

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**ADJUDICATION ORDER NO. EAD-7/BJD/NJMR/231-234/2018-19**

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

In respect of:

1. Yard Securities Pvt., Ltd., (PAN: AAACY2812P) 326, Karim Building, Ground Floor, Beside Super Cinema Grant Road, Mumbai – 400007.	2. Nitin Sharma (PAN: BOKPS3532Q) 34, Shrinagar Extension 301, Gangotri Apartments Indore - 452056.
3. Highlight Leafin Pvt., Ltd., (PAN: AAACH7523G) 326, Karim Building, Ground Floor, Beside Super Cinema Grant Road, Mumbai – 400007.	4. Sachin Sharma (PAN: ACWPS3831M) 15, Gulmohar Extension Indore – 452001.

***In the matter of Pithampur Steels Ltd.,***

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in the scrip of Pithampur Steels Ltd., (hereinafter referred to as “**PSL**” / “**Company**”) for any possible violation of the provisions of SEBI Act and the Regulations made thereunder during the period April 1, 2010 to September 30, 2010 (hereinafter referred to as “**Investigation Period**”). The investigation revealed that one of the promoter entities of PSL viz., Yard Securities Pvt., Ltd., (Noticee 1) had transferred shares through off-market to Nitin Sharma (Noticee 2) and Highlight Leafin Pvt., Ltd., (Noticee 3) without receipt / payment of consideration and thereby the Noticees 1 to 3 have violated the provisions of Section 16 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA**”) read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. The

investigation also found that one of the promoter entities of PSL viz., Yard Securities Pvt., Ltd., (Noticee 1) had failed to disclose change in its shareholding of more than 2% under SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 1997 (*hereinafter referred to as “SAST” Regulations*) and SEBI ((Prohibition of Insider) Regulations, 1992 (*hereinafter referred to as “PIT” Regulations*)). The investigation also brought out certain non-disclosure by the Director of PSL viz., Sachin Sharma (Noticee 4) which were required to be made under SEBI (PIT) Regulations, 1992.

## APPOINTMENT OF ADJUDICATING OFFICER

2. Ms. Anita Kenkare was appointed as Adjudicating Officer, vide Order dated October 26, 2015 under Sub-section (1) of Section 23-I of SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (*hereinafter referred to as “SCR Rules”*) and under Section 19 read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as “Adjudicating Rules”*) to inquire into and adjudge the alleged violations committed by the Noticees of the provisions of the corresponding Act, Notification and Regulations, under respective Sections of SCRA and SEBI.

Sl. No.	Name of the Entity	Violations observed	Initiation of Adjudication under the legal provisions
1	Yard Securities Pvt., Ltd.,	Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section	Section 23H of SCRA

		2(i) of SCRA, 1956.  Reg. 7(1A) of SEBI (SAST) Regulations, 1997 read with Regulation 35 of SEBI (SAST) Regulations, 2011.  Regulation 13(3) r/w Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.	Section 15 A (b) of SEBI Act.
2	Nitin Sharma	Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956	Section 23H of SCRA
3	Highlight Leafin Pvt., Ltd.,		
4	Sachin Sharma	Regulation 13(4) r/w Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.	Section 15 A (b) of SEBI Act.

3. Pursuant to internal restructuring, the undersigned has been appointed as Adjudicating Officer vide Order dated May 18, 2017.

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

4. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/NJMR/26863/2017 dated October 27, 2017 was served upon the Noticees under Rule 4 of SCR Rules and Adjudicating Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the SCR Rules & Adjudicating Rules and penalty be not imposed under section 23H of SCRA & 15 A (b) of SEBI Act for the violations alleged to have been committed by them.

