 2 does not stand established.

Disclosure of interest or holding in listed companies by certain persons -under PIT Regulations 1992

34. I note that the shareholding of Gaurav Enclave (P) Limited increased to 5.05% on June 06, 2009 from 4.77% by way of acquisition of 8900 shares representing 0.28% from one of promoter. Consequently, disclosures to the company and to the stock exchange had to be made mandatorily. However, the Noticee 3 failed to do the same.

35. Vide Letter dated September 11, 2019 Noticee 3 submitted the reply to the SCN and the significant parts of the reply are reproduced as under:

“We would like to state that the shareholding of Gaurav Enclave(P) Limited increased to 5.05% on June 06, 2009 from 4.77% by way of acquisition of 8900 shares representing 0.28% from one of promoter and we assume that since the shareholding of our company is marginally increased by 0.05% beyond threshold of 5%, hence in view of incorrect understanding of provisions of Regulation 7(1) of SAST 1997 and provision of Regulation 13(1) of PIT 1992 our company has not filed applicable disclosures to the stock exchange and company.

Non-filing of disclosures was only due to lack of knowledge and without any wrong and mala fide intention on our part. Also the same was not done with a view to defraud the shareholders of the company as the changes made in the shareholding of promoter was made available to investors by way of shareholding pattern filed with the stock exchange immediately for the quarter ended June 30, 2009 and also the investors at large have not suffered any loss in view of the same.”

36. Regulation 7(1) of SAST 1997, inter alia, mandates that an 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.

37. According to Regulation 7(2) of SAST 1997 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.

38. Regulation 13(1) of PIT Regulations, 1992 mandates any person who holds more than 5% shares or voting rights in any listed company to disclose to the company, the total number of shares held by the person. The said change is to be disclosed to the company within 2 working days from the date of acquisition or receipt of intimation of allotment of shares.

39. I find that the Noticee 3 on June 06, 2009 received 8900 shares in off-market which resulted in total shareholding of 1,61,600 shares (5.05% of the total share capital of the company) with the entity during the period April to June 2009 as under:

Transaction Date	Source First Hldr Pan	Source Client Name	Target First Hldr Pan	Target Client Name	Transferred Qty	% of shareholding	% of cumulative shareholding
15/04/2009	ALDPC7833K	Shalini Mittal	AACCG8028M	Gaurav Enclave Private Limited	48100	1.50	1.50
15/04/2009	CAPPS9847G	Prateek Gupta	AACCG8028M	Gaurav Enclave Private Limited	64300	2.01	3.51
20/05/2009	AJHPM4369E	Prem Chand	AACCG8028M	Gaurav Enclave Private Limited	9200	0.29	3.80
22/05/2009	APKPM5716N	Shalini Mittal	AACCG8028M	Gaurav Enclave Private Limited	13600	0.42	4.22
01/06/2009	AANPG9826F	Ajay Singh	AACCG8028M	Gaurav Enclave Private Limited	10000	0.31	4.54

02/06/2009	AMTPG1777F	Gaurav Mittal	AACCG8028M	Gaurav Enclave Private Limited	7500	0.23	4.77
06/06/2009	AANPG9826F	Saurabh Mittal	AACCG8028M	Gaurav Enclave Private Limited	8900	0.28	5.05
18/06/2009	AACCG8028M	Gaurav Enclave Private Limited	AABCV3332Q	Vijay International Limited	2000	0.06	4.91

40. This transaction, which resulted in the entity's shareholding to breach the threshold of 5%, had triggered disclosure requirements under Regulation 7 (1), 7 (2) of SAST 1997 read with Regulation 35 of SAST, 2011 and Regulation 13 (1) of PIT 1992 read with Regulation 12 of PIT 2015.

41. Disclosures made under the SAST 1997, SAST 2011, PIT 1992 and PIT 2015 during the period January 01, 2008 to March 31, 2018 were obtained from the exchange and the company. From the reply received from the company and the exchange, I find that no disclosures were filed by the entity with regard to the said transaction. Therefore, the alleged violation of Regulation 7 (1), 7 (2) of SAST, 1997 read with Regulation 35 of SAST, 2011 and Regulation 13 (1) of PIT 1992 read with Regulation 12 of PIT 2015 against the Noticee stand established.

42. Section 23 H of SCRA and 15A(b) of SEBI Act, 1992 read as under:

Section 23H of SCRA - "Penalty for contravention where no separate penalty has been provided".

Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupee

15 A(b) of SEBI Act 1992 reads as under:

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

43. The Hon'ble SAT, in Appeal No.66 of 2003 order dated April 15, 2005 - **Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, has also observed that, "the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."
44. The Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006]** 68 SCL 216(SC) has 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...".
45. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992 and Section 23 H of SCRA it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 and 23J of SCRA which read as under:-

Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I/23J, 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.*

46. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the defaults of the Noticees are not repetitive in nature. I note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decisions. I, therefore, conclude that the Noticee 1&3, by failing to make the disclosures are liable for monetary penalties under Section 23 H of SCRA and under Section 15A(b) the SEBI Act, 1992 respectively.

47. Before arriving to the quantum of penalty in matter, it is necessary to refer the importance of such disclosures. The main objective of SAST & PIT is to afford fair treatment for shareholders who are affected by the change in control. The Regulations seek to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision.

48. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee 1&3 or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticee 1&3, the details of the shareholding of the persons having substantial stake, promoter-group and persons in control over the Noticees and timely disclosure thereof, were of some importance from the point of view of investor as that would have prompted them to buy or sell shares of the Noticees. The disclosures made under SAST & PIT by a company and acquirers respectively are made public only through Stock Exchange. Therefore, it

is mandatory for the company and acquirers to give the required information under the aforesaid SAST & PIT to the Stock Exchange, so that the said information becomes known to all the investors at large. Therefore, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee 1&3 could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee 1&3 to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time.

49. It is also pertinent to mention here that Hon'ble Supreme court of India in **SEBI vs. Bhavesh Pabari** order dated February 28, 2019, C.A.No. 11311 of 2013, while making a reference to **Siddharth Chaturvedi & Ors.** Order dated March 14, 2016, C.A. No.14730/2015, has observed that *"..... Section 15-A) could apply even to technical defaults of small amounts and, therefore, prescription of minimum mandatory penalty of Rs.1 lakh per day subject to maximum of Rs.1 crore, would make the Section completely disproportionate and arbitrary so as to invade and violate fundamental rights. Insertion of the Explanation would reflect that the legislative intent, in spite of the use of the expression "whichever is less" in Section 15-A(a) as it existed during the period 29th October 2002 till 7th September 2014, was not to curtail the discretion of the Adjudicating Officer by prescribing a minimum mandatory penalty of not less than Rs. 1 lakh per day till compliance was made, notwithstanding the fact that the default was technical, no loss was caused to the investor(s) and no disproportionate gain or unfair advantage was made....."*

50. Thus, in the light of the above, considering the facts and circumstances, mitigating factors of this case and guidance specified in section 15J of the SEBI Act,

1992 and section 23J SCRA (as amended vide Part VIII of Chapter VI of the Finance Act, 2017), I am of the view that immediate steps taken by the Noticees to comply the statutory requirements also may be taken into consideration specially when this mistake comes to their knowledge, they have rectified the same and shareholding of Dinesh Gupta had been included under promoter category with effect from Quarter ended June, 2018 and his shareholding was shown under promoter category since then.

51. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the SEBI Act 1992 & Section 23- I of SCRA r/s Rule 5 of Adjudication Rules 1995/2005, I hereby impose a monetary penalties as under:

Sr No.	Noticees	Regulation Violated	Actions Recommended	Penalties
1	Vijay Solvex Limited	<i>Regulation 31(1)(b) of LODR 2015 read with SEBI Circular No: CIR/CFD/CMD/13/2015 dated November 30, 2015 r/w Sections 21 and 31 of SCRA</i>	<i>Section 23 H of SCRA</i>	50,000/- (Rs Fifty Thousand Only)
2	Dinesh Gupta	NA	NA	Nil
3	Gaurav Enclave Private Limited	<i>Regulation 7 (1), 7 (2) of SAST, 1997 read with Regulation 35 of SAST, 2011 and Regulation 13 (1) of PIT 1992 read with Regulation 12 of PIT 2015</i>	<i>Section 15A(b) of the SEBI Act, 1992</i>	50,000/- (Rs Fifty Thousand Only)
	Total			1,00,000/- (Rs One Lakh Only)

52. I am of the view that the said penalty would be commensurate with the violations committed and acts as a deterrent factor for the Noticee 1&3 and others in protecting the interest of investors and markets.

53. The Noticee 1&3 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 online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

54. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

55. 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.

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

Date: November 28, 2019

Place: Mumbai

B J DILIP
ADJUDICATING OFFICER