

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. MC/DPS/2019-20/3480-3482]**

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**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

In respect of –

1. **Shri Yogesh Kela** (PAN-AABPK5633N)
2. **Shri Prakash Nandalal Kela** (PAN-AABPK5343D)
3. **Shri Umesh Kela** (PAN-AFYPK7898F)

having address at – 401-Devpooja North Avenue Road, Santacruz (W),  
Mumbai – 400054.

In the matter of M/s Glory Polyfilms Ltd.

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against 1) Shri Yogesh Kela, 2) Shri Prakash Nandalal Kela and 3) Shri Umesh Kela (hereinafter referred to as '**the Noticee No. 1 to 3**' respectively or '**the Noticees / You**' collectively). Noticee No. 1 to 3 are the Promoters of the company – M/s Glory Polyfilms Ltd (hereinafter referred to as '**Glory / Scrip / Company**') and Noticee No. 1 is the Managing Director of the company. Adjudication proceedings were initiated against
  - i) Noticee No. 1 to 3 for the alleged violations of regulation 7(1A) and 8A(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations, 1997**') and for regulation 13(4) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**').
  - ii) Noticee No. 1 and 2 for the alleged violations of regulation 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade

Practices Relating to the Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') )

- iii) Noticee No. 1 for the alleged violations of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "**AO**") vide order dated May 10, 2018 to inquire into and adjudge under section 15A(b), 15HA and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), the aforesaid alleged violations against the Noticees. The appointment of the AO was communicated vide order dated November 9, 2018.

#### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. EAD5/MC/DPS/34855/2018 dated December 21, 2018 (hereinafter referred to as "**SCN**"), was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of 15A(b), 15HA and 15HB of the SEBI Act, for the following alleged violations against the Noticees:-

- i) Regulation 7(1A) and 8A(3) of SAST Regulations, 1997 and regulation 13(4) of PIT Regulations by Noticees 1 to 3,
- ii) Regulation 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations by Noticees No. 1 and 2,
- iii) Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations by Noticee No. 1.

4. It was alleged in the SCN that the Noticees failed to disclose reduction in their shareholding in Glory during December 31, 2008 to June 30, 2009. It was also alleged that the Noticees being the promoters of the company had disclosed certain off market transfers as pledge, thereby giving false information to

market that they continue to hold the shares. Noticees hence allegedly deprived the investors from the vital information that the promoters of the company have reduced their stake in the company by 14.92% of the paid up capital of the company, which amounted to fraud.

5. The aforesaid regulations alleged to be violated by the Noticees are reproduced as under;

*SAST Regulations, 1997*

**Acquisition of 5 per cent 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, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent 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.

**Continual disclosures.**

*8A(3) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company.*

***Explanation.***— For the purposes of sub-regulations (1), (2) and (3) the term “Promoter” and “promoter group” shall have the same meaning as is assigned to them under Clause 40A of the Listing Agreement.

PIT Regulations

**Continual disclosure.**

*13(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

**SCHEDULE 1**

*[Under regulation 12(1)]*

**PART A**

**MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES**

*4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.*

*In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.*

PFUTP Regulations

**4. Prohibition of manipulative, fraudulent and unfair trade practices**

- 2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-*

*f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*  
*k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;*  
*r) planting false or misleading news which may induce sale or purchase of securities.*

6. The SCN was issued through Speed Post Acknowledgement Due (SPAD) to the Noticees on December 21, 2018. SCN was sent to Noticee No. 1 and 3 at the address, 401-Devpuja North Avenue Road, Santacruz (W), Mumbai – 400054, which was returned undelivered by the Postal Department with remarks, “Unclaimed”. Affixture could also not be done at the last known address of the Noticee No. 1 and 3. SCN was delivered to Noticee No. 2 on December 27, 2018 through SPAD at the address, Shri Prakash Nandalal Kela, 201 Vintage Pearl, 29<sup>th</sup> Road, Bandra West, Mumbai – 400050.
7. As the SCN could not be delivered to the Noticee No. 1 and 3 at the last known address of the Noticees, the SCN was uploaded on the website of SEBI under the head, “Unserved Summons / Notices” and opportunity of hearing was provided to the Noticees through newspaper advertisement on January 23, 2019 in one of the leading national newspaper "Times of India – Mumbai edition", and in vernacular language newspaper "Navbharat Times – Mumbai editions" in Hindi and "Maharashtra Times – Mumbai editions" in Marathi, advising the Noticees to appear on February 25, 2019 for hearing.
8. Noticees were also informed by way of the aforesaid newspaper publications that they may file their reply towards the SCN by at least four days prior to the date of hearing and in case of non-receipt of any reply from the Noticees or non-appearance of any person / authorized representative at the hearing on February 25, 2019 the adjudication proceedings would be undertaken on *ex-parte* basis as per the material available on record.

9. Vide letter dated February 25, 2019, Noticee No. 1 on behalf of all the Noticees requested for extension of time for filing reply. Accordingly, Noticees were advised to file their reply, if any, towards the SCN by March 15, 2019 and an opportunity of personal hearing was provided to the Noticees on March 20, 2019, vide notice dated March 01, 2019 which were served by way of SPAD on March 5, 2019 to Noticee No. 1 & 3 and on March 7, 2019 to Noticee No. 2. Noticee No. 1 on behalf of all the Noticees submitted their reply vide letter dated March 14, 2019.
10. Hearing on March 20, 2019 was attended by Shri Yogesh Kela / Noticee No. 1. During hearing Shri Yogesh Kela submitted that he will be representing his brother - Shri Umesh Kela (Noticee No. 3) and his father - Shri Prakash Nandalal Kela (Noticee No. 2). Noticee No. 1 submitted that he will submit revised submissions and documents evidencing pledge of securities, if any and trade details regarding the market purchase and also original Authorization letter for all the Noticees along with copy of PAN card by April 11, 2019.
11. Vide email dated April 16, 2019, Noticee No. 1, submitted that, *"I was to come on April 11 for Hearing, but was not able to come and also communicate as I had got Typhoid. I am extremely sorry for not attending and request you to kindly give me any date as convenient with you so that I can come."*
12. In this regard, Noticee No. 1 was informed vide email dated May 10, 2019, that that he was required to make additional submissions as stated in the personal hearing conducted on March 20, 2019 and if no reply was received from him by May 13, 2019, then the matter would be decided further on the basis of evidence available on record. However, no further reply or any additional submissions were received from the Noticees.
13. The submissions made by the Noticees are reproduced below:-

- (a) Noticees had mistaken the Off-market transactions as pledge transactions and it was disclosed as pledge to the stock exchanges instead of reduction in holding of shares of the promoters. The same was unintentional and due to oversight and they had not gained profit or any unfair advantage & also not caused any loss to investors or anybody.
- (b) Noticees had not indulged in a fraudulent or any unfair trade practice in securities, as alleged Para 1(ii). We would nor had any malafide intention in not making the disclosures under the specific regulations, nor any intention to hide any information from the public at large. There was no malafide intention for alleged off market transfers carried out. Noticees did not make any unfair gain or unfair advantage nor cause any harm or loss to the investors because of the non-disclosures.
- (c) The mere unintentional non-disclosure of off market transfer cannot be considered per se illegal since there is no other additional evidence to prove manipulation or wrong intent.
- (d) Noticees had no knowledge of SEBI rules and technicalities, being normal graduate and usually acted upon the advice of professionals as they did not have a full time Compliance Officer. The opposite transactions were unintentional and due to oversight.
- (e) Noticees track record in terms of regulatory compliances has been excellent. No action has been taken against me in the past by SEBI or any other regulatory authority with respect to their dealing in securities market.
- (f) Glory Polyfilm Ltd had taken credit facility from consortium under the leadership of State Bank of India for purchase of plant and machinery and building of factory at Daman. Noticees have suffered huge loss due to business slowdown, Forex Fluctuations and as a result of the same the account slipped into stressed account. After the same, the liquidation order of the company was passed. While the matter was under BIFR, BIFR was abolished and NCLT was established and the protection which the company had against the liquidation order was withdrawn.

- (g) Later on Banks had started the recovery proceeding and sold the unit to ARCIL in the year 2014. Thereafter, Noticees had no work and their position is very grim.
- (h) Violation, if any is technical in nature and venial in nature and same is unintentional, therefore, Noticees requested that a lenient view may be taken.

## **CONSIDERATION OF ISSUES AND FINDINGS**

14. The issues that arise for consideration in the instant matter are:

- |                      |                                                                                                                                                                                                                                                                                                                        |
|----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Issue No. I</b>   | Whether the Noticees had failed to make mandated disclosures in violation of the provision of regulation 13(4) of PIT Regulations and regulation 7(1A) and 8A(3) of SAST Regulations as alleged in the SCN?                                                                                                            |
| <b>Issue No. II</b>  | Whether Noticee No. 1 had entered into opposite transactions i.e. buying or selling of shares within six months and same were in violation of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations? |
| <b>Issue No. III</b> | Whether Noticee No. 1 and 2 had given misleading disclosures and the same were in violation of regulations 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations?                                                                                                                                                      |
| <b>Issue No. IV</b>  | Does the violation, if any, on part of the Noticees attract monetary penalty under Section 15A(b), 15HA and 15HB of SEBI Act ?                                                                                                                                                                                         |
| <b>Issue No. V</b>   | If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?                                                                                                        |

**Issue No. I      Whether the Noticees had failed to make mandated disclosures in violation of the provision of regulation 13(4)**



**of PIT Regulations and regulation 7(1A) and 8A(3) of SAST Regulations as alleged in the SCN?**

**And**

**Issue No. II Whether Noticee No. 1 had entered into opposite transactions i.e. buying or selling of shares within six months and same were in violation of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations?**

15. The details relating to change in the shareholding of the Noticees as alleged in the SCN are not in dispute in the reply of the Noticees dated March 14, 2019. Noticees being the promoters of the company had reduced their shareholding consistently from 52.94% as on December 31, 2008 to 29.70% as on June 30, 2009, the details of which are given below:-

Name of the shareholder / Promoter	As on June 30, 2008		As on December 31, 2008		As on March 31, 2009		As on June 30, 2009	
	No. of shares	% holding	No. of shares	% holding	No. of shares	% holding	No. of shares	% holding
Noticee No. 1	4367249	25	4367249	25	3403450	19.48	2517248	14.41
Noticee No. 2	2619480	15	2619480	15	1354480	7.75	1219480	6.98
Noticee No. 3	2261237	12.94	2261237	12.94	1701237	9.74	1451237	8.31
Total	9247966	52.94	9247966	52.94	6459167	36.98	5187965	29.70

16. From the above table, I note the following facts:-

- a) Noticee No. 1 had reduced his shareholding from 25% as on December 31, 2008 to 19.48% on March 31, 2009 to 14.41% as on June 30, 2009 and the change exceeded 2% or more of the share capital from the shareholding as on March 31, 2009 and June 30, 2009, which triggered disclosure requirement under 7(1A) of SAST Regulations and Regulation 13(4) of PIT Regulations.
- b) Noticee No. 2 had reduced his shareholding from 15% as on December 31, 2008 to 7.75% on March 31, 2009 to 6.98% as on June 30, 2009 and

the change exceeded 2% or more of the share capital from the shareholding as on March 31, 2009, which triggered disclosure requirement under 7(1A) of SAST Regulations and Regulation 13(4) of PIT Regulations.

- c) Noticee No. 3 had reduced his shareholding from 12.94% as on December 31, 2008 to 9.74% on March 31, 2009 to 8.31% as on June 30, 2009 and the change exceeded 2% or more of the share capital from the shareholding as on March 31, 2009, which triggered disclosure requirement under 7(1A) of SAST Regulations and Regulation 13(4) of PIT Regulations.

17. I observe that the Noticee No. 1, Managing Director of the company in his statement dated May 6, 2013 to SEBI (copy of which was provided to the Noticees by way of Annexure 7 to the SCN) confirmed that disclosures under said regulations were not made to stock exchanges. Similarly, I also observe that the NSE, vide letter dated November 18, 2013 (copy of which was provided to the Noticees by way of Annexure 3 to the SCN) and BSE vide letter dated October 30, 2013 (copy of which was provided to the Noticees by way of Annexure 3 to the SCN) confirmed that no disclosures were received from the Noticees regarding change in their shareholding.

18. I also note that the Noticees, in their reply dated March 14, 2019, had submitted that non-compliance with Regulation 13(4) of the PIT Regulations and Regulation 7(1A) of the SAST Regulations was on account of ignorance of SEBI Regulations on the part of the Noticees and it was merely unintentional. However, I am of the view that it is a settled position of law that ignorance of law is no excuse. In fact, it is to prevent such ignorance of law that SEBI gives post-natal publicity by way of notification to all the rules and regulations made in the process of administrative rule making. Further, disclosure requirement is a statutory obligation where the intention of the parties becomes irrelevant.

19. In view of the above, I note that Noticees had admitted the said non compliance and confirmation of non-receipt of such disclosures in the Company as well as the BSE and NSE are on record. Hence, I am of the view that non compliance of Regulation 7(1A) of SAST Regulations and Regulation 13(4) of PIT Regulations by the Noticees is established.

20. Noticee No. 1 in its reply had submitted that the opposite transactions were unintentional and due to oversight. I note from the para 16 of the SCN that Noticee No. 1 had entered into opposite transactions i.e. executed buy and sell transactions in the market within six months. The details of such transactions are given below:-

Sl. No.	Promoters' Name	Trade Date	Buy Quantity	Sale Quantity	Net Quantity
1	Yogesh Kela	19-Mar-09	212000	0	212000
2	Yogesh Kela	23-Mar-09	35000	0	35000
3	Yogesh Kela	24-Mar-09	140000	75799	64201
4	Yogesh Kela	09-Apr-09	0	352	-352
5	Yogesh Kela	22-Apr-09	48718	0	48718
6	Yogesh Kela	27-Apr-09	15304	15304	0
7	Yogesh Kela	28-Apr-09	103302	0	103302
8	Yogesh Kela	14-May-09	0	73707	-73707
9	Yogesh Kela	15-May-09	24120	23283	837
10	Yogesh Kela	25-May-09	0	20000	-20000
11	Yogesh Kela	29-May-09	0	50000	-50000
12	Yogesh Kela	24-Jun-09	0	135000	-135000
13	Yogesh Kela	25-Jun-09	100850	0	100850
14	Yogesh Kela	30-Jun-09	25000	0	25000

21. According to Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations requires all directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. I note from the above table, that Noticee No. 1, being the Managing Director of the company had traded on 14 days in the scrip of the company, which resulted on buy and sell transactions within six months, during the period March 19, 2009 to June 30, 2009.

22. From the reply of the Noticee No. 1, I note that the facts relating to the Noticee No. 1 being the Managing Director of the company during the investigation period and execution of opposite transactions are not disputed. In this regard, Noticee has submitted that he had no knowledge of SEBI rules and technicalities, being normal graduate and usually acted upon the advice of professionals as they did not have a full time Compliance Officer. The opposite transactions were unintentional and due to oversight. However, as stated above, it is a settled position of law that ignorance of law is no excuse and to prevent such ignorance of law that SEBI gives post-natal publicity by way of notification to all the rules and regulations made in the process of administrative rule making.

23. In view of the above, that non compliance of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations by the Noticee No. 1 is established.

24. The details regarding non disclosure of invocation of pledge by the Noticees as alleged in the SCN are not in dispute in the reply of the Noticees dated March 14, 2019. Noticees being the promoters of the company had invoked shares, the details of which are given below:-

Sr. No.	Pledgor Name	Pledgee Name	No. of shares Pledged	No. of shares invoked	Date of creation of Pledge	Date of Invocation of Pledge
1	Prakash Kela	Ajas Components Pvt. Ltd.	65000	65000	26/05/2008	24/02/2009
2	Prakash Kela	Indtek Finance and Holdings Pvt. Ltd	100000	100000	28/11/2008	29/04/2009
3	Umesh Kela	Jatia Finance Ltd	164000	164000	15/09/2008	01/01/2009
4	Umesh Kela	Sunil G. Raheja	200000	200000	23/04/2008	02/01/2009
5	Umesh Kela	Satyanarayan Agarwal	250000	250000	16/06/2008	02/06/2009
6	Yogesh Kela	Famy Care Ltd.	100000	100000	14/05/2008	12/05/2009
7	Yogesh Kela	Satyanarayan Agarwal	500000	500000	06/05/2008	02/06/2009
		Total	1379000	1379000		

25. According to Regulation 8A(3) of SAST Regulations requires, a promoter or every person forming part of the promoter group of any company shall, within

*Adjudication Order in respect of 1) Shri Yogesh Kela, 2) Shri Prakash Nandlal Kela and 3) Shri Umesh Kela in the matter of M/s Glory Polyfilms Ltd.*

7 working days from the date of invocation of pledge on shares of that company pledged by him, inform the details of invocation of such pledge to that company. From the above table, I note that pledge was invoked twice against shares pledged by by Noticee No. 1 and 2 and thrice against shares pledged by Noticee No. 3. On the aforesaid pledge invocation, the Noticees ought to have disclosed the same within 7 working days from the date of invocation of pledge on shares to that company. However, Noticees in their reply have not disputed the non-disclosure regarding invocation of pledge as alleged in the SCN.

26. In view of the above, I note that Noticees, have admitted the said non compliance. Therefore, I am of the view that non compliance of Regulation 8A(3) of SAST Regulations by the Noticees is established.

27. In view of the aforesaid, I note that Noticees, being the promoters of the company had failed to make disclosures regarding reduction in their shareholding due to sale of shares and regarding invocation of pledge. Therefore it is established that the Noticees had failed to make disclosures as required under regulation Regulation 7(1A) and 8A(3) of SAST Regulations, 1997 and Regulations 13(4) of PIT Regulations. As Noticee No. 1 entered into sale transactions within six months of purchase, it is established that he violated Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations.

**Issue No. III      Whether Noticee No. 1 and 2 had given misleading disclosures and the same were in violation of regulations 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations?**

28. I note that Noticee No. 1 and 2 had admitted in their reply that they had mistakenly / unintentionally and due to oversight disclosed the offmarket transactions as pledge transactions as alleged in the SCN and alleged to have

violated 4(2)(f), 4(2)(k) and 4(2)(r) of the PFUTP Regulations. The details of off market transfers disclosed as pledge are given below.

Name of the promoter	No. of shares	Date of transfer	Name of transferee	Relationship with transferee
Prakash Kela	500000	05.01.09	Rosy Deal Comm	None
Yogesh Kela	250000	13.02.09	Vinimay Hanurag Pvt. Ltd.	None
Prakash Kela	500000	24.02.09	Jatin Seth	None
Prakash Kela	100000	24.02.09	Kishore Patki	None
Prakash Kela	100000	07.03.09	Kishore Patki	None
Yogesh Kela	125000	18.03.09	Shilpi Khemani	None
Yogesh Kela	325000	18.03.09	Shilpi Khemani	None
Yogesh Kela	450000	18.03.09	Sachin Pawar	None
Prakash Kela	50000	06.04.09	Shilpi Khemani	None
Prakash Kela	50000	06.04.09	Sachin Pawar	None
Yogesh Kela	600000	18.05.09	Hanurag Vinimay Pvt. Ltd	None
Yogesh Kela	200000	06.06.09	Famy Care Ltd	None
Yogesh Kela	75000	06.06.09	Pam Pac Machines	None
Total	3325000			

29. Noticee No. 1 and Noticee No. 2 had transferred 33,25,000 shares of the company (i.e. 19.03% of the paid up capital of the company) through off market transfers to various persons and have disclosed them to the stock exchanges as pledge under regulation 8A(1) and (2) of SAST Regulations. Out of the said 33,25,000 shares transferred through off market, the Noticee No. 1 and 2 have continued to show 26,09,150 shares (i.e 14.92% of the paid up capital of the company) under “promoters’ shareholding”, the details of which are provided to the Noticees in the SCN.

30. According to Regulation 4(2)(k) of PFUTP Regulations, dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if an advertisement is made that is misleading or that contains information in a distorted manner and which may influence the decision of the investors and according to Regulation 4(2)(r), dealing in securities shall be deemed to be a fraudulent or an unfair trade practice in case of planting false or misleading news which may induce sale or purchase of securities. I am of the opinion that disclosure of sale transaction as pledge was not advertisement or planting of false or misleading news, and hence it cannot be established that the Noticees

have violated Regulations 4(2)(k) and 4(2)(r) of the PFUTP Regulations by the Noticees.

31. According to Regulation 4(2)(f) of PFUTP Regulations, dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it includes publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities. I note that Noticee No. 1 and 2 by disclosing off market transfers as pledge, have given false information to market that they continue to hold the shares and thereby deprived the investors from the vital information that the promoters of the company have reduced their stake in the company by 14.92% of the paid up capital of the company. The Noticees, being persons dealing in securities of the company, have reported information about the company which was not true, in the course of dealing in securities which amounted to fraud. I also note that Noticee No. 1 and 2 had admitted in their reply that they had mistakenly / unintentionally and due to oversight wrongly reported the information. I am of the view that if there is wrong reporting then the whole purpose of disclosure requirement will fail as the investors will be deprived from the vital information to take informed decisions. Therefore I am of the view that by wrong reporting of shareholding information, violation of Regulation 4(2)(f) of the PFUTP Regulations by the Noticee No. 1 and 2, is established.

32. Noticees in their reply have also contended that no action has been taken against them in the past by SEBI or any other regulatory authority, they did not make any unfair gain or unfair advantage nor cause any harm or loss to the investors. Further Noticees also submitted that the Company had taken huge loans and they have suffered huge loss and liquidation order was passed against the company. Here, I am of the view that all the violations established against the Noticees are statutory obligations in their individual capacity for dealings in securities market. Thus Noticees cannot shirk responsibility from an obligation mandated by statutes by claiming that they suffered huge loss or the

company has gone under liquidation. As far as violation of PFUTP Regulations is concerned, while unfair gain or advantage is not quantified, the picture of confidence represented by promoters was misleading to investors and it cannot be stated with confidence that no harm was caused to investors by such wrong information.

**Issue No. IV Does the violation, if any, on part of the Noticees attract monetary penalty under Section 15A(b), 15HA and 15HB of SEBI Act ?**

**&**

**Issue No. V If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

33. Since the following violations by the Noticees are established, I am of the view that it warrants imposition of monetary penalty as under:-

Noticee No.	Failure on the part of the Noticee	Penalty Provisions and Violations
Noticee No. 1 to 3	Failure in making disclosure regarding reduction in their shareholding due to sale of shares and regarding invocation of pledge	Under section 15A(b) for violation of regulations 7(1A) and 8A(3) of SAST Regulations and regulation 13(4) of PIT Regulations
Noticee No. 1 and 2	For giving misleading disclosures by disclosing off market transactions (sales) as pledge transactions to stock exchanges	Under section 15HA for violation of regulations 4(2)(f) of the PFUTP Regulations
Noticee No. 1	For entering into opposite transactions i.e. buying and selling of shares within six months.	Under section 15HB for violation of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations.

34. The relevant sections of SEBI Act are reproduced as under:

SEBI Act:

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,—*

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*(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;*

**Penalty for fraudulent and unfair trade practices.**

*15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

**Penalty for contravention where no separate penalty has been provided.**

*15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

35. While determining the quantum of penalty under Section 15A(b), 15HA and 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

36. While it is established that the Noticees did not make timely disclosures to Company as well as to stock exchanges under SAST Regulations and PIT Regulations and also gave wrong disclosures, I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violations.

37. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹3,00,000/- (Rupees Three Lakh only) and ₹1,00,000/- (Rupees One Lakh only) for violation of Regulations 7(1A) and 8A(3) of SAST Regulations & Regulation 13(4) of PIT Regulations, and for violation of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in

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Schedule I of Regulation 12(1) of PIT Regulations respectively will be commensurate with the violations committed by the Noticee No. 1. Penalty of ₹2,00,000/- (Rupees Two Lakh only) each upon the Noticee No. 2 and Noticee No.3 for violation of Regulations 7(1A) and 8A(3) of SAST Regulations & regulation 13(4) of PIT Regulations will be commensurate with the violations committed. I am also of the view that a penalty of ₹5,00,000/- (Rupees Five Lakh only), which will be paid jointly and severally, for violation of regulation 4(2)(f) of the PFUTP Regulations will be commensurate with the violations committed by the Noticee No. 1 and 2.

## ORDER

38. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose total penalty of ₹13,00,000/- (Rupees Thirteen Lakh only) upon the Noticees as under:-

Noticee No.	Penalty Provisions and Violations	Penalty Amount	Total Penalty
Noticee No. 1	Under section 15A(b) for violation of regulations 7(1A) and 8A(3) of SAST Regulations and regulation 13(4) of PIT Regulations	₹3,00,000/- (Rupees Three Lakh only)	₹4,00,000/- (Rupees Four Lakh only)
	Under section 15HB for violation of Clause 4.2 Part A of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies as specified in Schedule I of regulation 12(1) of PIT Regulations.	₹1,00,000/- (Rupees One Lakh only)	
Noticee No.2	Under section 15A(b) for violation of regulations 7(1A) and 8A(3) of SAST Regulations and regulation 13(4) of PIT Regulations	₹2,00,000/- (Rupees Two Lakh only)	₹2,00,000/- (Rupees Two Lakh only)
Noticee No.3	Under section 15A(b) for violation of regulations 7(1A) and 8A(3) of SAST Regulations and regulation 13(4) of PIT Regulations	₹2,00,000/- (Rupees Two Lakh only)	₹2,00,000/- (Rupees Two Lakh only)
Noticee No. 1 and 2	Under section 15HA for violation of regulations 4(2)(f) of the PFUTP Regulations	₹5,00,000/- (Rupees Five Lakh only) to be paid jointly and severally.	₹5,00,000/- (Rupees Five Lakh only) to be paid jointly and severally.
<b>Total Penalty</b>			<b>₹13,00,000/- (Rupees Thirteen Lakh only)</b>

39. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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

40. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – IV of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

41. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**DATE: JUNE 25, 2019**

**PLACE: MUMBAI**

**MANINDER CHEEMA**

**ADJUDICATING OFFICER**