

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SM/AO/79-85/2019-20/3444-3450]

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 and SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Sr. No.	Name of the Entity	PAN	Order No.
1	Bipin Pushpasen Divecha HUF	AAFHB5124D	EAD/SR/SM/AO/79/2019-20/3444
2	Bhavana Bipin Divecha	AELPD4244E	EAD/SR/SM/AO/80/2019-20/3445
3	Grisha Bipin Divecha	ANAPD8949E	EAD/SR/SM/AO/81/2019-20/3446
4	Bipin Pushpasen Divecha	AABPD5165A	EAD/SR/SM/AO/82/2019-20/3447
5	Jigar Dilip Shah	BBOPS1405H	EAD/SR/SM/AO/83/2019-20/3448
6	Sharad Ghadi	AIQPG6396R	EAD/SR/SM/AO/84/2019-20/3449
7	Finalysis Credit & Guarantee Company Ltd.	AABCF9494P	EAD/SR/SM/AO/85/2019-20/3450

In the matter of Finalysis Credit & Guarantee Company Limited

FACTS OF THE CASE IN BRIEF

1. A Department (hereinafter referred to **OD**) of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation in the trading activities of certain entities in the scrip of Finalysis Credit & Guarantee Company Limited (hereinafter referred to as **FCGCL / Target Company**). The said investigation revealed that Bipin Pushpasen Divecha HUF (hereinafter referred to as **Noticee 1**), Ms. Bhavana Bipin Divecha (hereinafter referred to as **Noticee 2**), Ms. Grisha Bipin Divecha (hereinafter referred to as **Noticee 3**), Mr. Bipin Pushpasen Divecha (hereinafter referred to as **Noticee 4**), Mr. Jigar Dilip Shah (hereinafter referred to as **Noticee 5**) violated the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **SAST Regulations, 2011**), SEBI (Prohibition Of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**), Mr.

Sharad Ghadi (hereinafter referred to as **Noticee 6**) violated the provision of PIT Regulations, 1992 and Finalysis Credit & Guarantee Company Limited (hereinafter referred to as **FCGCL / Noticee 7**) violated the provision of PIT Regulations, 1992 and Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **SCRA, 1956**). All seven are collectively referred to as Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said investigation, OD of SEBI initiated Adjudication Proceedings against the Noticees and appointed, Ms. Sangeeta Rathod as Adjudicating Officer vide communique dated July 17, 2017, under section 15-I of 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 **Adjudication Rules, 1995**) and section 23-I of SCRA, 1956 r/w rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **Adjudication Rules, 2005**) to inquire into and adjudge –
 - a. under the provision of section 15A(b) of the SEBI Act, 1992 the alleged violations of regulations 29(1) and 29(2) r/w regulation 29(3) of SAST Regulations, 2011 by Noticee 1, Noticee 2 and Noticee 3
 - b. under the provisions of sections 15A(b) and 15HB of the SEBI Act, 1992, the alleged violations of regulations 29(1) and 29(2) r/w regulation 29(3) of SAST Regulations, 2011, regulation 12(1) and Regulation 12(3) r/w clause 1.2 of Part A of Schedule I of SEBI (Prohibition Of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT Regulations, 1992 and regulations 13(2), 13(4) r/w regulation 13(5) of PIT Regulations, 1992 by Noticee 4
 - c. under the provisions of sections 15A(b) and 15HB of the SEBI Act, 1992, the alleged violations of regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992, regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011 by Noticee 5
 - d. under the provision of section 15HB of the SEBI Act, 1992, the alleged violations of regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992 by Noticee 6 and

- e. under the provisions of sections 23A and 23E of SCRA, 1956 and section 15HB of the SEBI Act, 1992, the alleged violations of section 21 of SCRA, 1956 r/w clause 31 and clause 54 of Equity Listing Agreement and regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992 by Noticee 7.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common show cause notice no. SEBI/HO/EAD/AO-SR/SJ/23184/1, 2, 3, 4, 5, 8, 9 dated September 25, 2017 (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 sections 15A(b) and 15HB of the SEBI Act, 1992, sections 23A and 23E of SCRA, 1956 be not imposed on them for the violations alleged and specified in the said SCN. Details of which are given below:
- i) The shares of FCGCL were listed at Bombay Stock Exchange (**BSE**), when SEBI conducted an investigation in the scrip of the FCGCL for the period March 28, 2012 to May 31, 2013 (hereinafter referred to as **Investigation Period**). However, wherever deemed necessary reference has been made outside this period also.
 - ii) It is alleged that the Noticee 7 (FCGCL) did not frame a code of internal procedures and conduct as near thereto the Model Code of Conduct specified in Schedule I of PIT Regulations, 1992 and therefore, failed to adopt the same. The Model Code of Conduct for Prevention of Insider Trading for Listed Companies was mandated in the PIT Regulations, 1992 through an amendment in the year 2002. Thus, every listed company has to frame Code of Conduct for Prevention of Insider Trading based on Model code of Conduct mandated under PIT Regulations, 1992. However, Noticee 7 has failed to adopt appropriate mechanisms and procedures to frame, adopt and enforce a Code of internal procedures and Conduct as near thereto the Model Code specified in Schedule I of PIT Regulations, 1992 and therefore, alleged to have violated regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992. Further, Noticees 4, 5, and 6 viz Mr. Bipin Pushpasen Divecha, Mr. Jigar Dilip Shah, and Mr. Sharad Ghadi in their capacities of members of the Board of Directors have failed to frame, adopt and implement the Code of internal procedures and Conduct as near thereto the Model Code of Conduct specified in Schedule I of PIT Regulations, 1992 and therefore, alleged to have violated

regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992.

- iii) It is further alleged that the Noticee 7 had not submitted Annual Reports to BSE for the years 2013, 2014 and 2015 and failed to have functional website and therefore, violated clauses 31 and 54 of the Equity Listing Agreement r/w section 21 of the SCRA, 1956.
- iv) It is alleged that the Noticee 4 viz. Mr. Bipin Pushpasen Divecha have been appointed as the director of FCGCL on October 10, 2011. Prior to his appointment to the post of Director of FCGCL, on April 30, 2011, he had purchased / acquired 1,75,000 shares of FCGCL through off-market representing 3.18% of total shareholding of FCGCL. In terms of regulation 13(2) of PIT Regulations, 1992, the Noticee 4 was supposed to make required disclosure of his holding in FCGCL in prescribed Form B within two working days of October 10, 2011 (the day on which he was appointed as director of FCGCL). It is alleged that the Noticee 4 has failed to make a required disclosure under regulation 13(2) of PIT Regulations, 1992 to FCGCL and therefore, he is alleged to have violated the said provision of PIT Regulations, 1992. Further, Noticee 4 on April 23, 2012 acquired 14,616 shares of FCGCL through on-market and the value of the shares acquired was Rs.6,51,439.5/-. As, the change in shareholding of the Noticee 4 was more than Rs. 5 lakh in value, he was required to make disclosure of such acquisition to BSE and FCGCL under regulation 13(4) of PIT Regulations, 1992. It is alleged that he failed to make the disclosure under regulation 13(4) r/w regulation 13(5) of PIT Regulations, 1992 and therefore alleged to have violated said provisions of PIT Regulations, 1992.
- v) Further, on August 01, 2012 the Noticee 4 has disposed off 50,000 shares through off-market and as the change in his shareholding exceeded 25000 shares limit, he was under an obligation to make the disclosure to BSE and FCGCL as prescribed under regulation 13(4) of PIT Regulations, 1992. Lastly, on August 02, 2012, the Noticee 4 had further disposed of 35,000 shares of FCGCL through off-market and as the change in his shareholding exceeded 25000 shares limit, he was under an obligation to make disclosure to BSE and FCGCL under regulation 13(4) r/w regulation 13(5) of PIT Regulations, 1992. It is alleged that the Noticee 4 failed to make the required disclosures to BSE and FCGCL with respect to such disposal of shares of FCGCL and therefore, alleged to have violated regulation 13(4) r/w

regulation 13(5) of PIT Regulations, 1992. The above alleged violations and the transactions carried out by the Noticee 4 are provided in SCN in a tabular format as given below:

Date	No of shares held - pre Acquisition/ disposal	% of share holding held - pre Acquisition/ disposal	No of shares Acquired / (disposed off)	No of shares Acquired / (disposed off) as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Mode	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s) under PIT & SAST
Bipin Pushpasen Divecha												
30/04/2011	0	0.00%	175000	3.18%	NA	175000	3.18%	Off-market	No disclosure made	No disclosure made	Not applicable	PIT 13 (2)
23/04/2012	175000	3.18%	14616	0.27%	651439.5	189616	3.44%	On-market	No disclosure made	No disclosure made	Not applicable	PIT 13 (4)
01/08/2012	200189	3.64%	(50000)	0.91%	NA	150189	2.73%	Off-market	No disclosure made	No disclosure made	Not applicable	PIT 13 (4)
02/08/2012	150189	2.73%	(35000)	0.64%	NA	115189	2.09%	Off-market	No disclosure made	No disclosure made	Not applicable	PIT 13 (4)

- vi) Further, it is alleged that the Noticees 1, 2, 3, and 4 viz. Bipin Pushpasen Divecha HUF, Ms. Bhavana Bipin Divecha, Ms. Grisha Bipin Divecha and Mr. Bipin Pushpasen Divecha are related to each other. The Noticee 4 (Mr. Bipin Pushpasen Divecha) is the husband of the Noticee 2 (Ms. Bhavana Bipin Divecha) and the Noticee 3 (Ms. Grisha Bipin Divecha) is the daughter of the Noticee 2 and 4. Therefore, the Noticees 1, 2, 3 and 4 are immediate relatives and therefore, deemed PACs in terms of SAST Regulations, 2011. It is observed that on April 30, 2011, the Noticee 1, Noticee 2, Noticee 3 and Noticee 4 acquired through off-market 75,000, 12,500, 30,000 and 1,75,000 shares of FCGCL respectively. Thus, the total shareholding of the deemed PACs (the Noticees 1, 2, 3 and 4) has increased from 0 to 5.31% of the paid up capital of FCGCL. In terms of regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011, the Noticees 1, 2, 3 and 4 were under an obligation to make disclosure to BSE and FCGCL as their shareholdings has crossed 5% benchmark. It is alleged that the Noticees 1, 2, 3 and 4 failed to make the required disclosure and therefore violated regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011. Further, on August 01, 2012, the Noticees 1 and 4 disposed off through off-market 75,000 and 50,000 shares of FCGCL respectively together representing 2.27% of the paid up capital of FCGCL. In terms of regulation 29(2) of SAST Regulations, 2011, the Noticees 1 and 4 were under an obligation to make disclosure to

BSE and FCGCL under regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011. It is alleged that the Noticees 1 and 4 failed to make the required disclosures within the required time frame to BSE and FCGCL and therefore, violated regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011. The instances of disclosure violations and the transactions of the Noticees 1,2 ,3 and 4 are provided in the SCN in a tabular format as given below:

Date	Name of the entity	No of shares held - pre Acquisition/ disposal	% of share holding held - pre Acquisition/ disposal	Consolidated % of shareholding of promoters/PAC pre-Acquisition/disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/ (disposed off) as a % of paid up capital	No of shares held - post Acquisition/disposal	% of share holding held - post Acquisition/ disposal	Mode	Consolidated % of share holding of promoters/PAC post-Acquisition/ disposal	Date of disclosure to company	Date of disclosure to stock exchange	Violation of Regulation(s)
Bipin Pushpasen Divecha , Bipin Pushpasen Divecha HUF, Bhavana Bipin Divecha, Grisha Bipin Divecha													
30/04/2011	Bipin Pushpasen Divecha	0	0.00%	0.00%	175000	3.18%	175000	3.18%	off-market	5.31%	No disclosure made	No disclosure made	SAST 29 (1)
30/04/2011	Bipin Pushpasen Divecha HUF	0	0.00%		75000	1.36%	75000	1.36%	off-market		No disclosure made	No disclosure made	
30/04/2011	Grisha Bipin Divecha	0	0.00%		30000	0.54%	30000	0.54%	off-market		No disclosure made	No disclosure made	
30/04/2011	Bhavana Bipin Divecha	0	0.00%		12500	0.23%	12500	0.23%	off-market		No disclosure made	No disclosure made	
01/08/2012	Bipin Pushpasen Divecha	200189	3.64%	6.81%	(50000)	0.91%	150189	2.73%	off-market	4.54%	No disclosure made	No disclosure made	SAST 29 (2)
01/08/2012	Bipin Pushpasen Divecha HUF	110325	2.00%		(75000)	1.36%	35325	0.64%	off-market		No disclosure made	No disclosure made	
01/08/2012	Grisha Bipin Divecha	50220	0.91%		0	0.00%	50220	0.91%	off-market		No disclosure made	No disclosure made	
01/08/2012	Bhavana Bipin Divecha	14000	0.25%		0	0.00%	14000	0.25%	off-market		No disclosure made	No disclosure made	

- vii) The Notice 5 viz. Mr. Jigar Dilip Shah was also the promoter of FCGCL during the Investigation Period. The Noticee 5 on December 18, 2012 had disposed off on market 15000 shares of FCGCL for Rs. 18,76,500/-. As the change in shareholding of the Noticee 5 was more than five lakhs in value, he was under an obligation to make disclosure to BSE and FCGCL under regulation 13(4A) within two working days of the said disposal. It is alleged that the Noticee 5 failed to make the required disclosure and

therefore violated regulation 13(4A) r/w regulation 13(5) of PIT Regulations, 1992. Further, on August 18, 2013, the Noticee 5 disposed of 1,85,000 shares of FCGCL through off-market. As the change in shareholding of the Noticee 5 was more than 25,000 shares, he was under an obligation to make disclosure to BSE and FCGCL under regulation 13(4A) of PIT Regulations, 1992. The Noticee 5 was also under an obligation to make disclosure to BSE and FCGCL within two working days of disposal of shares of FCGCL. It is alleged that the Noticee 5 failed to make disclosure under regulation 13(4A) of PIT Regulations, 1992 to FCGCL and BSE within two working days of said disposal of shares of FCGCL and therefore, alleged to have violated regulation 13(4A) of PIT Regulations, 1992. It is also alleged that the Noticee 5 failed to make disclosure to FCGCL and made delayed disclosure to BSE under regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011 and therefore violated the said provisions of SAST Regulations, 2011. The details of the transactions and alleged violations of Noticee 5 provided in the SCN in a tabular format as given below:

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/ (disposed off) as a % of paid up capital	Value of transaction (Rs.)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Mode	Date of disclosure to company	Date of disclosure to stock exchange	Violation of Regulation(s) under PIT & SAST
18/12/2012	200000	3.63%	(15000)	0.27%	1876500	185000	3.36%	On-market	No disclosure made	No disclosure	PIT 13 (4A)
18/07/2013	185000	3.36%	(185000)	3.36%	NA	0	0.00%	Off-market	No disclosure made	13/08/2013 under SAST 29 (2)	PIT 13 (4A), SAST 29 (2)

4. The said SCNs were sent to the Noticees through speed post acknowledgement due (SPAD) and were delivered through SPAD to all the Noticees except Noticee 7. For Noticee no. 7, affixture was made at the available address “17, Damji Shamji Complex, Kurla West, Mumbai – 400070” and the affixture report is on record. Hence, all the SCNs were duly served in terms of Adjudication Rules, 1995 and proof of all delivery is on record.
5. I granted an opportunity of personal hearing to the Noticees vide separate Hearing Notices. Vide hearing notice dated April 17, 2018, Noticees 1, 2, 3 and 4 were given an opportunity of personal hearing on May 11, 2018. Shri Bipin Pushpasen Divecha (i.e. Noticee 4), in behalf all the four Noticees i.e Noticee 1, 2 3 and 4 attended the hearing on the scheduled date i.e. May 11, 2018. During the course of hearing, Noticee 4 submitted reply of all the Noticees vide letter dated May 10, 2018 and reiterated the same

during hearing. He also sought additional time till May 25, 2018 to provide certain information and the request was acceded to. Hearing minutes are on record.

