

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/KS/AA/2020-21/7528]**

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

In respect of

**Viking Industries Private Limited**  
**(PAN: AACCV3221B)**

In the matter of 20 Microns Limited

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a reference from the Bombay Stock Exchange (hereinafter referred to as '**BSE**') regarding disclosure violation by an entity viz. Viking Industries Pvt. Ltd. (hereinafter referred to as '**Viking/ Noticee**') in the scrip of 20 Microns Limited (hereinafter referred to as '**20 Microns**' / '**Company**'). In view of the same, SEBI conducted an analysis of the transactions executed by Viking in the scrip of 20 Microns Limited. During the course of investigation, SEBI

observed that the Noticee had violated the provisions of Regulations 29(1) & 29(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**') and Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**') read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations, 2015**'). In view of the same, SEBI initiated adjudication proceedings under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') for the above violations allegedly committed by the Noticee.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI appointed the undersigned as the Adjudicating Officer to inquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act, the aforesaid violations alleged to have been committed by the Noticee.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A Show Cause Notice bearing reference no. SEBI/HO/A&E/EAD/KS/VC/9915/2019 dated April 16, 2019 (hereinafter referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') communicating the alleged violations. The Noticee was also called upon to show cause as to why an inquiry should not be initiated against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under the provisions of Section 15A(b) of the SEBI Act for the aforesaid alleged violations.

4. The details in respect of alleged violations by the Noticee are as given below:

- (a) *SEBI received a reference from BSE regarding alleged disclosure violation by the Noticee in the scrip of 20 Microns. In view of same, the matter was taken up for investigation for, inter-alia, alleged disclosure violation. The period of investigation was from July 01, 2014 to October 31, 2015 (hereinafter referred to as Investigation Period/'IP').*
- (b) *For the purpose of investigation, an analysis was carried out on the transactions executed by the Noticee. From the analysis of Demat statement and trade details, it is observed that Noticee had executed on-market trades during the investigation period through the following brokers:*

	<b>NSE</b>		<b>BSE</b>		<b>Total</b>		<b>Net Qty</b>
<b>Broker name</b>	<b>Buy Qty</b>	<b>Sell Qty</b>	<b>Buy Qty</b>	<b>Sell Qty</b>	<b>Buy Qty</b>	<b>Sell Qty</b>	
<i>Sunflower Broking Pvt. Ltd.</i>	1425724	1461424	1640465	1594873	3066189	3056297	9892
<i>Marfatia Stock Broking Pvt. Ltd.</i>	537937	329560	427696	690614	965633	1020174	-54541
<i>Tradebulls Securities Pvt. Ltd.</i>	29300	408400	351800	34300	381100	442700	-61600
<i>Arcadia Shares &amp; Stock Brokers Pvt. Ltd.</i>	121500	0	114000	0	235500	0	235500
<b>Total</b>	<b>2114461</b>	<b>2199384</b>	<b>2533961</b>	<b>2319787</b>	<b>4648422</b>	<b>4519171</b>	<b>129251</b>

- (c) *However, it is observed that these trades were not reflected in the demat statements of the Noticee. Thereafter, SEBI analyzed the transaction statements of the Noticee (Annexure 3) for the trades done through Sunflower Broking Pvt. Ltd. (hereinafter referred to as 'Sunflower'), Marfatia Stock Broking Pvt. Ltd. (hereinafter referred to as 'Marfatia'), Tradebulls Securities Pvt. Ltd. (hereinafter referred to as 'Arcadia') and Arcadia Shares & Stock Brokers Pvt. Ltd. (hereinafter*

referred to as 'Arcadia' and hereinafter collectively referred to as 'Brokers'). Upon analysis of the transaction statements, SEBI observed that the shares of 20 Microns, which were bought on market by the Noticee, were held by the brokers.

(d) In view of this, from the cumulative holding of the Noticee in its Demat Accounts as well as the shares held by the brokers on behalf of it, as on July 01, 2014, it was observed that the Noticee was holding 20,16,603 shares which amount to 5.96% of the total issued share capital of 20 Microns. This exceeded the threshold of 5% of the total share capital of the company. Details of the shareholding of Noticee 1 (Viking) as on July 01, 2014 are as follows:

DATE	No of shares held - pre Acquisition	% of share holding held - pre Acquisition	Details of holding	Net	No of shares held - post purchase /	% of share holding
12/05/2014			No. of shares held by Arcadia Share & Stock Brokers Pvt.	1007134	1007134	2.98
13/06/2014	1007134	2.98	No. of shares held by Sunflower Broking Pvt. Ltd.	262513	1269647	3.75
27/06/2014	1269647	3.75	<b>No. of shares held by Marfatia Stock Broking Pvt. Ltd.</b>	<b>589135</b>	<b>1858782</b>	<b>5.5</b>
27/06/2014	1735161	5.13	No. of shares held by Tradebulls Securities Pvt. Ltd.	34200	1892982	5.6
30/06/2014	1769361	5.23	No. of shares held in BOID 1204440000201359 of Viking	123621	2016603	5.96

(e) From the above table, it is observed that the Noticee's shareholding in the company had crossed the threshold of 5% of total shareholding of the Company on June 27, 2014 when it acquired 12,69,647 shares of 20 Micron on-market through Marfatia Stock Broking Pvt. Ltd. It is also observed from Annexure 3 that the Noticee continued to hold more than 5% throughout the investigation period. This required the Noticee to make necessary disclosures to the Company in terms

*of Regulation 13(1) of PIT Regulation r/w Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 and to the Company and BSE under Regulation 29(1) read with 29(3) of SAST Regulation within 2 working days from June 26, 2014.*

*(f) However, from the information provided by the exchanges (Annexure 4) and information obtained from the company (Annexure 5), it is observed that no disclosure was filed by the Noticee relating to its shareholding. In view of the same, it is alleged that the Noticee failed to make the necessary disclosures as above and therefore violated the provisions of Regulations 29(1) & 29(3) of SAST Regulations and under Regulation 13(1) of PIT Regulations r/w Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015. It is further observed that a separate adjudication proceeding has already been initiated against the Noticee in the past in relation to its dealing in the scrip of 20 Microns...”*

5. The SCN issued to the Noticee was sent via Speed Post Acknowledgement Due and digitally signed email. The Noticee vide letter dated May 09, 2019 requested for an additional time of 30 days for submitting its reply in the matter. The request of the Noticee was acceded to and, vide hearing notice dated May 17, 2019, the Noticee was advised to submit its reply to the SCN on or before June 10, 2019. Further, the Noticee was also granted an opportunity of hearing in the matter on June 17, 2019, vide the said hearing notice dated May 17, 2019. Thereafter, the Noticee, vide its letter dated June 13, 2019, *inter alia* requested inspection of documents in the matter and requested to adjourn the hearing scheduled on June 17, 2019. In view of the same, the request of

inspection from the Noticee was forwarded to the concerned department of SEBI.

6. I note from available records that the inspection of documents in the matter was provided to the Noticee on September 24, 2019 by the concerned department of SEBI. Thereafter, the Noticee, vide its letter dated September 24, 2019, stated that it was provided with inspection of only those documents which were annexed with the SCN and requested for copies and inspection of certain additional documents. However, it was observed that all the relied upon documents in the matter were annexed with the SCN and inspection of the said documents was already provided to the Noticee. In view of the same, the Noticee was granted a final opportunity of hearing in the matter on November 04, 2019, vide hearing notice dated October 10, 2019. Thereafter, the Noticee, vide letter dated October 30, 2019 requested to adjourn the hearing and again made the request for copies of certain additional documents as made earlier. Further, it was observed that the said hearing scheduled on November 04, 2019 could not be held on the said date due to certain administrative reasons. In view of the same, the said hearing scheduled on November 04, 2019 was postponed and the same was intimated to the Noticee, vide hearing notice dated November 01, 2019.
7. In the interest of natural justice, another opportunity of hearing was provided to the Noticee on December 12, 2019 vide hearing notice dated December 02, 2019. The Noticee was informed in the said hearing notice that the inspection

of the relied upon documents in the matter was already provided to it by the concerned department of SEBI. However, the Noticee, vide its letter dated December 07, 2019, again requested to adjourn the hearing scheduled on December 12, 2019 and reiterated its demand for certain additional documents.

8. Thereafter, a final opportunity of hearing was granted to the Noticee on January 24, 2020 vide hearing notice dated January 17, 2020. In the said hearing notice dated January 17, 2020, the Noticee was informed that the copies of the relied upon documents had been annexed with the SCN and the same were already inspected by the Noticee. The Noticee was also informed that in case of absence at hearing, the matter shall be proceeded further as per available records. After the issuance of the said hearing notice, the Noticee vide letter dated January 22, 2020 inter alia made the following submissions:

“ .....

- (2) *It has been alleged in the said SCN that our shareholding w.r.t. no. of shares allegedly increased in the scrip of 20 Microns during the period of investigation, the details of which have been provided in the SCN, for which we were allegedly required to make certain disclosure under PIT Regulations and SAST Regulations. It has been alleged that we have failed to make required disclosures as required under PIT Regulations and SAST Regulations.*
- (3) *Hence, it has been alleged that we have violated provisions of Regulations 29(1) and 29(3) of SAST Regulations and Regulation 13(1) of PIT*

*Regulations r.w. Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

- (4) In this regard, at the outset, we deny all the allegations made against us in aforesaid SCN in toto. Nothing contained in the SCN may be deemed to be admitted by us by reason of non-traverse or otherwise, save and except what is expressly admitted herein. We vehemently 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.*
- (5) Our Company was incorporated on 30.07.2004 with the Office of the Registrar of Companies, Gujarat as Viking Paints Private Limited” and the name now stands changed w.e.f. 24.10.2008 as “Viking Industries Private Limited”. Our Company is engaged in the business of engineering, consulting and manufacturing of plants and equipment for the processing of industrial minerals, ores and recovery of secondary material from waste. The Company’s work force consists of highly skilled and qualified personnel with experience and expertise in the fields of mechanical engineering, process engineering, mineral processing Instrumentation and automation.*
- (6) We have purchased shares of 20 Microns purely for investment purpose.*
- (7) It has been alleged that for our shareholding in 20 Microns i.e. shares held in our demat account and shares held by our brokers in their pool account/beneficiary account, we did not make any disclosures and have*



*allegedly violated provisions of Regulations 29(1) and 29(3) of SAST Regulations und Regulation 13(1) of PIT Regulations.*

*(8) In reference to alleged violation of SAST Regulations and PIT Regulations, we submit as follows:*

*(a) As on 27.06.2014, we held 1,23,621 shares of 20 Microns in our demat account which comes to around 0.37% of total share capital of 20 Microns. So, we state that we were beneficial owners having voting rights of only 1,23.621 shares (0.37%) of 20 Microns. The aforesaid, is also mentioned under Table in Para 5 of the SCN on internal Page No. 3 of the SCN.*

*(b) As we held only 0.37% of total share capital of 20 Microns, no disclosure was required either under SAST Regulations or PIT Regulations as we have not breached the 5% threshold limit which is required to make disclosures under SAST Regulations and PIT Regulations.*

*(c) Further, the SCN itself mentions that the alleged trades as mentioned in the SCN were not reflected in our demat statements and the said shares of 20 Microns were held by brokers.*

*(d) Further, it is pertinent to note that as per table on Page No. 3 of the SCN, it is alleged that we have bought 5,89,135 shares of 20 Microns. However, in Para 6 of the SCN it is alleged that we have bought 12,69,647 shares of 20 Microns. So, there is discrepancy in SEBI's own SCN.*

(e) *Without prejudice to what is stated aforesaid, we would like to highlight that 12,69,647 shares alleged to be bought by us only amounts to 3.75% of total share capital of 20 Microns Ltd. The same % is also mentioned in the SCN under table at Page no. 3 of the SCN. The said % i.e. 3.75% does not require any disclosure to be made either to the Company or the stock exchange.*

**(9) Legal Submissions**

(a) *We place reliance on the Adjudication Order dated 23.02.2018 bearing reference no. RA/CB/309/2018 wherein it is mentioned that the holding of the broker and the client is to be treated differently. A copy of Adjudication Order dated 23.02.2018 bearing reference no. RA/CB/309/2018 is hereto annexed and marked as Annexure -1.*

(b) *Case of Reliance Industries Ltd. v SEBI Appeal No. 39/2002) – The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and then Hon'ble Securities Appellate Tribunal observed that 'The high Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case.'*

(c) *Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579*

*It is noteworthy to mention wherein the Hon'ble Court had stated that: Para 61: We refer in this connection the decision of Merck Spares v.*

*Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established.*

*(d) Hindustan Steel Ltd. v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563)*

*The Court held that- ‘The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute’.*

*(10) Mitigating Factors:*

*(a) As regard to allegation of 13(1) of PIT Regulations, it is submitted that SEBI (Prohibition of Insider Trading) Regulation, 2015 which has replaced SEBI (Prohibition of Insider Trading) Regulations, 1992, has not stipulated the disclosure requirement for his type of transactions. We submit that there is no corresponding provisions of Regulation 13(1) of PIT Regulations, 1992 in the PIT Regulations, 2015.*

*(b) In this connection, we would like to invite your kind attention to order dated 02.02.2017 passed by Hon’ble Whole Time Member,*

*SEBI in the case of Refex Industries Limited (formerly known as Refex Refrigerants Limited), wherein Hon'ble Whole Time Member did not issue any directions against the promoter and director and inter alia held that:*

*"13 ...*

*....*

- that the violation is unintentional and nor for consolidation;*
- that the violation is technical and venial in nature; and*
- that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation*

*(c) We also submit that our violation of Regulation 13(1) of PIT Regulations, if any, is unintentional and there are clear mitigating circumstances in the form of subsequent amendments to the PIT Regulations which further lessens the gravity of the violation.*

*(d) We submit that non-disclosure, if any, was technical in nature and due to inadvertence, devoid of any malafide intention. Further, no harm has been caused to any investor nor any loss has occurred due to our alleged non- disclosure.*

*(11) In view of the aforesaid, we state that we had no intention to violate Regulation 29(1) read with 2(3) of SAST Regulations and Regulation 13(1) of PIT Regulations.*

*(12) We submit and say that we have always followed all the procedures as stipulated by any regulatory authority, followed all rules/ regulations/*

*instructions etc. issued by any government agency and our intention has never been to conceal any information.*

*(13) In view of the above circumstances, we submit as follows:*

*(a) We did not have any intention to conceal any information nor have we concealed any information.*

*(b) No unfair advantage or gain has occurred to us and also no harm or loss has been caused to any retail investor.*

*(c) We deny that we have violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations...”*

## **CONSIDERATION OF ISSUES AND FINDINGS**

9. I have carefully perused the allegations against the Noticee, its submissions and the documents available on record. The issues that arise for consideration in the present case are:

- (i) Whether the Noticee has violated the provisions of Regulations 29(1) & 29(3) of the SAST Regulations, 2011 and Regulation 13(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015?
- (ii) Do the violations, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?
- (iii) If yes, what should be the quantum of penalty?

10. Before proceeding further, I would like to refer to the relevant provisions of the Broker Regulations:

## **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.

(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.

## **PIT Regulations, 1992**

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

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

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

## **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;*

11. I note that the Noticee has in its various letters had *inter alia* requested for copies and inspection of certain additional documents in the matter. In this respect, I note from available records that the inspection of documents relied in the present matter have been provided to the Noticee. Hon'ble Securities Appellate Tribunal ('SAT') in the matter of Reliance Commodities Ltd. Vs. National Commodity & Derivatives Exchange Ltd. (Misc. Application No. 189 of 2019 and Appeal No. 173 of 2019, date of decision: July 23, 2019) has observed that – “....2. *Having heard the learned counsel for the parties and having perused the list of documents so required for inspection we are of the opinion that the documents sought for is nothing but a roving and fishing enquiry. We accordingly do not find any merit in the submission of the learned counsel for the appellant that these documents are essential for the purpose of filing an appropriate reply.*

3. However, we are of the opinion that if any document is relied by the respondent while disposing of the matter such document should be made available to the appellant....”

12. I further rely on the observations of Hon’ble SAT in the matter of Shruti Vora vs. SEBI (Appeal (L) No. 28 of 2020, date of decision: 12.02.2020) where it was observed that:-“....A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon...”. In view of the same, I am convinced that the principles of natural justice have been complied with in the present matter.

13. I note from the SCN that the allegation against the Noticee is that its shareholding in the company 20 Microns Ltd. had crossed the threshold of 5% of total shareholding of the company on June 27, 2014 when it acquired shares of 20 Microns Ltd. on-market through Marfatia Stock Broking Pvt. Ltd. In view of the same, the Noticee was required to make necessary disclosures to the company 20 Microns Ltd. in terms of Regulation 13(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 1992, 2015 and to the Company and the stock exchanges under Regulation 29(1) read



with 29(3) of SAST Regulations. However, from the information provided by the exchanges and information obtained from the company 20 Microns Ltd., it was alleged that no disclosure was filed by the Noticee relating to its shareholding.

14. I note that the Noticee in its reply has submitted that it held only 1,23,621 shares of 20 Microns in its demat account, which comes to around 0.37% of total share capital of 20 Microns. Therefore, the Noticee has stated that it was beneficial owner / having voting rights of only 1,23,621 shares (0.37%) of 20 Microns. The Noticee has further stated that the SCN itself mentions that the alleged trades as mentioned in the SCN were not reflected in its demat statements and the said shares of 20 Microns were held by stock brokers.
  
15. In this respect, I note, from the IR and the annexures to the SCN containing the demat statements of the Noticee & the data submitted by the stock brokers, that the Noticee was holding 5.60% of the total shares of the company as on June 27, 2014, which were either in its own account or were held by stock brokers on its behalf. The details of the shares of the company held by the Noticee in its own account and with brokers as on June 27, 2014 is as below:

Date	Shares in Viking's account no. 1204440000201359 held with Marfatia	Shares held by brokers on behalf of Viking				Total Holding	Total shares of Company	% Holding
		Arcadia	Marfatia	Sunflower	Tradebulls			
27/06/2014	1,23,621	10,07,134	4,65,514	2,62,513	34,200	18,92,982	3,38,15,902	5.60%

16. The Noticee has claimed that it was holding only 1,23,621 shares (0.37%) of 20 Microns and remaining shares were held by brokers. The Noticee has relied on an Adjudication Order dated 23.02.2018 bearing reference no. RA/CB/309/2018 wherein it is mentioned that the holding of the broker and the client is to be treated differently. However, I note that the facts of the said matter are different from the present matter. In the present matter, the stock brokers were holding the shares of 20 Microns on behalf of the Noticee and, therefore, the Noticee was still undisputedly the owner of the above shares held by the said stock brokers. Therefore, the Noticee cannot claim that it was not liable for any disclosure obligation arising out of the said shares acquired by it but held by stock brokers.
17. The Noticee has also stated that the 12,69,647 shares alleged to be bought by it only amounts to 3.75% of total share capital of 20 Microns Ltd. The said 3.75% shares do not require any disclosure to be made either to the Company or the stock exchange. In this respect, I note from the IR that the Noticee had acquired shares of 20 Microns in multiple trades through different stock brokers. Further, the Noticee was also holding 1,23,621 shares of the company in its own demat account. As a result of these multiple trades, the shareholding of the Noticee in the company had breached the 5% threshold, which triggered disclosure obligation on the Noticee under Regulations 29(1) & 29(3) of the SAST Regulations, 2011 and Regulation 13(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015. The Noticee has admittedly not made any disclosures in this regard. I further note

from the IR that the Noticee continued to hold more than 5% of the total shares of the company throughout the investigation period.

18. In view of the foregoing, I find that the Noticee has admittedly failed to make requisite disclosures to the company 20 Microns Ltd. and to the stock exchange, when its shareholding in 20 Microns Ltd. crossed the threshold of 5%. In view of the same, I find that the allegation of violation of Regulations 29(1) & 29(3) of the SAST Regulations, 2011 and Regulation 13(1) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations, 2015 stands established against the Noticee. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*.

22. I note from the foregoing, that the aforesaid violations attract monetary penalty under Section 15A(b) of the SEBI Act. In view of the same, I am convinced that it is a fit case to impose monetary penalty. Section 15A(b) of the SEBI Act reads as under:

**SEBI Act**

***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;*

23. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act, which read as under:

**SEBI Act**

***Factors to be taken into account by the adjudicating officer.***

*15J. While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

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

24. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further,

from the material available on record, it may not be possible to ascertain the exact monetary loss, if any, on account of default by the Noticee. I note that that another adjudication proceeding was initiated against the Noticee in the past in relation to its dealing in the scrip of 20 Microns.

## **ORDER**

25. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of Adjudication Rules, I hereby impose a penalty of Rs. 3,00,000 (Rupees Three Lakh only) on the Noticee viz. Viking Industries Private Limited under the provisions of Section 15A(b) of the SEBI Act. I am of the view that the above penalty is commensurate with the lapse/omission on the part of the Noticee.
26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticee may contact the support at [portalhelp@sebi.gov.in](mailto:portalhelp@sebi.gov.in).

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
28. In terms of the provisions of Rule 6 of Adjudication Rules, a copy of this order is being sent to the Noticee viz. Viking Industries Private Limited and also to the Securities and Exchange Board of India.

**Date: April 24, 2020**

**Place: Mumbai**

**K SARAVANAN  
CHIEF GENERAL MANAGER &  
ADJUDICATING OFFICER**