

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD- 4/SRP/AE/AO/2018-19/17]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995, AND SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Kiran Kulkarni

(PAN AAKPK6962F)

In the matter of Geodesic Ltd

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*), conducted investigations into the alleged irregularities relating to trading, dealing etc. in the shares of Geodesic Ltd (**the Company/Geodesic/GL**) and for the possible violation of the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (*hereinafter referred to as “PIT Regulations, 1992”*) read with the SEBI (Prohibition of Insider Trading) Regulations, 2015 (*hereinafter referred to as “PIT Regulations, 2015”*), and the provisions of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956 (**SCRA, 1956**) by Kiran Kulkarni (PAN AAKPK6962F) (*hereinafter referred to as ‘the Noticee’*).
2. It was, *prima facie*, observed during the investigations that the Noticee had purchased 6,90,000 shares and sold 5,000 shares of the Company during the Financial Year (**FY**)

2011-12. The Noticee being Promoter and Managing Director of the Company during the said period, was required to make disclosures under Regulation 13(4) and 13(4A) of PIT Regulations, 1992 to the Company and also to the stock exchanges, where the Company's shares are listed, namely the BSE Ltd. (**BSE**) and the National Stock Exchange of India Ltd. (**NSE**), with respect to his aforesaid transactions in the shares of the Company executed during the period from October 18, 2011 to October 21, 2011. It is alleged that the Noticee has made delayed disclosures to the stock exchanges, and thereby violated the provisions of Regulation 13(4) and 13(4A) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

3. It was further alleged that the Noticee, who was Managing Director of Geodesic, had sold shares of the Company on June 29, 2011 and also bought shares of the Company between October 18, 2011 to October 21, 2011, and thereby entered into opposite transactions within six months. Therefore, it is alleged that the Noticee has violated Clause 4.2 of Schedule I (Part A) read with Regulation 12(1) of the PIT Regulations, 1992, read together with Regulation 12(2) of the PIT Regulations, 2015.
4. It was further alleged that the Company and its Board of Directors had failed to appoint Statutory Audit Committee as specified under Clause 49 of the Listing Agreement, since December 04, 2012. Accordingly, the Noticee as a non-independent director in the Company is alleged to have violated Clause 49 of the Listing Agreement read with Section 21 of SCRA, 1956. It was further observed that for various financial years during 2010 to 2014, at no point of time, the minutes of the Board of Directors' Meeting of its subsidiary companies were placed before the Board of the Company, which tantamounts to contravention of Clause 49 of the Listing Agreement read with Section 21 of SCRA, 1956. It was further observed during the investigations that the Company has allegedly failed to intimate BSE regarding its board meetings in which financial results for Quarters ended on June 2010, September 2010, June 2011 and Sep 2011 were discussed and hence, Clause 41 of Listing Agreement read with Section 21 of SCRA, 1956 was allegedly not complied with. Accordingly, the Noticee, as a non-independent Director of the Company is alleged to have violated Clause 41 of the Listing Agreement read with Section 21 of SCRA, 1956. It was also observed that there

were several instances in which the Company has made delayed disclosures or not made disclosures of the yearly and/or quarterly financial results to the stock exchanges. Further, that the Company has failed to submit the consolidated financial results for Quarter Ended (**QE**) June 2013, Year Ended June 2013, QE September 2013 and QE December 2013 to the stock exchanges, where its shares were listed. Accordingly, it was alleged that the Noticee being a non-independent director, has violated the provisions of Clause 41 of the Listing Agreement read with Section 21 of SCRA, 1956. It was further observed during SEBI's investigations, from BSE's e-mail dated March 10, 2016, that the company has failed to comply with Clause 15/16, Clause 31, Clause 41 and Clause 47(c) of the Listing Agreement read with Section 21 of SCRA, 1956. Accordingly, it has been alleged that the Noticee being a non-independent director in the Company has violated Clause 15/16, Clause 31, Clause 41 and Clause 47(c) of Listing Agreement read with Section 21 of SCRA, 1956.

APPOINTMENT OF ADJUDICATING OFFICER

5. Earlier, Shri Biju S, Chief General Manager, was appointed as Adjudicating Officer (**AO**) vide SEBI's Order dated November 27, 2017 to inquire into and adjudge under Section 15A(b) and 15HB of the SEBI Act, 1992, and Section 23E of SCRA, 1956 the aforesaid violations alleged to have been committed by the Noticee. Consequent to the transfer of Shri Biju S, the undersigned has been appointed as AO in the present matter vide Order dated July 06, 2018.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notice dated June 11, 2018 (*hereinafter referred to as 'SCN'*) was issued to the Noticee in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as "**SEBI Adjudication Rules**"*), and Section 23-I of the SCRA, 1956 read with Rule 4 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (*hereinafter referred to as "**SCR Adjudication Rules**"*) for the aforesaid violations alleged to have been committed by the Noticee, as specified in the SCN.

