BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 3443/29 /2019-20]

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

In respect of:
M/s Mark Corporate Advisors Pvt Ltd
(PAN No. AAFCM5379J)

In the matter of M/s Palred Technologies Ltd

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") received draft letter of offer filed by Merchant Banker-M/s Mark Corporate Advisors Pvt Ltd (hereinafter referred to as "Noticee) on behalf of Mr. Palem Srikanth Reddy (Acquirer) along with Ms. Stuthi Reddy (Persons Acting in Concert) to acquire 26% of equity shares of Palred Technologies Ltd ("Target Company"), it was disclosed in the Draft Letter of Offer (hereinafter referred to as "DLO") that promoter group entities of target company had not made pre-offer disclosures related to change in shareholding (2.90% during April 2007-December 2011 and 6.99% during January 2012-March 2012) under Regulation 29(2) of SAST Regulations, 2011 (hereinafter referred to as "SAST Regulation") and Regulation 13(4A) of PIT Regulations, 1992. SEBI observed that Noticee had filed incorrect information in the DLO about non-compliances under Regulation 29(2) of SAST Regulations and Regulation 13(4A) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") and in the Letter of Offer and thus violated Regulation 27(2) and 27(5) of SAST Regulation in the Target Company.
2. In this Notice wherever PIT Regulations, 1992 is mentioned it should be referred to as PIT 1992 read with Regulation 12 of PIT Regulations, 2015.

Appointment of Adjudicating Officer

3. The undersigned has been appointed as Adjudicating Officer vide order dated April 16, 2018, under Section 19 of the SEBI Act read Section 15-I of SEBI Act" read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Rules") to inquire and adjudge under Section 15HB of SEBI Act on Noticee for the alleged violation.

Show Cause Notice, Reply and Personal Hearing:

4. Based on the findings by SEBI, Show Cause Notice no. SEBI/EAD-9/SM/EE/22383/ 2018 dated August 08, 2018 (hereinafter referred to as 'SCN") was served on Noticee in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticee to show cause as to why an inquiry should not be held against them and penalty should be not

imposed under Section 15A(b) of SEBI Act, 1992 on Noticee for the alleged provisions of law. The SCN issued was duly received by the Noticee.

Allegations in the SCN:

5. The details of incorrect pre-offer non-disclosure made by the Noticee in the draft Letter of Offer was as follows:

5.1. Pre-offer Non-disclosure with respect to Regulations 29(2) of SAST Regulations, 2011:

Name of the Promoter	Period of sale	Promoters' Shareholding		Shares acquired/sold (%)
		Before	After	
1.PalemSrikanth Reddy 2. Suresh Rajpal 3.G K P Reddi * 4. D Vidyasagar 5. P Mangamma * 6. P Soujanya Reddy 7. Boon Hweekoh 8. Dakshayani Reddy 9. MahendranRamanathan 10. TeoSer Luck 11. Keen Whye Lee 12. Douglas Terene Ash 13. West River Investments Ltd 14. Six Rivers Group Ltd	April 2007-December 2011	1,29,19,623 (33.16%)	1,17,89,995 (30.26%)	2.90%
1. Palem Srikanth Reddy 2. Suresh Rajpal 3. G K P Reddi 4. D Vidyasagar 5. P Mangamma 6. P Soujanya Reddy 7. Boon Hweekoh 8. Dakshayani Reddy 9.MahendranRamanathan 10.Keen Whye Lee 11. West River Investments Ltd 12. Six Rivers Group Ltd	January-March 2012	1,17,89,995 (30.26%)	90,66,435 (23.27%)	6.99%

* G K P Reddi and P Mangamma are deceased as per the submission made.

5.2. Pre-offer Non-disclosure with respect to Regulations 13(4A) of PIT Regulations, 1992:

Name of the Promoter	Period of Acquisition/Sale	Regulation applicable	Compliance status
1. Suresh Rajpal 2. GKP Reddi 3. Venkateswar Rao 4. TeoSer Luck 5. Douglas Terene Ash 6. David Ian Beatson 7. Deborah Lee Siew Yin 8. SatverInc	April 2007-December 2011	13(4A)	Not complied
1. Suresh Rajpal 2. D Vidyasagar 3. Keen Whye Lee 4.MahendranRamanathan 5. Boon HweeKoh 6. Six Rivers Group Ltd 7. West River Investments Ltd	January-March 2012	13(4A)	Not complied

6. However, it is noted from the submission of Mr. Palem Srikanth Reddy, one of the Promoter of Target company on September 08, 2016 *inter-alia*:

6.1. The said changes in promoters' shareholding were due to re-classification of certain entities from promoter category to public category. No actual transfer of shares took place as a result of which the obligation for disclosure do not arise.

