EFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2018-19/2342]

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:

Mr. Amardeep Singh Dahiya (**PAN: AANPD3910B**)
House No. 329, Sector - 21A,
Chandigarh - 160021

In the matter of Polo Hotels Limited

1. M/s Polo Hotels Limited (hereinafter referred to as "the company") is a company having its shares listed on Bombay Stock Exchange Limited (hereinafter referred to as "BSE"). In the course of examination in the scrip of the company during June 03, 2014 to December 12, 2014 (hereinafter referred as "the Examination Period") SEBI observed the following:

   a. The shareholding of promoter of the company *viz.* Mr. Amardeep Singh Dahiya (hereinafter referred as "the Noticee") changed significantly during the examination period as shown in the following table:

Table 1

Name of Directors/ Promoters	As on 31/03/2014 (% Holding)	As on 30/06/2014 (% Holding)	As on 30/09/2014 (% Holding)	As on 31/12/2014 (% Holding)
Mr. Amardeep Singh Dahiya	21.22	21.22	11.75	20.30

Source: bseindia.com

   b. The Noticee had acquired/sold/transferred shares of the company through off-market and on-market transactions on different dates during examination period. His transactions had attracted consequent disclosure obligations under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'the PIT Regulations') and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'the SAST Regulations') as shown in the following table:

Table 2

S.N.	Date of transaction	Transaction Type	Buy/ Sell/ Transfer	Quantity of Shares	Holding after transaction	Value of Shares (₹)*	Disclosure required under PIT	Disclosure required under SAST
1	07/07/2014	On Market	Sell	5,00,000	12,91,558 (15.30%)	2,59,50,000	13(4), 13(4A)	29(2)
2	09/09/2014	Off Market	Transfer (debit)	3,00,000	9,91,558 (11.75%)	1,99,80,000	Disclosure Given	Disclosure Given

3	29/10/2014	Off Market	Transfer (debit)	5,00,000	4,91,558 (3.65%)	2,88,50,000	13(4), 13(4A)	29(2)
4	05/11/2014	Off Market	Transfer (credit)	1,91,134	6,82,692 (5.06%)	80,84,968	13(4), 13(4A)	29(2)
5	02/12/2014	Off Market	Transfer (credit)	5,00,000	11,82,692 (8.77%)	96,75,000	13(4), 13(4A)	29(2)

***Value of shares calculated on the basis of closing price of the share of the company.**

c. The number of shares involved in aforesaid 5 transactions was more than 25,000 and the value of the shares sold/bought/transferred by the Noticee in a day were more than ₹5,00,000/-. Accordingly, he was under the obligation to make disclosures to the company and to BSE within two working days of acquisition/ sale/ transfer of shares as stipulated in regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations for the said transactions except the transaction dated September 09, 2014.

d. Also, on all 5 occasions the Noticee's shareholding was reduced by more than 2% from the date of last disclosure made by him. Since he was holding 5% or more shares of the company, he was under the obligation to make disclosures to the company and to BSE within two working days of the respective transactions under regulation 29(2) read with 29(3) of the SAST Regulations except for the transaction dated September 09, 2014.

e. On January 24, 2012, Board of Directors of the company had allotted 50,43,882 Compulsory Convertible Preference Shares (CCPS) of ₹10 each to allottees, pursuant to Scheme of Amalgamation of the company and M/s A.R.D.Realty Private Limited. Subsequent to such allotment, 50,43,882 CCPS were opted to be converted into 50,43,882 equity shares of ₹10 each, forming part of equity share capital of the company and fresh equity shares were allotted in the meeting of Board of Directors of the company held on October 07, 2014 to following allottees, A. Mr. Abey Ram Dahiya – 32,97,824 shares; B. Mr. Amardeep Singh Dahiya – 17,46,058 shares, aggregating to 50,43,882 equity shares of ₹10 each. These allotted shares became part of Promoters and Promoters Group Individual category and added to Promoter Group shareholding in the company. With respect to this arrangement the paid up capital of the company increased from ₹84,41,482/- to ₹1,34,85,364/- from October 07, 2014 onwards.

f. During examination, vide letter dated June 01, 2015, the company had submitted that Competent Finman Pvt. Ltd. ("CFPL") is a stock broker and the Noticee had informed it that the transactions done by him, during the examination period was arising out of "Broker-Client" relationship among themselves. The response the company as provided by the Noticee is given below:

Table 3

Date of Transaction	Response of the company
07/07/2014	Shares were transferred to broker CFPL demat account for onward sale. The necessary disclosures were made on various dates when actual sale transaction took place i.e. on 14/07/2014 and 31/07/2014. Remaining unsold shares 1,91,134 shares were returned on 05/11/2014. Hence no disclosures were given.
09/09/2014	Disclosures were made.

29/10/2014	Shares which were transferred to Mr. Manish Masukhlal Shah on 29/10/2014 were returned on 02/12/2014. Hence no disclosures were given.
05/11/2014	Remaining shares 1,91,134 were transferred by CFPL to demat account of Mr. Amardeep Singh Dahiya. Hence no disclosures were given.
02/12/2014	Shares which were transferred to Mr. Manish Masukhlal Shah on 29/10/2014 were returned on 02/12/2014. Hence no disclosures were given.

2. In view of above, SEBI noted that in respect of his transactions dated September 09, 2014 the Noticee had made disclosures to the company and to BSE under regulations 13(4), 13(4A) read with 13(5) of the PIT Regulations and under regulations 29(2) read with 29(3) of the SAST Regulations. However, the Noticee had not made disclosures to the company and BSE with respect to his other 4 transactions as required under regulations 13(4), 13(4A) read with 13(5) of the PIT Regulations and under regulations 29(2) read with 29(3) of the SAST Regulations as mentioned in aforementioned Table-2.

3. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of regulations 13(4), 13(4A) read with 13(5) of the PIT Regulations and regulations 29(2) read with 29(3) of the SAST Regulations by the Noticee and approved the initiation of the instant proceedings on July 22, 2015 and on March 07, 2017 Shri Suresh Gupta, Chief General Manager was appointed as Adjudicating Officer in the matter. Subsequently, vide a *communication - order* dated June 25, 2018, undersigned was advised 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 section 15A (b) of the SEBI Act, the alleged violation of the provisions of regulations 13(4), 13(4A) read with 13(5) of the PIT Regulations and regulations 29(2) read with 29(3) of the SAST Regulations by the Noticee.

4. It was noted from the record provided in these proceedings that, on February 13, 2016, the Noticee had filed settlement application proposing settlement of the instant proceedings under the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 which was duly received in SEBI. However, the concerned department handling such proposal had placed on record that it had not received any such application from the Noticee. When clarification was sought about such contradiction and status of such application on August 05, 2018, the concerned department informed on October 09, 2018 that the settlement application of the Noticee was returned to the Noticee.

5. After receipt of records along with clarification as aforesaid, the notice to show cause no. EAD/SS/AKS/30715/1-4/2018 dated November 02, 2018 ('the SCN') was issued to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act, calling upon him to show cause as to why an inquiry should not be held against him 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.

6. The SCN was sent at the last known address of the Noticee through Speed Post Acknowledgment Due, however, the same could not be served upon him. In the interest of natural justice and in terms

of the Adjudication Rules, the Noticee was given additional opportunity to file reply to the SCN and was also granted an opportunity of personal hearing on December 20, 2018. The said notice of hearing along with copy of SCN was duly served upon the Noticee *via* delivery in terms of Rule 7 of Adjudication Rules.