7. The Noticee (through his authorized representative) submitted reply to the SCN vide letter dated September 28, 2018. The main submissions therein, are reproduced hereunder –

- i. *We address you on behalf of and at the instructions of our clients, Mr. Pankaj Kumar and Mr. Kiran Kulkarni as under: -*
- ii. *Our clients refer to Show Cause Notice dated June 11, 2018 ("the said SCN") issued by you. Upon receipt of the said SCN, our clients vide their advocate's letter dated June 26, 2018 sought 4 weeks' time to file their reply as the documents required for preparing the detailed and comprehensive reply to the said SCN are in the custody of the Provisional Liquidator appointed by the Bombay High Court.*
- iii. *Thereafter, our clients were afforded an opportunity of personal hearing on July 31, 2018, however, on behalf of our clients, vide our letter dated July 30, 2018, we sought an adjournment of the personal hearing and also informed Your Honour that our clients were in the custody of the Enforcement Department and subsequently we appeared before Your Honour on September 04, 20 18 and once again submitted that the Noticee Nos. 1 and 3 were in the custody of Enforcement Department and likely to be released on bail. Copies of the Arrest Orders of our clients are annexed hereto and marked as Annexure-A. However , till date our clients are not enlarged on bail and due to the non - availability of the relevant documents which are in the custody of the Provisional Liquidator appointed by the Bombay High Court Learned, our clients submit their preliminary reply to the allegations made against them in the said SCN as under:-*
- iv. *At the outset and without prejudice to anything stated hereinafter, our clients deny all the allegations, charges and findings made against them in the said SCN; nothing contained therein may be considered as having been accepted or admitted by our clients merely on account of non-traverse or otherwise and until and unless specifically accepted and admitted by them. Our clients deny all the statements, submissions, contentions, allegations and averments contained in the SCN that are contrary to and/ or inconsistent with what is stated herein below.*
- v. *At the further outset, our clients submit that they are the promoter directors of Geodesic Limited ("the Company"), a company with its registered office at B-3, Lunic Industries, Crossroad B, MIDC, Andheri (East), Mumbai 400 093; the shares of the Company were listed for trading on the Bombay Stock Exchange Limited ("BSE") and on the National Stock Exchange of India Limited ("NSE") since 2002. By its order dated April 7, 20 14, in Company Petition No. 471 of 20 13 filed by Citibank NA, London Branch, the Hon'ble High Court of Bombay the Company to deposit a sum of USD 162 million in a non-lien account with Citibank NA with a branch at London or Hong Kong before close of business hours (Zurich time) on April 28, 20 14 and in case the Company was unable to do so, directed that the Official Liquidator of the Bombay High Court would stand appointed as the Provisional Liquidator of the Company and of all its assets and properties and directed such Provisional Liquidator to take charge of the assets and properties. The Company was unable to*

deposit the aforesaid sum by the aforesaid date and accordingly, the Official Liquidator has taken charge - and possession of the assets and properties of the Company as the Provisional Liquidator. This was informed to the BSE by the office of the Official Liquidator by their letter dated August 1, 2014. As a result of the above, our clients have no access to the office or records of the Company and they rely on documents and records available with them and obtained from various court records in order to file this reply. By their letter dated May 15, 20 14, the Company informed the BSE and NSE that the Provision al Liquidator had taken charge and possession of the assets and properties of the Company on May 13, 20 14 and sealed the office premises.

- vi. On account of the Provisional Liquidator so taking possession of the offices of the Company and sealing the same, our clients or their representatives were/ are unable to access the records of the Company to prepare a comprehensive reply to the allegations in the said Show Cause Notice. However, our clients are making all efforts to obtain all the relevant records in order to reply to the allegations made against them in a comprehensive manner and reserve their right to file further submissions based on further documents and records that may be obtained by them after this reply is filed with you. A copy of the order dated April 7, 2014 passed by the Hon'ble Bombay High Court is annexed hereto and marked as Annexure B and a copy of the letter dated August 1, 2014 issued by the Official Liquidator is annexed hereto and marked as Annexure C. A copy of the announcement on the BSE's website regarding the possession and sealing of the office premises is annexed hereto and marked as Annexure D.
- vii. The Company was engaged in the business of hardware and software development (products and projects) and marketing and had offices at Mumbai and Bangalore and a factory at Roorkee. The Company also has 5 foreign subsidiary companies viz. (a) Emiloto Associates Inc. in British Virgih Islands, (b) Zomo Technologies · Limited in British Virgin Islands, (c) Geodesic Technology Solutions Ltd. ("GTSL") in Hong Kong (d) Geodesic Holding Ltd. ("GHL") in Mauritius and (e) Geodesic Information Systems Inc. in the United States of America (USA).
- viii. Brief profile of the Company and Noticees 1 & 3 are as under: -

GEODESIC LTD

Geodesic Ltd was incorporated in 1999 with the objective of building India's first global brand in the space of software products for computers and hand-held devices. With over 29000 shareholders, Geodesic Ltd got listed on the BSE in the year 2002 and subsequently on the NSE in the year 2004. The listing process on the stock exchanges was achieved through a process of a reverse merger (Geodesic acquired a listed company on the ESE and changed its name to Geodesic Ltd). Geodesic, till date, has never raised money for its capital through a public offering.

Geodesic raised its capital through preferential allotment or through preference capital. The company raised a total of Rs.96 crores as capital but gave away over Rs. 105 crores in dividends alone. Geodesic Ltd is one of the few companies in India

to pay out dividends from the 3rd year of it getting listed on the stock exchange. Geodesic Ltd paid dividends from 2004 through 2011 every year.

Geodesic Ltd has had a long list of innovative products in the space of content management, communication, collaboration and CRM. These products are being used by Government agencies besides enterprise customers and retail users on their computers and handheld devices. Some of its customers included:

- Government of India (Ministry of Finance, Public Distribution System) ,*
- Delhi Traffic Police for e-challan*
- Mumbai Police - for traffic and people management during Ganapati Visarjan*
- Government of Maharashtra*
- MSEB*
- Government of Nagaland*
- Public Sector Banks*
- Defense Research and Development Organization*
- Bombay Municipal Corporation*
- NASA*
- China Construction Bank*
- Samsung Investments Worldwide*
- CLSA*
- Axis Bank*
- HDFC securities*
- Business Standard*
- Muscat Stock Exchange*
- 40 Global Telecom Companies around the world*

Besides the above, Geodesic Ltd has had over 25 million retail customers for its products globally on their cell phones.

Geodesic products have been innovative and in several cases been a world first. This led Geodesic to win several international awards globally competing with the world's best technology companies including Google and Yahoo. Geodesic received many citations and awards. Some of them are as under:

- Red Herring Magazine recognized Geodesic Ltd as one of the top 100 innovative companies in the world.*
- PC Magazine (International) listed Geodesic's mobile product as the top 10 mobile products in the world*
- C I net a. recognized global technology magazine listed Geodesic's mobile content product as one of the top 10 must have mobile products in the world*
- GSM Asia picked Geodesic's mobile product as the best mobile product in Asia*
- Deloitte Touche Tohmatsu recognized Geodesic Ltd as a top 50/ 500 fast growing companies in India/ Asia. for 5 years in a row*
- NASSCOM - the apex Indian IT body awarded the prestigious Social Honors Award for Geodesic's product*
- Geodesic Ltd was chosen as one of the 3 companies by the Government of Maharashtra to help the Govt. of Maharashtra to innovate in its Information*

Technology initiative.

Geodesic's long list of innovative products include - .

- GeoAmida - A hand held device that allows last mile connectivity and processing of data. The device is used in the areas of Financial Inclusion, MGNREGA, Public Distribution System, Law enforcement, Tracking and Logistics. Banks, E- Medicine and Indian Government constitute a bulk of the company's customers.*
- ACMR - A smart electronic meter network used by utility companies to optimize and save water, electricity and gas across their consumers. Customers include State Electricity Boards, Meter Manufacturers, State Water Supply Boards and Piped Gas Companies*
- Mundu TV - Live TV on the mobile phones. Smart Phone Users around the world were our customers and users*
- Mobile Communication -. A powerful and a secure messaging*
- system used by Financial institutions, Enterprises and retail users worldwide*
- Collaboration :--- a 50-way video conferencing and collaboration solution that allows 50+ people to communicate and collaborate with one another without travel largely used by enterprises and nuclear families to stay in touch with one another.*

Geodesic Ltd undertook several CSR initiatives including donating an ambulance and acquiring Chanqamama Ltd - a publisher of children's magazine since 1947. The magazine is published in 12 Indian languages including tribal languages and Sanskrit. Chandamama as a magazine had stories written by India's former President -Shri Abdul Kalam and famous story writers including Ruskin Bond.

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KIRAN KULKARNI

The Noticee graduated as an Electronics and Communication Engineer from the prestigious Visvesvaraya Technology University, Belgaum in 1984. He has been part of the Technology industry for over 30 years and has worked with Honeywell, Uptron, Aftek and Neo. His ardent desire to build an Indian brand with a global presence led him to incorporate Geodesic Information Systems Pvt. Ltd along with Noticee No. 1 and Noticee No. 2.(referred in the SCN),

Noticee helped the company by ideating and creating successful products in the space of content, communication and collaboration for the enterprise and retail segments from a single robust platform.

Noticee No.3 was a part of the team that positioned Geodesic to trail-blaze onto the Internet and hand-held devices into 2004 and beyond. He created products that are fun, powerful, and easy to use. Geodesic was the first Indian company to have 25 million users worldwide for its products.

