

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/CB/2018-19/63-64]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

1. **JPA Solutions Pvt. Ltd. (PAN: AABCJ7151K)** having address at – 102, Man House, S. V. Road, Vile Parle (West), Mumbai – 400 056

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2. **Jagdishchandra Jhamaklal Mansukhani (PAN: AACPM2147G)** having address at – Plot No. 43, Aadhya, Jai Hind Co-op Hsg. Society, N. S. Road No. 10, JVPD Scheme, Vile Parle (West), Mumbai – 400 049

In the matter of *Man Industries (India) Limited*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the “**SEBI**”) conducted examination in the scrip of Man Industries (India) Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) as well as the National Stock Exchange of India Limited (hereinafter be referred to as, the “**NSE**”) for the period April 01, 2013 to March 31, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed violation of Regulation 13(4A) read with 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the “**PIT Regulations**”) and Regulation 31 of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter be referred to as, the “**SAST Regulations**”) by M/s. JPA Solutions Pvt. Ltd. (hereinafter be referred to as, the “**Noticee 1**”) and Mr. Jagdishchandra Jhamaklal Mansukhani (hereinafter be referred to as, the “**Noticee 2**”) upon not making relevant disclosures upon change in their shareholding in the Company. The Noticee 1 & 2 shall hereinafter collectively be referred to as, the “**Noticees**”.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the “**SEBI Act**”) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the “**Adjudication Rules**”) *vide* order dated March 07, 2017 to inquire into and adjudge under Section 15A (b) of the SEBI Act against the Noticee for the aforesaid alleged violations. Subsequently, the undersigned was appointed as the Adjudicating Officer on April 26, 2018 which was communicated *vide* order dated August 21, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD/EAD5/MC/CB/29288/2018 dated October 19, 2018 (hereinafter be referred to as, the “**SCN**”) was served upon the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15A (b) of the SEBI Act for alleged violations of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 31 of the SAST Regulations.
4. The allegations levelled against the Noticees in the SCN are summarized as below:
- a) During the Examination Period, the Noticees were promoters of the Company and indulged in various transactions involving acquisition and sale of shares of the Company, relevant excerpts of which are produced as under:

Name of the Noticee	Date of Transaction	Holding before Transaction (No. of shares held & their percentage)	Transaction Volume (Number of Shares Transacted and their percentage)	Holding Post Transaction (No. of shares held & their percentage post transaction)
JPA Solutions Private Limited	August 12, 2013	25,05,307 4.37%	(2,54,000) (0.42%)	22,51,307 3.92%
	September 30, 2013	2251307 3.92	497028 0.83	2748335 4.75
	November 01, 2013	14,52,894 2.54%	4,22,048 0.71%	18,74,942 3.25%
	November 19, 2013	18,74,942 3.25%	10,000 0.02%	18,84,942 3.27%
Jagdishchandra Jhamaklal Mansukhani	April 06, 2013	85,97,648 14.78%	(10,00,000) (1.67%)	75,97,648 13.11%

Relevant evidences of the aforesaid transactions were provided to the Noticees *vide Statement of Transactions* carried out by the Noticee provided to SEBI by the NSDL.

- b) As a result of the aforesaid transactions, the Noticees were required to submit relevant disclosures within 2 days of these transactions to the Company and to BSE & NSE under Regulation 13(4A) read with 13(5) of the PIT Regulations. However, the Noticees, allegedly, failed to submit disclosures required under the PIT Regulations.
- c) During the Examination Period, the Noticees also created encumbrance over the shares of the Company, details of which are produced hereunder:

Name of the Noticee	Date of Transaction	Transaction Volume – No. of shares encumbered and their percentage
JPA Solutions Private Limited	April 30, 2013	2,50,000 (0.44%)
	October 01, 2013	137977 (0.24%)
	October 01, 2013	7464 (0.01%)
	October 01, 2013	1,00,000 (0.18%)
	October 01, 2013	2,50,000 (0.44%)
	October 29, 2013	20,000 (0.04%)
Jagdishchandra Jhamaklal Mansukhani	April 02, 2013	3,00,000 (0.53%)
	April 08, 2013	2,00,000 (0.35%)
	April 12, 2013	20,000 (0.04%)
	April 15, 2013	2,00,000 (0.35%)
	April 17, 2013	2,00,000 (0.33%)
	April 25, 2013	1,00,000 (0.18%)
	April 25, 2013	1,00,000 (0.18%)
	July 05, 2013	2,511 (0.0004%)
	October 29, 2013	100000 (0.18%)
	October 29, 2013	20000 (0.04%)
	October 29, 2013	100000

		(0.18%)
	October 29, 2013	20000 (0.04%)
	February 11, 2014	1000000 (1.75%)

- d) The aforesaid creation of encumbrance over the shares of the Company required disclosures to be made in terms of Regulation 31(1) read with 31(3) of the SAST Regulations. However, the Noticees, allegedly, failed to submit disclosures required under the SAST Regulations.
- e) The aforementioned failure of the Noticees to disclose change in their shareholding was confirmed by the NSE *vide* e-mail dated July 17, 2018, BSE *vide* e-mail dated July 11, 2018 and the Company *vide* e-mail July 18, 2018.
- f) It was alleged that the aforesaid non-disclosures regarding change in their shareholding by the Noticees were in violation of Regulation 13(4A) read with 13(5) of the PIT Regulations and Regulation 31 of the SAST Regulations, text of which is mentioned as below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

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 of voting rights, whichever is lower.

(5) The disclosure mention 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.*

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

“31. (1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

...

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office..”

- g) The Noticees were also informed that the alleged violations, if established, would make them liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act.

5. The SCN was served upon the Noticees by way of Speed Post with Acknowledgment Due at the address of the Noticees on October 26, 2018, an acknowledgment of which is available on record. The Noticees were also advised to file reply, if any, within 14 days from the receipt of the SCN. However, no reply towards the SCN was received from the Noticees.
6. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticees on November 26, 2018 *vide* Notice of Hearing dated November 12, 2018. The Noticees were also advised to file their reply, if any, towards the SCN by November 23, 2018. Thereafter, the Noticees *vide* letter dated November 12, 2018 requested for an extension for three weeks to file their reply.
7. Thereafter, *Mindspright Legal*, the authorized representative of the Noticees made a further request for grant of an extension for filing of reply by the Noticees *vide* letter dated November 20, 2018. The request of the Noticees was acceded to *vide* notice of hearing dated November 27, 2018 and a final opportunity of hearing was provided on December 07, 2018.

8. The Noticees submitted their reply towards the SCN *vide* letter dated December 03, 2018. Relevant submissions of the Noticees are summarized as under:

a) The Noticee 1 made the following claims with respect to the transactions alleged in the SCN resulting into acquisition / disposal of its shareholding in the Company:

Date of Transaction	No. of shares transacted	Submissions of the Noticee 1
August 12, 2013	- 2,54,000	2,54,000 shares of the Company were made available from the account of the Noticee 1 to the account of broker of the Noticee 1, i.e. Mangal Keshav Capital Limited ("MKCL"). Noticee 1 had availed margin funding facility from the MKCL and the Noticee 1 fulfilled a short call in the margin based on a call made by MKCL by transferring 2,54,000 shares.
September 30, 2013	497028	The shares transacted were earlier provided to MKCL towards its margin requirement and when there was no further requirement to maintain high margin, these shares were returned to the Noticee 1. There was no change in ownership of the shares and rights associated with these shares, there was only change in the possession of the shares. The ownership and voting rights were always vested with the Noticee 1 even when the possession of the shares was with the MKCL.
November 01, 2013	4,22,048	
November 19, 2013	10,000	

b) Based on the aforesaid submissions, the Noticee 1 submitted that no disclosures were required to be made under the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations. To substantiate its claim of

transfer of these shares as *margin*, Noticee 1 produced copies of transaction statements issued by the MKCL to state that the transfer of 2,54,000 shares on August 12, 2013 was an *intra DP transfer* while transfer of shares on September 30, 2013, November 01, 2013 and November 19, 2013 were transactions which were *closed* and *settled*. These transactions were settled subsequent to decrease in margin requirement of the Noticee 1 and shares kept as margin were returned to the account of Noticee 1.

- c) With respect to transactions dated April 30, 2013, October 01, 2013 and October 29, 2013 of the Noticee 1 resulting into creation of encumbrance over shares held by it, the Noticee 1 claimed that these transactions were not in the form of pledge to have invited disclosures under Regulation 31 of the SAST Regulations. The shares were transferred to the pool account of the MKCL in lieu of margin call made by the MKCL for shortfall. No pledge was marked on such shares as the shares were transferred in form of margin.
- d) Noticee 2, in respect of the alleged transfer of 10,00,000 shares on April 06, 2013, stated that the transaction under inquiry had already been examined under separate adjudication proceedings and penalty for the established violation had already been imposed upon the Noticee *vide* adjudication order dated October 31, 2018. The Noticee 2 also produced copies of the show cause notice issued and order passed on October 31, 2018 to substantiate his claim. The Noticee, thus, submitted that since he has already been charged for non-compliance under the provisions of PIT Regulations, he cannot again be charged for the same set of non-compliance for the same transaction.
- e) The Noticee 2 also claimed that the transaction on April 06, 2013 was in the nature of pledge by way of transfer and it only effected a change of hands and not of ownership / voting rights and hence, no disclosure was required to be made under Regulation 13(4A) read with 13(5) of the PIT Regulations. He also submitted that it was not his intention to hide the information as necessary disclosure was made by him under Regulation 29(2) of the SAST Regulations. He also produced a copy of the disclosure made under SAST Regulations.
- f) The Noticees made the following submissions with respect to the transactions alleged in the SCN resulting into creation / release of pledge of shares in the Company:

Noticee	Date	No. of Shares	Submissions of the Noticee
JPA Solutions Pvt. Ltd.	April 30, 2013	2,50,000	The transaction was not in the form of pledge to have invited disclosures under the provisions of Regulation 31 of the SAST Regulations. The shares were transferred to the pool account of the broker MKCL in lieu of the margin call made by the broker for shortfall. Shares were not transferred by way of pledge in this transaction
	October 01, 2013	137977	The transaction was a transfer of shares to the pool account of the broker, MKCL for fulfilling margin requirement. No pledge was marked on these shares to have required disclosure under the provisions of Regulation 31 of the SAST Regulations and the shares were to be transferred back to the Noticee upon reduction in margin requirement. A copy of demat statement containing the aforesaid transfer was also provided by the Noticee.
	October 01, 2013	7464	
	October 01, 2013	1,00,000	
	October 01, 2013	2,50,000	
	October 29, 2013	20,000	The transaction was a release of shares upon revocation of pledge and the transaction erroneously mentions that pledge was marked on these shares.
Jagdishchandra Mansukhani	April 02, 2013	3,00,000	No submissions in relation to these transactions
	April 08, 2013	2,00,000	
	April 12, 2013	20,000	
	April 15, 2013	2,00,000	A cumulative disclosure had been made by the Noticee 2 under provisions of Regulation 31 of the SAST Regulations. It also produced
	April 17, 2013	2,00,000	
	April 25, 2013	1,00,000	
	April 25, 2013	1,00,000	

			a copy of disclosure dated May 14, 2013 to substantiate the same.
	July 05, 2013	2,511	Disclosure dated July 26, 2013 was duly made by the Noticee 2.
	October 29, 2013	100000	No submissions in relation to these transactions.
	October 29, 2013	20000	
	October 29, 2013	100000	
	October 29, 2013	20000	
	February 11, 2014	1000000	

- g) The Noticees submitted that they did not accrue any illegal profit by the alleged non-disclosures and no individual suffered any loss or detrimental consequences owing to the error on the part of the Noticees. They also submitted that there was no intention on the part of the Noticees to deliberately avoid disclosure and dispose shares of the Company.
- h) To substantiate their submissions, the Noticees placed reliance upon various judgments of various courts, including **Kensington Investment Ltd. v. SEBI Bhagat Ram v. State of Himachal Pradesh** [(1983) ILJ 1 SC], **Ranjit Thakur v. Union of India** [AIR 1987 SC 2386], **Reliance Industries Limited v. SEBI** [SAT Appeal No. 39/2002], **Akbar Badrudin Jiwani v. Collector of Customs Bombay** [AIR 1990 SC 1579], **Director of Enforcement v. MCTM Corporation Pvt. Ltd.** [AIR 1996 SC 1100], **Hindustan Steel Ltd. v. State of Orissa** [AIR 1970 SC 253], **Bajrang Oil Mills v. Income Tax Officer** [(2007) 295 ITR 314 (Raj)], to contend that the breach of law arose from a bona fide error in the instant case and therefore, the Adjudicating Officer is not bound to impose penalty just because the relevant provisions under PIT and SAST Regulations prescribe.
- i) The Noticees also submitted that the allegation of violation of PIT Regulations cannot be alleged on the basis of mere surmises and conjectures and based on erroneous interpretation of data and cited reference to various judicial precedents including **Union of India v. H. C. Goel** [AIR 1964 SC 364], **L. D.**

Jaisinghani v. Naraindas N Punjabi [(1976) 1 SCC 354], *Razikram v. J. S. Chauhan* [AIR 1975 SC 667], *Ambalal v. Union of India* [AIR 1961 SC 264], *Seth Gulabchand v. Seth Kudilal* [AIR 1966 SC 1734], *Ex-Naik Sardar Singh v. Union of India* [(1991) 3 SCC 212], *Ranjit Thakur v. Union of India* [AIR 1987 SC 2386].

- j) The Noticees, thus prayed for the Notice to be set aside and the charges levied against them be dropped.

9. The hearing scheduled on December 03, 2018 was attended by Mr. Pulkit Sharma, Ms. Nirali Mehta and Ms. Mayuri Thakkar, who were appointed as, the authorized representatives by the Noticees (hereinafter be referred to as, the “**Authorized Representatives**”). During the hearing, the Authorized Representatives reiterated their submissions dated December 03, 2018 and sought additional time to make submissions. The request of the Authorized Representative was acceded to and the Noticees were given additional time until December 18, 2018 to make submissions.

10. Vide letter dated December 18, 2018, the Noticees submitted additional submissions, a summary of which is produced as under:

- a. Noticee 1 submitted that the transactions alleged to be sale were not in the nature of sale but were made towards fulfilling margin requirements arising out of a loan availed during that period. There was no flow of consideration for the transfer of shares from the Noticee.
- b. Noticee 1 reiterated that beneficial ownership of the shares was always with it even when possession of shares was with MKCL. It also submitted copy of a letter from its broker, MKCL confirming that these shares were transferred on account of margin obligations.
- c. With regard to the transactions of the Noticee 1 on April 30, 2013 (sic.), it submitted that it had a funding facility with a lender, *J M Financial Services Ltd.*, who was also a broker of the Noticee 1. Noticee 1, in order to avail such facility, executed a power of attorney on September 08, 2011 in favour of *J M Financial Services Ltd.*, allowing them to operate its demat account including a power of transferring securities to the broker or to create pledge / mark lien in favour of stock broker or lender as security. Accordingly, pledge was created by the broker under the said power of attorney without

any information to the Noticee 1. Since the Noticee 1 did not have any information in relation to details of pledge, no disclosure could be made.

- d. Noticee 1 also stated that details pertaining to transactions on April 30, 2013 was not provided in its earlier reply and an erroneous reporting of pledge transactions as margin transfer was done.
- e. A cumulative disclosure for transactions on April 15, 2013, April 17, 2013, April 25, 2013 and July 05, 2013 was made by the Noticee 2 under Regulation 31 of the SAST Regulations.

11. A supplementary show cause notice dated January 28, 2019 was issue to the Noticees clarifying the nature of encumbrance transactions mentioned in the SCN as creation of pledge or release of pledge, as given below. The Noticees were advised to offer their comments / replies towards the supplementary show cause notice within 14 days of its receipt.

Name of the Noticee	Date of Transaction	Nature of Transaction	Transaction Volume – No. of shares encumbered and their percentage
JPA Solutions Private Limited	April 30, 2013	Creation of Pledge	2,50,000 (0.44%)
	October 01, 2013	Release of Pledge	137977 (0.24%)
	October 01, 2013		7464 (0.01%)
	October 01, 2013		1,00,000 (0.18%)
	October 01, 2013		2,50,000 (0.44%)
	October 29, 2013		20,000 (0.04%)
Jagdishchandra Jhamaklal Mansukhani	April 02, 2013	Creation of Pledge	3,00,000 (0.53%)
	April 08, 2013		2,00,000 (0.35%)
	April 12, 2013		20,000 (0.04%)
	April 15, 2013		2,00,000 (0.35%)
	April 17, 2013	Release of Pledge	2,00,000 (0.33%)
	April 25, 2013	Creation of Pledge	1,00,000 (0.18%)
	April 25, 2013		1,00,000 (0.18%)
	July 05, 2013	Release of Pledge	2,511

			(0.0004%)
	October 29, 2013		100000 (0.18%)
	October 29, 2013		20000 (0.04%)
	October 29, 2013		100000 (0.18%)
	October 29, 2013		20000 (0.04%)
	February 11, 2014	Creation of Pledge	1000000 (1.75%)

12. The Noticees filed their submissions dated February 26, 2019 in response to the supplementary show cause notice dated January 28, 2019. A summary of submissions (other than those previously submitted) of the Noticees is reproduced as under:

- a) With regard to transaction on October 01, 2013, Noticee 1 submitted that total 4,95,441 shares of the Company were pledged by the broker *J M Financial* against borrowings in the funding account with *M/S. J M Financial Services Ltd.* in September and October 2012. As the pledge was created by *J M Financial Products Ltd.* under authorization provided to it through a duly executed power of attorney, the terms and conditions of the same were not known to Noticee 1. The present transactions under consideration on October 01, 2013 were in relation to release of pledge in Noticee 1's account. However, as the terms and conditions of the same were not known to Noticee 1, they also did not have any information in relation to the details of release of the said pledge. Accordingly, disclosure in respect of same was not made.
- b) Noticees also submitted that intention of the disclosure under the SAST Regulations and PIT Regulations is that the shareholders should be aware about the changes in the shareholding of the promoters so that they are aware if there is any changes in the control of the Company or if the promoters are acting prejudicially to the interest of the shareholders on the basis of some insider information. However, in the present case, the Noticees were no longer in control of the Company, nor were they in a position to get any insider information which would have in any way impacted the transactions executed by the Noticees and hence there was no requirement on part of the Noticees to make disclosure under the provisions of SAST and PIT Regulations.

13. Since the inquiry in the instant matter is concluded, I proceed to decide the case on merit taking into account the allegations levelled against the Noticees in the SCN, submissions of the Noticees towards the SCN and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

14. The issues that arise for consideration in the instant matter are:

- Issue No. I** Whether Noticees failed in making disclosure required under Regulation 13(4A) of the PIT Regulations as alleged in the SCN?
- Issue No. II** Whether the Noticees failed to make disclosure required under Regulation 31 of the SAST Regulations as alleged in the SCN?
- Issue No. III** If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A (b) of the SEBI Act?
- Issue No. IV** If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue No. I Whether Noticees failed in making disclosure required under Regulation 13(4A) of the PIT Regulations as alleged in the SCN?

15. Regulation 13(4A) of the PIT Regulations requires any person who is a promoter or part of a promoter group of a listed company to disclose to the company as well as the stock exchanges the number of shares held and change in such shareholding if there is a change in shareholding from the last disclosure made and such change exceeds Rs. 5 Lakhs in value or 25000 shares or 1% of the total shareholding.