6.2. The intimation for re-classification was also submitted by the company to the stock exchanges vide letter dated November 24, 2011 and February 09, 2012.

7. The aforeasaid disclosure of re-classification of promoter entities was disseminated at the stock exchange on November 24, 2011 and February 09, 2012.

8. In view of the above, it was alleged that Noticee had provided incorrect information in the letter of offer and not exercised proper due diligence while submitting the information to SEBI, therefore, have violated Regulation 27(2) of SAST Regulations, 2011 wherein, it requires the MB to ensure that the contents of the letter of offer are true, fair and adequate in all material respects and not misleading in any material. Further, Regulation 27(5) of SAST Regulations, 2011 requires Noticee to exercise diligence, care and professional judgment to ensure compliance with the Regulations.

Reply pursuant to SCN:

9. Vide letter dated August 31, 2018, Noticee made the following submission which are broadly stated:

9.1. As per instructions issued to merchant bankers and format for letter of offer available on SEBI's website at page no. 10 para 4.2.4 of the said format it has bee stipulated that merchant banker has to confirm and disclose as to whether the applicable provisions of Chapter V of SAST Regulations and Chapter II of SAST Regulations, 1997 has been complied by the acquirer/PAC within time specified. In case there is delay it has to be mentioned in the letter of offer.

9.2. In compliance with the said clause we have exercised adequate due diligence and prepared the statement on the basis of data provided by the target company for the last 10 years.

9.3. The shareholding pattern filed by the target company was provided to us and confirmed with the compliance status of Chapter V of SAST Regulation. The promoter capital build up statement was sent to the target company and were requested to verify and confirm. The same was re-checked and confirmed by the target company, signed it across and sent us the statement in original. The same was submitted to SEBI along with letter of offer.

9.4. SEBI has issued instructions that merchant banker has to carry out the compliance with respect to Takeover Regulations only and no other compliance needs to be carried out. It was limited due diligence to the extent of open offer.

9.5. The target company did not at any period of discussion and various stages of due diligence process and no documents were provided to us for the reclassification of the promoters to the public category.

9.6. The acquirer and the PAC in the offer are the promoters of the target company are the signatory to the letter of offer wherein, they have vouchsafed for the credibility and integrity of the disclosures made therein.

9.7. The rigorous examination of the shareholding pattern filed by the target company with the stock exchanges over the last 10 years was conducted by us in order to ensure the correct disclosures are made and there is any discrepancy with regard to disclosures not being made.

9.8. Typically persons/entities try to hide and suppress the discrepancies and shy away from making correct disclosures in the offer document. SEBI registered intermediaries are cast with the responsibility of ensuring that no such suppression takes place and all discrepancies are highlighted in the offer document.

9.9. Concept of due diligence cannot be stretched to an extent. Wherein after a person is admitting that he has violated the law, still the intermediary is expected to proble whether the admission of violation by the person is correct or not.

9.10. The target company did not disclose such reclassification in the shareholding pattern nor they brought this to our notice at the time of due diligence.

9.11. Earlier in the year 2014 there was no specific procedure for reclassification or promoter category into public category. It was only in September 2015 that SEBI came out with SEBI (LODR) Regulations, 2015.

9.12. In our letter of offer we had mentioned several non disclosures of target company, only reclassification information was not provided.

9.13. The incorrect information in the letter of offer has not caused any loss to any investor and has not adversely affected the shareholders of the target company or the securities market in any manner. The alleged violation have not led to any gain any unfair advantage. The alleged violation is technical. Procedural and venial breach and does not warrant, imposition of any monetary penalty.

Personal Hearing:

10. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, hearing Notice was issued to Noticee on March 11, 2019 granting an opportunity of personal hearing before the undersigned on April 04, 2019.

10.1. Noticee had requested to preponed the personal hearing to April 03, 2019 and the request was acceded. The Authorized Representative (hereinafter referred to as "AR") of the Noticee appeared before the undersigned on April 03, 2019. AR reiterated to the written submission made pursuant to the SCN and AR agreed to provide the format of draft letter of offer as prescribed by SEBI (relevant period of allegation) and document to support that disclosure under PIT Regulation, 1992 was not required to be disclosed in the draft letter of offer.

