BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2018-19/1393-1395]

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:

1. Mr. Sunny Maria (PAN: AJPPK6346K)

2. Ms. Shamli Maria (PAN: AZNPM7768F)

3. Ms. Gauri Khanna (PAN: DMGPK8371H)

In the matter of Northlink Fiscal and Capital Services Limited

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination in the scrip of Northlink Fiscal and Capital Services Limited (hereinafter referred to as 'the company'), a company having its shares listed on the Bombay Stock Exchange (hereinafter referred to as 'BSE'), during the period July 01, 2016 to December 31, 2016. During such examination, change was observed in the shareholding of promoters of the company namely; Mr. Sunny Maria, Ms. Shamli Maria and Gauri Khanna (hereinafter referred to as 'the Noticees') on account of off market transfers of 5.5 lac shares of the company by one of the promoter Mr. Sunny Maria to three entities namely; Ms. Shamli Maria, Ms. Gauri Khanna and Ms. Nitika Khanna on August 10, 2016 as described in the following table:-

Transferor Name	Holding of Transferor before Transaction	Quantity of Shares Transferred	Holding of Transferor Post transfer	Counterparty transferee's Name	Holding of transferee's Post transfer
Mr. Sunny Maria	7,54,000 (23.20 %)	2,00,000	2,04,000 (6.28 %)	Ms. Gauri Khanna	4,41,800 (13.59 %)
		1,50,000		Ms. Nitika Khanna	6,06,824 (18.67 %)
		2,00,000		Ms. Shamli Maria	9,04,600 (27.83 %)

2. Based on the closing price of ₹ 8.75/- on August 10, 2016 the market value of the aforesaid 5.5 lac shares transferred by promoter Mr. Sunny Maria comes to ₹ 48,12,500/- i.e. more than ₹ 10 lacs as stipulated in regulation 7(2)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015

(hereinafter referred to as the 'PIT Regulations'). Ms. Shamli Maria and Ms. Gauri Khanna had received 2 lac shares each in the said off-market transfer on August 10, 2016 from Mr. Sunny Maria and based on the closing market price (₹8.75) of the scrip on August 10, 2016 the market value of the said 2 lac shares comes to ₹17,50,000/- i.e. more than ₹10 lacs as stipulated in the said regulation 7(2) (a) of the PIT Regulations.

3. Ms. Nitika Khanna had received 1.5 lac shares in the aforesaid off-market transfer of shares on August 10, 2016 from Mr. Sunny Maria. Based on the closing price (₹8.75/) of the scrip on August 10, 2016 the value of the shares acquired by her comes ₹13,12,500/- i.e. more than ₹10 lacs. However the company vide its email dated May 13, 2017 and May 24, 2017 had informed that Ms. Nitika Khanna was not a promoter or director or employee of the company as on the date of transaction i.e. on August 10, 2016. Accordingly, she was not required to make disclosures under regulation 7(2) (a). Further, the company vide email dated May 13, 2017 informed that Ms. Nitika Khanna was made a promoter of the company on August 13, 2016 and the disclosures of her shareholding, under regulation 7(1)(b) of PIT Regulations was received from Nitika Khanna within due date.

4. Thus, it was noted by SEBI that from amongst the above transferor and transferees, only Mr. Sunny Maria, Ms. Shamli Maria and Ms. Gauri Khanna were the promoters of the company as on August 10, 2016. Shareholding pattern of the company as disclosed to BSE for quarter ending June, 2016 and September 2016 also shows aforesaid change in shareholdings of the promoters of the company.

5. Vide email dated May 12, 2017, BSE had informed SEBI that no disclosures were received by it under the PIT Regulations during July 01, 2016 to September 30, 2016 from the promoters of the company w.r.t. aforesaid transfers.

6. The company vide e-mail dated May 13, 2017 had replied that shares have been gifted in off- market by Mr. Sunny Maria to the respective counterparties namely; Ms. Shamli Maria, Ms. Gauri Khanna and Ms. Nitika Khanna without any consideration. The company had contended that the transactions did not fall under the PIT Regulations as the transactions were without affecting the share price and were off market transaction and hence did not come under the purview of 7(2)(a) and 7(2)(b) of PIT Regulations, 2015.

7. The Noticees, vide their separate e-mails dated February 27, 2018, submitted that *'the aforementioned shares had not been traded on any stock exchange but transferred by way of gift without any value within family where value of specified security is NIL and hence the same could not be considered for computing the threshold limit of Ten Lakh rupees. Keeping in view of above the said transaction of gift of shares does not fall under PIT Regulations*'.

8. However, it was observed that disclosures must be made in accordance with the provisions of regulation 7(2) (a) of the PIT regulations and the value of securities in terms of the said regulation is to be taken as the prevailing market value of the securities on the day the shares are acquired or disposed of. As the market value of shares transferred by Mr. Sunny Maria and received by Ms. Shamli Maria and Ms. Gauri Khanna each was in excess of ₹10 lacs based on the closing market price of the scrip on August 10, 2018, they were under obligation to make requisite disclosures in terms of regulation 7(2) (a) of the PIT Regulations. In view of the above, it has been alleged that Mr. Sunny Maria, Ms. Shamli Maria and Ms. Gauri Khanna have failed to make required disclosures to the company under Regulations 7(2) (a) of PIT Regulations with respect to aforesaid off-market transfers of shares amongst them**.**

9. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to adjudicate upon the alleged violations of the provisions of regulation 7(2)(a) of the PIT Regulations by the aforesaid three promoters and approved the initiation of the adjudication proceedings in the matter on May 10, 2018. Thereafter, vide communication-order dated June 21, 2018, the undersigned has been appointed as the Adjudicating Officer to inquire and adjudge under rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) and under section 15A (b) of the SEBI Act, of the alleged violation of the provisions of regulation 7(2)(a) of PIT Regulations, 2015 by the aforesaid three promoters of the company, namely; Mr. Sunny Maria, Ms. Shamli Maria and Ms. Gauri Khanna.

10. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act and terms of reference as advised in above communication- order dated June 21, 2018, the notice to show cause no. EAD/SS/AKS/OW/P/2018/21610/1-3 dated August 02, 2018 ('the SCN') was issued to the Noticees, calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations.

11. The relevant provisions of the PIT Regulations charged in this case and possible penalty provided in section 15A (b) of the SEBI Act are reproduced hereinafter:

PIT Regulations, 2015.

Disclosure by certain persons.

7.(2)(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether

in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;..

SEBI Act.

Penalties and Adjudication

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,—*

(a) …….

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

12. The SCN was duly served upon the Noticees. After seeking further time, the Noticees filed their replies vide e-mails dated September 05, 2018 from Mr. Sunny Maria and Ms. Shamli Maria and e-mail dated September 06, 2018 from Ms. Gauri Khanna. In their replies the Noticees made common submissions *inter alia* as follows:

a. As per the Regulation 7(2) (a) of the PIT Regulations there was no *mens rea* for not filing the disclosure before stock exchange. The shares were transferred as a gift within a family out of love and affection without any value and the value of specified securities is NIL, hence, the same cannot be considered for computing the threshold limit of Ten Lakh rupees.

b. The said transactions of gift of shares were off-market transactions, wherein trading had not taken place and no consideration was received/ paid. The said trade had not affected the securities market. Since trading was not done the transactions did not fall under regulation 7(2) (a) of the PIT Regulations.

c. No one has gained any undue advantage from the said transactions. As a result of default no amount of loss caused to any investors or the group of investors. The transferor and the transferees both had no intention to deceive any person or investor. The transfer of shares did not affect the price of shares in the market.

d. Section 15A would, at all times, have to be read with Section 15J of the SEBI Act and being so, it is clear that the violation of the regulations being only technical, and not involving any

disproportionate gain to the appellant, or unfair advantage or loss to any investor. The disclosures not made were technical and they were not repetitive in nature. It was transfer of shares of the company among family members (promoters) through off-market transfer without any consideration and without affecting the capital market in anyway. As no trading was done no disclosure was required.

13. After seeking adjournment of dates, the Noticees availed opportunity of hearing granted to them on September 24, 2018 in terms of Rule 4 (3) of the Adjudicating Rules when Mr. Prakash Shah, Advocate i/b Prakash Shah & Associates made submissions on their behalf . Vide letter dated September 26, 2018, the Noticees made further submissions pursuant to personal hearing. The submissions so made on behalf of the Noticees are and *inter alia* as follows:

    a. Under regulation 7(2) (a) of the PIT Regulations, there is reference to "*traded value*" for determining disclosures parameters. However, in their case, there is no execution of trade, since the said transfer is a transaction of gift between close family members without any consideration. Hence, there is no "*traded value*" of the transaction. In this case, the *inter se* transfer of shares from one promoters to other promoters by way of gift was not an acquisition by way of 'trades' in securities and there was no 'traded value' of for gifted shares as required in regulation 7(2) (a) of the PIT Regulations. There is reference to "*Prevailing market value of the security*" in the allegation. However, there is no reference to such terminology in the relevant PIT Regulations. Therefore, the basis on which allegation is made against them is not supported by terms used in statute i.e. the PIT Regulations.

    b. Reference has been drawn to the Note on disclosure requirements as appearing under regulation 6(2) of the PIT Regulations, reproduced hereby:

    NOTE: *It is intended that disclosure of trades would need to be of not only those executed by the person concerned but also by the immediate relatives and of other persons for whom the person concerned takes trading decisions. These regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.*

    c. On perusal of the note, it is understood that disclosures are aimed to prevent abuse by trading by persons in possession of Unpublished Price Sensitive Information ("UPSI"). However, in the present case, there is no trading activity carried out by the Noticees and even after aforesaid transfer of shares by Sunny Maria, he continued to hold shares and remained as a promoter of the company, hence, there is no relevance to any UPSI prevalent at the relevant time.

d. The shareholding pattern was filed by the company on October 20, 2016 for the ensuing quarter ending September, 2016 with BSE. During the relevant period i.e. from August 10, 2018 to October 20, 2018, there is no material change in the market price and volume in the shares of the company and same can be seen from the price volume chart disseminated on BSE website. In support of the same the Noticees have relied upon Price Volume chart of share of the company on BSE during August, 2016 to October, 2016.

e. The attention has been drawn to the company e-mail dated May 13, 2017 (Para 2 of the SCN), wherein, it has been mentioned by SEBI that the company was aware of the aforesaid transaction among the Noticees. The company could take such stand only if it was informed about the gift.

f. The promoters did not have any design to make any gain of cause loss to any investors or to take any advantage of the transaction as the shares remained within the family members and the transaction was merely a gift out of love and affection.

g. There was no design to exit the company as all the Noticees remained promoters after the gift in question till Mr. Sunny Maria resigned on August 14, 2018 and BSE was informed about the same vide the corporate announcement made by the company on BSE website.

14. I have considered the allegation levelled in the terms of reference, the relevant material brought on record and reply / submissions of the Noticees. In this case, the facts about transfer of shares from Noticee 1 to other Noticees 2 and 3 as alleged in the SCN are admitted. The limited question for determination is as to whether the Noticees had failed to make disclosures to the company as required under regulations 7(2) (a) of the PIT Regulations. As per the language of regulation 7(2) (a) it is noted that the compliance obligation of a promoter to make disclosure to the company triggers when –

(a) he acquires or disposes of securities; and

(b) the aggregated value of securities so traded aggregates to a traded value in excess of ten lakh rupees

15. In order to attract the obligation under regulation 7(2) (a) both the above condition should be fulfilled. The mode of acquisition or disposal is not relevant under the first condition. With regard to the second condition, it is relevant to note that the words '*trading*' and '*trade'* has been defined under regulation 2(1)(l) of the PIT Regulations are not limited only to trades by way of buying and selling of securities. Regulation 2(1)(l) provides as under:-

PIT Regulations, 2015

Definition

2.(1)(a)…..

(l) *"trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly*;

NOTE*: Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities', it is intended to widely define the term "trading" to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc. when in possession of unpublished price sensitive information.*

16. As seen from the above Note appended to above regulation 2(1) (l), the term 'trading' is widely defined and is intended to include all dealings in securities without any exclusions. Accordingly, trades and traded value under regulation 7(2) (a) will import wider meanings. In my view, the off- market transaction are also covered within the ambit of this regulation. Thus, for such trades, the market value of transacted/transferred shares on the dates of transaction will be reasonable factor for determining the obligation under said regulation 7(2) (a). I, therefore, find that the Noticees were under obligation to make disclosures to the company under the provisions of this regulation as alleged in this case.

17. Coming to the adjudication of the charge in this case under section 15A (b) read with section 15J of the SEBI Act, it is also relevant to mention here the objective of disclosures under Chapter III of the PIT Regulations as spelt out in the Note appended to regulation 6. As declared in the said Note, the disclosure obligations under regulation 7(2) (a) are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information. In this case, there is no allegation that the transaction in question was to take any advantage of any unpublished price sensitive information. The charge is with regard to gift transaction simpliciter and allegation is that the transaction should have been intimated to the company.

18. Further, the purpose of this regulation 7(2) (a) is to enable the company to notify the stock exchange under regulation 7(2) (b) about the trades disclosed to it by promoters etc. under regulation 7(2) (a). The company in its response, vide e-mail dated May 13, 2017, during examination admitted to have been aware of the gift in question when it responded that the shares have been gifted in off- market by Mr. Sunny Maria to Ms. Shamli Maria and Ms. Gauri Khanna without any consideration. Thus, it can be safely assumed that the company was well aware of the off-market transfers by way of gift amongst the Noticees. In this case, there is no charge about any failure under regulation 7(2) (b). The Noticees deserve benefit of doubt on this ground alone.

19. Admittedly, the gift in question was *bona fide* transaction. There is no charge or allegation that the information with regard to acquisition or disposal of shares by the Noticees was not disclosed to the stock exchange/public. It is noted that on October 20, 2016, the company had disclosed the

shareholding pattern of the promoters and promoters group on the BSE website and thus, the said information was available in the public domain since October 20, 2016. The alleged non- disclosure to the company is the solitary instance. The gift in question did not have any market impact. From the Price Volume data regarding share of the company on BSE from July 01, 2016 to December 31, 2016, the price of the share of the company remained between ₹ 8.17/- to ₹ 9.00/-, while maximum volume was 1000 shares during the period August 10, 2016 to October 31, 2016. The Price Volume data shows that there was no significant movement either in price or volume during the said period. It is also noted that the Noticees continued as promoters till the donor resigned, recently, on August 14, 2018. Thus, the gift in question was not intended or designed to take any price or status advantage. It is admitted position that the gift in question did not result in any gain to the Noticee or detriment/loss to the investors. Considering the facts and circumstance of this case, I am of the view that default, if any, as alleged is venial. I am, therefore, of the view that the case does not deserve imposition of any monetary penalty and the SCN is accordingly disposed of.

20. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: September 28, 2018
Place: Mumbai

Santosh Shukla
Adjudicating Officer