BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2018-19/1962]

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:

Mr. Abhijeet Dwarkadas Daga (PAN: AHTPD5397B)
H.No. - E-42, Galaxy Tower,
Opp. Grand Bhagwati, SG Road,
Ahmedabad – 380054 (Gujarat)

In the matter of Timbor Home Limited

1. M/s Timbor Home Limited (hereinafter referred to as "the company") is a listed company having its shares listed on Bombay Stock Exchange Limited ("BSE") and National Stock Exchange Limited ("NSE"). An investigation was conducted by SEBI in the scrip of the company during the period April 1, 2014 to May 30, 2015 (Investigation Period). It was observed that during the Investigation Period:

   a. The shareholding of 4 promoters, *viz.* Mr. Anant Sureshchandra Maloo, M/s Maloo Building Materials Pvt Ltd, Mr. Manan Vidhyapati Patel and Mr. Abhijeet Dwarkadas Daga (hereinafter collectively referred to as 'the promoters') of the company had decreased from 29.90% to 0.29% as shown in the following table:

Name	As on 31/03/2014 (% Holding)	As on 30/06/2014 (% Holding)	As on 30/09/2014 (% Holding)	As on 31/12/2014 (% Holding)	As on 31/03/2015 (% Holding)	As on 30/06/2015 (% Holding)
Mr. Anant Sureshchandra Maloo	8.12	5.55	0.13	0.13	0.13	-
M/s Maloo Building Materials Pvt Ltd	8.66	8.66	0.08	0.08	-	-
Mr. Manan Vidhyapati Patel	7.62	7.62	0.03	0.03	0.03	0.03
Mr. Abhijeet Dwarkadas Daga	5.51	5.51	3.59	2.69	2.06	0.26
Total	**29.90**	**27.33**	**3.84**	**2.93**	**2.22**	**0.29**

Source: bseindia.com

b. Mr. Abhijeet Dwarkadas Daga ("the Noticee") had transferred more than 25,000 shares of the company on various occasions through off-market / on-market transactions to related entities. Details of the same are as follows:

Date	No. of Shares Disposed Of	Mode of Transfer	Date of disclosure to NSE/BSE
29/08/2014	2,00,000 (1.36%)	Off-Market	No Disclosure Made
13/10/2014	76,000 (0.52%)	On Market	
09/04/2015	68,041 (0.46%)		
10/04/2015	45,032 (0.31%)		
15/04/2015	50,910 (0.34%)		
21/04/2015	30,000 (0.20%)		

c. In the aforesaid transactions by the Noticee, the number of shares sold were more than 25,000, and thus, he was under the obligation to make disclosures to the company and to the stock exchanges as stipulated in regulation 13(4A) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations'). However, the Noticee had not made any disclosure to the company or to the stock exchanges for aforementioned transactions as stipulated in regulation 13(4A) and 13(5) of the PIT Regulations.

2. It was also observed that the aforesaid promoters being "Persons Acting in Concert (PAC)", were under obligation to make disclosures under Regulation 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(hereinafter referred to as the 'SAST Regulations') for following sell transactions:

Date	**Consolidated % of shareholding by PAC prior to sale transaction**	**Consolidated no. of shares sold by PAC**	**Consolidated % of shareholding by PAC post sale transaction**	**Trigger %**	**Trigger for Disclosure under SAST Regulations**
31/03/2014	31.60	2,50,000 (1.69%)	29.90	1.69	Not Applicable
13/06/2014	29.90	54,000 (0.37%)	29.54	2.06	29(2) r/w 29(3)
30/06/2014	29.54	3,25,000 (2.20%)	27.33	2.20	29(2) r/w 29(3)
03/07/2014	27.33	5,00,000 (3.39%)	23.94	3.39	29(2) r/w 29(3)
07/07/2014	23.94	6,20,000 (4.20%)	19.74	4.20	29(2) r/w 29(3)
11/07/2014	19.74	2,50,000 (1.69%)	18.05	1.69	Not Applicable
15/07/2014	18.05	65,000 (0.44%)	17.61	2.13	29(2) r/w 29(3)
22/07/2014	17.61	2,00,000 (1.36%)	16.25	1.36	Not Applicable
23/07/2014	16.25	5,50,000 (3.73%)	12.53	3.73	29(2) r/w 29(3)
24/07/2014	12.53	5,00,000 (3.39%)	9.14	3.39	29(2) r/w 29(3)
09/08/2014	9.14	5,00,000 (3.39%)	5.75	3.39	29(2) r/w 29(3)
29/08/2014	5.75	2,00,000 (1.36%)	4.39	1.36	Not Applicable
25/09/2014	4.39	6,213 (0.04%)	4.35	1.40	Not Applicable
29/09/2014	4.35	15,473 (0.10%)	4.25	1.50	Not Applicable
30/09/2014	4.25	400 (0.01%)	4.24	1.51	Not Applicable
09/10/2014	4.24	20,000 (0.14%)	4.11	1.64	Not Applicable
13/10/2014	4.11	76,000 (0.52%)	3.59	2.16	29(2) r/w 29(3)

3. NSE vide e-mail dated December 26, 2017 and BSE vide e-mail dated January 03, 2018 provided the list of disclosures received from the promoters of the company which showed that no disclosures were made to NSE and BSE by the Noticee about his above transactions. SEBI, thus, noted that with respect to the aforesaid transactions, the Noticee had failed to make relevant disclosures to the company / exchanges under Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the 'PIT Regulations 2015') and Regulation 29(2) read with 29(3) of the SAST Regulations.

4. The competent authority in SEBI has *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 12 of the PIT Regulations 2015 and Regulation 29(2) read with 29(3) of the SAST Regulations, by the Noticee, *viz*; Mr. Abhijeet Dwarkadas Daga. Vide a communication - order dated August 21, 2018, was advised to inquire and adjudge under Rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) and section 15A (b) of the SEBI Act, the alleged violation of the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 12 of the PIT Regulations 2015 and Regulation 29(2) read with 29(3) of the SAST Regulations by the Noticee.

5. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act the notice to show cause no. EAD/SS/AKS/OW/P/29111/1-4/2018 dated October 17, 2018 ('the SCN') was issued to the Noticee, calling upon him to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The SCN returned undelivered in respect to the Noticee. Since, the SCN issued to the Noticee returned undelivered, it was again served upon him by delivery at last known address along with hearing Notice dated November 30, 2018.

6. In terms of Rule 4(3) an opportunity of personal hearing was granted to the Noticee and was communicated to him vide notice dated November 30, 2018 and December 05, 2018. Though the SCN dated October 17, 2018 and hearing notice dated November 30, 2018 were delivered upon the Noticee, the notice dated December 05, 2014 intimating rescheduled date on December 18, 2018 could not be served upon him as the notice could not be delivered upon him by delivery/ affixture. The Noticee was provided another opportunity on January 23, 2019 and the notice in this regard was served in terms of Rule 7(d) of the Adjudication Rules *via* a public notice issued in leading newspapers namely; The Times of India in English, Gujarat Vaibhav in Hindi and Gujarat Samachar in Gujarati on January 05, 2019 for notifying the Noticee about date, place and time of hearing. However, he did not respond to this public notice either filing any reply or by seeking any further time. Considering these facts and circumstances, I am of the view that the Noticee has been provided sufficient opportunities in terms of the Adjudication Rules and the matter should now proceed with in accordance with prescribed procedure. It is noted that the Noticee is deliberately keeping away from these proceedings and is not willing to cooperate. I, therefore, conclude that the Noticee has nothing

to submit and in terms of Rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record.

7. In absence of any response from the Noticee, it is presumed that he has admitted the charge as alleged in the case. In this regard, the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006)* are relevant to rely upon wherein it has held that- *"… 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"*. Further, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014),* has, *inter alia*, observed that: *"… 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 levelled against them in the show cause notices..."*.

8. I have also carefully considered the allegations and charges levelled against the Noticee and relevant material relied upon in this case. Further, there is nothing on record to state that the Noticee has complied with statutory requirements as alleged. I, therefore, do not find any reason to deviate from the allegations *qua* the Noticee as described in the SCN. It is, thus, admitted position that the Noticee has failed to make disclosures in terms of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 12 of the PIT Regulations 2015 and Regulation 29(2) read with 29(3) of the SAST Regulations with regard to the transactions as detailed in above table in para 1(b). It is relevant to refer to the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 12 of the PIT Regulations 2015 and Regulation 29(2) read with 29(3) of the SAST Regulations charged in this case which read as under:-

PIT Regulations, 1992

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

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 persons 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.*

(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.*

PIT 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;*

(3) *After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.*

SAST Regulations, 2011

Disclosure of acquisition and disposal.

29(1) *…..……..*

(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.*

9. It is admitted position that the Noticee had transferred more than 25,000 shares of the company on 6 occasions and therefore, he was under the obligation to make relevant disclosures under Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 12 of the PIT Regulations 2015. With regard to the obligation under Regulation 29(2) read with 29(3) of the SAST Regulations, it is noted that the Noticee has been charged as PACs for the sale transactions of each other i.e. the aforesaid promoters. The question would be whether the sellers as well as the PACs with him, should all make disclosures under Regulation 29(2) of SAST Regulations with regard to the transaction of each acquirer/ seller. As held by Hon'ble SAT in the matter of *O.P. Gulati v. SEBI (Appeal No. 185 of 2011 decided on January 11, 2012*) decided with regard to similar obligations under Regulation 7(1A) of the SAST Regulations, 1997 and in the matter of *Mr. Gopalakrishnan Raman and Ors Vs. SEBI* decided on November 20, 2015, requiring every promoter to make such disclosures with regard to transaction of other would lead to absurd consequences and disclosure by each promoter is not required under the language and spirit of relevant regulations. It is established position that concept of PAC under the SAST Regulations is acquisition specific. For the purposes of obligations under Regulation 29(2), the change in combined shareholding of acquirer/ seller and PACs is taken into the account for determining the compliance obligations of the person who acquires/ sells the shares whereby there is consequential change in combined shareholding of such acquirer/ seller and PACs. Thus, if there is change in the combined shareholding of promoters on account of acquisition/sale of shares by any one of them, such promoter should make disclosure with regard to change in shareholding in terms of Regulation 29(2) read with 29(3) of the SAST Regulations. In this case, admittedly, the consequent changes in combined shareholdings of promoters pursuant to sale of shares by the Noticee had triggered the threshold under Regulation 29(2) read with 29(3) of the SAST Regulations. However, requisite disclosures were not made by any of him as required in said Regulations 29(2) read with 29(3). Therefore, I am of the view that the Noticee had failed to make disclosure to the company and stock exchanges in respect to aforesaid transactions as required under Regulation 29(2) read with 29(3) of the SAST Regulations.

10. The disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Timely disclosures of the details of the shareholding of the persons acquiring/transferring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014),* has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further in the matter of *Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI*–the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

11. In the facts and circumstances of this case, lack of relevant information in public domain with regard to change in shareholding of the promoters would create information asymmetry, at relevant times and the failure to make disclosure as found in this case would also defeat the purpose of the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 12 of the PIT Regulations 2015 and Regulation 29(2) read with 29(3) of the SAST Regulations. The statutory timelines stipulated in regulation 29(3) of the SAST Regulations and regulation 13(5) of the PIT Regulations are mandatory. Considering the above facts and circumstances, I hold that this case deserves imposition of monetary penalty upon the Noticee under Section 15A (b) of the SEBI Act which reads as following:-

SEBI Act.

Penalties and Adjudication

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

12. For the purpose of adjudication of penalty it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty"* are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. Further, vide Part VIII of Chapter VI of the Finance Act, 2017 which was brought after Judgement of Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in Section 15J of the SEBI Act, which reads as under:-

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

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-
(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
(b) the amount of loss caused to an investor or group of investors as a result of the default;
(c) the repetitive nature of the default.
Explanation-
For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

13. Having regard to the factors listed in section 15J, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default cannot be computed. It is established that, the Noticee being the promoter had failed to make prescribed disclosures in terms of the relevant Regulations with regard to a series of transactions. It is further noted that pursuant to his repeated sale transactions, promoters' shareholding in the company had been reduced in clandestine manner and he had failed to make timely disclosure in the prescribed form about the relevant details of his transactions. It also can't be lost sight of the fact that it is the transactions in question which were subject matter of investigation for probing fraudulent and manipulative acts for which proceedings have been initiated separately.

14. In this case, there are total 6 transactions of the Noticee which are subject matter of these proceedings. Out of these 6 transactions details of which were required to be disclosed under Regulation 13(4A) read with 13(5) of the PIT Regulations, 2 transactions dated August 29, 2014 and October 13, 2014 triggered obligations to make disclosures under Regulation 29(2) read with 29(3) of the SAST Regulations also. Thus, there are overlapping obligations for these 2 transaction under relevant regulations of PIT Regulations and SAST Regulations as both provide same requirements with regard to overall threshold, timelines and the entities to whom the disclosures are to be made. With regard to such similar violations arising out of same transactions, it is relevant to rely upon the order dated September 04, 2013 passed by the Hon'ble SAT in the matter of *Vitro Commodities Private Limited Vs. SEBI* wherein the it has observed that:

> *"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other ".*

15. As per *ratio decidendi* in the aforesaid judgement, I am of the view that the violation of the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 29(2) read with regulation 29(3) of the SAST Regulations are not substantially different and can be considered as a single violation by the Noticee for the purpose of adjudication in the matter, for aforesaid transactions dated August 29, 2014 and October 13, 2014 which attracted overlapping disclosure obligations under the aforesaid Regulations of PIT Regulations and SAST Regulations. In addition, the Noticee had also failed to make disclosures under Regulation 13(4A) read with 13(5) of the PIT Regulations with regard to his other 4 transactions as detailed in above table in para 1(b), wherein there was no such overlapping applicability of Regulation 13(4A) read with 13(5) of the PIT Regulations.

16. Considering all the facts and circumstances of the case, aforesaid factors/ guidelines and exercising the powers under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby

impose following penalty on the Noticee under section 15A (b) of SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case:

Name of Noticee	Amount of Penalty - Provisions of regulations violated (₹)
Mr. Abhijeet Dwarkadas Daga	₹ 4,00,000/-Rupees Four lac only) for violation of regulation 13(4A) read with 13(5) PIT Regulations. ₹2,00,000/- (Rupees Two lac only) for violation of regulation 13(4A) read with 13(5) PIT Regulations and regulation 29(2) read with 29(3) of the SAST Regulations.

17. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

18. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

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

Date: January 25, 2019
Place: Mumbai

Santosh Shukla
Adjudicating Officer