BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/AA/2019-20/6884]

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) RULES, 1995

In respect of

Heroic Mercantile Private Limited
(PAN: AACCH8846C)

In the matter of Filatex Fashions Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination of trading in the shares of Filatex Fashions LiImited (hereinafter referred to as '**FFL**'). The shares of FFL are listed on the Bombay Stock Exchange Limited (hereinafter referred to as '**BSE**'). It was observed by SEBI that Heroic Mercantile Pvt. Ltd. (hereinafter referred to as '**the Noticee**') was holding 12.39% of the share capital of FFL as on the quarter ending September 2016, which decreased to 9.98% as on October 30, 2016 and further decreased to 7.87% as on November 22, 2016. However, no disclosure

was made by the Noticee under Regulation 29(2) read with Regulation 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the '**SAST Regulations, 2011**'). In view of the same, SEBI initiated adjudicating proceedings against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri V S Sundaresan, was appointed as the Adjudicating Officer, vide communiqué dated August 29, 2019 under Section 15-I of the SEBI Act 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'**) to inquire and adjudge under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as **'SEBI Act'**), the alleged violations committed by the Noticee. Thereafter, the Competent Authority vide communique dated December 26, 2019 has appointed the undersigned as Adjudicating Officer in the instant matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as '**SCN**') dated September 25, 2019 was issued to the Noticee under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and penalty, if any, be not imposed on it under the provisions of Section 15A(b) of the SEBI Act for the alleged violations of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011 committed by the Noticee.

4. The SCN sent to the Noticee returned undelivered with the remarks "Consignee shifted". In view of the same, an attempt was made to affix the same in terms of Adjudication Rules on October 04, 2019. However, I find from the affixture report that the attempt was not successful for the reason mentioned as "Consignee shifted".

5. Thereafter, an attempt was made to ascertain the registered office address of the Noticee as per MCA records. From the MCA records, the address of the Noticee was found to be "*B -7, 5th Floor, Block– A, Aidun Building, 1st Dhobi Talao Lane, Mumbai".* The SCN was duly delivered at the above new address on November 07, 2019. Since no reply was received from the Noticee from the above SCN, reminder emails dated November 19, 2019 and November 21, 2019 were issued to the Noticee at its email id "*heroicmer@gmail.com."*

6. Consequent to the change in the AO and appointment of the undersigned as AO, a communication dated January 06, 2020 intimating the above change along with a copy of communique dated December 26, 2019 was issued to the Noticee granting an opportunity to submit its reply, if any, and was further granted a hearing opportunity on January 21, 2020. However, the Noticee failed to appear for the said hearing and did not submit any reply in the matter. Considering the principles of natural justice, another opportunity of hearing was granted to the Noticee on January 31, 2020, vide hearing notice dated January 24, 2020. Though the said hearing notice was duly served on

the Noticee, it failed to avail of the hearing opportunity on the scheduled date.

7. Thereafter, a final opportunity of hearing was granted to the Noticee on February 11, 2020, vide hearing notice dated February 03, 2020. From available records, I note that the said hearing notice was duly served on the Noticee. I further note that the Noticee availed of the hearing opportunity on February 11, 2020 and was represented by Ms. Rinku Valanju, Advocate (hereinafter referred to as "**AR**"). During the hearing, the AR submitted reply of the Noticee dated February 08, 2020 and reiterated the contents of the said letter. The same has been extracted as below: -

(a) *At the very outset, the Noticee may bring to your notice that the period of examination is between October 24, 2016 to November 22, 2016 and the above referred SCN is dated September 25, 2019. There is, therefore, a great delay of nearly 3 years in the issuance of the SCN. This delay has caused prejudice to the Noticee as the Noticee does not have relevant data regarding sale of shares in its possession. The Noticee stands guided by Hon'ble SAT's judgment dated 22nd August, 2019 in the case of Ashok Shivlal Rupani & Ors versus Securities and Exchange Board of India (Appeal No. 440 of 2018 and Appeal No. 417 of 2018), para nos. 6 and 7 is reproduced below:*

"Having considering the matter, we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellants for alleged violations. Much water

has flown since the alleged violations and at this belated stage the appellants cannot be penalized. It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST Regulations the investors became aware of the change in the shareholding. The non-compliance of Regulation 13 if any becomes technical in nature."