7. Vide letters dated December 06, 2018 and December 14, 2018, the Noticee *inter alia* submitted that the data/ information/ documents mentioned in the SCN pertain to the year 2014, i.e. more than 4 years old, therefore, he is facing grave difficulty in collating the same and thus, he is unable to prepare reply to the SCN. He further requested to grant him the opportunity of personal hearing after 2nd week of January, 2019. In the interest of natural justice and in terms of the Adjudication Rules, the Noticee was provided another opportunity of personal hearing on December 27, 2018 and a hearing notice dated December 18, 2018 was served upon him. After seeking adjournments on different dates, the Noticee availed the last opportunity on February 18, 2019 when Mr. Meit V. Shah, Advocate from Prakash Shah & Associates tendered the copy of written submissions of the Noticee dated February 12, 2019 and requested to consider the same as defence of the Noticee and waive-off the opportunity of the personal hearing in the matter. I, accordingly, proceed to deal with and dispose of the matter in terms of the Adjudication Rules.

8. In the reply dated February 12, 2019 , the Noticee has *inter alia* made following submissions:

   (a) The Noticee has denied all the allegations made against him in the SCN, except to the extent specifically admitted by him.

   (b) The Noticee had received notice of approved enforcement action dated December 12, 2015 bearing reference no. EFD/DRA-1/JS/RK/34465/2015 ("Settlement Notice"). He replied to Settlement Notice vide letter dated December 24, 2015 requesting SEBI to provide him with details of transactions which required disclosure requirements. However, he did not receive any reply and to his shock, surprise and disbelief received aforesaid SCN in the instant proceedings.

   (c) The Noticee was part of the promoter group of the company during the examination period and the company was regularly filing the shareholding pattern as required under the listing agreement and his shareholding was disclosed under the '*shareholding belonging to Promoter and Promoter group*' for the quarter ending June 2014, September 2014 and December 2014 and the same was in public domain. Hence, he denied that there was non-disclosure on his part.

   (d) The Noticee was not provided with complete records to take an independent view and the data provided by Investigation Department was incomplete. He submitted his explanation for each transaction in question, to reveal that in few cases he had made disclosures *albeit* late and in many instances the shares were received back by him, hence, the disclosures were not required for those transactions. In few instances, the shares have been either given/ received back from his broker in the ordinary course of business, hence disclosure requirement was not triggered. His explanation against each of the transactions is summarized as follows:

Table 4

Date	No. of Shares	Reasons
07/07/2014	5,00,000	The transactions were in the form of transfer to/ received from pool account of the broker CFPL and no adverse inference ought to have been drawn for the same.
05/11/2014	1,91,134	
29/10/2014	5,00,000	The Noticee was in urgent need of funds for few days and when he requested Mr. Manish Shah, he agreed to lend him the funds against the shares. The shares were shifted to his account and not transferred. Since shares were shifted on returnable basis and were not sold, the disclosure requirements were not triggered.
02/12/2014	5,00,000	

(e) The non-disclosure, if any, was technical in nature, and due to inadvertence, devoid of any *mala fide* intention. Further, no harm had been caused to any investor nor any loss had occurred due to my non-disclosures as the details regarding the change in his shareholding was disclosed in the shareholding pattern filed by the company during the quarter ending June 2014, September 2014 and December 2014.

(f) The provisions of regulation 13(4) and 13(4A) of the PIT regulations are not substantially different and one is corollary to other. In his case, the violation of first automatically triggers violation of second and hence a lenient view may be taken as regards imposition of penalty and penalty may not be imposed.

(g) The Noticee has relied upon Hon'ble SAT's judgment dated September 04, 2013 in the matter of *Vitro Commodities Private Limited v/s SEBI (Appeal No. 118 of 2013)*, wherein *inter alia* it was held that "*it may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone regulations and one is corollary to each other*." The Hon'ble SAT was pleased to reduce the penalty of ₹10 lakh to a penalty of ₹1 lakh for violation of regulation 7(1) of the Takeover Regulations, 1997 and regulation 13(1) of the PIT regulations.

(h) As regards allegation of violation of regulation 13(4) and 13(4A) of the PIT Regulations, it has been submitted that SEBI (prohibition of Insider Trading) Regulation, 2015 (PIT Regulations, 2015) which has replaced the PIT Regulations, has not stipulated the disclosure requirement for this type of transactions and there is no corresponding provisions of regulation 13(4) and 13(4A) of the PIT Regulations in the PIT Regulations, 2015, save and except disclosure of transactions more than ₹10 lakh in value in calendar quarter. The Noticee has also relied upon the order dated February 02, 2017 of Hon'ble Whole Time Member ("WTM"), SEBI in the matter of *Refex Industries Limited* (formerly known as Refex Refrigerants Limited), wherein WTM did not issue any directions against the promoter and director and *inter alia* held that:

"*13*….

- …

- *that the violation is un-intentional and not for consolidation;*
- *that the violation is technical and venial in nature; and*
- *that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation".*

(i) The violation of regulation 13(4) and 13(4A) of the PIT Regulations, if any, was unintentional and there were clear mitigating circumstances in the form of subsequent amendments to the PIT regulations which further lessens the gravity of the violation. Though he had not filed the disclosures under the respective regulations in respective format but there had been no non-disclosure on his part. He further submitted that due to not filling of relevant disclosures no gain or advantage has occurred to him and no loss or harm had been caused to any investors.

9. I have considered the allegation levelled in the terms of reference, the relevant material brought on record and reply/submissions of the Noticee. In this case, the facts about acquisition/sale/transfer of shares of the company through off-market and on-market transactions during examination period by the Noticee as alleged in the SCN are admitted. The moot question for determination remains as to whether the Noticee was required to make disclosures under regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations and regulation 29(2) read with 29(3) of the SAST Regulations as alleged and if so, whether he had failed to make such disclosures. Before dealing with the charge and replies of the Noticee thereto, it is relevant to refer to the provisions of regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations and regulation 29(2) read with 29(3) of the SAST regulations charged in this case which read as under:-

PIT Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - 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 persons 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.*

(4A) *Any person who is a promoter or part of promoter group 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 persons from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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.*

(5) *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

(a) *the receipts of intimation of allotment of shares, or*

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

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29(2) *Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a 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 per cent, 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.*

(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. As per the language of regulation 13(4) and (4A) of the PIT Regulations it is noted that the compliance obligation of a promoter – director to make disclosure to the company and to the stock exchange triggers when –

    (a) there is a change in the total number of shares or voting rights held and change in shareholding or voting rights of such persons from the last disclosure made under Listing Agreement or under sub-regulation (2) or (2A) or under this sub-regulation; and

    (b) the change exceeds ₹5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

11. Similarly, under regulation 29(2) of the SAST Regulations, the compliance obligation of a promoter to make disclosure to the company and to the stock exchange triggers when he together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company; and

    (a) if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and

    (b) such change exceeds two per cent of total shareholding or voting rights in the target company, even if such change results in shareholding falling below five per cent.

12. The Noticee in this case is, admittedly, the promoter as well as director of the company. The transactions as alleged in this case have not been disputed and are admitted. Thus, his transactions attract compliance obligations under regulation 13(4) and 13(4A) of the PIT Regulations and regulation 29(2) of the SAST Regulations if the transactions crossed the threshold prescribed therein. It is noted that the provisions of regulation 13(4) and 13(4A) of the PIT Regulations are not different with regard to obligation of a person who is promoter as well as the director of the respective company and one is corollary to each other. Further, in fact of any particular case, the obligation under these regulations and regulation 29(2) of the SAST Regulations may overlap.

13. Coming to the charge and reply thereto, it is noted that, out of the 4 transactions in Table 2 which are basis of the charge, the Noticee transactions dated July 07, 2014 and November 05, 2014, the Noticee has claimed that he had transferred 5,00,000 shares of the company in the pool account of its broker CFPL *via* transaction dated July 07, 2014 for trades and when sale transaction took place on July 14, 2014 and July 31, 2014, the remaining unsold 1,91,134 shares were returned to him *via* transaction dated November 05, 2014. In this regard, it is noted from the transaction statement of demat account 1204790000016449 of CFPL as available on record, that 5,00,000 shares of the company were received in the said demat account on July 09, 2014 and 1,91,134 shares were transferred on November 05, 2014 from CFPL demat account to demat account 1204790000077652 of the Noticee. The said demat account was opened under BO Sub Status category "*Corporate Body – Domestic*". Vide its letter dated November 16, 2018, CFPL had stated that it's demat account 1204790000016449 is a "*Client Beneficiary Account*" and the shares of the company were received in this account from its clients for their trading. During inquiry, the Central Depository Services (India) Limited, vide e-mail dated February 25, 2019, also confirmed that "*demat account 1204790000016449 is opened under the sub status 'Corporate CM/TM client account'. Corporate CM/TM client account is opened by stock broker for the purpose of holding client securities. If the Demat account is opened under BO Sub Status – "Corporate Body Domestic", then it is considered as Beneficiary Account"*. On further inquiry the concerned department of SEBI has confirmed in this regard that CFPL had traded on behalf of its clients and had not done any proprietary trade in his account. In view of above, it is established that *via* transaction dated July 07, 2014 shares were transferred to CFPL in client beneficiary account and on November 05, 2014 shares were received by the Noticee from CFPL client beneficiary account. I, therefore, find that beneficial ownership of the said 5,00,000 shares did not change when those shares were transferred to/ from his broker CFPL 'client beneficiary account' for the purpose of trading on July 07, 2014 and November 05, 2104, respectively.

14. The disclosure obligation for sale transaction as in this case, arises on the date when shares are actually sold i.e. July 14, 2014 and July 31, 2014 resulting in change of beneficial ownership. In this case, it is established that a part of said 5,00,000 shares was later sold through the stock broker CFPL. The Noticee has claimed, without substantiating his claim by any evidence, that he had made disclosures on various dates when actual sale transactions took place. However, the actual sale transaction/s are not the basis of charge in these proceedings and no material has been brought on record to show any default with regard to the actual sale transaction/s through the stock broker CFPL. When the

remaining 1,91,134 were received back by the Noticee from CFPL on November 05, 2014, he remained the beneficial owner of those shares at all times. He can not be said to be an 'acquirer' of those shares so as to say that he gained control over those shares on November 05, 2014. In the facts and circumstances of this case, I find that the Noticee was not liable to make disclosures under the provisions of regulation 29(2) read with regulation 29(3) of the SAST Regulations and regulation 13(4) and 13(4A) read with regulation 13(5) of the PIT Regulations is acceptable with respect to transfer of shares to / from CFPL on July 07, 2014 and November 05, 2014, respectively.

15. With regard to the remaining 2 transactions dated October 29, 2014 and December 02, 2014 as mentioned in Table 2, it is pertinent to mention that the mode of acquisition or disposal is not relevant under the aforesaid provisions and no exemptions/ exclusions had been granted/ provided under the PIT Regulations and the SAST Regulations on account of mode or motive of the transactions. In all these transactions of the Noticee, the shares had, admittedly, been transferred/received back *via* off-market transaction to/from Mr. Manish Shah resulting in change in shareholding of the Noticee on respective dates of transfers/ from Mr. Manish Shah and there was change in beneficial ownership in respect of said two transactions. As such, each change in shareholding pursuant to these 2 transactions triggered his disclosure obligation under regulation 13(4) and 13(4A) read with 13(5) of the PIT Regulations and regulation 29(2) read with 29(3) of the SAST Regulations. I, therefore, do not agree with contentions of the Noticee in this regard.

16. It is noted that under regulation 13(4) and 13(4A) of the PIT Regulations it is clearly brought out that "*Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D".* Regulation 13(5) of the PIT Regulations and regulation 29(3) of the SAST Regulations provide timeline of two days from the date of acquisition/ sell/ transfer of shares. I note that in the matter of *Premchand Shah and Others V. SEBI* Hon'ble SAT vide its order dated February 21, 2011, held that -"*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner...Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments.*" Form D, as specified under regulation 13(4) and 13(4A) of the PIT Regulations, contains specific details about transactions of promoters of the company such as: *Name, PAN No. & Address of Promoter, No. of shares/voting rights held by the Promoter, Date of receipt of allotment advice/ acquisition/ sale of shares/ voting rights, date of intimation to the company, mode of acquisition (market purchase/ public/ rights/ preferential offer etc./ sale), No. & % of shares/ voting rights post acquisitions or sale, Trading Member through whom the trade was executed with SEBI registration no. of the TM, Exchange on which the trade was executed, Buy quantity, Buy Value, Sell quantity, sell value.* The quarterly disclosures made by the company at the end of the quarter contain only the summarized information of the acquisition/ sale/ transfer of that particular quarter rather than specific details as required in Form D. Such disclosure though could be considered as a mitigating factor but can not be a substitute for compliance of obligation under regulation 13(4) and 13(4A) of the PIT Regulations and regulation 29(2) of the SAST Regulations.

17. Relying upon SEBI order dated February 02, 2017 in the matter of *Refex Industries Limited* the Noticee has submitted that his violation of regulation 13(4) and 13(4A) of the PIT Regulations, if any, was unintentional and no penalty should be imposed upon him in view of the principles announced in the said order. In this regard, I note that, in *Refex Industries Limited* case the issue was open offer obligation under regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 that was triggered on account of acquisition of miniscule 42 shares. In this case there are two transactions, wherein requisite disclosures were not made by the Noticee.

18. Considering the above facts and circumstances, I hold that this case deserves imposition of monetary penalty upon the Noticee under Section 15A (b) of the SEBI Act which reads as following:-

> ***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.*

19. It is also relevant to note that in this case, the transactions of the Noticee, aforesaid 2 which triggered overlapping obligations under regulation 13(4) and 13(4A) of the PIT Regulations as well as under regulation 29(2) of the SAST Regulations were the same transaction as well as under regulation 13(4) and 13(4A) of the PIT Regulations as both provide same requirements with regard to overall threshold, timelines and the entity to whom the disclosures are to be made. With regard to such similar violations arising out of same transaction, the Hon'ble SAT judgment dated September 04, 2013 in the matter of *Vitro Commodities Private Limited Vs. SEBI* quoted by the Noticee can be relied upon. As per *ratio decidendi* in the aforesaid judgment, I am of the view that in the facts of this case, the violation of the provisions of regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations and regulation 29(2) read with 29(3) of the SAST Regulations are not substantially different and can be considered as a single violation by the Noticee for the purpose of adjudication in the matter.

20. For the purpose of adjudication of quantum of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J which reads as following:-

> ***15J - Factors to be taken into account by the adjudicating officer***
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> *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 investor/+s 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.

21. Having regard to the factors listed in section 15J, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. In this case, the Noticee being a director and promoter of the company have acquired/ transferred shares of the company beyond the prescribed threshold *via* two transactions involving substantial number of shares / high values. In my view repeated defaults in compliance of disclosure obligations involving acquisition and sale of substantial number of shares as found in this case can not be considered as technical and venial as sought to be contended by the Noticee.

22. As commonly understood the disclosure of the consolidation / dilution of holding of such persons is intended to ensure transparency of the transactions of such insiders/ traders apart from serving the purposes that the company is informed of sizeable holding, so that if necessary it can take steps to prevent a raider, the stock exchange is informed so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Timely disclosures of the details of the shareholding of the persons acquiring/transferring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014),* has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further in the matter of *Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI*–the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

23. I note that, in the facts and circumstances of this case, lack of relevant information in public domain with regard to change in shareholding of the Noticee would create information asymmetry, at relevant times and the failure to make disclosure as found in this case would also defeat the purpose of the provisions of regulation 13(4) and 13(4A) read with 13(5) of the PIT Regulations and regulation 29(2) read with 29(3) of the SAST Regulations.

24. Considering all the facts and circumstances of the case, aforesaid factors/ guidelines and exercising the powers under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹2,00,000/ (Rupees Two Lakh only) on the Noticee *viz.* Mr. Amardeep Singh Dahiya under section 15A (b) of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

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

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

26. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

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

Date: February 28, 2019
Place: Mumbai

Santosh Shukla
Adjudicating Officer