BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/SR/SM/AO/39/2017-18]

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

In respect of

Choice Equity Broking Pvt. Ltd.

(Address: Shree Shakambhari,
Corporate Park, Plot no.156-158
Chakravati Ashok Society
J.B Nagar, Andheri (East)
Mumbai-400099)

Recognised Stock Exchange	**SEBI Registration No.**
Bombay Stock Exchange	INZ000160131
National Stock Exchange Of India Ltd.	INB231377335
Metropolitan Stock Exchange of India Ltd.	INZ000160131

(PAN: AADCC8390B)

In the matter of Women's Next Loungeries Limited

BACKGROUND

1. A Department of Securities and Exchange Board of India (hereinafter referred to as the **SEBI**) examined the trading activities of certain entities in the scrip of Women's Next Loungeries Limited (hereinafter referred to as the **company)** for the period October 01, 2015 to March 31, 2016. It was observed by the Department (OD) of SEBI that Choice Equity Broking Private Limited (hereinafter also referred to as **Noticee**) has violated the provisions of regulations 29(1) and 29(2) read with (r/w) regulation 29(3) of SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **SAST Regulations, 2011**) and regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the examination, OD initiated adjudication proceedings against the Noticee, to inquire into and adjudge under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) for alleged violations of provisions of regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations, 1992. The adjudication proceedings were approved by the Competent Authority. Ms. Anita Kenkare was appointed as the Adjudicating Officer under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged violation of the provisions of regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations, 1992 by the Noticee. Subsequent to the transfer of Ms. Anita Kenkare, I was appointed as Adjudicating Officer vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. EAD-6/AK/VG/15555/2017 dated July 06, 2017 (hereinafter referred to as **SCN**) was issued to the Noticee in terms of Rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against it for the alleged violations of provisions of regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations, 1992 and why penalty be not imposed on the Noticee under section 15A(b) of the SEBI Act, 1992 for the alleged violations as specified in the SCN. The SCN was issued through speed post acknowledgement due (SPAD) and the same was delivered to the Noticee as seen from proof of delivery available on record.

4. It was alleged in the SCN that the Noticee acquired 4,000 shares of the company on February 06, 2015 and as a result, shareholding of the Noticee increased from 1,24,000 to 1,28,000 i.e. 4.96% to 5.12% of the shares of the company. As the shareholding of the Noticee crossed 5% in the share capital of the company, the Notice was required to make disclosures to the company under regulation 13(1) of PIT Regulations, 1992 and also under regulations 29(1) r/w regulation 29(3) of SAST

Regulations, 2011 to the Company and BSE within the prescribed time. However, it was alleged that the Noticee failed to make the required disclosures within the prescribed time as per the provisions of PIT Regulations, 1992 and SAST Regulations, 2011. Further, it was alleged that, the Noticee sold 58,000 shares of the company on January 19, 2016 and as a result, shareholding of the Noticee decreased from 1,40,000 to 82,000 i.e. 5.92% to 3.6% of the shares of the company. By selling the said shares, the change in shareholding of Noticee exceeded over two percent of the share capital of the company and thereby the Noticee was required to make disclosures within the prescribed time under the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011. The details of transaction made by the Noticee and the allegations are tabulated below:

Date of Transaction	**Buy/ Sale(-ve)**	**% of shareholding before transaction**	**% of shareholding after transaction**	**Regulations for disclosure**	**Due date of compliance**	**Actual date of compliance**	**Delay in days**
February 06, 2015	4,000	4.96	5.12	Reg. 29(1) of SAST Regulations, 2011	10/02/2015	Company: 07/08/2015	178
					10/02/2015	BSE: 10/08/2015	181
				Reg. 13(1) of PIT Regulations, 1992	10/02/2015	Company: 07/08/2015	178
January 19, 2016	-58,000	5.92	3.60	Reg. 29(2) of SAST Regulations, 2011	21/01/2016	Company: 22/01/2016	1
					21/01/2016	BSE: 25/01/2016	4