(b) *In Mr. Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) proceedings were quashed on account of inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order is extracted hereunder:*

"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs. Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771) held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each

case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. BhaveshPabari (2019) SCC Online SC 294 held:

"13. There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/ statute, prejudice caused, whether the third-party rights had been created etc.""

(c) The Noticee also relies upon the order of the Hon'ble SAT in the matter of HB Stockholdings Limited versus Securities and Exchange Board of India (Appeal No. 114 of 2012), Hon'ble SAT while observing that "the alleged trades took place in the year 2000. The first show cause notice itself was issued by the Respondent on September 2, 2005 i.e. after a period of more than five years had already lapsed. There is not even a whisper in the impugned order to explain away such a long delay in issuing the SCN" observed that, "At this point we find it pertinent to note that human memory has a short shelf life. Allowing matters to go on and

on for years together by the Respondent serves no purpose, rather it risks loss of evidence such as important documents which may get destroyed while the issue gathers dust. Such systemic failures occur to the disadvantage of all parties concerned and lead to consequences such as genuine violators being allowed to function normally in the capital market for years together, whereas in some situations the reputation of innocent entities gets tarnished as they wait for the wheels of justice to tum a bit faster than the pace at which they seem to be going." On this line Hon'ble Tribunal concluded that "Thus, the existence of unnatural and unexplained delay of more than a decade and prejudice caused due to such undue delay is writ large in the matter. Therefore, the impugned order deserves to be quashed on this ground as well."

In view of the aforesaid orders of the Hon'ble SAT, the SCN dated September 25, 2019 is liable to be dropped.

Allegations under the SCN

(d) *In para 4 and 5, the SCN states 'During the period from October 25, 2016 to October 30, 2016, the Noticee had sold a total of 700000 shares (2.41%) of the Target Company and as a result, the shareholding of the Noticee in the Target Company was decreased to 2900000 (9.98%). With the sale of 140000 shares by the Noticee on October 30, 2016 (out of the said 700000 shares), the cumulative sale by the Noticee exceeded 2% and consequently, the Noticee was obligated to make*

disclosure to BSE and the Target Company as stipulated u/r 29(2) r/w 29(3) of SAST 2011.

During the period from November 01, 2016 to November 22, 2016, the Noticee had sold a total 612984 shares (2.11%) of the Target Company and as a result, the shareholding of the Noticee in the Target Company was decreased to 2287016 (7.87%). With the sale of 140000 shares by the Noticee on November 22, 2016 (out of the said 612984 shares), the cumulative sale by the Noticee exceeded 2% and consequently, the Noticee was obligated to make disclosure to BSE and the Target Company as stipulated u/r 29 (2) r/w 29 (3) of SAST 2011.

Submissions

(e) *The Noticee was an investor in the stock market at the relevant time and used to trade/ invest in other scrips also at the relevant time. It is pertinent to mention that the Noticee has never defaulted in any of its settlement obligations. The Noticee submits that it is a non-promoter shareholder and somehow came to hold the abovementioned quantity of shares.*

(f) *The Noticee was holding 36,00,000 (12.39%) shares of the Target Company as at the quarter ended on September 30, 2016. The Noticee then through market sold some of its shares in the Target Company throughout the quarter ended December 31, 2016 and as at the end of this quarter was left with 18,85,347 (6.49%) shares of the Target Company.*

(g) Under the head of Shareholding Pattern of the Target Company on the BSE website, Noticee's name and reduction in number of Noticee's shareholding for both the aforementioned quarter endings was displayed. Hereto annexed are copies of the Shareholding Patterns for both periods downloaded from BSE Website.