10.2. Pursuant to the personal hearing, the Noticee made additional submission stating:

10.2.1. That for ascertaining whether a person has exercised "due diligence", the test to be applied is the 'test of reasonable man'. Further, while applying the 'test of a reasonable man', what has to be seen is whether a person has done what a reasonable man would have done under the circumstances and not that whether a person has done everything possible under the circumstances.

10.2.2. Since the acquirer had confirmed that there has been breach of provision of Takeover Regulations, there was nothing for us to suspect that what the acquirer was confirming to us was incorrect. More so, since there were no disclosures appearing on the BSE website pertaining to those particular dates when the percentages were breached by the acquirer. Additionally, it is common knowledge that no person will confirm that he has breached the provision of law, when he has in fact not breached the provisions, Especially, when the breach of provision has a penal consequence. Normally, person suppress the breaches of law in order to avoid penal consequences. It may be appreciated that it was not the case that the acquirer stated that he has not breached the provisions and merchant banker accepted it on face value without ascertaining the same.

10.2.3. Suggestion that we should have examined the entire website of BSE and viewed all the disclosures made by the company(i.e disclosures other than relating to Takeover Regulations also), for the purpose of preparation of "Letter of Offer" is totally inapposite and misplaced. Firstly, we were doing limited due diligence from the perspective of Takeover Regulations for preparing the "Letter of Offer". Secondly, the preparation of "Letter of Offer" in terms of Takeover Regulations cannot be compared with the preparation of "Offer Document/Prospectus" for the purpose of IPO etc. Scope of "Offer Document/Prospectus" is far more wide, deep and intensive. As opposed to the same, "Letter of Offer" in terms of Takeover Regulations is very narrow and restricted. Thirdly, when the acquirer had himself that there was breach, there was on occasion to dig deeper to prove that what was confirmed was incorrect.

10.2.4. Thus, going by the 'test of a reasonable man', we respectfully submit that, under the circumstances, we have exercised requisite due diligence as expected from the merchant banker.

10.2.5. The impugned disclosures which are alleged to be incorrect are nothing but pertain to routine and inconsequential information and the same was not information having any significance.
The purpose of letter of offer is to provide requisite information about the acquirer/offer so as to enable the shareholders of the target company in taking an informed decision. The information is solely for the existing shareholders of the Target company and not for the public at large.

ISSUES FOR CONSIDERATION AND FINDINGS :

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

Issue I: Whether the Noticee have violated Regulation 27(2) AND Regulation 27(5) of SAST Regulations by Noticee;

Issue II Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act on Noticee;

Issue III If so, what should be the quantum of monetary penalty?

Before proceeding further, I would like to refer to the relevant provisions of SAST Regulations,

Relevant provisions of SAST Regulations are reproduced hereunder:

27 Obligations of the manager to the open offer.
(2) The manager to the open offer shall ensure that the contents of the public announcement, the detailed public statement and the letter of offer and the post-offer advertisement are true, fair and adequate in all material aspects, not misleading in any material particular, are based on reliable sources, state the source wherever necessary, and are in compliance with the requirements under these regulations.

(5) The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations.

12. From the records available before me, I find that Noticee had submitted DLO to SEBI on behalf of Mr. Palem Srikanth Reddy (Acquirer) along with Ms. Stuthi Reddy (Persons Acting in Concert) to acquire 26% of equity shares of Palred Technologies Ltd ("Target Company"). The Noticee has submitted promoter build up statement along with DLO wherein it had mentioned that promoter group entities of Target Company had not made pre-offer compliance related to change in shareholding of 2.90% during April 2007-December 2011 and 6.99% during January 2012-March 2012 under Regulation 29(2) of SAST Regulations. On the basis of information submitted by the Noticee, SEBI initiated enforcement proceedings against the entities mentioned at para 5.1 of the above and served Notice under Regulation 4 of SEBI(Settlement of Administrative and Civil Proceedings) Regulations, 2014 (hereinafter referred to as "Notice").

13. On receipt of the Notice, Mr. Palem Sirkanth Reddy, one of the alleged entity of the Notice and Promoter and Managing Director of the Target Company on behalf of himself and other Noticees vide letter dated September 08, 2016 replied that the disclosure obligations for the entities mentioned above with respect to pre-offer compliance does not arise as the change in promoters shareholding occurred due to removal of some individuals/entities from promoter category and their subsequent re-classification in public category. Hence, no actual transfer of shares took place as result of which no disclosure arise under Regulation 29(2) of SAST Regulation and under Regulation 13(4A) of PIT Regulation.

14. Pursuant to the reply received by the Promoter, SEBI raised query to the Noticee vide e-mail dated October 19, 2016, wherein, Noticee replied vide e-mail dated November 16, 2016 and November 21, 2016 *inter-alia "the business of the target company was sold in October 2013 and all the employees got transferred as part of the sale agreement. The then company secretary left the target company on November 2013. The new company secretary had no knowledge of the old transactions and even the acquirer of the target company were unable to provide the supporting documents pertaining to reduction in the shareholding of the promoter/promoter group for a period of last 10 years. In the absence of the supporting documents, it had relied upon the quarterly shareholding pattern filed with the stock exchanges to prepare the promoters build up statement".* Further, the Noticee vide e-mail dated November 22, 2016 informed to SEBI that the communication mentioned in the e-mail dated November 16, 2016 and November 21, 2016 was provided by the target company during the process of due diligence exercise carried out by the Noticee.

15. SEBI observed that Noticee being appointed as Manager to Offer did not provide true, fair and adequate information and did not exercise due diligence, care and professional judgment to ensure compliance. In view of the above, SEBI initiated adjudication proceeding against the Noticee.

16. Before proceeding with my findings, I would like to state that manager to offer means Merchant Banker has a dominant role to play, that the importance of his role has been recognized under the SAST Regulations, In this context, the requirement of appointing Merchant Banker has been referred under Regulation 12 of SAST Regulation wherein, prior to making a public announcement, the acquirer shall appoint a merchant banker registered with the Board, who is not an associate of the acquirer, as the manager to the open offer and further the Regulation states that the public announcement of the open offer for acquiring shares required under these regulations shall be made by the acquirer through such manager to the open offer. Further, Regulation 27 of SAST Regulations enumerates the obligations of the Merchant Banker appointed for the purpose. I note the reason for appointing a merchant banker as prescribed under SAST Regulation for the purpose of public offer is that a merchant banker is an professional body and therefore it will ensure regulatory compliance with reference to the public offer and therefore, it is expected to carry out outmost care in complying with the Regulations applicable to public offer. I also find it pertinent to mention that the target

company, the acquirer and the merchant banker work together to ensure that the offer meets all regulatory compliances. I also note that the Merchant Banker submits due diligence certificate to SEBI at the time of submitting DLO confirming that it has examined various relevant documents and that contents of public announcement, detailed public statement as well as DLO are true, fair and adequate and are based on reliable sources.

17. I also note that Regulation 29(2) triggers when acquirer who together persons in concert acquires or dispose shares more than two percent and in case of Regulation 13(4A) of PIT Regulations triggers when the promoter/promoter group if there is a change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. In the instant case, the reduction in the shareholding of the promoter group was due to reclassification of the promoter into public category.

18. I note that reportedly Noticee had taken following steps as part of due diligence:

    i. it had made rigorous examination of the shareholding pattern filed by the target company with stock exchange and had also taken confirmation from the entities about the non-disclosure of SAST Regulations during the last ten years of filing DLO.

    ii. when it had observed that there was reduction in the promoter/promoter group shareholding during the quarter ended December 2011 and March 2012 and it had contacted the promoter/ target company to know the reason of reduction in the shareholding.

    iii. based on response received from company and non-availability of disclosure in Bombay Stock Exchange (hereinafter referred to as "BSE/stock exchange") website, Noticee has prepared shareholding built-up statement and disclosed accordingly to SEBI.

19. I note that when the promoters and the target company had itself confirmed about the non-disclosure, there is no reason for the Noticee to suspect otherwise as disclosure were not available on BSE website. There was no reason or evidence that may have arisen a suspicion since it is general tendency to suppress the information of violation but in this case the promoters/target company itself vouched for the non-disclosure made under the SAST Regulation.