5. The Noticees 1, 3, and 4 vide their letters dated November 7, 2017 while acknowledging receipt of the SCN, requested for personal hearing. Further, the Noticees 1, 3 and 4 vide their letters dated November 14, 2017 sought four weeks to furnish their replies to the charges alleged in the SCN. I note that the Noticees had not responded to the SCN despite being given deemed extension of time. I also note that no reply has been received from the Noticee 2.
6. Accordingly, in the interest of natural justice and in terms of Rule 4 (4) of SCR Rules and Adjudicating Rules, an opportunity of personal hearing was granted to all the Noticees on July 12, 2018, which was communicated vide Notice dated June 20, 2018. In accordance with Rule 7 (b) of SCR Rules and Adjudicating Rules, the Notice of hearing was also sent through electronic mail digitally signed to all the Noticees on June 28, 2018. I note that the email sent to the Noticees did not bounce. I also note that the Noticees did not avail the personal hearing which was scheduled on July 12, 2018.
7. On behalf of the Noticees Mr. Ashok Kumar Singh, Advocate {*hereinafter referred to “**Authorized Representative**” (AR)*} vide letter dated August 23, 2018 (*received by email*) requested to provide the annexures mentioned in the SCN and also sought for an opportunity to carry out inspection of documents. I note that all the documents which were referred to and relied upon in the SCN were provided to the Noticees along with the SCN dated October 31, 2017. However, in the interest of natural justice, soft copy of SCN along with the annexures mentioned in the SCN were once again provided to the AR, vide email dated August 23, 2018. Vide email dated September 5, 2018, the Noticees were given an opportunity of personal hearing which was scheduled on September 12, 2018.
8. I note that on the scheduled date of hearing i.e., September 12, 2018 the AR appeared before me and submitted authorization letters issued by Noticees 1, 3 and 4 to appear on their behalf, before me, which was taken on record. In respect of Noticee 2, the AR submitted that he has been orally advised to appear on his behalf, before me, which was also taken on record. The AR

made oral submissions on behalf of the Noticees and undertake to furnish the written submissions. Accordingly, the AR, vide letter dated September 12, 2018 had submitted the reply on behalf of all the Noticees, which is summarized hereunder.

- i. *It is submitted that the Noticee-1 i.e., Yard Securities Pvt., Ltd., have transferred 25,000 shares to Mr. Nitin Sharma (Noticee 2) on 16/09/2010 and 1,00,000 shares to Highlight Leafin Pvt., Ltd., (Noticee 3) on 25/09/2010 for market transaction. The shares were transferred to Mr. Nitin Sharma against receipt of cash. In so far as transfer to Noticee 3 is concerned, the said share were transferred as a loan. The Noticee 1 had disclosed to the Company under Section 13 (3) of SEBI (PIT) Regulations and the Company disclosed the same to Stock Exchange. However, the copies of the disclosures are not traceable as the old staff of the Noticee 1 have left the Company without handing over the documents. The Noticee 1 pursuant to change in shareholding from 20.03% to 17.51% on September 25, 2010 had duly disclosed to the Company and to BSE, however proof is not traceable.*
- ii. *It is submitted that the transfer of shares from Noticee 1 to Noticee 2 & 3, were against payment of consideration, however, proof of receipt of payment are not traceable.*
- iii. *It is submitted that Mr. Sachin Sharma had duly made disclosure under the provisions of Regulation 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulations, pursuant to change in shareholding on April 20, 23, and May 27, 2010 to the extent of more than 25,000 shares.*

## **CONSIDERATION OF ISSUES**

9. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against Noticees 1 to 3 is that they had carried out transfer of shares through off-market without receipt / payment of

consideration. Further, the Noticee 1 had failed to make appropriate disclosures under SEBI (SAST) and (PIT) Regulations. The Noticee 4 being one of the Directors of PSL had failed to make disclosures under SEBI (PIT) Regulations. After perusal of the material available on record, I have the following issues for consideration, viz.,

- (I) Whether the Noticees 1 to 3 have violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956?*
- (II) Whether the Noticees 1 has violated the provisions of Regulation 7(1A) of SEBI (SAST) Regulations, 1997 read with Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13 (3) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations?*
- (III) Whether the Noticees 4 has violated the provisions of Regulation 13(4) r/w Regulation 13(5) of SEBI (Prohibition of Insider Trading) (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015 (as applicable).*
- (IV) Does the violation, if any, attract monetary penalty under Section 23H of SCRA and Section 15 A (b) of SEBI Act (as applicable)?*
- (V) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA and 15J of SEBI Act (as applicable)?*

**ISSUE-I: Whether the Noticees 1 to 3 have violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. Section 16 of SCRA, 1956 read with SEBI**

**Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956?**

10. Before moving forward, it is pertinent to refer to the relevant provisions of SCRA and SEBI Notification dated March 2, 2000, which reads as under:

**Section 2 (i) of SCRA**

*In this Act, unless the context otherwise requires,—*

*spot delivery contract” means a contract which provides for, -*

*(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;*

*(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository*

**Section 13 of SCRA**

*If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal.*

**Section 16 of SCRA**

*If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*

**Section 18 of SCRA**

*Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.*

**SEBI Notification G.S.R 219(E) dated March 2, 2000**

*“In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992, (See [1992] 75 Comp Cas (St.) 216.) and Notification No. 183(E), dated 1st March, 2000, (See page 53 supra.) issued under section 29A of the said Act,*

*the Securities and Exchange Board of India (hereinafter referred to as "the Board") being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange*

*Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with-*

*(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the directions issued by the Securities and Exchange Board of India under the said Acts;*

*(b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973), by the Reserve Bank of India;*

*(c) the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956)*

11. I note that the shares of PSL were listed at BSE. During the investigation period, the price of PSL opened at ₹ 17.20 on April 1, 2010, closed at ₹ 16.76 on September 30, 2010, before touching a low of ₹ 7.76 on September 8, 2010 and high of ₹ 47.70 on May 12, 2010.
12. It was observed from the off-market transfers that one of the promoters entities namely Yard Securities Pvt., Ltd., (Noticee 1) transferred 25,000 shares to Nitin Sharma (Noticee 2) on September 16, 2010 and 1,00,000 shares to Highlight Leafin Pvt., Ltd., (Noticee 3) on September 25, 2010 through off-market transfers due to which the shareholding of Yard Securities Pvt., Ltd., came down from 8,18,880 shares as at the quarter ending June 2010 to 6,93,880 shares as at the quarter ending September 2010. I note from the investigation records that vide email dated March 3, 2015, Suresh



Sharma, Director of Yard Securities Pvt., Ltd., provided the details of the said off-market transfers to Noticee 2 & 3, which are tabulated hereunder:

Sl. No.	Name of Target Entity	No. of shares transferred	Date of transfer of shares	Whether amount received	Rate at which shares transferred	Mode of receipt of payment	Amount received	Date of receipt of payment
1	Nitin Sharma	25000	16-09-2010	Yes	10.50	Cash	2,62,500/-	18-09-2010
2	Highlight Leafin Pvt., Ltd.,	100000	25-09-2010	Loan	14.00	Cheque	14,00,000-	28-09-2010

13. I also note that there was no document provided by Suresh Sharma, Director, Yard Securities Pvt., Ltd., to substantiate the receipt of consideration for these off-market transfer of shares to the Noticee 2 & 3. Further, I note that the off-market transactions between Yard Securities Pvt., Ltd., and Highlight Leafin Pvt., Ltd., was shown as loan stating that "both are promoter entities, hence internal transfer". However, no documentary evidence regarding the same was provided. It is also pertinent to note here that Highlight Leafin Pvt., Ltd., was not a promoter entity of Pithampur Steels Ltd., which is corroborated from the shareholding pattern as disclosed to BSE for the quarter ended September 2010. The AR in his submissions stated that these off-market transfers were against payment of consideration, however, proof of receipt of payment thereof were not traceable. In view of absence of documentary proof of having received the amount from Nitin Sharma, I am inclined to hold that neither the Noticee 1 had received the consideration nor the Noticee 2 had paid the consideration.

14. I note from the submissions made by Suresh Sharma, Director, Yard Securities Pvt., Ltd., vide letter dated March 10, 2014 to Investigating Authority, that he does not have any relationship with Nitin Sharma. The submissions of the Noticees 1 that it had lent 1,00,000 shares to Noticee 3 as inter-se transfer among promoters is factually incorrect, as the Noticee 3 was not a promoter entity of PSL as per the shareholding pattern disclosed to BSE for the quarter ended September, 2010. The submissions of the Noticee-1 that it had lent shares to Noticee 3 does not find merit as there was

no loan agreement found to have been executed among themselves. I am of the view that such type of loan would be advanced only to a known borrower and not otherwise. If the shares are given as loan by the Noticee 1 to Noticee 3, then they should have followed the procedure as mentioned in Depositories Act, 1996 and SEBI (Depositories and Depository Participants) Regulations, 1996 along with the relevant Bye-laws prescribed by the Depositories. However, in the instant case, I note that no such procedure was followed by the Noticees 1 and 3.

15. Another significant factor to be noted is that the shares are being transferred to the demat account of Noticees 2 & 3, which implies transfer of beneficial ownership of the shares. The transfer of beneficial ownership comes along with the rights and liabilities attached to the ownership of shares. The conduct of the parties, which is important in any transaction, establishes that there was a transfer of the shares. The conduct of the parties and nature of the transactions establishes that the Noticees 1 to 3 had entered into a transaction in off-market, without receipt / payment of consideration, which is in contravention of the provisions relating to spot delivery contracts.
16. In this regard, I would like to draw reference to Section 16 of SCRA, which provides that if the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified therein. Sub section of section 16 declares that all contracts in contravention of the provisions of sub section (1) entered into after the date of the notification issued thereunder shall be illegal. The central Government had issued a notification in the year 1969, and thereafter SEBI issued a similar Notification on March 2, 2000 in exercise of its delegated authority under section 16 of SCRA prohibiting any person in the territory of India to enter into any contract for sale or purchase of securities other than spot delivery or contract for cash or hand delivery or special delivery or

contract in derivatives as is permissible under SCRA or the Act and the Rules and Regulations made there under and Rules, Regulations and Bye laws of a recognized stock exchange. In other words, the prohibition contained in the Notification means that no security could be traded in an off market transaction except by way of spot delivery contract as defined in section 2(i) of SCRA. Further this was made applicable to the whole of India vide notification dated SO 3644 dated November 29, 1962.

17. As per SEBI Notification G.S.R 219(E) dated 2nd March, 2000 no person in the territory to which SCRA extends, shall, save with the permission of SEBI, enter into any contract for sale or purchase of securities other than such spot Delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said SCRA or the SEBI Act and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange.
18. In terms of Section 13 of SCRA, any transactions in securities in an area other than between the members of a recognized stock exchange or through or with such member will be illegal, except spot delivery contracts. In the instant case, I note that the transactions carried out by Noticees 1 to 3 are not spot delivery contract.
19. The Hon'ble Securities Appellate Tribunal in its order dated July 17, 2007 in the matter of Alok Kehtan Vs. SEBI, Appeal No. 55 of 2007, upheld that:  
*".....it is clear that the appellant sold his unlisted shares on 25.08.1999 in an off market transaction and received the sale consideration of ₹ 22,50,000/- only in January, 2000 which is much beyond the time permitted by section 2(i) of the SCRA. Since the transaction was off market the contract for the sale of shares could only be by way of spot delivery in view of the restriction imposed by the Board under section 16 of SCRA which mandates that the sale consideration ought to have been received either on the same day of the transaction or on the following day. It is, thus, clear that the sale of shares by the appellant on 25.08.1999 in the off market transaction is*

*violative of the restriction imposed under section 16 read with section 2(i) of SCRA.”*

20. If the facts of the present case are tested with the touchstone of the observations made by the Hon'ble SAT, it is clear that the 1,25,000 shares sold by the Noticees 1 to Noticees 2 & 3 in off-market deal i.e., outside the stock exchange mechanism, against no consideration is not in conformity with the provisions of section 2(i) of SCRA. Therefore, I am of the view that the said transactions are illegal, void and a nullity and consequently in contravention of SEBI Notification G.S.R 219(E) dated March 2, 2000 and provisions of Section 13, 16 and 18 of SCRA.
21. Accordingly, I hold that the allegation of violation of SEBI Notification G.S.R. 219(E) dated March 2, 2000 read with Section 16 and Section 18 of SCRA, 1956 against the Noticees 1, 2 & 3 viz., Yard Securities Pvt., Ltd., Nitin Sharma & Highlight Leafin Pvt., Ltd., stands established.

***ISSUE-II: Whether the Noticee 1 has violated the provisions of Regulation 7(1A) of SEBI (SAST) Regulations, 1997 read with Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13 (3) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015?***

22. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (SAST) Regulations, 1997 & 2011 and SEBI (PIT) Regulations, 1992 & 2015, which reads as under:

**Regulation 7 (1A) of SEBI (SAST) Regulations, 1997**

*7 (1A) - Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

### **Regulation 35 of SEBI (SAST) Regulations, 2011**

**35 (1)** - The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, 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;

(b) 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 has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, 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.

### **Regulation 13 (3) of SEBI (PIT) Regulations, 1992**

Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, 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 2% of total shareholding or voting rights in the company.

### **Regulation 12 of SEBI (PIT) Regulations, 2015**

(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*

23. It was observed from the shareholding pattern of PSL that during the investigation period, the holding of one of the promoter entities PSL viz., Yard Securities Pvt., Ltd., (Noticee 1) reduced from 20.66% to 17.51% on account of off-market transfer of 1,25,000 shares to Noticee 2 & 3. The Noticee 1 was holding 8,18,880 shares, which was 20.66% of the share capital of the Company, as on April 1, 2010. Pursuant to transfer of 25,000 shares and 1,00,000 shares to Noticee 2 & 3 on September 16 & 25, 2010 respectively, the holding of the Noticee came down to 6,93,880 shares, which was 17.51% of the share capital, which resulted in change of 3.15% of the total shareholding. Pursuant to transfer of 1,00,000 shares to the Noticee 3 on September 25, 2010, the holding of the Noticee 1 change by 2.52%, which triggered disclosure obligation under Regulation 7 (1A) of SEBI (SAST) Regulations and Regulation 13 (3) of SEBI (PIT) Regulations. I note from the investigation records that the Noticee 1 vide letter dated December 1, 2014 submitted to the Investigating Authority, that it had made disclosures to the Company under Regulation 13 (3) of SEBI (PIT) Regulations, however, copies of disclosures were not submitted, since the same were stated to have been misplaced. In view of absence of documentary proof of having

submitted the disclosures to Company, I am not inclined to take into consideration the submissions of the Noticee 1.

24. In terms of Regulation 7 (2) of SEBI (SAST) Regulations, 1997, the disclosures under Regulation 7 (1A) SEBI (SAST) Regulations, 1997 shall be made within two days of the events viz., (a) the receipt of intimation of allotment of shares or (b) the acquisition of shares or voting rights, as the case may be. I note that the Regulation 7 (2) casts upon an obligation on the acquirer to make disclosure only to acquisition of shares and does not relate to sale of shares or voting rights in excess of the limits prescribed under Regulation 7 (1A).
25. In this connection, I would like to refer to the judgement of Hon'ble SAT in the case of Ravi Mohan & Others Vs., SEBI (Appeal No. 97 of 2014) decided on December 16, 2015, which held that: *"Disclosure obligation under Regulation 7 (1A) has to be discharged in accordance with Regulation 7 (1A) read with Regulation 7 (2). Since, Regulation 7 (2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under Regulation 7 (1A), appellants herein cannot be said to have failed to comply with Regulation 7 (1A) within the time stipulated under Regulation 7(1A). Consequently penalty imposed on the appellants cannot be sustained"*
26. In view of the aforesaid judgement, as there is no obligation under Regulation 7 (2) to make disclosure of sale of shares specified under Regulation 7 (1A), I cannot hold the Noticee 1 guilty of failing to make disclosure under Regulation 7 (1A) of SEBI (SAST) Regulations.
27. However, the obligation to make disclosure under Regulation 13 (3) of SEBI (PIT) Regulations upon change in shareholding of more than 2%, i.e., transfer of 1,00,000 shares to the Noticee 3 on September 25, 2010, was not made by the Noticee 1, I hold the Noticee guilty of violation of Regulation 13 (3) of SEBI (PIT) Regulations, 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015.

**ISSUE-III: Whether the Noticee 4 has violated the provisions of Regulation 13(4) r/w Regulation 13(5) of SEBI (Prohibition of Insider Trading) (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015?**

28. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992, which reads as under:

**Regulation 13 (4) of SEBI (PIT) Regulations, 1992**

*Any person who is a Director or Officer of a Listed company, shall disclose to the Company and the Stock Exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

29. I note that the Noticee 4 i.e., Sachin Sharma, Managing Director of PSL, was holding 1,51,000 shares, which was equivalent to 3.81% of total share capital, as on April 1, 2010. Pursuant to sale of 95,000 shares and 45,000 shares on April 20 and 23, 2010, the shareholding of the Noticee 4 changed to the extent of 2.39% and 1.14% respectively.
30. As on April 23, 2010, the Noticee 4 held 11,100 shares, which was equivalent to 0.28% of total share capital. On April 27, 2010, the Noticee 1 received 87,200 shares in off-market, whereby his holding changed by 2.20% and accordingly, as on April 27, 2010 the Noticee 1 held 98,300 shares, which was 2.48% of share capital. On May 10, 2010, the Noticee 4 sold 87,000 shares, which resulted into decrease in shareholding of the Noticee 1 by 2.19%.
31. I note from the records that the Noticee 4 had made disclosure to BSE about change in his shareholding under Regulation 13 (6) of SEBI (PIT) Regulations, in respect of sale of 87,000 shares, on May 13, 2010. The



obligation of requirement of disclosures under Regulation 13 (6) of SEBI (PIT) Regulations is cast upon the Listed Company to disclose the information received under Regulation 13 (1), (2), (3) and (4). The object of requiring such disclosure to be made under SEBI (PIT) Regulations, within the requisite number of days is with a view to ensure that there is no abuse on account of investors being not aware of such in shareholding of a Promoter / Director. In the instant case, I note that the Noticee 4 had disclosed the sale of 87,000 shares under Regulation 13 (6), instead of Regulation 13 (4). I am of the view that the change in shareholding was in public domain and that the quoting of wrong provisions would not have caused any harm to the investors.

32. However, in respect of receipt of 87,200 shares through off-market on April 27, 2010, which caused increase in shareholding of the Noticee 4 by 2.20%, I find that no disclosure was made by the Noticee 4 to BSE & Company. In terms of the provisions of Regulation 13 (4) of SEBI (PIT) Regulations, any person who is a Director or Officer of a listed company, shall disclose to the Company and the Stock Exchange where the securities are listed, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation and the change exceeds ₹ 5 lakhs in value of 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. As there was change in shareholding of Sachin Sharma on April 27, 2010 to the extent of more than 25,000 shares i.e., 87,200 shares, the Noticee 4 was required to make disclosure under Regulation 13(4) r/w Reg. 13(5) of SEBI (PIT), 1992 to the company and the stock exchange. Since, no disclosure was made by the Noticee 4 to PSL & BSE under Regulation 13 (4) of SEBI (PIT) Regulations, the charge against the Noticee 4 for violation of Regulation 13 (4) of SEBI (PIT) Regulations 1992 read with Regulation 12 of SEBI (PIT) Regulations, 2015, stands established.

**ISSUE – IV: Does the violation, if any, attract monetary penalty under Section 23H of SCRA and Section 15 A (b) of SEBI Act (as applicable)?**

33. It is established from the foregoing paragraphs that the Noticees 1 to 3 had carried out transfer of shares through off-market without receipt / payment of consideration and thereby violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. Since, the aforesaid violations stands established against the Noticees 1 to 3, the Noticees 1 to 3 are liable for monetary penalty under Section 23H of SCRA.
34. It is also established from the foregoing paragraphs that the Noticee 1 i.e., Yard Securities Pvt., Ltd., had failed to make disclosures to the Company upon transfer of 1,00,000 shares to the Noticee 3 on September 25, 2010, which triggered disclosure requirement under Regulation 13 (3) of SEBI (PIT) Regulations. Since, the aforesaid violation stands established against the Noticee 1, the Noticee 1 is liable for monetary penalty under Section 15 A (b) of SEBI Act.
35. Further, it is also established that the Noticee 4 being Director of PSL had failed to make disclosure of acquisition of 87,200 shares through off-market on April 27, 2010, which triggered disclosure requirement under Regulation 13 (4) of SEBI (PIT) Regulations. Since, the aforesaid violation stands established against the Noticee 4, the Noticee 4 is liable for monetary penalty under Section 15 A (b) of SEBI Act.
36. The provisions of Section 23H of SCRA and Section 15 A (b) of SEBI Act are reproduced hereunder.

***Section 23H of SCRA - Penalty for contravention where no separate penalty has been provided.***

*Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate*

*penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**Section 15 A (b) of SEBI Act - Penalty for failure to furnish information, return, etc.**

*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 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*

**ISSUE – V: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA and 15J of SEBI Act?**

37. While determining the quantum of monetary penalty under Section 23H of SCRA and Section 15 A (b) of SEBI Act, I have considered the factors stipulated in Section 23J of SCRA and 15-J of SEBI Act, which reads as under:

*Section 23J of SCRA and 15J of SEBI Act- Factors to be taken into account by the Adjudicating Officer*

*While adjudging quantum of penalty under section 23-I (SCRA) and 15-I (SEBI Act), 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.*

38. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' default. There is also no material made available on record to assess the amount of loss caused to

investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default.

39. However, I find that the Noticees 1 to 3 had carried out off-market transfer of 1,25,00 shares, without receipt / payment of consideration. Considering the quantum of shares involved in such dubious deals and that the shares were sold outside the mechanism of stock exchange in contravention of the provisions of the Law, I am of the view that the Noticees 1 to 3 for their said acts of omissions and commissions should be penalized suitably.
40. There is no dispute that the Noticees 1 and 4 failed to make the requisite disclosures to the Company & BSE in terms of SEBI (PIT) Regulations, 1992. Any lapse in such matters would be detrimental to the interest of investors.
41. In this connection, I would like to draw reference to the Hon'ble SAT's observations in the Appeal No. 66 of 2003 - Milan Mahendra Securities Pvt. Ltd. Vs. SEBI, wherein the Hon'ble SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market"*.
42. Therefore, I am not inclined to view the lapse on the part of the Noticee 1 & 4 in not making the disclosures leniently and consider it necessary to impose monetary penalty which would act as deterrent to the Noticee in future.

### ORDER

43. In view of the foregoing, after taking into consideration all the facts and circumstances and in exercise of power conferred upon me under Section 23I of SCRA and Section 15I of SEBI Act, I impose the following penalties on the Noticees 1 to 4 under Section 23H of SCRA and Section 15 A (b) of SEBI Act, respectively.

Noticee No.	Name of the Noticee	Nature of violations	Violation of Act / Notification / Regulation	Penalty amount in ₹ and words	Penalty imposed under
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1	Yard Securities Pvt., Ltd.,	Transferred shares in off-market without receipt of consideration	Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.	₹ 5,00,000/- (Rupees Five lac only)	Section 23H of SCRA
		Failure to make disclosure to the Company upon change in 2% of shareholding	Regulation 13 (3) of SEBI (PIT), 1992 Regulations read with Regulation 12 of SEBI (PIT) Regulations, 2015.	₹ 1,00,000/- (Rupees One lac only)	Section 15 A (b) of SEBI Act
2	Nitin Sharma	Received shares in off-market without payment of consideration	Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.	₹ 5,00,000/- (Rupees Five lac only)	Section 23H of SCRA
3	Highlight Leafin Pvt., Ltd.,			₹ 5,00,000/- (Rupees Five lac only)	Section 23H of SCRA
4	Sachin Sharma	Failure to make disclosure to the Company & BSE upon change in shareholding	Regulation 13 (4) of SEBI (PIT), 1992 Regulations read with Regulation 12 of SEBI (PIT) Regulations, 2015.	₹ 1,00,000/- (Rupees One lac only)	Section 15 A (b) of SEBI Act

44. 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

45. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department, DRA-II, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

46. In terms of rule 6 of the SCR Rules & Adjudicating Rules, copies of this Order are sent to the Noticees and also to SEBI.

**Date: 27 September 2018**

**Place: Mumbai**

**B J DILIP**

**Adjudicating Officer**