(h) The Noticee submits that it is a common investor who does not know and cannot be expected to know Insider Trading Regulations and Takeover Code Regulations for trading in the securities market. It is pertinent to mention that neither SEBI nor Exchanges nor member brokers nor depository participant have ever spread any awareness either through brochures, leaflets, investors booklet, contract notes or television/ print media advertisement to the investors about such type of special disclosures.

(i) The sole onus of disclosures on the lay investor is improper, inappropriate as a lay investor does not have knowledge, infrastructure, wherewithal, logistics, mental strength, time and it is very difficult to remember and take consequential act on such stray exceptional buy sale transaction. Hence it is requested that a practical view be taken and not hyper technical view.

(j) The Noticee says that the Noticee is an investor and not a SEBI registered intermediary or promoter/ promoter group entity. Further the common investors do not employ any professional such as Chartered Accountant/ Company Secretary/ lawyer for keeping track and co-relate

their day to day stock market trades with several provisions of different laws.

(k) *Further the disclosures are not at the heart of securities market. The Noticee states that the investors' decisions to buy/ sell specific securities and at what prices mainly depend on advice, research, fundamentals of the industry and the company, company's performance and its corporate announcements, reputation of promoters, country rating, political or banking events, economic and political conditions at country level and political level, conviction and risk appetite of investors and many such factors/ forces/ influences the market at macro and micro level. The integrity in the securities market mainly depend on the conduct of various SEBI registered intermediaries participating in the market viz. listed companies, Stock Exchanges, Depositories, main brokers, their sub-brokers, depository participants, and how they service / add value to the investors etc. aspects.*

(l) *The Noticee reiterates that it being a retail investor was not aware about any disclosure provision applicable to it at the relevant time. The Noticee verily believed that it being a non-promoter group entity its sale of the Target Company shares) does not require any further action on my part. The Noticee states that neither was it a broker nor the Stock Exchange/ Depository Participant/ Depository pointed out the requirement of disclosure at the relevant time.*

(m) The Noticee when being pointed out by SEBI (vide its SCN dated 25.10.2019) has made the disclosures to the said Target Company, and BSE on 07.02.2020 in their prescribed formats. For the Noticee, as a lay person, it was difficult to remember and keep track of different norms I requirements set by the apex Regulator for the different categories of the investors to follow and adhere.

(n) In the circumstances, the Noticee says that the lapses were unintentional, inadvertent - the non-disclosures were technical as the corporate I stock market world knew about the increase in shareholding through quarterly disclosures by the company to BSE. This was a stray case. Hence, no harm, loss or injury was caused to anyone on account of my non-disclosure at the relevant time.

(o) The Noticee had had no ulterior motive m the non-disclosures at the relevant time. Consequently, such non-compliance at the relevant time had no adverse effect, relevance and significance.

MITIGATING FACTORS:

(p) Mitigating factors provided as follows:

i. The Noticee has not violated any substantive provision of law.

ii. The Noticee is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. The Noticee has not acted in defiance of law.

iii. The Noticee has not viewed the regulatory proceedings in a non-chalant manner.

iv. *The Noticee has not made any unfair gain or advantage m any manner.*

(q) *In view of the above, the Noticee says the alleged violations in the captioned SCN were an inadvertent omission. The fact of reduction in shares held was displayed through the shareholding pattern of the Target Company which could be viewed on the BSE website. The delay in filing of this specific disclosure was unintentional. No unfair gain or advantage was made in any manner. The Noticee has as on date made the delayed disclosures with the exchange (BSE) and the target company (Filatex Fashions Limited). Considering the aforementioned factors, the Noticee prays that a lenient view be taken in the matter. The Noticee also craves leave to rely on the following case laws regarding the above matter: M/s. Rathi Bars Limited dated June 30, 2017, M/s. Inanna Fashion and Trends Limited dated March 15, 2018, Tricom Fruit Products Limited dated March 21, 2018 and Marg Limited dated March 22, 2018. (sic)*

CONSIDERATION OF ISSUES AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are:

(a) Whether the Noticee has violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011?

(b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?

