

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SM/AO/2019-20/5249/126]

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

In respect of

Komal Duke

(PAN – ADWPD0279P)

(Address: 5, 2nd Floor, Sukhshanti no. 3, 19 Pedder Road
Next to Jaslok Hospital, Worli, Mumbai – 400026)

In the matter of Duke Offshore Limited

BACKGROUND

1. A department (hereinafter referred to as **OD**) of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted an examination in the scrip of Duke Offshore Limited (hereinafter referred to as **Company/DOL**) for the period March 01, 2016 to December 31, 2016 (hereinafter referred to as Examination Period). The Company was listed at Bombay stock Exchange (BSE) during the period of examination. OD observed that one of the the promoters of the Company viz. Komal Duke (hereinafter referred to as **Noticee**) pledged the shares of the Company during the quarter ending September 2016, which required disclosures under regulations 31(1) and 31(2) read with (r/w) 31(3) of SEBI (Substantial Acquisition of Shares and takeovers) Regulations, 2011 (hereinafter referred to as **SAST regulations, 2011**) and there were certain deficiencies in the disclosures made by the Noticee under the SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015. Hence Noticee is alleged to have violated the said provisions of SAST Regulations, 2011 and the said Circular.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said examination, OD of SEBI initiated Adjudication Proceeding against the Noticee and appointed the undersigned as an Adjudicating Officer, under section 15-I of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) read with (r/w) rule 3 of SEBI (Procedure for Holding Inquiry

and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **AO Rules, 1995**) to inquire into and adjudge under sections 15A(b) and 15HB of the SEBI Act, 1992, the alleged violations of provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015. The same was conveyed vide communique dated August 20, 2019.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice dated August 22, 2019 (hereinafter referred to as **SCN**) was issued to the Noticees under rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty under section 15A(b) and 15HB of the SEBI Act, 1992, be not imposed on them for the violations alleged and specified in the said SCN. The SCN was sent through the speed post acknowledgment due (SPAD) and e-mail at komduke@yahoo.com and gadduke@gmail.com. The said SCN was delivered to the Noticee and the proof of delivery is on record. The allegations in the SCN are as follows:

- a) Noticee was the promoter of the Company during the examination period and pledged the shares of the Company with IDBI Bank Ltd. and IndusInd Bank Ltd. The details of shares pledged by the Noticee in the scrip of the Company are tabulated below:

Name of Pledgor	Number of Shares	Pledgee					
		IDBI Bank Limited			IndusInd Bank Limited		
		Pledge request Date	Pledge confirmation Date	Pledge Release Date	Pledge request Date	Pledge confirmation Date	Pledge Release Date
Komal Duke	4,86,450	Sept 16, 2016	Sept 19, 2016	Dec 16, 2017	Dec 18, 2017	June 01, 2018	-
	1,85,715	Sept 16, 2016	Sept 20, 2016	Dec 15, 2017	Dec 18, 2017	June 01, 2018	-

- b) Regarding pledge of shares with IDBI Bank Ltd. it was alleged that while Noticee was required to disclose the pledge of 6,72,165 shares of Company created on Sept 16, 2016 within 7 working days to the Company and BSE under regulation 31(1) r/w 31(3) of SAST Regulations, 2011, however, Noticee failed to make the

said disclosure. Further, the said pledged shares were released on December 15, 2017 and December 16, 2017. For the said released shares, Noticee was required to disclose to the Company and BSE within 7 working days of the release of pledged shares of the Company as prescribed under regulation 31(2) r/w 31(3) of SAST Regulations, 2011. However, Noticee allegedly failed to make the said disclosure under the provisions of regulation 31(2) r/w 31(3) of SAST Regulations, 2011. BSE, vide its letter dated September 01, 2017 informed that for the period March 01, 2016 to December 31, 2016 the Noticee has not filed disclosure for the pledged shares made during the quarter September 2016. Therefore, it is alleged that Noticee violated the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011.