16. From the reply of the Noticee 1, I note that the facts relating to the Noticee 1 being a promoter of the Company during the Examination Period and change in its shareholding in the Company are not disputed. On perusal of the SCN as well as the transaction statement of Noticee 1 during the Examination Period, it is observed that 2,54,000 shares of the Company were debited from the account of the Noticee and were credited to account 1202470000162906 belonging to *Mangal Keshav Capital Limited* on August 12, 2013. Similarly, 4,97,028, 4,22,048 and 10,000 shares were credited to the account of the Noticee from the aforesaid account of MKCL on September 30, 2013, November 01, 2013 and November 19, 2013 respectively. However, Noticee 1 has submitted that the aforesaid reduction in its shareholding was

effected on account of transfer of shares to its broker, *MKCL* to maintain margin requirement and the ownership of the said shares continued to be with the Noticee 1. It has also submitted that the aforesaid credit of shares was on account of transfer of shares from the broker after fulfilling margin requirements.

- 17.** From the reply dated December 18, 2018 of the Noticee 1, it is noted that the Noticee 1 has produced a confirmatory letter dated December 17, 2018 from the broker, *Mangal Keshav Capital Limited*, confirming that the debit transactions of shares of the Noticee 1 in the Company were towards fulfilling margin requirements against the loan availed by the Noticee 1. I note that the broker of the Noticee 1 has confirmed that the transactions were in the nature of collaterals against loan facility and were not in the nature of purchase or sale of shares.
- 18.** I have perused the submissions of the Noticee 1 and relevant documentary evidence relating to the transactions involving reduction in shares held in the Noticees demat account during the Examination Period. On perusal, I am of the view that debit of shares on August 12, 2013 and subsequent credit of shares on September 30, 2013, November 01, 2013 and November 19, 2013 from / to the account of Noticee 1 was on account of *loan against shares* facility availed by Noticee 1 and consequently, did not entail any disclosures to be made under Regulation 13(4A) read with 13(5) of the PIT Regulations.
- 19.** In view of the aforesaid, it is established that the Noticee 1 was not required to make disclosures required under Regulation 13(4A) read with 13(5) of the PIT Regulations to the Company as well as the BSE & NSE and therefore, violations of the same do not stand established.
- 20.** I note that in respect of the transaction of 10,00,000 shares on April 06, 2013 by Noticee 2 has already been adjudicated and penalty for the established violation has already been imposed upon the Noticee *vide* adjudication order dated October 31, 2018.

Issue No. II Whether the Noticees failed to make disclosure required under Regulation 31 of the SAST Regulations as alleged in the SCN?

- 21.** Regulation 31 (1) of the SAST Regulations requires a promoter of every target company to disclose the details of shares in such company encumbered by him. Similarly, Regulation 31(2) of the SAST Regulations requires every promoter of a target company to disclose details of any invocation or release of encumbrance of shares. Such disclosure of creation, release and invocation of disclosures required under Regulation 31(1) & (2) of the SAST Regulations has to be made within 7 working days from creation, invocation and release of such encumbrance.
- 22.** On perusal of the replies of the Noticees dated December 03, 2018 and December 18, 2018, it is observed that both the replies of the Noticees are in contradiction with each other. The Noticees, in their replies dated December 03, 2018, submitted that the transfer of shares was not on account of creation or release of encumbrances but on account of transfer of shares to the pool account of their broker, *MKCL*, to maintain margin obligations. However, in their reply dated December 18, 2018, the Noticees submitted that they *erroneously* and *unintentionally* provided details pertaining to margin transfer in the place of transactions involving pledge of shares. Since the Noticees have admitted to erroneous submissions in their reply dated December 03, 2018, I decide to not peruse the same in order to examine the instant issue.
- 23.** From the replies of the Noticees dated December 18, 2018 and February 26, 2019, I note that the Noticees did not dispute details relating to creation and release of encumbrance which were alleged in the supplementary show cause notice dated January 28, 2019.
- 24.** Noticee 1, however, has submitted that it had a funding facility with its lender, *J M Financial Services Limited* and that it had executed a power of attorney dated September 08, 2011 in favour of *J M Financial Services Ltd.* authorizing the latter to operate their demat account including a power to transfer securities to stock broker or to create a pledge / mark lien in favour of the stock broker etc. It also furnished a copy of the aforesaid power of attorney to substantiate its claim. It also submitted that it did not have any information in relation to the details of creation of such pledge on April 30, 2013 and release of pledge in October 2013 which resulted in non-disclosure under Regulation 31 of the SAST Regulations.

- 25.** However, I observe that even after execution of the aforesaid power of attorney, the ownership of shares of the Company continued to be vested in Noticee 1. Thus, I am of the view that the requirement to disclose the number of shares pledged by a promoter is a statutory requirement and the Noticee cannot shirk away from its statutory obligation of making disclosures relating to creation and release of encumbrance of its own shares by citing ignorance of such creation or release.
- 26.** I observe that the Noticee 2 had submitted that with regard to transactions executed between April 15, 2013 and April 25, 2013, a cumulative disclosure has been made under Regulation 31 of the SAST Regulations by Noticee 2 on May 14, 2013. Similarly, it also submitted that a disclosure of creation of pledge on July 05, 2013 was made by it under Regulation 31 of the SAST Regulations on July 26, 2013. I have confirmed presence of these disclosures in public domain by verification of the same on the website of the BSE.
- 27.** At this juncture, it is relevant to note that Regulation 31(3) of the SAST Regulations mandates any disclosure under Regulation 31(1) and 31(2) to be made within 7 working days from the creation or invocation or release of encumbrance to the stock exchange as well as the Company. Thus, the reply of the Noticee 2 that a cumulative disclosure was made under Regulation 31 of the SAST Regulations on May 14, 2013 for the transactions which were executed between April 15-25, 2013 and that a disclosure under Regulation 31 of SAST Regulations was made on July 26, 2013 for the creation of pledge on July 05, 2013, itself establishes delay of 21, 18 & 13 days for the transactions executed on April 15, 17 & 25, 2013 respectively and 15 days for the transaction executed on July 05, 2013 in making relevant disclosures under Regulation 31 of SAST Regulations on the part of the Noticee 2.
- 28.** Further, Noticee 2 has not made any submissions in relation to disclosures relating to creation or release of encumbrance on April 02, 2013, April 08, 2013, April 12, 2013, October 29, 2013 and February 11, 2014. In view of absence of any rebuttal in relation to the allegation and information available on record, I am of the view that non-compliance with Regulation 31 of the SAST Regulations for these instances has been admitted by the Noticee 2.

29. In view of the above, it is established that the Noticees failed to make disclosures required under Regulation 31 of the SAST Regulations to the Company as well as BSE.

Issue No. III If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A (b) of the SEBI Act?

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Issue No. IV If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

30. Since failure of the Noticees in making disclosures to the Company as well as BSE & NSE under Regulation 31 of the SAST Regulations is established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticees, text of which is reproduced as under:

SEBI Act

“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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.”

31. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

32. I note that the Noticees had submitted that the non-disclosure on their part were unintentional and were merely a technical lapse and that they did not cause any loss to any investor nor did they make any wrongful gain out of it. I find it relevant to note here that the Securities Appellate Tribunal in the matter of **Virendrakumar Jayantilal**

Patel v. SEBI (Appeal No. 299 of 2014 dated October 14, 2014) had observed that, “obligation to make the 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 the 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 the disclosures.” Thus, I am of the view that the abovementioned submissions of the Noticees cannot be accepted. I also note that the Noticees have cited numerous judicial precedents to substantiate their submissions but on examination of the same, I find that they are not relevant for determination of issues under the instant adjudication proceedings.

33. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. I note that the defaults are repetitive in nature. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹6,00,000/- on Noticee 1 and ₹12,00,000/- on Noticee 2 will be commensurate with the violations committed by the Noticees.

ORDER

34. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a total penalty of ₹6,00,000/- (Rupees Six Lakh only) upon the Noticee 1, i.e. M/s. JPA Solutions Pvt. Ltd. and ₹12,00,000/- (Rupees Twelve Lakh only) upon the Noticee 2, i.e. Mr. Jagdishchandra Mansukhani under Section 15A(b) of the SEBI Act for violation of Regulation 31 of the SAST Regulations.
35. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India

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

36. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI and shall also provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

37. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date : March 29, 2019

Place : Mumbai

(Maninder Cheema)

Adjudicating Officer