5. The Noticee vide its letter dated July 17, 2017 requested the previous Adjudicating Officer for a personal hearing. Vide e-mail dated July 20, 2017 the Noticee was advised to submit a reply to the SCN. The Noticee vide its letter dated July 21, 2017 submitted its reply to the SCN. After my appointment, acceding to the request made by the Noticee and in the interest of natural justice, vide hearing notice dated December 07, 2017 an opportunity was granted to the Noticee for a personal hearing on December 21, 2017. The said hearing notice was served to the Noticee by SPAD and proof of delivery is on record. Accordingly, the authorized representatives (AR), on behalf of the Noticee attended the hearing on the scheduled date i.e. December 21, 2017. AR re-iterated the earlier submissions made by Noticee and requested for

more time for additional submission. Accordingly, the Noticee was given time for additional submissions till December 29, 2017. Hearing minutes are on record. The AR submitted a reply vide letter dated December 29, 2018.

6. The Noticee in its reply dated July 21, 2017 and December 29, 2017 inter-alia submitted the following:

a) *The Noticee submitted that the violations as alleged in SCN regarding PIT Regulations, 1992 and SAST Regulations, 2011 should not be applicable to a registered Market Maker like the Noticee in SME segment. The Noticee is associated with the company as the Market Maker since the date of Initial Public Offer brought by the company in 2014 for listing on SME Segment of BSE Limited. The Noticee has subscribed the shares of the company in the capacity of the Market Maker as the Noticee entered into a Tri partite agreement with the issuer company and the Merchant Banker to subscribe to minimum 5 % of issue size of SME IPO and use them as initial inventory to provide 2 way quote in SME exchanges. Also the Noticee provided a copy of Market Making Agreement entered between the Noticee as a Market Maker, Company & Merchant Banker.*

b) *The Noticee does not buy SME scrips for taking controlling stake in a company or help facilitate a hostile takeover. It is only performing duties as a registered Market Maker guidelines as per SEBI circulars CIR/MRD/DP/14/2010 dated April 26, 2010 and CIR/MRD/DSA/31/2012 dated November 27, 2012, which has to provide liquidity in the market by giving two way quotes for the minimum presence of 75% of trading hours.*

c) *During the Initial phase of Market Making, the Noticee was of the opinion that it is not required for the market maker to disclose any acquisitions / disposal as the limit up to which the Noticee could have acquired the Shares in the Company as the Market Maker was well defined in the SEBI Circular, Exchange Circular & Prospectus of the Noticee which was available in Public Domain & the particulars of the Noticee as a Market Maker was too incorporated in the Prospectus, thus the Noticee had exempted to provide any Disclosures .*

d) *The Noticee submitted on the role of Market Maker as Prescribed by "Securities and Exchange Board of India" or "SEBI" vide their Circular bearing No. CIR/MRD/DP/ 14 /2010 dated April 26, 2010 as follows:*

- *The Market Maker shall be required to provide a 2-way quote for 75% of the time in a day.*
- *The minimum depth of the quote shall be Rs.1,00,000/-. However, the investors with holdings of value less than Rs 1,00,000 shall be allowed to offer their holding to the Market Maker in that scrip provided that he sells his entire holding in that scrip in one lot along with a declaration to the effect to the selling broker.*
- *Execution of the order at the quoted price and quantity must be guaranteed by the Market Maker, for the quotes given by him.*
- *The Market Maker has to start providing quotes from the day of the listing / the day for the respective scrip and shall be subject to the guidelines laid down for market making by the exchange.*

- *The Market Maker has to act in that capacity for a period of three years.*

e) *From the above stated roles & responsibilities of the Market Maker it can be reasonably understood that, the while acquiring or disposal of Shares in the Course of conducting the Market Making activity as an Ordinary Course of Business, the Noticee is not in the position of any Price Sensitive Information of the Company nor have any intention to acquire Control over the Management of the Company.*

f) *If we apply the above regulations then in our opinion all of the three parties to the agreement (Market Maker, Issuer Company and the Merchant Banker) may be violating the rule everyday as the stock inventory keeps increasing or decreasing daily.*

g) *We therefore did not feel that we have to report to BSE and the issuer company when the limit was crossed in the said 2 instances (on 06-Feb-2015 and on 19-Jan-2016). We however filed it at a later date only to be on the safe side as we did not found any specific exemption for the registered market maker under the above said regulations.*

h) *The above stated explanation can be supported by the Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation 2011 wherein the Market Maker are exempted from the provisions of Regulation 3 & 4 which triggers the Open Offer in case of Acquisition of Shares of more than 25 % of the Company within a Financial Year. It gives a clear intention of the Law that the purpose of acquisition/ disposal by the Market Maker is not to speculate but the action of acquisition/ disposal is mere want of the Ordinary course of Business to provide liquidity to the investor as a Market Maker.*

i) *At that point of time, the Noticee had tried to seek clarification with respect to giving disclosures under the said regulation in the industry, but there were no clear revert on the same. By due course of time and in absence of any written clarifications the Noticee adopted the Policy of giving disclosures as per the Disclosure Regulations and thus there was a delay of 178 days in providing the disclosure for the first time. The delay occurred for the second time by one day was mere clerical error.*

j) *Further we would like to state that we have done/ doing the Market Making of around 44 Companies as on date, while playing the role of Market Maker we are in position to acquire/ dispose the Shares on daily basis in the Ordinary Course of Business, we might trigger the Regulation of giving Disclosures on each day for a particular Script *(For Instance when we buy one Lot of Shares of a particular company and limit crosses 5 % and then next day , if we sell one lot and day after tomorrow again we buy one lot again crossing the limit of 5 % then on every such instances we have to give the Disclosures) giving disclosures every now and then for a particular script as a Market Maker is not feasible nor serves the Purpose of Law. However the Company has adopted the best practises to abide by the law by giving necessary Disclosures as and when required from 10-Aug-2015.*

k) *We would hereby request the Authority to exempt the Market Makers from the Regulatory frame work of Compliances where the activities are conducted in the mere ordinary course of conducting Business.*

7. After taking into account, the allegations levelled in the SCN, reply submitted by the Noticee to the SCN, and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

8. The issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992 and provisions of regulations 29(1) r/w regulation 29(3) of SAST Regulations, 2011?

(b) Whether the Noticee has violated the provisions of regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011?

(c) Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992? and,

(d) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 read with rule 5 (2) of the Adjudication Rules, 1995?

9. Before proceeding further, it will be appropriate to refer to the relevant provisions of the PIT Regulations, 1992 and SAST regulations, 2011 which read as under:-

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons – Initial Disclosure

13. (1) *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—*

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

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

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29. (1) *Any acquirer who acquires shares or voting rights in a company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such company, aggregating to five per cent or more of the shares of such company, shall disclose their aggregate shareholding and voting rights in such company in such form as may be specified.*

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

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

(a) every stock exchange where the shares of the company are listed; and

(b) the company at its registered office.

EVIDENCES AND FINDINGS

10. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

11. **Issue (a): Whether the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992 and provisions of regulations 29(1) r/w regulation 29(3) of SAST Regulations, 2011?**
Issue (b): Whether the Noticee has violated the provisions regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011?

a) I have noted from the available records that on February 06, 2015 the Noticee had acquired 4,000 shares of the company. Pursuant to this transaction, shareholding of the Noticee increased to 1,28,000 shares representing 5.12% of the share capital of the company. In this regard, I note from regulation 13(1) of PIT Regulations, 1992 that as the holding of the Noticee crossed 5% of the share capital of the company, the Noticee was required to make relevant disclosures to the Company within two working days of the acquisition of shares and in terms of regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011 to the Company and to BSE within two working days of the acquisition of shares. I have noted from the records available that the Noticee made the disclosures to the company on August 07, 2015 under the provisions of regulation 13(1) of PIT Regulations, 1992 with a delay of 178 days. Further, under the provisions of regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011, the Noticee made disclosure to the company on August 07, 2015 with a delay of 178 days and to BSE on August 10, 2015 with delay of 181 days. Further, on January 19, 2016 the Noticee had sold 58,000 shares of the company. Pursuant to this transaction, shareholding of the Noticee decreased to 82,000 shares, thereby the change in shareholding of Noticee exceeded over two (2) percent of the share capital of the company. In this regard, I note from regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011 that the Noticee was required to make relevant disclosures to company and to BSE. I have noted from the records available that the Noticee made disclosure to the company on January 22, 2016 with a delay of one (1) day and to BSE on January 25, 2016 with a delay of four (4) days.

b) As regards, the allegations made in SCN, Noticee has submitted that Noticee is a market maker for the company since IPO of the company and acting as a market maker in the Small and Medium Enterprises (SME) segment, Noticee

acquired and sold shares of the company beginning with subscribing to a minimum 5% of issue size of the said SME IPO, in accordance with instant regulatory framework for SME segment. Further, the Noticee has claimed exemption for not making disclosure owing to the acquisition/sale of shares in the company citing that under regulation 10 of SAST regulations, 2011, market makers are exempted from the provisions of regulations 3 & 4 of SAST Regulations, 2011, which triggers an open offer in case of acquisition of shares of more than 25 % of the company within a financial year. In this regard, I am of the view that, plain reading of PIT Regulations, 1992 and SAST Regulations, 2011 shows that there is no exemption allowed to the market maker from the requirement of making disclosures upon acquisition/sale of shares.

c) Even though the Noticee was buying and selling shares of the company by virtue of being a market maker, owing the absence of any specific exemptions to the market maker, Noticee was required to make disclosures. However, by not making disclosures to within the time specified, I find that the Noticee has violated provisions of regulation 13(1) of PIT Regulations, 1992 and regulations 29(1) and 29(2) r/w regulation 29(3) of SAST Regulations, 2011.

d) In view of aforementioned observations and the admitted position by the Noticee, I conclude that by failing to make disclosures to the Company and BSE as per the said requirements prescribed under PIT Regulations, 1992 and SAST Regulations, 2011, the Noticee has violated the provisions of regulation 13(1) of PIT Regulations, 1992 and regulations 29(1) and 29(2) r/w regulation 29(3) of SAST Regulations, 2011.

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

a) In respect of imposition of monetary penalties, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was 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".

b) It is relevant to mention here that 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 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.

c) Therefore, after taking into account the aforesaid entire facts / circumstance of the case and the aforesaid case laws, it is noted that the said violations of provisions of regulation 13(1) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 by the Noticee attracts the imposition of monetary penalties upon the Noticee under section 15A(b) of SEBI Act, 1992, are reproduced below:

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

13. **Issue (d) - If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995 ?**

While determining the quantum of penalty under sections 15A(b) of the SEBI Act,1992 it is important to consider the factors stipulated in section 15J Of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, which reads as under:-

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."

14. 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 the aforesaid violations. I find that the Noticee had failed to make required disclosures as prescribed under PIT Regulations, 1992 and SAST Regulations, 2011. In this regard, it is relevant to quote the observations made by Hon'ble SAT in its judgment on September 04, 2013 in the matter of Vitro Commodities Private Limited Vs SEBI wherein Hon'ble SAT had observed that:

"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other"

ORDER

15. In exercise of the powers conferred under section 15-I of SEBI Act, 1992 and Rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the Noticee viz. Choice Equity Broking Private Ltd. under section 15A(b) of the SEBI Act, 1992 for the violations of provisions of regulation 13(1) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee in terms of penalty structure provided in section 15A(b) of the SEBI Act, 1992.

16. The Noticee 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

17. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

18. In terms of the Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticee at his last known address and also to Securities and Exchange Board of India.

Date: February 28, 2018 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**