6. Vide hearing notice dated April 17, 2018 Noticee 5 was given an opportunity of personal hearing on May 11, 2018. In this regard, Noticee vide its letter dated May 09, 2019 replied that, he has not received the said SCN. Accordingly, SCN was forwarded to the Noticee through SPAD vide letter dated May 11, 2018 and the same was delivered to Noticee 5 as seen from available record. Further, vide hearing notice dated September 12, 2018 Noticee was granted an opportunity of hearing on September 26, 2018. Vide e-mail dated September 26, 2018 Noticee requested for 2 weeks' time. Further, vide hearing notice dated February 04, 2019 Noticee was given a final opportunity of hearing on February 26, 2019. In the said hearing notice, Noticee was requested to provide the reply to the SCN by February 18, 2019 failing which the matter shall be proceeded based on material available on record. However, Noticee 5 neither replied to the SCN nor availed the hearing granted to him.
7. Vide hearing notice dated April 17, 2018 Noticee 6 was advised attend hearing on May 11, 2018. Noticee 6 vide his letter dated May 07, 2018 replied that he was unable to attend the hearing and to take the reply as his statement for the said hearing notice. Further, vide hearing notice dated September 12, 2018 Noticee was granted another opportunity of hearing on September 26, 2018 and final opportunity of hearing was granted on February 26, 2019 vide hearing notice dated February 04, 2019. However, Noticee 6 did not avail the hearing in this regard.
8. An opportunity of hearing was granted to Noticee 7 on September 26, 2018 vide hearing notice dated September 12, 2018 through affixture and the said hearing Notice was not affixed at the available address. Copy of the said hearing notice was uploaded on SEBI website under the head "Home>>Enforcement>>Unserved Summons/Notices. A Public Notice was also given on February 15, 2019 in Times of India, Navbharat Times and Lokmat (all Mumbai Editions). The said publication advised the Noticee to submit its reply on or before March 05, 2019 and to appear for Personal Hearing on March 12, 2019. However, neither did Noticee 7 appear on the scheduled date for personal hearing, nor filed any reply to the said SCN till date.

9. Reply from the Noticees

All Noticees except Noticee no.5 and 7 above have submitted replies to the SCN. Summary of the Noticees' submissions made in their replies is as under:

Noticee 1

Vide letter dated May 10, 2018 Noticee 1 submitted that the HUF account is separate and its object to invest in stock market shares, income of HUF is separate and it is not clubbed to others at any point of time. Buying and selling of shares were from the open market from the trading terminal through the registered brokers and all the transactions were normal in nature. The payment made for purchase and receipt of shares were paid and received in the respective bank accounts. All our trades were independent and standalone. Our trades were not executed with the intention of manipulating the price in any manner. Noticee 1 purchased 75000 shares of the company, when the shares of the said company was suspended for trading, which was relisted on March 12. The said shares were purchased for the long term investment and were not sold in the open market. No loss to investor/shareholders on non-submission of disclosures if be required. As per the procedures, the compliance officer of the company would have given the list of the shareholders to the BSE while relisting the shares of the company and those became a mandatory procedure to be adopted by any company which is relisted or the suspension revoked. Noticee 1 submitted that the transactions of buy or sell of shares neither be linked to Noticee 4 nor other entities directly or indirectly. All the entities are different and they have separate PAN card and they are filing ITR in respective names. Noticee 4 joined as non-independent director in March 2012, with retrospective effect from October 2011(as per record) in the company that is his decision for which neither income nor investment was clubbed with other Noticees. They purchased the shares prior to joining of Noticee 4 as non-executive director. Trading and demat accounts of the said HUF accounts were separate with the broker which had no concerned to any other Noticees. The alleged violation of SAST Regulations, 2011 did not apply to HUF as Noticee 1 purchased the shares when the shares of the company were not traded in the market. Noticee 1 requested to drop the proceeding without imposing any monetary penalty in the matter.

Noticee 2

Vide letter dated May 10, 2018, Noticee 2 submitted that she is a self employed woman and a strategic investor in stock market for last 20 years and her investment in shares were appeared in books of accounts. Her income was not clubbed with her husband's income at any point of time. Her buying and selling of shares were from the open market from the trading terminal through the registered brokers and all the transactions were normal in nature. The payment made for purchased and receipt of shares were paid and received in the respective bank accounts. All her trades were independent and standalone. Her trades were not executed with the intention of manipulating the price in any manner. She purchased 125000 shares of the company in the mid of 2011, when the shares of the said company was suspended for trading, which was relisted on March 2012. The said shares were purchased for the long term investments. As per the procedures, the compliance officer of the company would have given the list of the shareholders to the BSE while relisting the shares of the company and those became a mandatory procedure to be adopted by any company which is relisted or the suspension revoked. Her transactions were not linked to any other entities and she herself was decision maker for her investment. Her address is different from the address of her husband. She requested to drop the proceeding without imposing any monetary penalty in the matter.

Noticee 3

Vide letter dated May 10, 2018, Noticee 3 replied that she was engaged in financial activities and also an investor in stock market. Her income was not clubbed with her parent's income or investment for any point of time. Buying and selling of shares were from the open market from the trading terminal through the registered brokers and all the transactions were normal in nature. The payment made for purchase and receipt of shares were paid and received in the respective bank accounts. All her trades were independent and standalone. Her trades were not executed with the intention of manipulating the price in any manner. He purchased 125000 shares of the company in the mid of 2011, when the shares of the said company was suspended for trading, which was relisted on March 2012. The said shares were purchased for the long term investments. As per the procedures, the compliance officer of the company would have given the list of the shareholders to the BSE while relisting the shares of the company

and those became a mandatory procedure to be adopted by any company which is relisted or the suspension revoked. Her transactions were not linked to any other entities and she herself was decision maker for her investment. Her address is different from the address of her husband. She requested to drop the proceeding without imposing any monetary penalty in the matter.