20. The Noticee also has contended that for ascertaining whether a person has exercised ‘*'due diligence',* the test of to be applied is the ‘*test of reasonable man'.* I note that Noticee has cited extract of the judgment by Hon'ble Supreme Court of India, in the matter of Chander Kanta Bansal Vs Rajender Singh Anand (2008) 5 SCC 117 "According to Oxford Dictionary (Edn.2006) the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's law Dictionary (18 Edn), *"Due Diligence" means the diligence reasonably expected from, and ordinarily expected by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to words and pharses by Drain-Dyspnea (Permanent Edn. 13-A) "due diligence" in law, means doing everything reasonable, not everything possible. "Due Diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs…". Further the judgment relied upon the various definition of due diligence available in various dictionaries which reads as :due diligence in law*

means reasonable diligence and doing "everything reasonable, not everything possible". Bearing in mind these principles governing "due diligence", the merchant banker cannot be expected to look at each and every statement and information provided by the target company with suspicion unless the facts and circumstances at the relevant time so demand. I note when it did not have the updated information in relation to reduction of the shareholding, it relied on the promoters/target company and the quarterly shareholding uploaded on the stock exchange website. The allegations are based on probability or effort the Noticee should have taken to check any past declarations made by the promoter/promoter group to the stock exchange which could have come to light about the reclassification of the promoter/promoter group into public category. Here the question is not about declaration made at that point of time but whether it is made at the right statutory obligations.

21. It is noted in the matter of *Imperial Corporate Finance and Services Pvt Ltd vs SEB (2005) 61 SCL 197, The Hon'ble SAT has held that "A Lead Manager is required to employ reasonable skill and care but he is not required to begin with suspicion and to proceed in a manner of trying to detect a fraud or lie unless such information excites his suspicion or ought to excite his suspicion as a professional man of reasonable competence."*

22. In the matter of Keynote Corporate Services Ltd Vs SEBI (order dated Feburary 19, 2014) Hon'ble SAT has held "*Due Diligence on part of Merchant Banker does not mean passively reporting whatever is reported to it but to find out everything that is worth finding out. It is about making an active effort to find out material developments that would affect interest of investors. It is on faith that intermediary has conducted due diligence with utmost sincerity that investing public goes forward and decides to invest in a particular company…."*

"---ensuring the truth and correctness of the letter of offer is a fundamental responsibility of the merchant banker which he has to discharge by exercising due diligence. In fact, an incorrect or wrong information in a letter of offer or other similar documents issued for the benefit of investors in general could lead to serious consequences including loss of credibility for the market operates and for the regulatory system. This kind of failure has to be taken very seriously by the market regulator…"

23. I find from the records at no point of time of the open offer, the promoters of the target company disclosed to SEBI or to the Noticee that the reduction of shareholding was due to reclassification of certain promoters to public category, however, the same was disclosed to the stock exchange and it was disseminated under the heads "quarterly shareholding pattern-December 2011 and March 2012" and "Corporate Announcements" on November 24, 2011 and February 09, 2012. This was brought to the notice of SEBI after the notice was issued to the promoter/promoter group for non-disclosure under SAST Regulation. It is relevant to mention here that Regulation 29(2) do not give flexibility to the promoter/promoter group not to make disclosure under SAST Regulation, when there is a change in shareholding and the change has resulted into more than two percent.

24. In regard to the contention made by the Noticee with respect to PIT Regulations, wherein it has emphasized on the instruction issued to Merchant Banker by SEBI that Merchant Banker had to carry out the compliance related to SAST Regulations only and no other compliance therefore the diligence is limited to extent of open offer. I agree with the Noticee that SEBI had issued guidelines to Merchant Banker in respect to compliance with SAST Regulations.

25. I agree with the submission of the Noticee that it had not suppressed the information in regard to non-disclosure, I am of the view that Merchant Banker who acts as a gateway between investors and company should exercise due care and diligence to verify the information before

including the letter of offer and that any information included in letter of offer is a material for investors to take informed decision and therefore necessary care and due diligence need to be exercised so as to reflect true, fair and correct information since the promoter/promoter group had made disclosure under corporate announcement and quarterly shareholding pattern but it had failed to make disclosures under Regulation 29(2) of SAST Regulation.

26. Hence, in view of the above, I conclude that the allegation against Noticee for violation of non exercising of due diligence do not stand established.

27. Since the alleged violations are not established against the Noticee, Issues No. (II) and (III) require no consideration.

ORDER

28. In view of my findings noted in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15 -I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby dispose of the Adjudication Proceedings initiated against M/s Mark Coporate Advisors Pvt Ltd in respect of allegation of violation of Regulation 27(2) and 27(5) of SAST Regulation, without imposition of any monetary penalty.

29. In terms of Rule 6 of the Adjudication Rules, copy of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 24, 2019
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER