BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. EAD-7/BJD/NJMR/2018-19/1787

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

In respect of

Dalal Street Investments Ltd.,
(PAN: AAACD1359E)
Registered Office
301, Chintamani Apartment
1478, Sadashiv Peth
Pune – 411030.

In the matter of Dalal Street Investments Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation into the alleged irregularity in the dealings in the shares of Dalal Street Investments Ltd., *(hereinafter referred to as **"Noticee" / "Company" / "DSIL")*** during the period September 1, 2008 to July 24, 2009 ***("Investigation Period")*** and into the possible violation of the provisions of the Securities Contracts (Regulation) Act (SCRA), 1956, SEBI Act, 1992, other allied Acts and various Rules and Regulations made thereunder.

2. During the course of investigation, it was inter-alia observed by SEBI that five private companies namely DS Agrofarms Pvt., Ltd., Elite Agencies Pvt., Ltd., Man-Made Fibres Pvt., Ltd., Resham Resha Pvt., Ltd., and SM Sheti Seva Pvt., Ltd., *(hereinafter referred to as "five companies")* were falling within the definition of Promoters of DSIL in terms of Clause 35 of the Listing Agreement. It was observed that the shareholding of the said five companies was substantial (97.66% of the paid up capital of the Company) and DSIL had not included the shareholding of these five companies under promoter category in its quarterly filings from March 2002 till September 2009 filed with Bombay Stock Exchange (BSE).

3. It was observed that the Company vide its letter dated October 29, 2009 addressed to BSE had submitted revised shareholding pattern from March 31, 2002 to September 30, 2009 by incorporating the shareholding of four companies out of the five companies stated above, under promoter category. However, it was observed that even in the revised shareholding pattern submitted to BSE, in respect of the shareholding of Man-Made Fibres Pvt., which was holding 18.48% of share capital, it was not shown in the promoter category by DSIL.

4. Therefore, it was alleged that DSIL had made wrong disclosures to BSE as regards shareholding pattern of its promoters during the period March 2002 and September 2009. Accordingly, it was alleged that DSIL by making wrong disclosure with regard to the shareholding pattern of its promoters had violated the provisions of Clause 35 of Listing Agreement.

APPOINTMENT OF ADJUDICATING OFFICER

5. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticee and appointed Shri Jayanta Jash as the Adjudicating Officer vide Order dated May 6, 2014 under Section 23I of SCRA read with Rule 3 of Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (*hereinafter referred to as **"SCR Adjudication Rules")*** to inquire into and adjudge under Section 23H of SCRA for the alleged violation of the provisions of Clause 35 of Listing Agreement by the Noticee. Pursuant to internal restructuring, the undersigned has been appointed as Adjudicating Officer vide Order dated May 18, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. A Show Cause Notice (hereinafter referred to as "**SCN**") bearing ref. no. EAD/BJD/NJMR/7049/2018 dated March 6, 2018 was served upon the Noticee under Rule 4 of SCR Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the SCR Adjudication Rules and penalty be not imposed under Section 23H of SCRA for the violation alleged to have been committed by it. The Noticee vide letter dated March 19, 2018 sought

some more time to submit its reply to the charges alleged in the SCN. Vide email dated March 21, 2018, the Noticee was informed of extension of time till April 2, 2018 to submit its reply. The Noticee vide letter dated March 26, 2018 sought time till April 15, 2018, which was acceded to and a communication in this regard was sent to the Noticee by email on March 28, 2018.

7. The Noticee vide letter dated April 9, 2018 had sought certain documents relating to the present Adjudication proceedings. In reply, vide letter dated April 10, 2018 the Noticee was informed that all the documents which were relevant and relied upon in the instant Adjudication proceedings were provided along with the SCN. Accordingly, in the interest of natural justice and in terms of Rule 4 (4) of SCR Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on April 17, 2018. Vide letter dated April 14, 2018 the Noticee once again sought copies of documents, which were sought by it vide its letter dated April 7, 2018. The Noticee also sought an opportunity to carry out inspection of documents on any day after June 5, 2018. Vide email dated April 17, 2018, it was reiterated to the Noticee that all the documents which were relevant and relied upon in the current Adjudication proceedings were provided along with SCN. The Noticee was given an opportunity to carry out inspection of documents before April 27, 2018 and to furnish its reply within 14 days from the date of inspection. The Noticee vide letter dated April 20, 2018 had sought copies of the documents sought by it vide its letter dated April 9, 2018, before carrying out inspection on any day after May 20, 2018.

8. The Noticee vide letter April 27, 2018 informed that it had filed an application of settlement and submitted a copy of acknowledgment of receipt of consent application. Accordingly, the proceedings against the Noticee were kept in abeyance. While the proceedings were kept in abeyance, the Noticee had carried out inspection of documents on June 11, 2018.

9. I note that pursuant to rejection of settlement of application by a Panel of Whole Time Members of SEBI on October 12, 2018, the Adjudication proceedings were recommenced. Accordingly, vide letter dated November 1, 2018 the

Noticee was given an opportunity to file its reply by November 12, 2018, besides being provided with an opportunity of personal hearing on November 15, 2018. The Noticee vide letter dated November 5, 2018 sought extension of time till November 30, 2018 to furnish its reply and reschedule personal hearing any time after December 10, 2018. Vide email dated November 5, 2018, the Noticee was informed of non-consideration of its requests for extension of time for reply and personal hearing. Further, the Noticee vide letter dated November 6, 2018 once again sought extension of time as sought by it vide its letter dated November 5, 2018, which was acceded to and a communication in this regard was sent to the Noticee through email on November 12, 2018.

10. The Noticee vide its letter dated November 29, 2018 furnished its reply to the charges alleged in the SCN, which are summarized hereunder:

(a) The SCN is issued on March 6, 2018 for the affairs appears to have taken in the year 2010 for the alleged act of the Company on October 29, 2009, for levelling charges and allegations for the entire period of year 2002 to 2009.

(b) On account of such passage of almost 10 years, the Company has no records for the period 2002 to 2009, as also nothing is placed on record what was filed with BSE during 2002 to 2009 and only client database of five companies has been claimed to have been relied upon. Therefore, in the absence of cogent and credible evidences for the period for which charges and allegations have been levelled, the Company expresses its difficulty in dealing with the SCN for want of evidence.

(c) There was no document brought on record to come to a conclusion that the five companies were falling within the definition of promoter within the terms of Clause 35 of Listing Agreement.

(d) One of the five companies, being Man-Made Fibres Pvt., Ltd., holding 18.48% of shareholding being the cause for entire grievance and is raised the same for not clubbing in the promoter category in revised shareholding pattern was clarified to SEBI vide its letter dated August 16, 2010 that there was a change in the Directors of the Company on September 25, 2009 as also there was change in shareholders of the Company and therefore, since that date the Company was not in any way connected with DSIL. Therefore, a confusion is created whether revised shareholding pattern is incorrect or original shareholding pattern is incorrect.

(e) Considering the fact of September 25, 2009 in mind, the revised shareholding pattern was filed vide letter dated October 29, 2009 as if it is

since 2002. Therefore, it appears that, on account of these submissions of Man-Made Fibres Pvt., Ltd., it appears that findings have been derived as to incorrect filing of revised shareholding pattern filed vide letter dated October 29, 2009.

(f) Therefore, there appears to be a difference of 97.65% and 80% as incorrect shareholding pattern. This under no circumstances can be said and alleged to be a substantial information depriving the investors from vital information much less when there is no investor other than promoter.

(g) The trading history of the Company has remained almost 71 shares during the year 2002 to 2009 and 5 shares per year during the period of investigation. This under no circumstances can be said and alleged to be a substantial information depriving the investors from the vital information.

(h) There was no shareholding of public category till the year 2009 and therefore, the need to verify the gravity of non-compliance of provisions relating to disclosure shall be viewed differently than rest of the listed companies.

(i) In view of the fact that the data for the period 2002-2009 is neither available with the Company nor with the BSE, the question of proceeding further in the Inquiry is at stake and illegal.

(j) The reliance has been claimed to have been placed on letter of the Company dated October 29, 2009 justifying the filing of revised shareholding pattern. The said letter of the Company deals with only the affairs of filing taking place on that day for the period 2002 to 2009 and not a whisper has been found with regard to what was filed during the period 2002-2009. The said letter of the Company further advance the reasons of filing the same on account of change in Director and shareholding in Man-Made Fibres Pvt., Ltd.,

(k) The Noticee would like to draw the attention to the provisions of Regulation 102 of SEBI (Listing Obligations and disclosure Requirements) Regulations, 2015 for kind appreciation in the facts and circumstances of the case more particularly the violation attracts the Clause 35 of Listing Agreement.

(l) In the absence of any evidence relating the period 2002-2009, the violation of Clause 35 of Listing Agreement cannot be levelled against the Company merely on the basis of drawing inferences from the revised shareholding pattern. Had there been any violation on the part of the Company and the claim made by the BSE was corrected in the year 2010, then BSE was the only Authority and completely empowered vide SEBI Circular no. SMD/Policy/Listing/CIR-5/2003 dated February 12, 2003 to take action against the Company.

(m) In the absence of any action by BSE at prevalent point of time not usurping its power made available by SEBI vide above Circular, the question of invocation of penal provisions under SCRA does not arise at all.

(n) The provisions of Law invoked for the alleged violation for imposition of penalty is also incorrect as much as, if at all the alleged violation, if established then it attracts the violation of provisions of Section 23 A (a) and not the provisions of Section 23H of SCRA.

(o) The Noticee would like to rely on the Adjudication Order dated May 25, 2018 in the matter of Confidence Finance and Trading Ltd., and WTM's Order dated February 2, 2017 in the matter of Refex Industries Ltd., in its defence.

(p) The Noticee would like to draw the attention of the Order of Hon'ble Securities Appellate Tribunal (SAT)in the Appeal No. 17 & 18 of 2000, in the matter of Sangeeta J Valia Vs. Adjudicating Officer, SEBI and ratio laid down therein.

(q) There have been well settled precedent available on the record arising out of various pronouncement of Orders by Learned AO as well as Learned WTM of SEBI exonerating such technical lapses arising out of inordinate delay of almost 18 years and much water has been flown during the period for a Company in which hardly any trading is taking place and admittedly there is no investor other than promoters in the interest of mankind as also taking lenient view and not imposing penalty where similar nature of disclosure in provisions of other Regulations have been made and thereby the safety and integrity of securities market and safety of investor interest is maintained.

11. In terms of Rule 4 (3) of SCR Adjudication Rules, an opportunity of personal hearing was accorded to the Noticee on December 10, 2018, which was communicated vide email dated December 3, 2018. The Noticee vide letter dated December 1, 2018 authorized Mr. Anish Kharidia & Mr. Viral Shah, Company Secretaries *(hereinafter referred to as Authorized Representatives / ARs)* to appear before me, which was taken on record. The ARs appeared for personal hearing on December 10, 2018 and reiterated the submissions made by the Noticee vide its letter dated November 29, 2018.

CONSIDERATION OF ISSUES

12. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee that it had filed wrong

disclosures to BSE as regards the shareholding pattern of its promoters during the period March 2002 and September 2009 and thereby violated the provisions of Clause 35 of Listing Agreement. After perusal of the material available on record, I have the following issues for consideration, viz.,

a. *Whether the Noticee has violated the provisions of Clause 35 of Listing Agreement?*

b. *Does the violation, if any, attract monetary penalty under Section 23H of SCRA?*

c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?*

ISSUE-1: Whether the Noticee has violated the relevant provisions of Clause 35 of Listing Agreement?

13. Before moving forward, it is pertinent to refer to the relevant provisions of Clause 35 of Listing Agreement, alleged to have been violated by the Noticee, which reads as under:

Clause 35 of Listing Agreement

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

a) *…….*
b) *On a quarterly basis, within 21 days from the end of each quarter;*
c) *…….*

(I) (a) – Statement showing Shareholding Pattern;

14. I note from the records that the shares of DSIL are listed at BSE. The Board of Directors of the Company as per its Annual Report 2008-09 are as under:

Name	Designation
Pavankumar Sanwarmal	Director
Rita Pavankumar	Director
Vikas Pavankumar	Director

15. The Company had issued 2,25,000 shares at ₹ 10/- each per share aggregating to ₹ 22,50,000 paid up capital, which was held by only 80 shareholders. As per the original shareholding pattern for the quarter ended June 2008 filed by DSIL with BSE on July 11, 2008, the holding of promoters and non-promoters are shown as under:

Promoters:

Sl. No.	Name of the Shareholder	Number of shares held	%age of total number of shares
1	Pavankumar Sanwarmal	485	0.216
2	Pavankumar Sanwarmal	485	0.216
3	Rita Pavankumar	300	0.133
4	Rita Pavankumar	50	0.022
5	Sanwarmal Pavankumar	542	0.241
Total		**1,862**	**0.828**

Shareholding of persons belonging to the category Public and holding more than 1% of the total number of shares:

Sl. No.	Name of the Shareholder	Number of shares held	%age of total number of shares
1	D S Agrofarms Private Ltd.,	45,200	20.089
2	Elite Agencies Private Ltd.,	40,731	18.103
3	Man-Made Fibres Private Ltd.,	41,600	18.489
4	Resham Resha Private Ltd.,	49,900	22.178
5	SM Sheti Seva Private Ltd.,	42,300	18.800
Total		**2,19,731**	**97.658**

It is observed from the above table that that the promoter holding was shown as 1,862 shares only, accounting for 0.83% of the share capital of the company. The holdings of persons belonging to the category Public and holding more than 1% of the total number of shares were shown as 2,19,731 shares

accounting for 97.66% of the share capital of the company, under the head Body Corporates. The holding of individual shareholders holding share capital up to ₹ 1 lakh was shown as 1,718 shares accounting for 0.76% of the share capital of the company.

16. BSE from its client database observed that the aforementioned five entities who were collectively holding 97.66% of the share capital of the Company were related to the Company by way of common Directors (Pavankumar Sanwarmal / Rita Pavankumar). Further, from the shareholders details of these five companies, it was observed that the individual promoters/directors of DSIL were the Directors of these five companies, the details of which are tabulated hereunder:

Sl. No.	Name of the company	Name of the Directors
1.	DS Agrofarms Pvt. Ltd.	Harinarayan Murarka **Pavankumar Sanwarmal**
2.	Elite Agencies Pvt. Ltd.	Harinarayan Murarka **Rita Pavankumar**
3.	Man-Made Fibres Pvt. Ltd.	**Pavankumar Sanwarmal** **Rita Pavankumar**
4.	Resham Resha Pvt. Ltd.	Harinarayan Murarka **Pavankumar Sanwarmal**
5.	SM Sheti Seva Pvt. Ltd.	Harinarayan Murarka **Rita Pavankumar**

17. It was also observed that the phone number of D S Agrofarms, Elite Agencies, Resham Resha & S M Shetia Seva is common viz., 022-22024555, which is the phone number of the Company viz., DSIL. Therefore, it was observed that the aforesaid five entities are apparently connected / related with each other and with the Promoter / Director of DSIL. Hence, these five companies were falling within the definition of Promoters in terms of Clause 35 of the listing agreement. Thus, pursuant to taking into consideration the holding of the aforementioned five entities under the head promoter, it was observed that the 98.49% of share capital of DSIL was held by the promoters and their related entities, whereas, the promoters holding was shown as 0.83%, which was factually incorrect. Therefore, I note that the shareholding of the said five companies was 97.66% of the paid up capital of the Company, which was substantial and DSIL had not included the shareholding of these five companies

under promoter category in its quarterly filings from March 2002 till September 2009.

18. I note that the Company vide its letter dated October 29, 2009 addressed to BSE had submitted revised shareholding pattern from March 31, 2002 to September 30, 2009 by incorporating the shareholding of four companies out of the five companies stated above, under promoter category, as if, it was filed from the quarter ended March 2002 to September 2009. I note from the revised shareholding pattern submitted to BSE that, the Noticee had shown the holdings of four companies out of the five companies, under promoter category along with the Directors & Relatives, the details of which are furnished hereunder:

Promoter's holding:

Sl. No.	Category	Number of shares held	%age of total number of shares
1	Directors & Relatives	1,862	0.828

Persons Acting in Concert:

2	D S Agrofarms Private Ltd.,	45,200	20.089
2	Elite Agencies Private Ltd.,	40,731	18.103
4	Resham Resha Private Ltd.,	49,900	22.178
5	SM Sheti Seva Private Ltd.,	42,300	18.800
Total		**1,79,993**	**79.997**

I note from the above table that the Noticee had shown the holding of the promoters as 1,79,993 shares which was around 80% of the total share capital of the Company under the head Promoter's holding. However, in respect of the shareholding of Man-Made Fibres Pvt., which was holding 18.48% of share capital, it was not shown in the promoter category by DSIL.

19. I note that Man-Made Fibres Pvt., Ltd., was holding 41,600 shares which was 18.49% of the total share capital of the Company and there has been no change in the shareholding of Man-Made Fibres Pvt., Ltd., since the quarter ended March 2002 till the quarter ended September 2009. I note that the Noticee had not included the holding of Man-Made Fibres Pvt., Ltd., under the head promoter category. The Noticee vide letter dated August 16, 2010 in its submissions to the Investigating Authority stated that Man-Made Fibres Pvt.,

Ltd., was not the promoter or promoter group entity and therefore its holding should be excluded while considering the shareholding of the Promoters / Directors / related entities. I note from the submissions made by Man-Made Fibres Private Ltd., vide letter dated August 16, 2010 to the Investigating Authority, that as per the Annual Returns submitted to Registrar of Companies for the year 2008 and 2009, Shri Pavan Kumar Sanwarmal and Smt., Rita Pavan Kumar ceased to be Directors of the Company with effect from October 12, 2009. It was confirmed by Man-Made Fibres Private Ltd., that its Directors were Mr. Vijay Sakharam Pednekar and Mr. Dinesh Maliram Dhanuka, who were appointed on September 25, 2009 and none of them has any relationship with DSIL or any of its Directors / Promoters.

20. In view of the submissions made by the Noticee and Man-Made Fibres Private Ltd., I note that Man-Made Fibres Private Ltd., was in fact a promoter group entity till the quarter ended September 2009. However, the Noticee had not included the shareholding of Man-Made Fibres Private Ltd., under promoter category and shown it in the revised shareholding as public holding, which was factually incorrect.

21. Therefore, from the above sequence of facts, I note that the Noticee had not included the holding of five companies who were together holding 97.66% of share capital of DSIL under the promoter category in its quarter shareholding pattern filed with BSE from March 2002 till September 2009. I also note that in the revised shareholding pattern filed with BSE by DSIL vide its letter dated October 29, 2009, the holding of Man-Made Fibres Private Ltd., was not shown under promote category. Thus, I note that the Noticee had filed wrong shareholding pattern in its quarterly filings to BSE from March 2002 till September 2009 and even in the revised quarterly filings made for the said period, vide letter dated October 29, 2009.

22. The Noticee in its submissions had contended that the SCN was issued after 8 years for the affairs that have taken place in the year 2010 for the alleged violations for the period March 2002 till September 2009. In this connection, I deem it appropriate to refer to the observations made by Hon'ble SAT in the

matter of Vaman Madhav Apte & Ors. Vs. SEBI vide Order dated March 04, 2016, which reads as follows

"Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws."

23. Besides under the SEBI Act, there is no limitation on initiation of Adjudication proceedings for violation of various provisions of the Act and Regulations made thereunder. In the matter of Radheyshyam Chiranjilal Goenka Vs. Adjudicating Officer, SEBI, the Hon'ble SAT on August 31, 2000 held that –

"… Adjudication under section 15I for default under section 15F cannot be said to be hit by Article 14 of the Limitation act, as the default identified thereunder being a continuing one, till such time it is made good. In the instant case the default was made good only in September 1999, whereas the adjudication proceedings had commenced much earlier as way back in the year 1998."

24. In the case at hand, I note from the shareholding pattern filed by the Noticee that it had filed revised shareholding pattern for the year 2002 and 2009 on October 29, 2009 and that in the revised shareholding pattern also correct shareholding of the promoters was not filed. Hence, the contention of the Noticee that delay is writ large on the record since the alleged period of violation was nearly 16 years ago does not hold any merit. Thus under the circumstances, if the Noticees are to be given benefit on the ground that there has been delay in initiating the proceedings, and therefore the proceedings should be quashed, I am of the view that it would result in travesty of justice

than upholding of justice. In this connection, I note that mere delay in initiating proceedings cannot be a reason for absolving any person of the liability arising under law. In view of the aforesaid observations of the Hon'ble SAT, I am not inclined to take a different view and hold that the SCN is tenable.

25. Further, the Noticee contended the evidence placed on record for the charges alleged in the SCN. In this connection, I note that the initial burden of proving the allegation rests on the person making the allegation. In the extant matter, as stated earlier, the SCN has been issued pursuant to detailed investigation. I note from the submissions made by the Noticee to BSE vide its letter dated October 29, 2009, while resubmitting the shareholding pattern under Claus 35 of Listing Agreement for the quarter ended March 2002 till September 2009, wherein it had stated as under:

"We have to inform you that due to misinterpretation of definition of Persons Acting in Concert (PAC), only individual were considered in the category of promoters holding. The shares held in the name of the Companies whether connected / associated with the promoters or otherwise were all shown under one category of corporate bodies under the head of non-promoter holding. This pattern was prepared in 2001 and accordingly shareholding pattern was submitted till September 30, 2009. Recently, the Company has been advised by a Practicing Company Secretary the interpretation of PACs. We therefore would like to rectify and resubmit shareholding pattern. We assure that henceforth we shall take utmost care and precaution in submitting information / documents to you in future"

26. From the aforesaid submissions made by the Noticee to BSE, it is clear that it had not included the shareholding of body corporates *(five companies)* who were related to promoters under the promoter category due to misinterpretation of PAC. I note that the Noticee had rectified its mistake upon advising by a Practising Company Secretary. Therefore, it is clear from the above facts that the Noticee in fact had filed wrong shareholding pattern, which it had rectified subsequently in the year 2009 by resubmitting the correct shareholding pattern for the period March 2002 till September 2009. However, as brought out in the

findings of pre-pages, in the revised shareholding pattern submitted by the Noticee, the Noticee had not included the holding of one of the promoter entities viz., Man-Made Fibres Private Ltd., Thus, it is not that the SCN was not supported by evidence as claimed by the Noticee, the source of information was as per the submissions made by the Noticee and as per the original shareholding pattern filed by it with BSE.

27. In this context, I note that in the matter of A. Raghavamma and Another v. A. Chenchamma and Another (AIR 1964 SC 136), while making a distinction between burden of proof and onus of proof, the Hon'ble Supreme Court has opined as follows:

"There is an essential distinction between burden of proof and onus of proof: burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence."

28. I note that the Noticee came up with the defence of records being unavailable only at the adjudication stage. However, I note that the Noticee except claiming non-availability of records due to delay in initiating proceedings have not stated anything else. However, the Noticee has not given any explanation as to why they did not retain the earlier shareholding pattern filed with BSE that should have been available with them at the time of filing revised shareholding pattern despite being within knowledge of the fact that the earlier shareholding pattern filed by them was wrong. Further, I note that the Noticee had claimed non-availability of its earlier shareholding pattern filed with BSE, by BSE. However, I note that there is no record to justify the claim of the Noticee of non-availability of its earlier shareholding pattern, by BSE. The contention now raised by the Noticee pursuant to the issue of SCN that no records are available is especially suspect given the fact that the Noticee had not brought any such facts to the

notice of SEBI earlier i.e., at the stage of investigation. Any prudent person who is subjected to investigation, would at least retain all available records at the point of time.

29. Further, I note that the Noticee has contended that the allegation made in the SCN are merely on suspicions and conjecture based on BSE client database and that there has been no independent application of mind by SEBI. If this argument of the Noticees were to be accepted, then the basis of regulatory requirement of first level regulator viz., Stock Exchange would become redundant and would also naturally raise the basic question on the *raison d'être* of the Stock Exchange. Therefore, I find the contention of the Noticee devoid of any merit.

30. The Noticee in its submissions contended that since the public shareholding in DSIL was minuscule i.e., 0.83% of the total shareholding, it cannot be said to be deprival of substantial information to the investors of wrong shareholding filed by it. The requirement of correct disclosures by a listed company is as per established legal practices and there is no exemption for any listed company just because it is a closely held company and the public holding is miniscule. In this regard it is pertinent to note that the Noticee had not divulged the holding of 97.66% of its entities under promoter category and shown them as non-promoter category, which was wrong. Had the Noticee furnished the correct shareholding pattern of promoters i.e., 98.49% at the relevant quarters during the period 2002 and 2009, the investors in general would have taken an informed decision as regards their investment options in DSIL. In this regard, I would like to draw reference to the Hon'ble SAT's observation in the matter of Komal Nahata Vs. SEBI (Order dated January 27, 2014), which reads as under:

> *"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 15-J of the 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".*

Any disclosure made to stock exchanges by listed company are meant for investors to take an informed decisions in respect of their investments. Therefore, it is essential for a listed company to make the disclosure which are factually correct at all times and any wrong disclosure would result in misleading appearing of the facts which would ultimately impact the interest of investors. Therefore, in line with the aforesaid observations of Hon'ble SAT, I find no merit in the arguments put forth by the Noticee that the wrong disclosures had not mislead the investors and / or public at large.

31. The Noticee in its submissions requested to take a lenient view for the alleged violation as similar nature of disclosure in provisions of other Regulations have been made. In this regard, it is pertinent to note that under the provisions of Clause 35 of the Listing Agreement, companies listed on Stock Exchange are required to file with the Stock Exchange on a quarterly basis, within 21 days from the end of each quarter, their Shareholding Pattern as per the prescribed format. Therefore, the contention of the Noticee that similar nature of disclosure in provisions of other Regulations were filed by it, is devoid of any merit, as it does not absolve of the wrong shareholding pattern filed by it. In this connection, I would like to rely on the observations of Hon'ble SAT in the case of Enterprise International Ltd., Vs. SEBI in the Appeal No. 344 of 2017(Order dated January 31, 2018), which reads as under:

> *"Admittedly, the particulars disclosed in the years in question were wrong. Fact that correct particulars were in the quarterly reports cannot be a ground for the appellant to escape penal liability for furnishing wrong information in the format prescribed under clause 35 of Listing Agreement. Very fact that mutually inconsistent particulars were furnished by the appellant clearly shows that the investors were mislead during the period in question. Fact that the company and its promoters have not been benefitted from the error committed and the fact that the investors have not suffered any financial loss cannot be a ground to escape liability for furnishing wrong information during the period from December 2010 to December 2013".*

32. The Noticee in its submissions drawn reference to the provisions of Regulation 102 of SEBI (Listing Obligations and disclosure Requirements) Regulations, 2015 for taking into consideration the factors envisaged therein for relaxation of enforcement of the Regulations. I note that the violation committed by the Noticee dates back to March 2002 till September 2009, during which period there was no relaxation as per Regulation 102 of SEBI (LODR) Regulations, as the same were notified in the year 2015. Therefore, I find no merit in the submissions made by the Noticee.

33. Further, the Noticee drawn reference to SEBI Circular ref. no. SMD/Policy/Listing/Cir-5/2003 dated February 12, 2003, wherein Stock Exchanges have been directed to take necessary action under the provisions of SCRA for any non-compliance of the provisions of Listing Agreement. Accordingly, the Noticee claimed that since BSE had not taken any action against it for the alleged default of filing wrong shareholding pattern, SEBI ought not to take any action under the provisions of SCRA. In this connection, I note that the Listing Agreement is a document which is executed between companies and the Stock Exchange when companies are listed on the stock exchange. The main purposes of the listing agreement are to ensure that companies are following good corporate governance. The Stock Exchange on behalf of the SEBI ensures that companies follow good corporate governance. The Listing Agreement comprises of 55 clauses stating corporate governance, which listed companies have to follow, failing which companies have to face disciplinary actions, suspension, and delisting of securities. The companies also have to make certain disclosures and act by the clauses of the agreement. In case of any non-compliance of Listing Agreement by a listed company Stock Exchange is empowered to take action as deemed fit as per the extant Acts, Rules, Regulations and Bye-laws. However, in case of no action by Stock Exchange for any wrongdoing by a Listed Company, it does not preclude from taking any action against the Listed Company by SEBI. Therefore, I find no merit in the arguments put forth by the Noticee.

34. The Noticee further submitted that if at all the alleged violation is established, then it attracts Section 23A(a) of SCRA and not Section 23H of SCRA, for imposition of monetary penalty. In this connection, it is pertinent to mention that the Hon'ble Supreme Court in Civil Appeal No. 5859 of 2006 in the matter of Bonanza Biotech Ltd Vs SEBI and other connected appeals examined the issue as to whether the Adjudicating Officer(AO) under section 15A of the SEBI Act is authorized to impose penalty when the documents/information called for and furnished are false or whether the power of the said AO to impose penalty on the person/entity is limited and exercisable only in the event of failure to furnish information/details/documents. I note that the above appeal was filed in the context of an Order dated June 16, 2008 in the matter of Bonanza Biotech vs SEBI wherein Hon'ble SAT had upheld the levy of penalty imposed by the AO under section 15A for submission of false information /details by the entity. In its order dated March 7, 2017, in Civil Appeal No 5859 of 2006, the Hon'ble Supreme Court inter-alia referred to the observation of the expert group constituted by SEBI under the chairmanship of Late Mr.Justice M.H.Kania, former Chief Justice of India, which was relied upon by the appellant, which mentioned that –*"as per the provisions of Chapter VIA of SEBI Act, SEBI can impose monetary penalty for failure to furnish information or delay in furnishing the information. However, there is no provision for monetary penalty for giving false information"*

35. The Hon'ble Supreme Court of India, in its judgment dated March 07, 2017 had observed the following:-*"It appears that the only question in this matter is whether the Adjudicating Officer Under Section 15A of the Securities and Exchange Board of India Act, 1992, is authorized to impose penalty on the ground that the documents which have been asked for and have been furnished are false or whether power of the Adjudicating Officer to impose penalty is limited and can be exercised only in the event of failure to furnish documents. We have perused the order passed by the Adjudicating Officer. It appears from the order which was passed that the Adjudicating Officer had specifically stated in para 31 'that the Appellant has already furnished the materials which are*

available on record'. Since the materials have already been furnished, in our opinion, the said section is not attracted on the given facts."

36. Having regard to the above mentioned observations, the Hon'ble Supreme Court set aside the Order dated June 16, 2008 of Hon'ble SAT as not sustainable. In this connection, I am of the view that the ratio of the above judgment of Hon'ble Supreme Court of India would apply with equal force in the context of the present proceedings. Therefore, Section 23 A (a) of SCRA which provides for failure to provide information akin to Section 15 A (a) of SEBI Act is not the charging provision, since the Noticee had furnished information to the Stock Exchange, which however subsequently found to be wrong. Accordingly, Section 23H of SCRA, which is akin to the Section 15HB of SEBI Act, has been invoked as the charging provision, which provides penalty for contravention where no separate penalty has been provided. Therefore, the contention raised by the Noticee does not find any merit.

37. The Noticee in its submissions relied upon Orders of the Hon'ble SAT, Hon'ble WTM and Learned Adjudicating Officer in its defence. I have perused the case laws referred to and relied upon by the Noticee and I record my observations as under:

(a) ***Adjudication Order in the matter of Confidence Finance and Trading Ltd., dated May 25, 2018:*** It was ruled out that the violation committed by the Noticee was technical in nature and devoid of any malafied intention as the information with respect to the stock split and resultant changes in shareholding of the Company was already in public domain, since the stock split was carried out after giving due notice of the same to the stock exchanges well in advance. In this case, the investors / shareholders were aware of stock split by the Noticee, since the information about stock split was already in public domain and one day post stock split, the Depositories have electronically processed.

(b) ***Hon'ble WTM of SEBI Order dated February 2, 2017 in the matter of Refex Industries Ltd.,*** *- The Hon'ble WTM of SEBI did not issue any*

directions against the promoter and director and inter-alia held that "the violation is un-intentional and not consolidation …… that the violation is technical and venial in nature….."

(c) Hon'ble SAT Order dated November 30, 2000 in the matter of Sangeeta J Valia Vs. Adjudicating Officer, SEBI – SAT set aside the Order of the Adjudicating Officer dated July 24, 2000 for invoking wrong provisions of Law viz., Section 15 A (b) of SEBI Act, instead of Section 15 A (a) of SEBI Act.

38. I note that the facts of the current proceedings are materially different from what has been referred to and relied upon by the Noticee in the aforementioned first two case laws. The violation in the instant case cannot be termed technical / venial in nature and unintentional, as the violation of wrong filing of promoter shareholding continued for more than 7 years and even in the revised shareholding pattern filed by the Noticee, it failed to include the holding of one of its promoter entities under promoter category. Therefore, the violation observed in the instant proceedings cannot be termed as inadvertent, unintentional, technical and venial in nature. The third case law referred to and relied upon by the Noticee has been appropriately dealt in the preceding paragraphs as regards the rationale for invoking penal provisions under Section 23H of SCRA. Therefore, I conclude that the reliance placed by the Noticee in its defence of the above case laws is misplaced.

39. In view of the foregoing, I conclude that the Noticee by making wrong disclosure with regard to the shareholding pattern of its promoters during the period March 2002 and September 2009 had violated the provisions of Clause 35 of Listing Agreement.

ISSUE -2: Does the violation, if any, attract monetary penalty under Section 23H of SCRA?

40. The basic criterion on which the whole Listing Agreement based is Corporate Governance. By way of Listing Agreement inter-alia Stock Exchange ensures on behalf of SEBI that the Listed Companies are following good Corporate

Governance Practice. The investors need adequate disclosure at all times to take well informed investment decisions. Any wrong disclosures by Listed Companies would hamper the interest of investors in taking an informed decision. Therefore, as the violation against the Noticee stands established, the Noticee is liable for monetary penalty under Section 23H of SCRA.

41. The Hon'ble Supreme Court of India in case of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter-alia 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".*

42. It is relevant to mention here that the ratio of said case of Shri Ram Mutual Fund (supra) was maintained by the three Judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to income tax act. It was held by the Hon'ble Supreme Court *"that penalty under the provision is for breach of civil obligation and is mandatory and the mens-rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives".*

ISSUE -3: ***If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA?***

43. While determining the quantum of monetary penalty under 23H of SCRA, I have considered the factors stipulated in Section 23J of SCRA, which reads as under:

Section 23J - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under section 23-I, the Adjudicating Officer shall have due regard to the following factors, namely:

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

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

(c) the repetitive nature of the default.

44. 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. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default. It is the responsibility of Listed Company to furnish correct disclosures to Stock Exchanges which is very vital for the investors / shareholders to enable them to take an informed decision and any such failure on its part is likely to impact the interest of investors / shareholders.

45. Therefore, any lapse on the part of the Listed Company has to be dealt by SEBI seriously in order to protect the interests of investors in securities market. Therefore, I consider it appropriate for imposition of penalty on the Noticee for violation of Clause 35 of Listing Agreement, under Section 23H of SCRA.

ORDER

46. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 23I of the SCRA read with Rule 5 of the SCR Adjudication Rules, hereby impose a penalty ₹ 10,00,000/- (Rupees Ten Lakhs only) on the Noticee viz., Dalal Street Investments Ltd., under Section 23H of SCRA.

47. The said penalty imposed on the Noticee, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

48. 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

49. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department-I, DRA-IV, 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

50. In terms of rule 6 of the SCR Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: December 31, 2018 **B J DILIP**
Place: Mumbai **Adjudicating Officer**