Noticee No.3 was part of the team that won several international accolades including "Top 100 innovative companies in the world" by Red Herring USA, "Top 10 Mobile products in the world" by PC Magazine USA and C / net. "Best product in Asia" by GSM Asia. "Social Honors Award", NASSCOM, India for the company

Noticee No.3 is the recipient of 'The Indira Super Achiever Award' - one that is aimed at recognizing professional talent that has created a difference.

Noticee successfully led the team that built ENLYTE (Education and Learning You Take Everywhere) - the world's first comprehensive solution in the space of Education. ENLYTE was a combination of a dual sided screen device and a powerful content management platform for students, teachers and parents/guardians.

- ix. With regard to paragraphs 1 & 2 of the said SCN, subject to what is stated herein, our clients submit that the contents of the same are a matter of record; however, our clients repeat, reiterate and deny that they have violated any provisions of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act") or the Rules or Regulations thereunder or the Securities Contract (Regulation) Act, 1956 ("the SCRA") or the Rules or Regulations made thereunder or any other provision of law.
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- x. Paragraph nos. 6 and 7 do not relate to our clients and hence are not answered by them.
- xi. With reference to paragraph nos. 8 to 10 of the SCN, it is submitted as under: -
 - a. With respect to purchase of 6,90,000 shares and sale of 5,000 shares during the FY 2011-12, it is alleged that while - Noticee No.3 made timely disclosures under Regulation 13(4) and 13(4A) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations") to the company but made delayed disclosures to the stock exchanges.
 - b. It is submitted that the delay in making the disclosures to the stock exchanges is relatively small and unintentional. It is further submitted that Noticee No. 3 being the Managing Director of the Company at the relevant time, it was the Company that was sending his disclosures to the stock exchanges and the delay may have been on account of tardiness on the part of the officials of the Company. .
 - c. It is also alleged that Noticee No. 3 sold 5000 shares on June 29, 2011 and purchased shares between October 18 and 21, 2011 thus contravening Clause 4.2 of Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992, which prohibits entering into opposite transactions within 6 months. In this regard, it is submitted that the quantity of shares in respect of which opposite transactions .took place within 6 months is a mere 5,000 shares (out of 6,90,000 shares or 0.73%).
 - d. In view of the above and since the disclosure was in fact made and thus no prejudice was caused to the securities market or investors in general or to the shareholders of the company and since only a very small number of shares was purchased back, Noticee No.3 requests that he may be given the benefit of the doubt.
- xii. With reference to paragraph nos.11 to 13 of the SCN it is submitted as under: -
 - a. It is alleged that the company and the Board of Directors failed to appoint statutory audit committ.ee .as per Clause 49 of the Listing Agreement since December 04, 2012 ; for the said reason, it is alleged that the non-independent directors .including o-ur clients violated Clause 49 of Listing Agreement read with Section 2 1 of SCRA, 1956.

- b. *In this regard, our clients submit that only the Company could be held liable for violation of the provisions of the Listing Agreement and the provisions of the SCRA. Furthermore, to best of our client's recollection, at the relevant time, no person was agreeable to be appointed as an Independent Director of the Company in view of the loan defaults and delay in redemption of FCCBs.*
- xiii. *With reference to paragraph nos. 14 and 15 of the SCN, it is submitted as under:*
 - a. *It is alleged that during the financial years between 2010 to 2014, the minutes of the meeting of the Board of Directors of subsidiary companies were not placed before the Board of Directors of the Company and thereby, the company failed to comply with Clause 49 of the Listing Agreement.*
 - b. *In this regard, at the outset, our clients submit that only the Company could be held liable for violation of the provisions of the Listing Agreement and the provisions of the SCRA.*
 - c. *Furthermore, the documents available on record show that the agenda of the board meeting was inclusive for consideration and adoption of accounts, auditor's report, director's report and all allied statement, reports and annexures forming annual accounts of all subsidiaries of the company, (please see Annexure 3 to the SCN) . It is pertinent to note that the statutory auditors have not noticed any violation of this nature.*
 - d. *It is also pertinent to note that several pages relied upon by SEBI and annexed to the SCN are illegible and hence our clients reserve their right to file a more comprehensive and detailed reply on the receipt of the legible copies of the annexures/documents relied upon by SEBI.*
- xiv. *With reference to paragraph nos. 16 to 18 of the SCN, it is submitted as under:*
 - a. *It is alleged that the Company has failed to intimate BSE regarding the board meetings in which financial results for Quarter Ended ("QE") June 2010, QE September 2010, QE June 2011 and QE September 2011 were discussed and thus failed to comply with Clause 41 of Listing Agreement read with Section 21 of SCRA.*
 - b. *In this regard, at the outset, our clients submit that only the Company could be held liable for violation of the provisions of the Listing Agreement and the provisions of the SCRA.*
 - c. *It is also pertinent to note that the intimations were admittedly submitted to the NSE; therefore, the quarterly financial results were available to the public and investors at large and therefore, no prejudice was caused to shareholders of the Company and investors at large.*
- xv. *With reference to paragraph nos. 19 and 20 of the SCN, it is submitted as under: -*
 - a. *It is alleged that the company has made delayed disclosures regarding the financial results for year ended ("YE") March 2011, YE June 2012, YE June 2013 and quarter ended (QE) September 2013 to the BSE and NSE. Further it is also alleged that the company made delayed submission of financial result for QE December 2012 to BSE and that it has not submitted quarterly results for QE June 2013. It is also observed by SEBI that the company failed to submit the consolidated financial results for QE June 2013, YE June 2013, QE September 2013 and December 2013 to the stock exchanges. Hence it*

is alleged by SEBI that Clause 41 of the Listing Agreement read with Section 21 of SCRA has been violated by our clients and the Noticee No.2 (Compliance Officer)".

- b. In this regard, at the outset, our clients submit that only the Company could be held liable for violation of the provisions of the Listing Agreement and the provisions of the SCRA. .*
- c. It is also pertinent to note that the instances of delay were only 6 out of 19; and no prejudice was caused to investors at large or to the shareholders of the Company on account of such delayed submissions by the Company.*
- xvi. With reference to paragraph nos. 21 and 22 of the SCN, our clients repeat, reiterate and submit that only the Company could be held liable for violation of the provisions of the Listing Agreement and the provisions of the SCRA.*
- xvii. The contents of paragraph 23 of the SCN are a matter of record.*
- xviii. With reference to paragraph nos.24 and 25 of the SCN, our clients repeat, reiterate and submit .that:*
 - a. The delay in disclosure of share transactions by them to the stock exchanges was inadvertent and on account of tardiness on the part of officials of the Company. In any event, since no prejudice was caused to investors, they may be given the benefit of the doubt.*
 - b. The quantity of shares involved in the inadvertent opposite transaction within 6 months was miniscule and therefore, caused no prejudice to investors. Therefore, our Clients ought to be given the benefit of the doubt.*
 - c. Only the Company could be held liable for violation of the provisions of the Listing Agreement and the provisions of the SCRA. In fact, Section 23E of the SCRA clearly restricts liability to persons managing a Collective Investment Scheme or Mutual Fund.*
- xix. In the light of the above, our clients pray that they may be discharged from the present proceedings and an order may be passed accordingly.*
- xx. Our clients have made all efforts to obtain the relevant documents from their offices which are in the possession of the Provisional Liquidator, from various court records, from banks and depositories. Therefore, our clients request that they may be permitted to file further submissions as and when documents and records are made available by the Provisional Liquidator, various courts, banks and depositories.*
- xxi. Our clients also request that they may be granted an opportunity of personal hearing before any further orders are passed in the matter.*

8. Pursuant to appointment of the undersigned as AO, an opportunity of personal hearing was granted to the Noticee on July 31, 2018, however vide email dated July 30, 2018, the authorized representative of the Noticee requested for an adjournment of the hearing. Subsequently, another opportunity of personal hearing was granted to the Noticee on August 20, 2018, however the same was not attended to either by the Noticee or his authorized representative. Subsequently, a personal hearing was held on September 04, 2018 which was attended by the authorized representatives (AR)

of the Noticee viz. Mr. Joby Mathew and Mr. Ramesh Gogawat, advocates - Joby Mathew & Associates. In the said hearing, the ARs requested for additional time to make submissions in the matter.

9. Another opportunity of personal hearing was granted to the Noticee on October 04, 2018, however, vide letter dated October 03, 2018, the AR of the Noticee requested for an adjournment of the hearing. Accordingly, the personal hearing was scheduled on October 16, 2018. The aforementioned AR of the Noticee appeared for the said hearing and reiterated the submissions made vide their reply dated September 28, 2018. It was further submitted that certain pages (numbered as 340-345) of Annexure 3 to the SCN were illegible and a copy of the same was requested.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully examined the submissions of the Noticee and material available on record. The issues that arise for consideration in the present case are :
 - I) Whether the Noticee has violated the provisions of Regulation 13(4) and/or 13(4A) of PIT Regulations, 1992, read with Regulation 12(2) of PIT Regulations, 2015, and Clause 4.2 of Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992 together read with Regulation 12(2) of PIT Regulations, 2015, and if the same is established whether it attracts monetary penalty under Sections 15A(b) and/or 15HB of the SEBI Act, 1992?
 - II) Whether the Noticee has violated the provisions of Clause 15, 16, 31, 41, 47(c), and 49 of the listing agreement read with Section 21 of SCRA, 1956, and if the same is established whether it attracts monetary penalty under Section 23E of SCRA, 1956?
 - III) If yes, what would be the quantum of penalty to be imposed?

FINDINGS

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder –

Issue I) Whether the Noticee has violated the provisions of Regulation 13(4) and/or 13(4A) of PIT Regulations, 1992, read with Regulation 12(2) of PIT Regulations, 2015, and Clause 4.2 of Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992 together read with Regulation 12(2) of PIT Regulations, 2015, and if the same is established whether it attracts monetary penalty under Sections 15A(b) and 15HB of the SEBI Act, 1992?

12. Before I proceed with the matter, it is pertinent to mention the relevant provisions of the Act/Regulations alleged to have been violated by the Noticees with respect to the instant issue. The same are reproduced below:

PIT Regulations, 1992

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 subregulation, 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.

It may be noted that the provisions of Regulation 13(5) reads as follows -

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.*

SCHEDULE I [Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any

number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.

13. The SEBI (Prohibition of Insider Trading) Regulations, 1992 have been repealed by the SEBI (Prohibition of Insider Trading) Regulations, 2015. In terms of Regulation 12 of PIT Regulations, 2015, specifically Regulation 12(2) (a) and (b), any obligation or liability acquired, accrued or incurred under PIT Regulations, 1992 or any legal proceedings initiated under PIT Regulations, 1992 shall remain unaffected and proceeded with as if PIT Regulations, 1992 have not been repealed. Provisions of Regulation 12 of PIT Regulations, 2015, are mentioned hereunder in this regard:

SEBI (Prohibition of Insider Trading) Regulations, 2015

Repeal and Savings.

12. (1) *The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.*

(2) *Notwithstanding such repeal,—*

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

Alleged violation of Regulation 13(4) and 13(4A) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015

14. It was observed that the Noticee had bought 6,90,000 shares and sold 5,000 shares of the Company during FY 2011-12. The details are given in the table below –

Table – 1

Date	Buy/ Sell	Opening Share Holding	Quantity Traded	Closing Share holding	Trade Value(Rs.)	Excha nge	Disclosure Required under PIT Regulations (Y/N)	Remarks
29/06/2011	Sell	9163808	(5000)	9158808	3,50,050	BSE	N	NA
18/10/2011	Buy	9158808	239751	9398559	1,26,35,902	BSE & NSE	Y	Timely Disclosure to Company, delay of 2 working days to BSE & 8 working days to NSE
19/10/2011	Buy	9398559	235088	9633647	1,34,54,915	NSE	Y	Timely Disclosure to Company, delay of 1 working day to BSE and 7 working days to NSE
20/10/2011	Buy	9633647	183558	9817205	1,06,72,670	BSE & NSE	Y	Timely Disclosure to Company and BSE, delay of 6 working days to NSE
21/10/2011	Buy	9817205	31603	9848808	19,54,286	NSE	Y	Timely Disclosure to Company and BSE, delay of 5 working days to NSE

15. It was observed that the Noticee being the Promoter and Managing Director of the Company was required to make disclosures under Regulation 13(4) and 13(4A) of PIT Regulations, 1992 to the Company and to the stock exchanges where its shares are listed, namely BSE and NSE, with respect to his transactions carried out on October 18, 2011, October 19, 2011, October 20, 2011 and October 21, 2011 in the shares of the Company. Further, in terms of Regulation 13(5) of PIT Regulations, 1992, the aforesaid disclosures were to be made by the Noticee within 2 working days of the acquisition. From the materials available on record, I note that the Noticee has made timely disclosure to the Company with regard to his transactions. From the replies of BSE and NSE vide email dated May 13, 2016 and May 12, 2016 respectively, it is observed that the Noticee has made delayed disclosures to the stock exchanges as mentioned in the above table. In view of the same, it has been alleged in the SCN that the Noticee has violated Regulation 13(4) and 13(4A) of PIT Regulations, 1992.
16. With regards to the above allegation, the Noticee vide its reply dated September 28, 2018 to the SCN has submitted that *“the delay in making the disclosures to the stock exchanges is relatively small and unintentional”*. The Noticee has further submitted that *“...being the Managing Director of the Company at the relevant time, it was the Company that was sending his disclosures to the stock exchanges and the delay may*

have been on account of tardiness on the part of the officials of the Company". In this regard, I note that the Noticee has admitted the delay in making the disclosures under Regulation 13(4) and 13(4A) of PIT Regulations, 1992. I further note that making the disclosures is the responsibility of the Noticee and not that of the Company / Company's officials. Accordingly, I find no merit in the above contentions of the Noticee, and conclude that the Noticee has violated Regulation 13(4) and 13(4A) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015. I would further like to refer to the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014), wherein it was held that - "... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures".

Alleged Violation of Clause 4.2 of Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015

17. As per Clause 4.2 under Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992 all directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. Accordingly, it is alleged that the Noticee, by entering into opposite transactions within a period of six months, has violated Clause 4.2 under Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992. With regards to the above allegation, the Noticee vide its reply dated September 28, 2018 to the SCN has submitted that "*the quantity of shares in respect of which opposite transactions took place within 6 months is a mere 5,000 shares (out of 6,90,000 shares or 0.73%)*". The Noticee has further submitted that "*In view of the above and since the disclosure was in fact made and*

thus no prejudice was caused to the securities market or investors in general or to the shareholders of the company and since only a very small number of shares was purchased back, Noticee No .3 requests that he may be given the benefit of the doubt”.

On perusal of the material available on record, I note that the Noticee has sold 5000 shares on June 29, 2011. Subsequently the Noticee has purchased 2,39,751, 2,35,088, 1,83,558, and 31,603 shares respectively on October 18th, 19th, 20th and 21st, 2011. From the reply of the Noticee, I note that the Noticee has not refuted the allegations and the facts related to the opposite transaction. I also find the contention of the Noticee that quantity of shares in respect of opposite transaction was only 5,000 shares (out of 6,90,000 shares or 0.73%), to be devoid of merit, as the Clause 4.2 under Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992, prohibits all persons who are “directors/ officers/ designated employees” from entering into opposite transactions within a time period of six months, and the said provision does not provide any exemption based on the quantity of shares. In view of the aforesaid, I find that the Noticee (Managing Director of Geodesic) has entered into opposite transactions (i.e. buy after sell in the present case) within a period of six months and therefore, I conclude that the Noticee has violated Clause 4.2 under Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992, read with Regulation 12(2) of PIT Regulations, 2015.

18. I note that the Hon’ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund held that –

“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.”

19. In the context of disclosure related violations, I observe that Hon’ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation. The Hon’ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that -

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

20. Therefore, I am of firm opinion that the violations of Regulations 13(4) and 13(4A) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015, and Clause 4.2 of Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015 make the Noticee liable for penalty under the provisions of Sections 15A(b) and 15HB of the SEBI Act, 1992, which read as under :

SEBI Act, 1992

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 twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

Issue II) :Whether the Noticee has violated the provisions of Clause 15, 16, 31, 41, 47(c), and 49 of the listing agreement read with Section 21 of SCRA, 1956, and if the same is established whether it attracts monetary penalty under Section 23E of SCRA, 1956?

21. From the SCN, I note that the Noticee has been alleged to have violated provisions of Clause 15, 16, 31, 41, 47(c), and 49 of the listing agreement read with Section 21 of SCRA, 1956, as follows –

- i. The composition of the audit committee of Geodesic during the FY 2012-13 and FY 2013-14 as per the annual reports was as below -

Table - 2

Year 2012-2013				
Sl. No.	Name of Member	Designation	No. of meeting held	No. of meeting attended
1.	Shri Vinod Sethi	Chairman –Independent	3	3 (resigned on 16/5/13)
2.	Shri Nitin Potdar	Member-Independent	3	3 (resigned on 04/12/12)
3.	Shri Prashant Mulekar	Member-Non-independent	3	3
Year 2013-2014				
No Audit Committee's meeting was reportedly held.				

Due to the resignations of the independent directors - Mr. Nitin Potdar and Mr. Vinod Sethi, it was alleged that the company and the board of directors failed to appoint statutory audit committee as per Clause 49 of Listing Agreement since December 04, 2012. Accordingly, the Noticee (non-independent director) is alleged to have violated Clause 49 of Listing Agreement read with Section 21 of SCRA, 1956.

- ii. On the perusal of the outcome of Board meetings and minutes of the Board's meeting of Geodesic, it was observed that for the financial years (between 2010 to 2014), at no point of time, the minutes of the Board of Directors' meeting of Geodesic's subsidiary companies were placed before the board of Geodesic, which is in contravention of Clause 49 of Listing Agreement. It was, therefore, alleged that the company and the board of directors failed to comply with Clause 49 of Listing Agreement with regard to not placing, discussing and taking on record the minutes of subsidiary companies by a holding company. Accordingly,

the Noticee is alleged to have violated Clause 49 of Listing Agreement read with Section 21 of SCRA, 1956.

- iii. As per Clause 41(III) of Listing Agreement, the Company shall give prior intimation of the date and purpose of meetings of the Board or Committee in which the financial results will be considered at least seven clear calendar days prior to the meeting (excluding the date of the intimation and date of the meeting). It was alleged that the company has failed to intimate BSE regarding the board meetings in which financial results for QE June 2010, QE September 2010, QE June 2011 and QE Sep 2011 were discussed and hence, Clause 41 of Listing Agreement read with Section 21 of SCRA, 1956 has not been complied with. Accordingly, the Noticee is alleged to have violated Clause 49 of the Listing Agreement read with Section 21 of SCRA, 1956.
- iv. It was observed that the company has made delayed disclosures regarding the financial results for Year ended March 2011, Year ended June 2012, Year ended June 2013 and QE September 2013 to both BSE and NSE. It was also observed that the Company has made delayed submission of financial result for QE December 2012 to BSE. It was further observed that the Company has not submitted quarterly results for QE June 2013. Further, it was also observed that the Company has failed to submit the consolidated financial results for QE June 2013, Year Ended June 2013, QE September 2013 and December 2013 to the stock exchanges. Accordingly, it is alleged that Clause 41 of Listing Agreement read with Section 21 of SCRA, 1956 has not been complied with. Accordingly, the Noticee is alleged to have violated Clause 49 of the Listing Agreement read with Section 21 of SCRA, 1956.
- v. BSE, vide its email dated March 10, 2016, *inter-alia*, provided the details regarding the non -compliance of Listing Agreement by Geodesic during the period from FY 2010-11 to FY 2014-15, and the same is tabulated below –

Table - 3

S. No.	SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (Key Clause of Listing Agreement)	Compliance Status For the period starting from 1 st April 2010 till 31 st March 2015 (5 Years)
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1	Regulation 33 - Financial Result (Erstwhile Clause 41)	Discrepancy in submission in Dec-13 (Not subject to Limited review by the statutory auditors)
2	Regulation 34(1) - Annual Report - Hard Copy (Erstwhile Clause 31) Form A / Form B	Not Submitted for year 2013,2014,2015
3	Regulation 40(9) – Certificate by Company Secretary from RTA (Erstwhile Clause 47C)	Not submitted from the half year ended on March 2013 till March 2015
4	Regulation 42 - Book Closure/Record Date (Erstwhile Clause 15/16)	Not provided for 2013 and 2015

It was observed that the Company has failed to comply with the Clause 15/16, Clause 31, Clause 41 and Clause 47(c) of Listing Agreement read with Section 21 of SCRA, 1956 as mentioned in the aforementioned table. Accordingly, the Noticee is alleged to have violated Clause 15/16, Clause 31, Clause 41 and Clause 47(c) of the Listing Agreement read with Section 21 of SCRA, 1956.

22. I note that Geodesic being a listed company was under obligation in terms of Section 21 of SCRA, 1956, to comply with the conditions of Listing Agreement. With respect to the alleged defaults pertaining to the instant issue as detailed above, the said defaults attracts liability on the part of the company. However, based on the material available on record, I note that in the instant case *since the company is under liquidation and official liquidator has been appointed on May 13, 2014*, no action has been initiated against the Company.
23. Further, in response to the above allegations, the Noticee has vide its reply dated September 28, 2018 *inter alia* submitted that only the Company could be held liable for violation of the provisions of the Listing Agreement and the provisions of SCRA, 1956. The Noticee has also further submitted that “*In fact, Section 23E of the SCRA clearly restricts liability to persons managing a Collective Investment Scheme or Mutual Fund*”. In this regard, I note from the SCN that the penal provisions for the aforesaid violations of the provisions of Listing Agreement read with Section 21 of the SCRA, 1956 as alleged in the instant case is Section 23E of SCRA, 1956 and the same reads as - “*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*”. Considering the above, I am of the opinion that penalty is not warranted against the Noticee under Section 23E of SCRA, 1956.

Issue III) : What is the quantum of penalty to be imposed?

24. In this regard, the provisions of Section 15J of the SEBI Act, 1992 and Rule 5 of the SEBI Adjudication Rules, require that while adjudging the quantum of penalty, 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.

25. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that no quantifiable figures or data are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the default of the Noticee. However, I note that securities market is based on free and open access to information. As a result of the violation committed by the Noticee, the investors were deprived of valuable information in a timely manner which would have enabled them to take well informed decisions regarding their investments in the company. I note that Noticee, being a Promoter and Director of the Company, has on four occasions, made delayed disclosures under Regulations 13(4) and 13(4A) of PIT Regulations, 1992 to the stock exchanges (BSE and NSE) with regards to his transactions, with delays ranging from 1 working day to 8 working days, and thus the default is repetitive in nature. I further note that the Noticee, admittedly being the Managing Director of the Company at the aforesaid time, ought not to have entered into opposite transactions within a period of six months from the date of the first transaction. However, the Noticee has sold 5,000 shares on June 29, 2011 and purchased back 6,90,000 shares between October 18th to 21st, 2011, and has thus violated Clause 4.2 of Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

ORDER

26. After taking into consideration all the facts and circumstances of the case, the material on record and the factors stipulated in Section 15 J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15 I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules impose the following penalty on the Noticee, Mr. Kiran Kulkarni (PAN AAKPK6962F)–

Violation	Penal Provisions	Penalty
Regulations 13(4) and 13(4A) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015	Section 15A(b) of the SEBI Act, 1992	Rs. 4,00,000/- (Rupees Four Lakh only)
Clause 4.2 of Schedule I (Part A) read with Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015	Section 15HB of the SEBI Act, 1992	Rs. 2,00,000/- (Rupees Two Lakh only)
Total		Rs. 6,00,000/- (Rupees Six Lakh only)

27. The amount of penalty shall be paid either by way of demand draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45-days of receipt of this Order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief (Enforcement Department - DRA-II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	

4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

28. In terms of the Rule 6 of the SEBI Adjudication Rules and Rule 6 of SCR Adjudication Rules, copy of this Order is sent to the Noticee and also to Securities and Exchange Board of India.

Place: Mumbai

Date: October 31, 2018

Satya Ranjan Prasad

Adjudicating Officer