- c) Regarding pledge of shares with IndusInd Bank Ltd., it was alleged that the Noticee was required to disclose the pledge of 6,72,165 shares of the Company created on December 18, 2017 within 7 working days under regulation 31(1) r/w (3) of SAST Regulations, 2011. OD observed from the website of BSE that Noticee made the disclosure under regulation 31(2) of SAST Regulations, 2011 and the said disclosure was made on January 22, 2018. Hence, it is alleged that the Noticee did not make the disclosure within the prescribed time as specified under the provision of regulation 31(1) r/w 31(3) of SAST Regulations, 2011.
- d) Further, the format for providing disclosure under regulations 31(1) of SAST Regulations, 2011 have been provided vide Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015. From the disclosure made by the Noticee on January 22, 2018, OD observed following deficiencies:
- The date of creation of pledge has been mentioned as December 22, 2017 whereas the pledge request was made on December 18, 2017.
 - The name of the entity in whose favour shares have been encumbered was not disclosed.
 - Reason for encumbrance was not mentioned.
 - The format provided by SEBI requires that the names of all the promoters, their shareholding in the target company and their pledged shareholding as on the reporting date should appear in the table irrespective of whether they are reporting on the date of event or not. However, the same was not mentioned.

By making wrong and incomplete disclosures as against prescribed under SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015, it is alleged that Noticee violated the provision of regulation 31(1) of SAST Regulations, 2011 r/w Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015.

e) In view of the above, it is alleged that Noticee violated the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015.

4. The authorized representative (AR) on behalf of the Noticee vide e-mail dated September 12, 2019 requested for inspection of documents and to furnish all evidence, letters, records, opinions, statements, documents, notings, reports, complaints etc. in the instant matter. In this regard, vide e-mail dated September 13, 2019, Noticee was informed that all the documents in the instant matter relied upon by the undersigned have already been provided to the Noticee during the issuance of SCN. Noticee was also advised to submit a reply to the SCN. The AR on behalf of the Noticee submitted reply to the SCN vide letter dated September 30, 2019 and also requested for an opportunity of personal hearing. Reply of the Noticee is summarized below:

- a) Noticee submitted that the encumbrances created by the Noticee, were created as a security towards the loan taken by DOL for furtherance of its business. With respect to loan taken from IDBI, on November 03, 2016 a loan agreement was signed between DOL and IDBI whereby an amount of Rs. 9.55 crore was lent by IDBI to DOL for purchase of a ship for furtherance of its business activities. As per article 2 of the loan agreement, the loan was secured by way of *inter alia* pledge of shares held by the Noticee and Ms. Komal Duke (collectively, "Promoters") and a personal guarantee by the Promoters. Accordingly, a guarantee agreement and a pledge agreement were also signed between the Promoters, DOL and IDBI on the same day. A copy of the loan agreement, pledge agreement and guarantee agreement provided by the Noticee.
- b) Pursuant to execution of the loan agreement and in accordance with the terms of the said agreement, a charge was created on the shares held by the Noticee in favour of IDBI on November 11, 2016. The copy of the relevant forms for creation of charge, as filed with Ministry of Corporate Affairs (MCA) provided. Further, the details of creation of this pledge was always available with DOL, being a party to the agreements. A disclosure was filed by the Noticee in this regard on

September 25, 2017. A copy of the same was provided to SEBI on January 01, 2019.

- c) With respect to loan taken from IndusInd, Noticee submitted that on September 22, 2017 the loan of IDBI was transferred to IndusInd, and no new encumbrance was created. Noticee provided a copy of the said agreement. On the same day appropriate form was filed by DOL with MCA. A copy of this form also provided by the Noticee. Subsequently, a form for satisfaction of charge that was created in favour of IDBI was also filed with MCA on October 06, 2017. Details of the said transfer / creation of encumbrance was filed with BSE on January 22, 2018. A copy of the disclosure made to the BSE provided. The same was also disclosed in the annual report of DOL for the financial years 2016-17 and 2017-18.
- d) Noticee submitted that the information regarding pledging of shares was duly reflected in the quarterly shareholding pattern of DOL and the same was disclosed by the Noticee. It is submitted that the information related to disclosure of encumbrance created by the Noticee in November 2016 on its shares was in fact available in public domain. Under Regulation 31 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, every listed entity is obliged to disclose its quarterly shareholding pattern to the stock exchanges. The disclosure of the shareholding pattern made by DOL for the quarter ending December 2016 clearly provided that 100% of Noticee's shareholding in DOL, i.e. 2,81,635 shares had been encumbered by the Noticee. Hence, the allegation that the encumbrance created in 2016 was not disclosed at all to DOL is false, baseless and incorrect.
- e) This is also due to the fact that DOL itself was a party to the agreement whereby the said pledge was created as the loan for which the said pledge was created was taken by the Company itself. Hence, the Company was aware of the creation of the pledge. Furthermore, it is reiterated that the details of the creation of the pledge was disclosed on September 25, 2017 and therefore, the allegation of non-disclosure is false and incorrect.
- f) With regard to the incorrect disclosure, Noticee submitted that the pledge created in favour of IDBI on November 11, 2016 was transferred to IndusInd and there was no 'creation' of encumbrance on September 22, 2017 as such, only the existing pledge was transferred. Further, as stated the details of the said transfer of pledge was duly reported to MCA as the Company itself was a party to the loan agreement. It is further submitted that the discrepancies in the disclosure made by the Noticee were made inadvertently by the Noticee and it does not amount to violation of SAST Regulations.
- g) Also it is submitted that Noticee had no malafide intent to hide the act of creation of pledge. It is submitted that the pledge was created to purchase new ship for furthering the existing business of DOL. In fact, DOL itself was a party to the pledge agreement, as clear from the documents attached herewith. Both creation

and transfer of pledge was disclosed by various means by the Noticee: disclosure to BSE / Company, quarterly disclosure by the Company, in the annual accounts of the Company, etc. It is submitted that these were clerical errors on the part of the Noticee and the Noticee had no intention to withhold any information. There was no unfair gain or advantage taken by the Noticee by not disclosing these details. Accordingly, it is submitted that the Noticee never intended to hide the encumbrance created on the shares.

- h) Noticee that the SEBI Act, 1992 and Adjudication Rules, 1995 prescribe certain factors that should be taken into account at the time of determining the quantum of penalty to be imposed. Noticee submitted that none of the above stated criteria have been fulfilled by the Noticee in the present matter. It is submitted by the Noticee that the Noticee has not bought, sold or pledged shares of DOL in the last 20 years. DOL has been a dividend giving company and the shareholders of DOL have always been kept abreast of the important information, necessary details and timely and mandatory disclosures. Further, there is no gain made by the Noticee or loss caused to the investors. In fact, the loan for which the shares were pledged by the Noticee was taken for furtherance of DOL and its group's business. Further, this is the first instance on which allegations such as violation of securities laws have been levied upon the Noticee. The Noticee has the highest regard for the securities laws and has always endeavoured to comply with the applicable laws, regulations and the disclosure norms thereunder.
- i) Noticee cited the case law of Refex Industries Ltd. and Cabot International Capital Corporation.
- j) It is further submitted that the Noticee has always acted in a *bona fide* manner. Non-filing of the relevant disclosures at the time did not provide the Noticee with any disproportionate gain or unfair advantage. The investors were made aware of the transactions and did not suffer any loss. The Noticee has never defaulted before this transaction in making the mandatory, timely, continuous and quarterly disclosures as can be checked from the records.

- 5. Vide hearing notice dated October 03, 2019, an opportunity of personal hearing was granted to the Noticee on October 17, 2019. The said hearing notice was sent through SPAD and the same was delivered to the Noticee as seen from available record. The ARs attended the hearing on the scheduled date i.e. October 17, 2019 and reiterates the submissions made by the Noticee vide letter dated September 30, 2019. Hearing minutes are on record.
- 6. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other evidences available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

7. The issues arising for consideration in the instant proceedings before me are:-
- a. **Whether the Noticee violated the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015?**
 - b. ***Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992 for the alleged violations by the Noticee?***
 - c. ***If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?***
8. Before proceeding further, I would like to refer to the relevant provisions of SAST Regulations, 2011 and SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015:
- SAST Regulations, 2011**
Disclosure of encumbered shares.
- 31(1)** *The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*
- (2)** *The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.*
- (3)** *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—*
- (a) every stock exchange where the shares of the target company are listed; and*
 - (b) the target company at its registered office.*

SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015 on “Formats under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011” is available on the website of SEBI.