(c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

9. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 2011 which read as under:

SAST Regulations, 2011:

Acquisition of 5 per cent and more shares or voting rights of a company

29(2) Any person who together with persons acting in concert with him, holds shares or voting rights entitling them to five percent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights even if such change results in shareholding falling below five percent, 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 two per cent of total shareholding or voting rights in the target 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 target company to –

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

(b) the target company at its registered office.

10. Before proceeding further, it would be appropriate to mention the relevant facts of the case leading to the present proceedings against the Noticee. SEBI examined the trading in the shares of FFL and it was observed from the share holding pattern available at BSE website that the equity share capital of the company at the quarter ended September 2016 was 2,90,54,545 out of which the Noticee was holding 36,00,000 shares (12.39%) of the target company in public category. It was observed that the Noticee had traded in the shares of FFL as per the details below during the period of examination.

NON INDIVIDUAL CLIENT NAME	***TRADE DATE***	***SELL QTY***	***SHAREHOLING IN TARGET COMPANY AFTER SALE TRANCATION***		***DECREASE IN SHARHOLDING FROM LAST DISCLOSURE***
HEROIC MERANTILE PVT LTD	*25/10/2016*	*140000*	*3460000*	*11.91%*	*0.48%*
HEROIC MERANTILE PVT LTD	*26/10/2016*	*140000*	*3320000*	*11.43%*	*0.96%*
HEROIC MERANTILE PVT LTD	*27/10/2016*	*140000*	*3180000*	*10.94%*	*1.45%*
HEROIC MERANTILE PVT LTD	*28/10/2016*	*140000*	*3040000*	*10.46%*	*1.93%*
HEROIC MERANTILE PVT LTD	***30/10/2016***	***140000***	***2900000***	***9.98%***	***2.41%***
HEROIC MERANTILE PVT LTD	*01/11/2016*	*140000*	*2760000*	*9.50%*	*2.89%*
HEROIC MERANTILE PVT LTD	*03/11/2016*	*91300*	*2668700*	*9.19%*	*3.21%*
HEROIC MERANTILE PVT LTD	*04/11/2016*	*100000*	*2568700*	*8.84%*	*3.55%*
HEROIC MERANTILE PVT LTD	*07/11/2016*	*9628*	*2559072*	*8.81%*	*3.58%*
HEROIC MERANTILE PVT LTD	*08/11/2016*	*11366*	*2447706*	*8.42%*	*3.97%*
HEROIC MERANTILE PVT LTD	*10/11/2016*	*14680*	*2433026*	*8.37%*	*4.02%*

HEROIC MERANTILE PVT LTD	*11/11/2016*	*6010*	*2427016*	*8.35%*	*4.04%*
HEROIC MERANTILE PVT LTD	***22/11/2016***	***140000***	***2287016***	***7.87%***	***4.52%***
HEROIC MERANTILE PVT LTD	*23/11/2016*	*140000*	*2147016*	*7.39%*	*5.00%*
HEROIC MERANTILE PVT LTD	*24/11/2016*	*140000*	*2007016*	*6.91%*	*5.48%*
HEROIC MERANTILE PVT LTD	*25/11/2016*	*121669*	*1885347*	*6.49%*	*5.90%*

11. During the period from October 25, 2016 to October 30, 2016 the Noticee had sold a total of 7,00,000 shares (2.41%) of the target company and as a result, the shareholding of the Noticee in the target company had decreased to 29,00,000 shares (i.e., 9.98%). With the sale of 1,40,000 shares by the Noticee on October 30, 2016 (out of the said 7,00,000) shares), the cumulative sale by the Noticee during the above period had exceeded 2% and consequently, the Noticee was obligated to make necessary disclosure to BSE and the target company as stipulated under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011.

12. It was again observed that, during the period from November 01, 2016 to November 22, 2016, the Noticee had sold a total 6,12,984 share (2.11%) of the target company and as a result, the shareholding of the Noticee in the Target company had decreased to 22,87,016 (7.87%). With the sale of 1,40,000 shares by the Noticee on November 22, 2016 (out of said 6,12,984 shares), the cumulative sale by the Noticee exceeded 2% and consequently, the Noticee was obliged to make necessary disclosure to BSE and to the Target company as stipulated under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011.

13. I note from available records that the BSE, vide its email dated September 21, 2018, addressed to SEBI had confirmed non receipt of any disclosure from the Noticee under the provisions of SAST Regulations, 2011 during the period from October 01, 2016 to December 31, 2016. I further note from the reply of the Noticee that the Noticee has admitted to the violation and has confirmed that necessary disclosures to BSE and to the target company were made on February 07, 2020. In this regard, I note from records that the Noticee has submitted as a proof of compliance copies of separate letters addressed to BSE (received by BSE on February 10, 2020) and to the target company in terms of the provisions of law referred above. From the copies of the disclosures as submitted by the Noticee, I find the inward receipt stamp of BSE, however, I do find any inward receipt stamp with respect to the disclosures claimed to have been made to the target company. However, considering the BSE inward receipt stamp, I am inclined to accept the submissions of the Noticee with respect to delayed disclosures. I, thus, note that the Noticee has taken 807 and 792 working days respectively to comply with the disclosure obligations that were triggered on October 30, 2016 and November 22, 2016. I further note from the reply that the Noticee has admittedly made the delayed disclosure only after receipt of the SCN under reference.

14. I further find from the reply that the Noticee has made various arguments to justify its non-compliance and I proceed to deal with them in the ensuing paragraphs.

14.1 The Noticee has claimed it to be a retail investor and has no knowledge on law and is not a SEBI registered intermediary and has not engaged professionals to advise it on law. In this regard, I note that ignorance of law is not an excuse. Also, I gather from the reply of the Noticee that it admittedly used to trade in other scrips also at the relevant time. Thus, I find from the reply that the Noticee to be not new to the securities market trading and hence I expect it to know the applicable provisions of law enabling it to duly comply on time.

14.2 The Noticee has claimed that the target company has made necessary disclosures on the BSE website wherein the name of the Noticee and its reduction in holding(s) for the relevant quarters has been disclosed. In this regard I note that the disclosure obligation on the Noticee alleged to have been violated is different and independent and the same cannot be avoided citing disclosures made by the target company under other applicable provisions of law. In this regard I would like to refer to the decision of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the 'Hon'ble SAT') in the matter of Ambaji Papers Pvt. Ltd. vs. The Adjudicating Officer, SEBI dated January 15, 2014, wherein similar contention of information being in the public domain was raised by the appellant. Hon'ble SAT observed that - *".... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also*

required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well."

14.3 The Noticee has also argued on other grounds such as the lapses were unintentional, inadvertent, and technical, without any ulterior motive and did not cause any harm or injury to anyone. In this regard, I rely upon the ratio of the Hon'ble SAT in the matter of Ashok Jain vs. SEBI (Appeal No. 79 of 2014 dated June 09, 2014) wherein the Hon'ble SAT observed as under:

".....Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations…" (Emphasis supplied)

14.4 I also note certain 'mitigating factors' brought out by the Noticee on a similar tone as argued above. Thus, for the reasons discussed above, I do not find the above arguments to be acceptable warranting any lenient view on the Noticee.

15. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that - *"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."*

16. In view of the above, I find that the violations of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011 is established against the Noticee. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} held that - *" In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the*

view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".

17. In view of the same, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act, which reads as under:

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 such failure continues or one crore rupees, whichever is less:

…

18. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

19. The material available on record also 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 non-compliance committed by the Noticee.

ORDER

20. After taking into considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act 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 impose a penalty of Rs. 2,00,000 (Rupees Two Lakh only) on the Noticee viz. Heroic Mercantile Private Limited under the provisions of Section 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with violations committed by the Noticee.

21. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEB Ii.e.www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT-> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalty, the Noticee may contact the support at portalhelp@sebi.gov.in.

22. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

23. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Heroic Mercantile Private Limited and also to the Securities and Exchange Board of India.

Date: February 20, 2020
Place: Mumbai

K SARAVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER