

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SR/SM/2019-20/6036/137]

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

In respect of

Mayfair Capital Private Limited
(PAN No: AAACM2505R)
(Address: C 41, Mayfair Garden,
New Delhi- 110016)

In the matter of Unitech Limited

BACKGROUND

1. A department (in short **OD**) of Securities and Exchange Board of India (in short **SEBI**) conducted an examination in the scrip of Unitech Limited (in short **Company/Unitech**) for the period October 01, 2008 to December 31, 2008 (in short Investigation Period/IP). The Company was listed at Bombay Stock Exchange (BSE) and National Stock Exchange Limited (NSE) during IP. On investigation, OD observed that certain promoters of the Company who traded in the scrip of Unitech, failed to make disclosures with regard to change in their shareholding, of which one promoter entity was Mayfair Capital Private Limited. On June 28, 2013, two promoter entities viz Prakausali Investments India Private Limited and Mayfair Investments Private Limited amalgamated with Mayfair Capital Private Limited. However, during the relevant period, as the said promoter entities i.e Prakausali Investments India Private Limited, Mayfair Investments Private Limited and Mayfair Capital Private Limited existed disjointedly, investigation was accordingly conducted. After amalgamation in 2013, the promoter entity so formed was Mayfair Capital Private Limited (in short **Noticee**). During investigation, OD observed that there were changes in the shareholding pattern of the Noticee and Noticee failed to make disclosures to the Company and Stock Exchange under the provisions of regulations 7(1A) read with (r/w) 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (in short **SAST Regulations, 1997**) r/w regulation 35 of SEBI (Substantial Acquisition of Shares and
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Takeovers) Regulations, 2011 (in short **SAST Regulations, 2011**) and regulations 13(3) r/w 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (in short **PIT Regulations, 1992**) r/w regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (in short **PIT Regulations, 2015**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said investigation, OD of SEBI initiated Adjudication Proceeding against the Noticee and appointed Shri Prasad Jagdale as Adjudicating Officer, under section 15-I of the Securities and Exchange Board of India Act, 1992 (in short the SEBI Act, 1992) r/w rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (in short **Adjudication Rules, 1995**) vide communique dated March 18, 2016 to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged violations of provisions of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 r/w regulation 35 of SAST Regulations, 2011 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12 of PIT Regulations, 2015, by the Noticee. Subsequently, the matter was transferred to Shri. Nagendraa Parakh vide order dated December 14, 2016. After him, I was appointed as AO vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. SEBI/HO/EAD/E&AO/SR/VV/OW/9241/2 /2018 dated March 23, 2018 (hereinafter, referred to as the **SCN**) was issued to the Noticee in terms of the rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it and penalty be not imposed under section 15A(b) of the SEBI Act, 1992 for the alleged violations of provisions of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 r/w regulation 35 of SAST Regulations, 2011 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12 of PIT Regulations, 2015, by the Noticee.
4. It was alleged in the SCN that the Noticee did not make disclosure of its shareholding pattern in the scrip of Unitech. Details of the SCN are given below:

- a) IA observed that the shareholding pattern of promoters in the scrip of Unitech for quarters ending June 2008, September 2008, December 2008 and March 2009 reduced from 74.56% as on quarter ending September 2008 to 67.46% of total share capital as on quarter ended Dec 2008, which is a reduction of 7.10%. The shareholding of the promoter entities viz., Prakausali Investments India Private Limited and Mayfair Investments Private Limited changed during the relevant period and later on these two promoters amalgamated with the Noticee. The details of transactions for which there is change in shareholding of the Noticee (i.e the two promoter entities) given below:

- I. **Prakausali Investments India Private Limited (Prakausali):** The shareholding of Prakausali reduced from 62,33,88,446 shares (38.40% of total share capital) to 56,00,25,938 shares (34.50% of total share capital) during the quarter ended December 2008. In terms of regulation 7(1A) of SAST Regulations, 1997, while holding more than 15% but less than 55% of the share capital of the company, Prakausali was required to make disclosures to the company and the exchanges in respect of the above transaction (i.e. when the limit of 2% is triggered). Further, in terms of regulation 13(3) of PIT Regulations, 1992, Prakausali was required to make disclosures to the company in respect of the above transaction (i.e. when the limit of 2% is triggered). The date-wise details of changes in shareholding are given below:

Date	Particulars	Change in no. of shares		Change as % of company's share capital	Cumulative Change	Balance shares	% of share capital
		Increase	Decrease				
1-Oct-08	Opening balance as on 01/10/2008	-	-		-	623388446	38.40
27-Oct-08	Invocation of pledged shares by IDBI Trusteeship Services Ltd		- 23500000	-1.45%	-2.56%	581784938	35.84

- II. **Mayfair Investments Private Limited:** The shareholding of Mayfair Investments had reduced from 18,66,69,500 shares (11.50% of total share capital) to 11,49,59,257 shares (7.08% of total share capital) during the quarter ended Dec 2008. Date-wise details of changes in shareholding are given below:

Date	Particulars	Change in no. of shares		Change as % of company's share capital	Cumulative Change	Balance shares	% of share capital
		Increase	Decrease				
1-Oct-08	Opening balance as on 01/10/2008	-				186669500	11.50%
21-Nov-08	Invocation of pledged shares by JM Financial Products Limited		- 10105225	-0.62%	- 2.41%	147508727	9.09%
24-Dec-08	Invocation of pledged shares by Cholamandalam Investment And Finance Company Limited	-	-4116000	-0.25%	- 4.42%	114959257	7.08%

In terms of Regulation 13(3) of SEBI (PIT) Regulations, 1992, Mayfair Investments was required to make disclosures to the company in respect of the above transactions.

- b) IA observed that Unitech vide its letter dated January 11, 2014 stated that since there was no direct sale or purchase of shares by the promoter companies and that some lenders even subsequently returned the pledged shares to the demat account of the promoter companies after repayment of their loans, there was a bonafide belief that no disclosure was required to be filed in terms of PIT Regulations, 1992 and SAST Regulations, 1997. IA also observed from e-mail received from BSE and NSE that they have not received any disclosure under SAST Regulations, 1997, SAST Regulations, 2011, PIT Regulations, 1992 and PIT Regulations, 2015 in respect of the changes in shareholding of the said three promoter entities during quarter ended Dec 2008.
- c) In view of the above, it is alleged that there were changes in shareholding of Noticee (Prakausali Investments India Private Limited and Mayfair Investments Private Limited) and for the said changes, Noticee was required to make relevant disclosures within stipulated time in terms of SAST Regulations, 1997 and PIT Regulations, 1992. However, as the Noticee failed to make the disclosures to the company and to the exchanges and therefore it is alleged that the Noticee has violated the provisions of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 r/w regulation 35 of SAST Regulations, 2011 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12 of PIT Regulations, 2015.
5. The said SCN was issued to the Noticee at the address “C41, Mayfair Garden, New Delhi -110016” through speed post with acknowledgement due (SPAD) and the same
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was undelivered to the Noticee as seen from record. Subsequently the said SCN was affixed at the aforementioned address on May 07, 2018 and the affixture report is on record. Vide hearing notice dated June 26, 2018, an opportunity of hearing was granted to the Noticee on July 12, 2018. The said hearing notice was sent through SPAD and the same returned undelivered, as seen from available record. The copy of the SCN and hearing notice were uploaded on SEBI website under the head "Home>>Enforcement>>Unserved Summons/Notices. Further, a Public Notice was also given in Times of India, and Dainik Jagaran (Delhi Edition). The said publication advised the Noticee to submit its reply and appear for Personal Hearing on September 24, 2018. However, Noticee neither submitted any reply to the SCN nor attended the hearing as scheduled on September 24, 2018. Having received no reply from Noticee after having exhausted all stipulated modes of delivery as specified under rule 7 of Adjudication Rules, 1995, as an additional mode of delivery, vide letter dated October 15, 2019, SCN was sent to the Company. Addresses of Company where SCN was sent are "*Basement - 6, Community Centre, Saket, New Delhi – 110017*" and "*13th Floor, Tower B, Signature Tower South City-I, Gurugram-122001, Haryana*" advising the Company to deliver the said SCN to its promoter i.e. the Noticee and provide the acknowledgement receipt of the same. The said addresses of the Company were taken from websites of Ministry of Corporate Affairs. The said letters dated October 15, 2019 were delivered to the company as checked from website of India post office and in this regard, no reply received from the Company/Noticee till date. Neither did the Noticee appear on the scheduled date for personal hearing, nor filed any reply to the said SCN till date. I find that sufficient opportunities were granted to the Noticee to submit reply to the SCN and to appear for personal hearing in the instant adjudication proceedings.

6. In view of the above, I am of the opinion that the SCN has been duly served upon the Noticee in terms of Adjudication Rules, 1995 but the Noticee failed to reply and also failed to avail opportunities of personal hearing. I have carefully perused the charges made against the Noticee as mentioned in the SCN and the documents available on record. After taking into account, the allegations levelled in the SCN, and other evidences available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

7. The issues arising for consideration in the instant proceedings before me are:-
- a) **Whether the Noticee has violated the provision of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 r/w regulation 35 of SAST Regulations, 2011 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12 of PIT Regulations, 2015?**
 - b) **Do the violations, if any, on the part of the Noticee attract any monetary penalty under section 15A(b) of the SEBI Act, 1992?**
 - c) **If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?**
8. Before proceeding further, it will be appropriate to refer to the relevant provisions of the PIT Regulations, 1992, PIT Regulations, 2015, SAST Regulations, 1997 and SAST Regulations, 2011 which read as under:-

SAST Regulations, 1997

Acquisition of 5 percent and more shares or voting rights of a company

7(1A): *Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two percent 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
(a) the receipt of intimation of allotment of shares; or
(b) the acquisition of shares or voting rights, as the case may be.

SAST Regulations, 2011

Repeal and Savings

35(1): *The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.*

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any

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- adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*
- (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;*
- (c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.*
- (3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.*

PIT Regulations, 1992

Continual disclosure

- 13(3):** *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*
- 13(5):** *The disclosure mentioned in sub-regulations (3) and (4) shall be made within two working days of:*
- (a) the receipts of intimation of allotment of shares, or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

PIT Regulations, 2015

Repeal and Savings.

- 12(1)** *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*
- (2)** *Notwithstanding such repeal,—*
- (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*
- (b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

(3) *After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.*

9. Issue (a): Whether the Noticee has violated the provision of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 r/w regulation 35 of SAST Regulations, 2011 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12 of PIT Regulations, 2015?

- a) On perusal of available record, I find that the instant adjudication proceedings were initiated against Noticee alleging that Noticee failed to make disclosure for the change in shareholding and hence alleged to have violated the provision of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 r/w regulation 35 of SAST Regulations, 2011 and regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12 of PIT Regulations, 2015 for not making disclosure regarding the change in shareholding pattern in the scrip of Unitech.
- b) I find that opportunities were given to the Noticee to submit reply to the said SCN and also to avail opportunities of personal hearing in the instant adjudication proceedings. However, the Noticee neither replied to the SCN nor availed the opportunity of personal hearing granted to it. In this regard, it is pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed that *"... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against it in the show cause notice were admitted by it"*. I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that *"...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to it nor availed opportunity of personal hearing offered to it in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against it in the show cause notices..."* Therefore, in view of the said case law, it is presumed

that the Noticee has admitted the charges levelled against it in the said SCN. However, I still proceed to decide the matter on merit.

c) From the material available on record, it is noted that pursuant to a scheme of amalgamation and arrangement sanctioned by the Hon'ble High Court of Delhi, vide order dated April 23, 2013 made effective on June 28, 2013, the two promoter namely viz., Prakausali Investments India Private Limited (Prakausali) and Mayfair Investments Private Limited (Mayfair Investments) amalgamated with Mayfair Capital Private Limited i.e. the Noticee. Further, during the period of investigation the shareholding of the said two promoter entities viz. Prakausali and Mayfair Investments changed in the scrip of Unitech. Therefore, Noticee was required to make disclosures for the said changes in shareholding of the said two promoter entities. It is observed that on October 27, 2008 shareholding of Prakausali Investments India Private Limited reduced from 62,33,88,446 shares (38.40% of total share capital) to 58,17,84,938 shares (35.84% of total share capital). Percentage of change in shareholding of Prakausali Investments India Private Limited was 2.56% which is more than 2% of the total shareholding of the Company. Further, on November 21, 2008, shareholding of Mayfair Investments Private Limited, reduced from 18,66,69,500 shares (11.50% of total share capital) to 14,75,08,727 (9.09% of total share capital) and then on December 24, 2008 the shareholding reduced to 11,49,59,257 shares (7.08% of total share capital). For the said change in shareholding, the percentage of change is more than 2% of the shareholding of the Company and for the said transactions, Noticee was required to make disclosures to the Company under the provisions of 13(3) r/w 13(5) of PIT Regulations, 1992 as the percentage of change in shareholding exceeded 2% of the total shareholding of the Company. However, it is noted from the available record that Noticee failed to make disclosure.

d) In this regard, the Company i.e. Unitech in its letter dated January 11, 2014 informed that there was no direct sale or purchase of shares by the said promoters and the reduction of shareholding was due to invocation of pledge of shares of the Company. The reply of the Company is not acceptable to me since overall shareholding did not change owing to invocation of pledge but the percentage of

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change of shareholding of the Noticee were more than 2%, owing to the said transactions, which required to be disclosed by the Noticee. However, Noticee failed to make the said disclosures and hence violated the provisions of regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w regulation 12 of PIT Regulations, 2015.

- e) With regard to the violation of the provisions of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997, it would be appropriate to refer to the observations made by the Hon'ble SAT vide its order dated December 16, 2015 in the matter of Ravi Mohan and Others vs SEBI (Appeal no. 97 of 2014). The relevant portion is reproduced below:

“27. It is relevant to note that while inserting regulation 7(1A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1A) has to be made within two days of the events specified 35 in regulation 7(2). On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting rights in excess of the limits prescribed under regulation 7(1A). As a result, even though regulation 7(1A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Since regulation 7(2) as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1A), the question of discharging that obligation arising under regulation 7(1A) read with regulation 7(2) does not arise at all.

28. It was open to SEBI to make newly inserted regulation 7(1A) self operative, because regulation 7(1A) itself provides that the obligation set out therein has to be discharged within two days of purchase or sale specified therein. However, SEBI in its wisdom deemed it fit to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation specified under regulation 7(1) and 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Thus, by 2002 amendment it is made clear that although disclosure of purchase or sale referred to under regulation 7(1A) has to be discharged within two days of purchase or sale, of shares referred to therein, by 36 amending regulation 7(2) it is provided that two days time to make disclosure under regulation 7(1A) shall commence

on the happening of events specified under regulation 7(2). Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1A), the question of complying with regulation 7(1A) within two days of sale of shares does not arise at all.

29. *It is not even the case of SEBI, that regulation 7(1A) is self operative and that the obligation there under has to be discharged independent of regulation 7(2). In fact, in the impugned order, it is held by the AO that by failing to make disclosure to the stock exchanges regarding aggregate sale of shares or voting rights in excess of 2% of the share capital of the target company, the appellants are guilty of violating regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants.*
30. *It is apparent that after having specified two days time for complying with the obligation specified under regulation 7(1A), there was no need for SEBI to amend regulation 7(2) in relation to the disclosure obligation under regulation 7(1A). In any event, having deemed it fit to amend regulation 7(2), SEBI ought to have ensured that regulation 7(2) as amended contains a clause relating to disclosure of sale of shares or voting rights specified under regulation 7(1A). However, SEBI has failed to do so.*
31. *It is relevant to note that Takeover Regulations, 1997 have been replaced by Takeover Regulations, 2011. In the Takeover Regulations, 2011, SEBI has taken care to ensure that the disputes raised herein do not arise in those regulations. Since Takeover Regulations, 1997 is replaced by Takeover Regulations 2011, there is no need to issue any direction for taking remedial steps in the matter.*
32.
33. *For all the aforesaid reasons, the issues raised in these appeals are answered as follows:-*
- i)*
 - ii) Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under*

regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained.”

- f) In the instant adjudication proceedings, the shareholding of the Noticee reduced due to invocations of the said shares and hence, Noticee was not the acquirer or pledgee as specified in regulation 7(1A) of SAST Regulations, 1997. Therefore, based on the aforementioned facts and the case law, I am of the view that Noticee is not the acquirer and hence, Noticee has not violated the provision of regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 r/w SAST Regulations, 2011. However, Noticee violated the provision of regulations 13(3) r/w 13(5) of PIT Regulations, 1992 by not making the disclosures to the Company for the said transactions made Prakausali and Mayfair Investments and hence the allegation of the said provision of PIT Regulations, 1992 r/w PIT Regulations, 2015, stand established.

10. Issue (b):- Do the violations, if any, on the part of the Noticee attract any monetary penalty under section 15A(b) of the SEBI Act, 1992?

After taking into account the aforesaid entire facts / circumstance of the case, I am of the view that the violation of regulations 13(3) r/w 13(5) of PIT Regulations, 1992, by the Noticee, attracts the imposition of monetary penalty upon the Noticee under section 15A(b) of the SEBI Act, 1992. The text of the said penalty provision at the time of commission of the alleged violations are reproduced below:

The SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

11. Issue (c):- If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?

- a) While determining the quantum of penalty under section 15-I of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995 which reads as under:-

The SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

15J -: *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

- b) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to failure to make disclosures by the Noticee. I find that the Noticee did not make disclosures and hence violated the provisions of regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w PIT Regulations, 2015.
- c) The object of the Regulations, mandating disclosure of shareholding is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. The Regulation seeks 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.
- d) The Regulation seeks 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. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. Vs. SEBI–, *“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.”*

- e) I conclude that the aforementioned violation of provisions of regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w PIT Regulations, 2015 attracts monetary penalty and therefore, taking into consideration the facts/circumstance of the case and the above case laws, I am of the view that the Noticee is liable for a monetary penalty of Rs. 3,00,000/- (Rupees Three Lakh only) for violating the provision of regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w PIT Regulations, 2015.

ORDER

12. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 3,00,000/- (Rupees Three Lakh only) on the Noticee i.e. Mayfair Capital Private Limited under section 15A(b) of the SEBI Act, 1992 for the violation of the provisions of regulations 13(3) r/w 13(5) of PIT Regulations, 1992 r/w PIT Regulations, 2015. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.
13. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:
- a. By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai
14. Details of Demand Draft made as given in format below shall be sent to "The Division Chief,EFD-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C-4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

- a) Case Name
- b) Name of the 'Payer/Noticee'
- c) Date of Payment
- d) Amount Paid
- e) Transaction No.
- f) Bank Details in which payment is made
- g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

15. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
16. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the Adjudication Rules, 1995.

Date: December 12, 2019

SANGEETA RATHOD

Place: Mumbai

ADJUDICATING OFFICER