FINDINGS:

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue a: Whether the Noticee violated the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015?

- a) It is alleged in the said SCN that Noticee was the promoter of the target company during the relevant period and Noticee pledged the shares of the Company with IDBI Bank Ltd. and IndusInd Bank Ltd. With regard to the said pledged shares Noticee failed to make disclosures within the prescribed time as specified in the SAST Regulations, 2011. Further, with regard to the disclosures of pledging shares with IndusInd Bank Ltd., it is alleged that the disclosures made by the Noticee are incomplete, wrong and have certain deficiencies in the disclosures as seen from the available record vis a vis requirements of SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015.
- b) Upon perusal of the available record, I find that Noticee was the promoter of the Company during the period of examination and has pledged the shares of the Company with IDBI Bank Ltd. and IndusInd Bank Ltd. The Company was listed with BSE during the examination period. The same was also admitted by the Noticee in reply dated September 30, 2019. As seen from record, Noticee created a pledge of 6,72,165 shares of Company on September 16, 2016 with IDBI Bank Ltd. and the said shares were released on December 15, 2017 (1,85,715 shares) and December 16, 2017 (4,86,450 shares). For the said creation and release of pledged shares of the Company, Noticee was required to make disclosures to the Company and BSE under regulation 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 within the prescribed time as specified in the SAST regulations, 2011. However, as seen from record Noticee did not make disclosure to the Company and BSE within the prescribed time. I observed from the letter of BSE dated September 01, 2017, Noticee did not file any disclosure regarding the said pledged shares of the Company with BSE. In this regard, Noticee replied that the details of pledging of shares were already available with DOL i.e. the Company, being a party for the loan agreement with IDBI Ltd. wherein the loan was secured by way of inter alia pledge of shares held by the Noticee. I don't find merit in the contention of the Noticee that company being the party of the agreement does not absolve the Noticee for disclosure to the Company and the Stock exchange regarding the creation and release of the said pledge. I also note

that specific obligation is cast upon the Noticee to make the disclosures to the target company and the stock exchanges under the SAST Regulations.

- c) Further, Noticee replied that Noticee has made disclosure on September 25, 2017 and provided a copy of the disclosure signed by the Noticee on January 07, 2019, however this document submitted by the Noticee does not have any evidence which shows that the said disclosure was received by the Company and BSE. Hence, the reply of the Noticee is devoid of evidentiary proof and therefore, it is not acceptable to me. By not making the disclosures for the said creation and release of the said pledged shares with IDBI Bank Ltd., Noticee violated the provision of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011.
- d) Further, from the available record I find that Noticee pledged shares with IndusInd Bank Ltd.. A pledge of 6,72,165 shares of the Company was created on December 18, 2017. In this regard, Noticee was required to disclose the said pledged shares of the Company within the prescribed time as specified under regulation 31(1) r/w (3) of SAST Regulations, 2011. In this regard, I find that Noticee made the disclosure under regulation 31(2) of SAST Regulations, 2011 and the said disclosure was made on January 22, 2018. As per regulation 31(3) of SAST Regulations, 2011, Noticee was required to make disclosure within seven working days of the creation of the pledged shares. However, by not making the said disclosures within the prescribed time Noticee violated the said provision of the SAST Regulations, 2011. In this regard, Noticee replied that the pledge created in favour of IDBI Bank Ltd. was transferred to IndusInd Bank Ltd. The contention of the Noticee regarding transfer of pledge from the IDBI Bank Ltd. to IndusInd Bank Ltd. is not acceptable to me on ground that from the transaction statements of NSDL, it is found that pledge created with IDBI Bank Ltd. was closed and then a new pledge was created with IndusInd Bank Ltd. Hence, by not making the disclosures for the said creation of pledged shares, Noticee violated the provision of regulations 31(1) r/w 31(3) of SAST Regulations, 2011.
- e) Further, I don't find merit in the contention of the Noticee that Noticee had made the disclosures under Clause 35 of the listing Agreement in the instant matter. I

also note that specific obligation is cast upon the Noticee to make the disclosures to the target company and the stock exchanges under the SAST Regulations. The said obligation cast upon the Noticee to make disclosures has nothing to do with the provisions of the Listing Agreement which are applicable to the company.

- f) Further, w.r.t. the pledged shares with IndusInd Bank Ltd, I find from the disclosures made by the Noticee that there were certain deficiencies such as the date of creation of pledge has been mentioned as December 22, 2017 whereas the pledge request was made on December 18, 2017, the name of the entity in whose favour shares have been encumbered was not disclosed, reason for encumbrance is not mentioned, the format provided by SEBI requires that the names of all the promoters, their shareholding in the target company and their pledged shareholding as on the reporting date should appear in the table irrespective of whether they are reporting on the date of event or not. However, the same is not mentioned. The same was admitted by the Noticee that it was inadvertently made by the Noticee. The format of making disclosure regarding pledged shares under the provision of regulation 31(1) and 31(2) of SAST Regulations, 2011 should be as per the format prescribed in the Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015. By making wrong and incomplete disclosures as against prescribed under SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015, Noticee violated the said Circular.
- g) Noticee cited the case law of Refex Industries Ltd., however, no evidentiary proof regarding mitigating circumstances, if any has been submitted by the Noticee. Further, Noticee cited the case law of Cabot International Capital Corporation, for which, I note that the same is relevant in the case of technical violations etc. and Noticee has not made out a relevant case.
- h) Further, I do not find any merit in the submission of the Noticee that the nondisclosures were unintentional and not wilful. Also, I do not find any merit in the submissions of the Noticee that he has not made any profits and no loss to investors. In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of **Komal Nahata Vs. SEBI** vide order dated January 27, 2014 has observed that: *“Argument that no investor has suffered on account of*

*nondisclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such nondisclosure.” Further, I also note that in Appeal No. 78 of 2014 in the case of **Akriti Global Traders Ltd. Vs. SEBI**, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has observed that: “... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay”.*

- i) In view of the above case law and material available on record, I find that Noticee failed to make disclosure to the Company and BSE for the said pledged shares with IDBI Bank Ltd. and Indusland Bank Ltd. within the prescribed time as specified under the provisions of SAST Regulations, 2011. Further, disclosing wrong and incomplete information to BSE Noticee violated the said Circular of SEBI. Therefore, Noticee violated the provision of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015 and hence, the alleged violations against the Noticee in the SCN stand established.

10. Issue (b) Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992 for the alleged violations by the Noticee?

Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the said failure to make disclosure for the pledged shares as prescribed in Regulations at the time of creation and release of pledge and making wrong and incomplete disclosures on the part of the Noticee attracts the imposition of monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992, respectively which are reproduced below:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

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 shall not be less than one lakh rupees but which may extend to one crore rupees.*

11. Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995?

a) While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995 , which reads as under:-

The SEBI Act, 1992

15J: *"Factors to be taken into account by the adjudicating officer-*

While adjudging quantum of penalty under section 23 I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default."*

(a) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. I find that the Noticee failed to make required disclosures as specified under the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and also made wrong disclosure as against prescribed under SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015.

- (b) The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. Vs. SEBI–, *“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.”*
- (c) Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) will be commensurate with the violations of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015 under sections 15A(b) and 15HB of the SEBI Act, 1992 committed by the Noticee.

ORDER

12. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticee i. e. Komal Duke under sections 15A(b) and 15HB of the SEBI Act, 1992 for violations of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and SEBI Circular No. CIR/CFD/POLICYCELL/3/2015 dated August 05, 2015.
13. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:
- a. By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
 - b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai
14. Details of Demand Draft made as given in format below shall 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

- a) Case Name
- b) Name of the 'Payer/Noticee'
- c) Date of Payment
- d) Amount Paid
- e) Transaction No.
- f) Bank Details in which payment is made
- g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

15. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
16. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the AO Rules, 1995.

Date: October 30, 2019

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER