BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2019-20/3424-3426]

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. Gajanan Enterprises (PAN: AAKFG7595A)
2. Dr. Madhukar Seth (PAN: ANXPS1972P)
3. Shakti Hotels Pvt. Ltd. (PAN: AAKCS7807G)

In the matter of Prism Medico and Pharmacy Ltd.

1. M/s Prism Medico and Pharmacy Ltd. (hereinafter referred to as "the company") is a company having its shares listed on the Bombay Stock Exchange Limited (hereinafter referred to as "BSE"). SEBI has observed that Gajanan Enterprises (Noticee No. 1), Dr. Madhukar Seth (Noticee No. 2) and Shakti Hotels Pvt. Ltd. (Noticee No. 3) had acquired/ sold shares of the company as detailed below:

   A. Noticee No.1 had acquired 1,26,654 shares (6.36%) of the company on December 29, 2014, which triggered the disclosure obligations upon its under regulation 13(1) read with 13(5) of the PIT Regulations and under regulation 29(1) read with 29(3) of the SAST Regulations, to make disclosures to the company and BSE within two working days of this acquisition.

   B. Noticee No. 2 had acquired 50,000 shares (2.51%) of the company on September 09, 2014 and another 50,000 shares (2.51%) of the company on September 19, 2014. Since, his acquisition of 50,000 shares on September 19, 2014 had increased his shareholding in the company up to 5.02% he was required to make disclosure to the company and BSE under regulation 13(1) read with 13(5) of the PIT Regulations and under regulation 29(1) read with 29(3) of the SAST Regulations, within two working days from September 19, 2014.

   C. Purchase /sale transactions of Noticee No. 3, during examination period and its consequent disclosure obligations under the PIT Regulations and the SAST Regulations are shown in the following table:

Table 1

Date of transaction	Transaction Type	Buy/ Sell	Quantity of Shares	Holding after transaction	Disclosure required under PIT	Disclosure required under SAST
07/07/2014	On Market	Buy	1,05,000 (5.27%)	1,05,000 (5.27%)	13(1)	29(1)
08/07/2014	On Market	Sell	48,056 (2.41%)	56,944 (2.86%)	13(3)	29(2)
25/09/2014	On Market	Buy	14,875 (0.74%)	1,08,012 (5.40%)	13(1)	29(1)

i. Details of the disclosures made by the Noticee No. 3 to the Company and BSE under the PIT Regulations and the SAST Regulations with respect to aforementioned buy/ sell transactions are as follows:

Table 2

Date of transaction	under the SAST Regulations		under the PIT Regulations
	Date on which disclosure made to the Company	Date on which disclosure made to the Exchange	Date on which disclosure made to the Company
07/07/2014	27/08/2014	27/08/2014	27/08/2014
08/07/2014	01/09/2014	01/09/2014	01/09/2014
25/09/2014	20/07/2018	20/07/2018	20/07/2018

2. In view of above, SEBI noted that –

a) Noticee No. 1 and 2 had not made any disclosures to the company or BSE with respect to their respective transactions under PIT Regulations and SAST Regulations.

b) Noticee No. 3 had made delayed disclosures to the company and BSE under Regulations 13(1), 13(3) read with 13(5) of PIT Regulations and under Regulations 29(1), 29(2) read with 29(3) of SAST Regulations for its transactions dated July 07, 2014, July 08, 2014 and September 25, 2014.

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 the PIT Regulations and SAST Regulations by the Noticees No. 1 to 3 (hereinafter collectively referred as 'the Noticees') as described hereinabove. Vide a *communication - order* dated February 13, 2019, undersigned has been 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 violations by the Noticees as aforesaid. Provisions of section 15A(b) of the SEBI Act are as under :-

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.

4. 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 February 13, 2019, the notice to show cause no. EAD/SS/AKS/6060/1-5/2019 dated March 07, 2019 ('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.

5. The SCN was duly served upon the Noticees. Vide letter dated March 22, 2019, Noticee No. 1 requested for 4 weeks' time to file its reply to the SCN, without providing any cogent reason for the same. However, Noticee No. 2 and 3 did not submit reply to the SCN. Accordingly, in the interest of natural justice and in terms of Rule 4(3) of the Adjudicating Rules, the date for personal hearing was fixed for April 16, 2019 and the Noticees were allowed to file their reply to the SCN on or before the scheduled date of hearing. The notice dated April 04, 2019 in this regard was also served upon the Noticees. Vide e-mail dated April 10, 2019, Mr. Pratik M. Seth S/o Noticee No. 2, informed that his father is hospitalized and he had not received SCN issued in the matter. Therefore, he requested to e-mail the SCN to him. Copy of the SCN was mailed to him on April 11, 2019.

6. After seeking adjournments, Noticee No. 3 filed its reply to the SCN vide e-mail dated April 30, 2019 and waived of the opportunity of personal hearing, while Noticee No. 1 and 2 availed the opportunity of personal hearing that was rescheduled for May 02, 2019 on their reqsut. Mr. Ravi Ramiya, Chartered Accountant appeared on behalf of Noticee No. 1 on May 02, 2019 and made submissions on the lines of the Noticee No. 1 e-mail dated July 02, 2018 and requested for a week's time to make additional written submissions in the matter. Noticee No. 2 appeared in person on the said date and requested for time up to May 15, 2019, on health grounds, to make his written submissions in the matter. He also waived of further opportunity of hearing in the matter.

7. After seeking further time to file their written submissions as aforesaid, the Noticee No. 1 filed its reply/submission on May 28, 2019 and Noticee No. 2 filed his written submissions on May 15, 2019. The replies/submissions of the Noticees are *inter alia* as following:

Submissions of Noticee No. 1

a. Its main business is trading and arbitrage in capital market and its most trades are squared off on the same day. It may take delivery as well in limited instances where it see good opportunity. It have been trading in securities markets since 2011 and have very large volume. It had traded in the shares of the Company on 62 days during July 10, 2014 to March 26, 2015 in delivery based transactions.

b. Its transactions were in the nature of short term trading and it had never attended the meetings of any companies or impact the course of business by participating in the management or even meeting the management of any company. These transactions are purely trading in nature and never impacted the course of business of the Company.

c. It had continuously reported the bulk deals on the website of the Exchange during the aforesaid period. The said disclosures inform the public at large about its transactions in the share of the Company/ its trading and therefore the purpose of disseminating the information to public was somewhat met, though not under the alleged regulations and it is not a case that investors at large were completely kept in dark about its trades.

d. It had placed reliance upon the judgment of the Hon'ble Supreme Court in the matter of *SEBI v/s Bhavesh Pabari (CIVIL APPEAL NO(S).11311 OF 2013)*, wherein it held that - *"We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15 J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty".*

e. It requested to take a considered view and condone its technical failure to file disclosures and not levy any penalty as mentioned in the SCN for the violations mentioned in the SCN.

Submissions of Noticee No. 2

a. Regulation 13(5) of the PIT Regulations is relevant only when there is violation under Regulations 13(3), 13(4) and 13(4A) of the PIT Regulations and not when there is alleged violation of Regulation 13(1) of the PIT Regulation. Therefore, it cannot be said that he had violated Regulation 13(5) of the PIT Regulations.

b. Vide letter dated September 19, 2014, he had made the required disclosure under Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations to the company and same had been duly acknowledged by the Company. Also, in the said letter the company was requested to inform BSE about the said transaction. Further, the Company informed the BSE about his shareholding in the Company and his shareholding was reflecting under the quarterly shareholding pattern of the company for the quarter ending September 2014 (***Source:*** *BSE Website*). Therefore, the investors at large became aware of his shareholding in the Company and therefore, the object of disclosure is ultimately served. Accordingly, he had not violated the provisions of Regulation 13(1) of the PIT Regulation and Regulation 29(1) of the SAST Regulations. In support of his claim he has provided the copy of letter dated September 19, 2014 and shareholding pattern available on BSE website for quarter ending on September, 2014.

c. There was no major price movement or upheaval in the share of the Company during his transactions. Price moved from ₹22.45 for week ended September 12, 2014 to ₹21.25 for week ended September 19, 2014. Even Average price in August, 2014 was ₹19.92 and moved to ₹20.38 as average for September, 2014. Thus there was no fluctuation in the price of the share of the Company affecting investors, instead price remained stable and his transaction provided liquidity in the market.

d. Penalty should not be levied merely on grounds of alleged default and in this regard he placed reliance on the judgment of Hon'ble Securities Appellate Tribunal ('SAT') in the matter of *Chandrakant Gandhi Stock Broker P. Ltd. Vs. SEBI [2000 (37) CLA 238]* and Hon'ble SAT views in the matter of *Housing Development Finance Corporation Vs. SEBI [(2000) 28 SCL 289 (SAT)]*, that -*"default per se is not dominant guiding principle for imposition of penalty. It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum"*.

e. Considering that his shareholding in the Company was in public domain as found in quarterly shareholding pattern for September 2014 and there was no repetitive default, he requested for not imposing any penalty upon him.

Submissions of Noticee No. 3

a. Delayed disclosures were technical in nature and there is no intention to defraud the investors. The intention of good faith can be derived from the disclosures made by it.

b. Regulation 29(1) of the SAST Regulations is corollary to Regulation 13(1) of the PIT Regulations and violation of Regulation 13(3) of the PIT Regulations is corollary to the violation of Regulation 29(2) of the SAST Regulations and violation of one will automatically trigger the violation of another and therefore, no separate penalty is warranted under another regulation. The purpose of both the Regulations is dissemination of information. Hon'ble SAT also in the matter of *Vitro Commodities Private Limited V SEBI* held 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 of other".*

c. No loss has been caused to the investors and no gain has been made by it. SCN also does not mention any loss being caused to the investor or any gain made by it. Without prejudice to the above, it state that penalty should not be levied merely because there is default. In this regard, it placed reliance upon the judgment of the Hon'ble SAT in *Chandrakant Gandhi Stock Broker P. Ltd. Vs. SEBI [2000 (37) CLA 238]* and *Housing Development Finance Corporation Vs. SEBI [(2000) 28 SCL 289 (SAT)].*

d. Imposing of Penalty is discretionary power of the AO which should be exercised based on facts and circumstances of the case. In this context, it has relied upon the judgment of the Hon'ble Supreme Court in the matter of *Hindustan Steel's case (supra)*, wherein it held that –

"An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".

e. Reference and reliance is placed on Adjudication Order dated July 31, 2018 of Ms. Maninder Cheema, Adjudicating Officer, SEBI in the matter of *Sunbright Stock Broking Limited,* wherein the learned AO placed reliance on SAT judgment in the matter of *Vitro Commodities Pvt. Ltd.* and levied a penalty of Rupees One Lakh only.

8. I have considered the allegation levelled in the terms of reference, the relevant material brought on record and reply / submissions of the Noticees. The transactions that are basis of allegations and consequential change in their shareholding as alleged in the SCN are admitted by the Noticees. The questions for determination in these proceedings are whether the Noticees were required to make disclosures under relevant regulations of the PIT Regulations and SAST Regulations, as alleged, and if so, whether they had failed to make such disclosures and if such failure had occurred should the penalty be imposed upon them.

9. Before dealing with the charge and replies of the Noticees thereto, it is relevant to refer to the provisions of Regulation 13(1) and 13(3) read with 13(5) of the PIT Regulations and Regulation 29(1) and 29 (3) read with 29(3) of the SAST Regulations charged in this case which read as under:-

PIT Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in a Initial Disclosure

13. (1) *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—*

(a) *the receipt of intimation of allotment of shares; or*

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

Continual Disclosure

(3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, 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 2% of total shareholding or voting rights in the company.*

(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(1) *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*

(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. From the above provisions of PIT Regulations and SAST Regulations it can been seen that the requirements provided therein are very clear as to when the disclosure obligations of the persons acquiring or selling/disposing shares in a company are triggered. In terms of Regulation 13(1) of the PIT Regulations, the person concerned is obligated to make requisite disclosures in specified Form within 2 working days of allotment/acquisition of shares, as the case may be. For the purposes of disclosures under Regulation 13(1), the timeline has been prescribed in the said Regulation 13(1) itself and reference to timeline under Regulation 13(5) is not relevant for the purpose of Regulation 13(1) of the PIT Regulations though both prescribe similar timelines. However, wrong referring to Regulation 13(5) for the purposes of Regulation 13(1) cannot be of any help to Noticee No. 2 and 3, if they have not made requisite disclosures within timeline specified in Regulation 13(1).

11. The provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations provides the common threshold regarding the compliance obligation of a person when he holds shares or voting rights entitling him to five per cent or more of the shares or voting rights in a company. Similarly, Regulation 13(3) of the PIT Regulations and Regulation 29(2) of the SAST Regulations provides for the common threshold regarding the compliance obligation of a person when he holds shares or voting rights entitling him to five per cent or more of the shares or voting rights in a target company and the change in such holdings exceeds two per cent of total shareholding or voting rights in a company, even if such change results in shareholding falling below five per cent. 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, if any, of the provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations are not substantially different and can be considered as a single violation. Similarly, the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations also provide for substantially overlapping obligations and can be treated single violation in respect of same transaction.

12. In this case, while Noticee No. 1 has admitted to the alleged failure in making disclosures in terms of respective regulations. Noticee No. 2 has demonstrated that with regard to his transaction dated September 19, 2014 he had made disclosures in specified Form A to the Company under applicable provisions of Regulation 13(1) of the PIT Regulations and the Regulation 29(1) of the SAST Regulations on the date of this transaction itself.

13. It is relevant to mention that Regulation 29(1) read with 29(3) of the SAST Regulations casts additional obligation upon the persons who acquires shares or voting rights in a listed company to make requisite disclosures to the stock exchange also. With regard to his acquisition dated September 19, 2014, Noticee No. 2 was under obligation to make disclosures in terms of Regulation 29(1) read with 29(3). He has contended that he had asked the Company to disclose his shareholding in the Company to BSE and the Company informed the BSE about his shareholding in the Company and his shareholding was reflecting under the quarterly shareholding pattern of the company for the quarter ending September 2014 on BSE website. Therefore, the investors at large became aware of his shareholding in the Company and therefore, the object of disclosure is ultimately served. From the language of Regulation 29(1) and 29(3) of the SAST Regulations, it is clear that the statutory disclosure obligation therein is cast upon the person who is acquiring shares or voting rights in the Company. With regard to such disclosure obligations, Hon'ble Calcutta High Court in the matter of *Arun Kumar Bajauria vs SEBI* in writ petition no. 331 of 2001 decided on March 27, 2001 held that - it was for the acquirer to establish by cogent material on record that he had sent the disclosures to the exchange and that those had been received by it. For such obligations, it is also pertinent to mention that Hon'ble SAT, in the matter of *Mega Resources Ltd. v. SEBI (Appeal No. 49/2001)* has observed that,

"…regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement. But Regulation 7(1) requires the acquirer to disclose the aggregate of his holding in the Target Company to the company. Sub regulation (2) prescribes the time limit within which the disclosure is required to be made…….According to Black's Law Dictionary "Disclosure" means –act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."

14. Further in the matter of *Kalindee Rail Nirman (Engineers) Limited vs SEBI* decided on July 19, 2001, Hon'ble SAT held that –

"…. As observed by the Calcutta High Court, the agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said documents has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgement received from BSE in regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant…"

15. Thus, mere dispatch of the disclosures or furnishing the same to the Company with request to inform the exchange as was done by Noticee No. 2 is not sufficient to show compliance of the disclosure obligation. What is important is that the disclosures should actually reach the exchange. The onus in this regard is always on the sender to establish his/ her compliance. In the instant case, the Noticee No. 2 has failed to establish that he made disclosures with regard to his transaction dated September 19, 2014

to the BSE and that the information given by him to the Company actually reached BSE and was received by it within stipulated time.

16. As admitted by the Noticee No. 3, it had made disclosures after the delay of –

    a) 40 days for transaction dated July 07, 2014 under Regulation 13(1) of the PIT Regulation and Regulation 29(1) read with 29(3) of the SAST Regulations;

    b) 45 days for transaction dated July 08, 2014 under Regulation 13(3) read with 13(5) of the PIT Regulation and Regulation 29(2) read with 29(3) of the SAST Regulations; and

    c) 3 years 10 months (approximately) for transaction dated September 25, 2014 under Regulation 13(1) of the PIT Regulation and Regulation 29(1) read with 29(3) of the SAST Regulations.

17. In view of above, I, find that the Noticee No. 1 to 3 have failed to make disclosures with respect to their respective transactions as under:

    a) Noticee No. 1- failed to make disclosure to the Company and BSE under Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations, as applicable, for its transaction dated December 29, 2014,

    b) Noticee No. 2 – failed to make disclosures to BSE under the Regulation 29(1) read with 29(3) of the SAST Regulations for his transaction dated September 19, 2014; and

    c) Noticee No. 3 made delayed disclosures as aforesaid under the Regulation 13(1) and Regulation 29(1) read with 29(3) of the SAST Regulations for transaction dated July 08, 2014 and Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29 (2) read with 29(3) of the SAST Regulations for transaction dated July 07, 2014 and September 25, 2014.

18. Since the failure is linked to penal consequences, one has to look to it in a realistic manner and the consequences arising out of the failure. In this context it is to be noted that section 15I of the SEBI Act providing for adjudication, does not direct the Adjudicating Officer to impose penalty for failure *per se*. According to section 15I(2) if on inquiry the Adjudicating Officer is satisfied that the person has failed to comply with the provisions specified in the section, '*he may impose such penalty as he thinks fit'* in accordance with the provisions of any of those sections. The expression *'may'* used is not mandatory. Further the *'failure'* referred to therein need be considered in the light of judicial pronouncements explaining the situation. In this context, it is also relevant to know the significance of the expression "*shall be liable to a penalty"* appearing in the section 15A. It is settled position that the expression "*shall be liable to a penalty"* occurring in many statutes has been held as not conveying the sense of an absolute obligation or penalty but merely imposing a possibility of such obligation or penalty. (The Supreme Court in *Superintendent & Remembrancer of Legal Affairs to Govt. of West Bengal*; and *State of WB V Abani Maity*

AIR1979SC 1029). Further, in this regard, the provisions of section 15J has to be properly understood, and not to be mechanically applied. Section 15J of the SEBI Act reads as follows:-

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

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default."

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

19. In this case, having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that Noticee No. 1 being a SEBI registered sub-broker had been trading in the shares of the Company during the period July 10, 2014 to March 26, 2015 through series of transactions. It is its acquisition of 1000 shares on December 24, 2014 which had triggered its obligations under Regulation 29(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations and not 1,26,654 shares as alleged. All its other transactions which qualified as bulk deal were reported on the stock exchange during period July 10, 2014 to August 14, 2015 under applicable norms. From the BSE website it is noted that the shareholding of the Noticee No. 1 had been disclosed under the '*Shareholding of securities (including shares, warrants, convertible securities) of persons belonging to the category Public and holding more than 1% of the total number of shares*' for the quarter ending on December, 2014. Its transaction dated December 24, 2014 involving 1000 shares was also available in public domain within a month of the transaction. Considering these facts and circumstances with regard to the trades of the Noticee No. 1, I am of the view that on the contrary, the reporting by the Noticee No. 1 may be more dis-informative than informative and only historical. While so holding I am not suggesting that in the strict technical sense, the Noticee had not failed in its obligation. But the failure has to be seen in realistic manner. In this case, there is no blameworthy conduct nor lethargic indifference nor the needless procrastination on its part. I am, therefore, inclined to conclude that the failure on the part of the Noticee No. 1 is technical and venial and does not warrant imposition of monetary penalty upon it under section 15A (b) of the SEBI Act.

20. It is established that the Noticee No. 2 had made disclosures with regard to his transaction dated September 19, 2104 to the Company on the same date. Further, the details of his shareholding was disclosed under the quarterly shareholding pattern of the Company for the quarter ending September 2014 on BSE Website. Thus, the requisite information was in public domain within reasonable time frame. There is also no allegation of wilful concealment or hiding the information. Considering these mitigating factors, criteria under section 15J and guidance pronounced by Hon'ble Supreme Court in

aforementioned *Bhavesh Pabari Case,* I do not deem this failure blameworthy enough to impose a monetary penalty upon the Noticee No. 2 under section 15A (b) of the SEBI Act.

21. It is noted that the Noticee No. 3 had repeatedly made delayed disclosures. Two of his disclosures were made with delays of 40 days and 45 days, respectively of the date of the transactions, while third disclosure was substantially delayed and made after 3 years and 10 months. I further note that, timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Such disclosures also bring about transparency and enable the investors in the scrip to take an informed investment or disinvestment decision. Hon'ble SAT 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."* Timelines is the essence of disclosure under the PIT Regulations and SAST Regulations and repeated delay in making such disclosure, as in the case of Noticee No. 3, would not serve the purpose for which the obligation is cast in the Regulations. The case of the Noticee No. 3 is also such that no information were available about its transactions until it made such delayed disclosures. In the facts and circumstances of this case, lack of relevant information in public domain with regard to change in shareholding of the Noticee No. 3 would create information asymmetry at relevant times and delay in making such disclosures as found in this case would also defeat the purpose of the provisions of Regulation 13 of the PIT Regulations and Regulation 29 of the SAST Regulations.

22. Such delays clearly show lethargic approach of the Noticee No. 3 and its conduct is blameworthy as it had repeatedly delayed the disclosures to the Company and the stock exchange. The repeated failures of Noticee No.3 are thus not technical or venial as claimed by it. In this regard, in the matter of *Ambaji Papers Private Limited & Ors. v. Adjudicating Officer, Securities and Exchange Board of India (Appeal No. 201 of 2013 dated January 15, 2014)*, the Hon'ble SAT has held that, "*To this extent, the appellants, though inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless. This Tribunal has held time and again that the penalty levied on any wrong-doer ought to be commensurate with the gravity of the deviation effected."*

23. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee No. 3 or the extent of loss suffered by the investors as a result of the default cannot be computed. Further, the transactions in question are almost 5 years old and there is no material to indicate any deliberate design of suppression of true fact to defraud investors by it.

24. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹ 3,00,000/ (Rupees Three Lakh only), on the Noticee No. 3 *viz.* Shakti Hotels Pvt. Ltd. under section

15A(b) of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee No. 3 in this case.

25. The Noticee No. 3 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 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.

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

Date: June 18, 2019
Place: Mumbai

Santosh Shukla
Adjudicating Officer