Noticee 4

Vide letter dated May 10, 2018, Noticee 4 submitted that he is a strategic investor in stock market for last 20 years and his buying and selling of shares were from the open market from the trading terminal through the registered brokers and all the transactions were normal in nature. The payment made for purchased and receipt of shares were paid and received in the respective bank accounts. All his trades were independent and standalone. His trades were not executed with the intention of manipulating the price in any manner. He purchased 175000 shares of the company, when the shares of the said company was suspended for trading, which was relisted on March 12. The said shares were purchased for the long term investment well before his joining as a director in the company and hence the question of Form B does not arise in the said case. He replied that his friend Mr. Vinayak Sarkhot wanted financial help and he supported by buying those shares when company was suspended. On persistent request from Mr. Vinayak Sarkhot, CMD cum Compliance Officer of the Company and to fulfill requirement of BSE, he agreed for non-executive Director in March 2012. Mr. Vinayak Sarkhot had enrolled his name as non-executive - Independent Director from October 2011 without his knowledge. He had no knowledge about the formalities and Mr. Vinayak Sarkhot used to do all the formalities of revocation and listing of shares prior to and after his joining as director. Mr Sarkhot assured him to take care all the compliances from time to time as required by the regulations since he was a novice in the department of compliance. He was not denying the compliance to be followed by the Company. With regard to PAC, Noticee 4 replied that all the entities are different and they separate PAN and they were filing the ITR in their respective names. He had not intentionally failed to make required disclosures as alleged in the SCN. He requested to drop the proceeding without imposing any monetary penalty in the matter.

Noticee 6

Noticee 6 replied that Mr Vinayak Sarkhot offered me a proposal to become a director of the company on paper and there will be no role and responsibility towards the company. Under a good relationship with him, I agreed and became director of the company. He never visited the office of the company. He was just independent director of the company and he was not aware of any activities of the company. The company without my knowledge appointed me as chairman of various committees. He gave his resignation letter to Mr. Vinayak Trimbak and in this regard, he submitted a copy of resignation letter having no date addressed to the Company. Noticee 6 replied that the company appointed him in back dated and filed all its pending ROC filing in the year 2011-12 for the financial year 2000-01 to 2010-11. He has not attended any board meeting and also not received any document with regard to the Board meeting of the company. Mr Vinayak Sarkhot was looking after day to day affairs of the company. He came to know that Mr Vinayak Sarkhot has passed away and he has no idea about the other directors, whom he can contact in this matter. Noticee 6 submitted that he not that literate that having knowledge about compliance requirement of the Company. Noticee 4 was supposed to make required disclosures. He requested to remove his name in the present proceedings.

10. I am of the view that as per Adjudication Rules, 1995, SCNs have been duly served to all the Noticees and sufficient time has been provided to the Noticees to submit their replies to the allegations levelled in the said SCN. Out of the total of seven Noticees, the Noticees no. 5 and 7 have not submitted their reply to the SCN. Also, opportunity of personnel hearing was granted to all the Noticees in the said matter. As regards, non-submission of reply to the SCN by Noticees no. 5 and 7, I refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed "... the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them". Also I note that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that "...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and,

therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..." Therefore, in view of the above case laws, it is presumed that the Noticee no. 5 and 7 have admitted the charges levelled against them in the said SCN. However, in the interest of natural justice, as regards all the Noticees, including Noticee no. 5 and 7 mentioned herein, I proceed to decide the matter on the basis of material available on record.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticees in the SCN, their replies and other material available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. **Whether Noticees 1, 2, 3, and 4 have violated the provisions of regulation 29(1) and 29(2) r/w regulation 29(3) of SAST Regulations, 2011?**
- b. **Whether Noticee 4 violated the provisions of regulation 13(2) of PIT Regulations, 1992 and regulation 13(4) r/w 13(5) of PIT Regulations, 1992?**
- c. **Whether Noticee 5 has violated regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulations, 2011?**
- d. **Whether Noticee no. 4,5,6 and 7 have violated the provisions of regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992?**
- e. **Whether Noticee 7 has violated the provision of clauses 31 and 54 of the Equity Listing Agreement r/w section 21 of the SCRA, 1956?**
- f. **Do the violations mentioned above from issue (a) to issue (e), if any, on the part of the said Noticees attract monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992, sections 23A and 23E of SCRA, 1956 for the alleged violations by the Noticees?**
- g. **If yes, then what would be the monetary penalty that can be imposed upon the said Noticees, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995 and section 23J of the SCRA, 1956 r/w rule 5(2) of the Adjudication Rules, 2005?**

12. Before proceeding further, I would like to refer to the relevant provisions of the SCRA, 1956, PIT Regulations, 1992, SAST Regulations, 2011, Listing agreement :

PIT Regulations, 1992

Code of internal procedures and conduct for listed companies and other entities.

12.(1) All listed companies and organisations associated with securities markets including:

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;
 - (b) the self-regulatory organisations recognised or authorised by the Board;
 - (c) the recognised stock exchanges and clearing house or corporations;
 - (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
 - (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.
- (2)
- (3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

SCHEDULE I [Under regulation 12(1)] PART A MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.0 Compliance Officer

1.1 ...

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :— (i) officers comprising the top three tiers of the company management; (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

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

13.(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

Continual disclosure.

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

sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13(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 person 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.

13(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

The SCRA, 1956

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Clause 31 Equity Listing Agreement:

The Company will forward to the Exchange promptly and without application - - -

(a) six copies of the Statutory and Directors' Annual Reports along with Form A or Form B, as applicable, Balance Sheets and Profit and Loss Accounts and of all periodical and special reports as soon as they are issued and one copy each to all the recognised stock exchanges in India;

- (b) six copies of all notices, resolutions and circulars relating to new issue of capital prior to their despatch to the shareholders;*
- (c) three copies of all the notices, call letters or any other circulars including notices of meetings convened u/s 391 or section 394 read with section 391 of the Companies Act, 1956 together with Annexures thereto, at the same time as they are sent to the shareholders, debenture holders or creditors or any class of them or advertised in the Press*
- (d) copy of the proceedings at all Annual and Extraordinary General Meetings of the Company;*
- (e) three copies of all notices, circulars, etc., issued or advertised in the press either by the Company, or by any company which the Company proposes to absorb or with which the Company proposes to merge or amalgamate, or under orders of the court or any other statutory authority in connection with any merger, amalgamation, re-construction, reduction of capital, scheme or arrangement, including notices, circulars, etc. issued or advertised in the press in regard to meetings of shareholders or debenture holders or creditors or any class of them and copies of the proceedings at all such meetings.*

Clause 54 of the Equity Listing Agreement

The issuer company agrees to maintain a functional website containing basic information about the company e.g. details of its business, financial information, shareholding pattern, compliance with corporate governance, contact information of the designated officials of the company who are responsible for assisting and handling investor grievances, details of agreements entered into with the media companies and/or their associates, etc. The company also agrees to ensure that the contents of the said website are updated at any given point of time.

FINDINGS:

13. 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:
 - a. Whether Noticees 1, 2, 3, and 4 have violated the provisions of regulation 29(1) and 29(2) r/w regulation 29(3) of SAST Regulations, 2011?**
 - b. Whether Noticee 4 violated the provisions of regulation 13(2) of PIT Regulations, 1992 and regulation 13(4) r/w 13(5) of PIT Regulations, 1992?**
- i) From the material available on record, I find that Noticees 1, 2, 3, and 4 are related to each other. The Noticee 4 (Mr. Bipin Pushpasen Divecha) is the husband of the Noticee 2 (Ms. Bhavana Bipin Divecha) and Noticee 3 (Ms. Grisha Bipin Divecha) is the daughter of the Noticee 2 and 4. Noticee 1 being the HUF, related to Noticees no. 2, 3 and 4. Therefore, the Noticees 1, 2, 3 and 4 are immediate relatives and therefore, deemed PACs in terms of SAST Regulations, 2011. I find from the available record that on April 30, 2011, the Noticee 1, Noticee 2, Noticee 3 and Noticee 4 acquired

through off-market 75,000, 12,500, 30,000 and 1,75,000 shares of FCGCL respectively. Thus, the total shareholding of the deemed PACs (the Noticees 1, 2, 3 and 4) has increased from 0 to 5.31% of the paid up capital of FCGCL. Being PAC, as their shareholdings has crossed 5% benchmark, the said Noticees were under an obligation to make disclosure to BSE and FCGCL under regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011 within the prescribed time as specified in the said regulations. However, the said Noticees failed to make the required disclosure and therefore violated regulation 29(1) r/w regulation 29(3) of SAST Regulations, 2011.

- ii) Further, on August 01, 2012, the Noticees 1 and 4 disposed off 75,000 and 50,000 shares of FCGCL respectively together representing 2.27% (i.e. more than 2%) of the paid up capital of FCGCL through off-market. In terms of regulation 29(2) of SAST Regulations, 2011, the Noticees 1, 2, 3 and 4 were under an obligation to make disclosure to BSE and FCGCL under regulation 29(2) r/w 29(3) of SAST Regulations, 2011 for the said change of shareholding of more than 2% of the paid up capital of FCGCL. However, the said Noticees failed to make the required disclosures within the required time frame to BSE and FCGCL and therefore, violated regulation 29(2) r/w regulation 29(3) of SAST Regulations, 2011.
- iii) Noticee 1 to 4 in their reply to the SCN contended that they are independent with regard their investment, income etc., however as per the SAST Regulations, 2011 they are deemed PAC and hence they are required to made the said disclosures for the transactions as alleged in SCN. With regard to the suspension of FCGCL, I am of the view that trading of shares in the BSE are affected, however it does not prevent the Noticees or anyone from sending requisite disclosure to BSE. Noticees cannot take umbrage of suspension as contended by the said Noticees. Further, the said Noticees have replied that it is the duty of the compliance officer of the Company to make the required disclosures and hence the instant proceedings may be dropped, which is not acceptable by me. Therefore, I hold that the Noticee no. 1, 2, 3 and 4 failed to make disclosures to BSE and FCGCL under regulations 29(1) and 29(2) within the time frame as specified for the above mentioned transactions made in the shares in FCGCL and therefore, violated the provisions of regulation 29(1) and 29(2) r/w 29(3) of SAST Regulations, 2011.

- iv) I find from the material available on record that Noticee 4 viz. Mr. Bipin Pushpasen Divecha have been appointed as the director of FCGCL on October 10, 2011. Noticee's contention that he had no knowledge regarding formalities associated with the company and his directorship is not acceptable to me. The said submission cannot be accepted in as much as ignorance of law cannot be an excuse. In this regard, it is pertinent to refer to SAT order dated September 07, 2017 in the matter of Mega Resources Ltd., Hooghly Mills Project Ltd. and Hooghly Stocks and Bonds Project Ltd., wherein it was held *"It is admitted by the appellant that the non-compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any mala fide intentions. It is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor this argument of the appellant, therefore, fails in our opinion"*.
- v) Prior to his appointment to the post of Director of FCGCL, he had purchased / acquired 1,75,000 shares of FCGCL through off-market representing 3.18% of total shareholding of FCGCL on April 30, 2011. After being director of FCGCL, the Noticee 4 was under obligation to make required disclosure of his holding to FCGCL under regulation 13(2) of PIT Regulations, 1992, within two working days of October 10, 2011 (the day on which he was appointed as director of FCGCL). However, Noticee 4 has failed to make a required disclosure under regulation 13(2) of PIT Regulations, 1992 to FCGCL and therefore, violated the said provision of PIT Regulations, 1992.
- vi) Further, Noticee 4 on April 23, 2012 acquired 14,616 shares of FCGCL through on-market and the value of the shares acquired was Rs.6,51,439.5/-. As the change in shareholding of the Noticee 4 was more than Rs. 5 lakh in value, he was required to make disclosure of such acquisition to BSE and FCGCL under regulation 13(4) of PIT Regulations, 1992 within the prescribed time as specified in the said regulations. However, he failed to make the disclosure under regulation 13(4) r/w 13(5) of PIT Regulations, 1992 and hence violated said provisions of PIT Regulations, 1992.
- vii) Further, Noticee 4 disposed off 50,000 shares through off-market on August 01, 2012 and as the change in his shareholding exceeded 25000 shares limit, he was under an obligation to make the disclosure to BSE and FCGCL under regulation 13(4) r/w 13(5) of PIT Regulations, 1992 within the time frame as prescribed in PIT regulations.

However, he failed to make the disclosure under regulation 13(4) r/w 13(5) of PIT Regulations, 1992 and hence violated said provisions of PIT Regulations, 1992.

viii) Further, Noticee 4, disposed of 35,000 shares of FCGCL through off-market on August 02, 2012 and as the change in his shareholding exceeded 25000 shares limit, he was under an obligation to make disclosure to BSE and FCGCL under regulation 13(4) r/w 13(5) of PIT Regulations, 1992. However, Noticee 4 failed to make the required disclosures to BSE and FCGCL with respect to such disposal of shares of FCGCL and therefore, violated regulation 13(4) r/w 13(5) of PIT Regulations, 1992.

c. Whether Noticee 5 has violated regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulations, 2011?

- i) I find from the material available on record that Noticee 5 viz. Mr. Jigar Dilip Shah was the promoter of FCGCL during the Investigation Period. The Noticee 5 had disposed off on market 15000 shares of FCGCL for Rs. 18,76,500/- on December 18, 2012. As the disposal of shares by Noticee 5 was more than five lakhs in value, he was under an obligation to make disclosure to BSE and FCGCL under regulation 13(4A) r/w 13(5) of PIT Regulations, 1992, within two working days of the said disposal. However, Noticee 5 failed to make the required disclosure and hence violated the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992.
- ii) Further, Noticee 5 disposed of 1,85,000 shares of FCGCL through off-market on August 18, 2013. As the disposal of Noticee 5 was more than 25,000 shares, he was under an obligation to make disclosure to BSE and FCGCL within two working days of disposal of shares of FCGCL as specified under regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. However, Noticee 5 failed to make the required disclosure and hence violated the provision of regulation 13(4A) r/w 13(5) of PIT Regulations, 1992. For the said transaction, I found that Noticee 5 made disclosure to BSE under 29(2) of SAST Regulations, 2011 on September 13, 2013. As per regulation 29(2) r/w 29(3) of SAST Regulations, 2011, the Noticee 5 was required to make the required disclosure within two working days of the said transaction made by the Noticee. Therefore, by not making the required disclosure within the timeframe as prescribed under regulation 29(2) r/w 29(3) of SAST Regulations, 2011, Noticee 5 violated the said provisions of SAST Regulations, 2011.

- d. Whether Noticee no. 4,5,6 and 7 have violated the provisions of regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992?**
- e. Whether Noticee 7 has violated the provision of clauses 31 and 54 of the Equity Listing Agreement r/w section 21 of the SCRA, 1956?**
- i) From the material available on record, I note that the shares of FCGCL were listed at BSE during the investigation period. Noticee 4 (Bipin Pushpasen Divecha), Noticee 5 (Jigar Dilip Shah) and Noticee 6 (Mr. Sharad Ghadi) along with others were the members of the Board of Directors of the FCGCL during the period of investigation. I note from the reply of Noticee 6 that he has contended that he had submitted his resignation letter which was duly acknowledged by Shri Vinayak Sarkhot, however from the perusal of said letter I note that it is an undated letter. As also, I note that Noticee has not submitted any evidentiary proof of his resignation being accepted such as filing of requisite Form with Registrar of Companies.
- ii) I find that Noticee 7 (FCGCL) did not frame a code of internal procedures and conduct as near thereto the Model Code of Conduct specified in Schedule I of PIT Regulations, 1992 and therefore, failed to adopt the same. As per the statement of Mr. Vinayak Trimbak Sarkhot who was the Executive Director and Compliance Officer of FCGCL during the alleged period, no code of conduct for prevention of insider trading was adopted at FCGCL. The Model Code of Conduct for Prevention of Insider Trading for Listed Companies was mandated in the PIT Regulations, 1992 and every listed companies had to frame Code of Conduct for Prevention of Insider Trading based on Model code of Conduct. However, Noticee 7 (FCGCL) has failed to adopt appropriate mechanisms and procedures to frame, adopt and enforce a Code of internal procedures and Conduct as near thereto the Model Code specified in Schedule I of PIT Regulations, 1992 and therefore, violated regulation 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992. Further, Noticees 4, 5 and 6 viz Mr. Bipin Pushpasen Divecha, Mr. Jigar Dilip Shah, and Mr. Sharad Ghadi in their capacities of members of the Board of Directors had also failed to frame, adopt and implement the Code of internal procedures and Conduct as near thereto the Model Code of Conduct specified in Schedule I of PIT Regulations, 1992 and hence violated regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992.

iii) I also note from the available record that Noticee 7 (FCGCL) had not submitted Annual Reports to the BSE for the years 2013, 2014 and 2015 and failed to have functional website during the period of investigation and the same was confirmed by BSE vide e-mail dated February 25, 2016. Therefore, Noticee 7 violated the provisions of clauses 31 and 54 of the Equity Listing Agreement r/w section 21 of the SCRA, 1956.

f. Do the violations, if any, on the part of the Noticees attract any monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992, sections 23A and 23E of the SCRA, 1956?

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 on the part of the Noticees regarding failure to make required disclosures, failure to frame model code of conduct etc. attract the imposition of monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992, sections 23A and 23E of the SCRA, 1956, which is reproduced below:

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,—

(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 may extend to one crore rupees.

Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made thereunder,—

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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 for each such failure;

(b) to maintain books of account or records, as per the listing agreement or conditions, or bye-laws of a recognised stock exchange, fails to maintain the same, 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 for each such failure

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

g. What would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995 and 23J of the SCRA, 1956 r/w rule 5(2) of the Adjudication Rules, 2005?

i. While determining the quantum of penalty under section 15J of the SEBI Act, 1992 and section 23J of the SCRA, 1956, 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 and , section 23J of the SCRA, 1956 r/w rule 5(2) of the Adjudication rules, 2005, 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."*

The SCRA, 1956

23J: *"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."*

ii. I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the loss,

if any, suffered by the investors due to such failure on the part of the Noticees. Further, material available on record does not show that the said failure is repetitive.

- iii. The objects of the PIT Regulations, 1992 and SAST Regulations, 2011 mandating disclosure of acquisition beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. 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.
- iv. In this regard, it would be appropriate to refer to the observations made in Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. Vs. SEBI–the Hon’ble SAT has observed 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.”* Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon’ble SAT had observed *“Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow.”*
- v. After taking into consideration the facts / circumstance of the case and the above case laws, I am of the view that the Noticees are liable for monetary penalty for their violations the aforesaid provisions of SAST Regulations, 2011, PIT regulations, 1992, SCRA, 1956.

ORDER

14. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992, 23-I of the SCRA, 1956, rule 5 of the Adjudication Rules, 1995 and rule 5 of Adjudication Rules 2005, I hereby impose following penalties on the Noticees for the said violations under

sections 15HA and 15HB of the SEBI Act, 1992 and sections 23A and 23 E of the SCRA, 1956 :

Name of the Noticee	Regulations violated and penalty sections	Penalty Amount (Rs.)
Bipin Pushpasen Divecha HUF (Noticee 1) Bhavana Bipin Divecha (Noticee 2) Grisha Bipin Divecha (Noticee 3) Bipin Pushpasen Divecha (Noticee 4)	Regulations 29(1) and 29(2) 29(3) of SAST Regulations, 2011 by Noticee 1, 2, 3 and 4 under section 15A(b) of the SEBI Act, 1992 Regulation 13(2) of PIT Regulations, 1992 and regulations 13(4) r/w 13(5) of PIT Regulations, 1992 by Noticee 4 under section 15A(b) of the SEBI Act, 1992	Rs. 4,00,000/- Jointly and severally
Jigar Dilip Shah (Noticee 5)	Regulations 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(2) r/w 29(3) of SAST Regulations, 2011 under section 15A(b) of the SEBI Act, 1992	Rs. 2,00,000/-
Bipin Pushpasen Divecha (Noticee 4) Jigar Dilip Shah (Noticee 5) Sharad Ghadi (Noticee 6) Finalysis Credit & Guarantee Company Limited (Noticee 7)	Regulations 12(1) and 12(3) r/w clause 1.2 of Part A of Schedule I of PIT Regulations, 1992 under section 15HB of the SEBI Act, 1992	Rs. 3,00,000/- Jointly and severally
Finalysis Credit & Guarantee Company Limited (Noticee 7)	Clauses 31 and 54 of the Equity Listing Agreement r/w section 21 of the SCRA, 1956 under sections 23A and 23E of the SCRA, 1956	Rs. 2,00,000/-

I am of the view that the said penalty is commensurate with the defaults committed by the Noticees.

15. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to

Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
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

16. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052."The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in
- a) Name and PAN of the entity (Noticee)
 - b) Name of the case / matter
 - c) Purpose of Payment – Payment of penalty under AO proceedings
 - d) Bank Name and Account Number
 - e) Transaction Number
17. 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.
18. In terms of the rule 6 of the Adjudication Rules, 1995, copies of this order are sent to all the Noticees and also to Securities and Exchange Board of India.

Date: June 25, 2019

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER