BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/DPS/287/2018]

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:

M/s Sayaji Hotels Limited

(PAN No. AADCS2086A)

H-1, Scheme No. 54, Vijay Nagar

Indore – 425010 (M.P.)

In the matter of M/s Sayaji Hotels Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has initiated adjudicating proceeding against M/s Sayaji Hotels Limited, (**the Noticee / Sayaji**). Adjudication proceedings have been initiated against the Noticee for the alleged violations of regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992'**) read with 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations, 2015'**).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) read with rule 3 of the SEBI (Procedure for

Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) vide order dated April 25, 2016, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations of regulation 13(6) of PIT Regulations read with 12 of PIT Regulations, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2017/3582/1 dated February 15, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticee 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 under section 15A(b) of the SEBI Act for the aforesaid alleged violation of PIT Regulations.

4. The observations made under the examination and the allegations levelled against the Noticee in the SCN are mentioned hereunder;

5. SEBI had received the draft letter of offer filed by Raoof R. Dhanani ("Acquirer") and Anisha R. Dhanani ("PAC") to acquire 26% equity shares of the Noticee ("Target Company"). During examination of the said draft letter of offer, SEBI observed certain non-compliances by the Noticee with regard to the PIT Regulations, 1992 / 2015. The details of alleged irregularities / violations by the Noticee are mentioned below:

6. The change in shareholding of Aries Hotels Pvt Ltd (Aries) and Ahilya Hotels Ltd (Ahilya), during the period(s) quarter ended June 30, 2005 to quarter ended March 31, 2006 are given below:-

	Quater ended June 30, 2005	Quater ended September 30, 2005	Quater ended December 31, 2005	Quater ended March 31, 2006
Aries Hotels Pvt. Ltd.	6,00,000 (7.63)	Nil	Nil	Nil
Ahilya Hotels Ltd	Nil	Nil	Nil	7,25,000 (8.44)

7. The change in shareholding of Ahilya between the period December 2005 to March 2006 i.e. acquisition of 7,25,000 shares of the company on March 2, 2006 warranted

disclosure under Regulation 13(1) of PIT Regulations, from Ahilya. Noticee in its reply dated September 11, 2015 has submitted the copy of the disclosure it received from the Ahilya was provided as **Annexure – 2** of SCN. As per the reply, it was observed that the Noticee received the said disclosure on March 6, 2006. Further, BSE has confirmed vide its e-mail dated October 9, 2015 that they have not received the disclosure under Regulation 13(6) of PIT regulations from the Noticee, which was placed as **Annexure – 3** of SCN.

8. The change in shareholding of Aries between the period June 2005 to September 2005 i.e. sale of 6,00,000 shares of the company on September 6, 2005 warranted disclosure under Regulation 13(3) of PIT Regulations, from Aries. Noticee in its reply dated September 17, 2015 has submitted the copy of the disclosure it received from Aries was provided as **Annexure – 4** of SCN. As per the reply, it is observed that the Noticee received the said disclosure on September 10, 2005. Further, BSE has confirmed vide its e-mail dated October 9, 2015 that they have not received the disclosure under Regulation 13(6) of PIT regulations from the Noticee.

9. In view of the above, it was alleged that, the Noticee by not disclosing the above said transactions of Ahilya and Aries to the exchange, it is alleged that it had not complied with Regulation 13(6) of PIT regulations.

10. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15A(b) of the SEBI Act, which reads as follows:

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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

11. In response to the SCN, the Noticee filed its reply dated April 29, 2017. The key submissions/ reply of the Noticee in its reply dated April 29, 2017 towards the SCN are being reproduced below:-

a) We refer to: (i) your Show Cause Notice dated February 15,2017 SEBI/HO/EAD/EAO/OW/P/20 17/3582/ 1 under Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 issued to Sayaji Hotels Limited (the "Noticee") under Rule 4(I) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (the "Notice"); and (ii) a letter from us to you dated March 2, 2017 seeking an extension until April 26, 2017 to submit our response to the Notice.

b) The Notice requires the Noticee to show cause as to: (a) why an inquiry should not be carried out against the Noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (the "Adjudication Rules") read with Section 151 of the Securities and Exchange Board of India Act, 1992 (the "SEBI Act"); and (b) penalty should not be imposed under Section I 5A(b) of the SEBI Act.

c) At the very outset, we would like to assure you that we have always acted in compliance with the general obligations in terms of the extant regulatory framework applicable to dealings in the securities market, including ensuring compliance with the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (the "1992 PIT Regulations"), Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (the "2015 PIT Regulations"), the uniform listing agreement, Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 and the SEBI Act.

d) As set out in Part III of this response, it is respectfully submitted that the observations set out in the Notice do not establish any contravention by the Noticee of any provision(s) of the 1992 PIT Regulations or the 2015 PIT Regulations.

e) In light of the submissions contained herein, we urge the Hon'ble Adjudicating Officer to discharge the Notice in its entirety. Without prejudice to any of the above, all allegations and contents set out in the Notice have been responded to in this reply to the Notice. The Noticee seeks and reserves the right to file supplemental and additional replies to the Notice, as required. We request you to kindly consider our submissions in this light and seek your kind indulgence in discharging the Notice accordingly.

f) Based on a plain reading of the Notice, we understand that, at paragraph 7 of the Notice it is alleged, that the Noticee has violated Regulation 13(6) of the 1992 PIT Regulations read with Regulation 12 of 2015 PIT Regulations by not disclosing the change in shareholding of Aries Hotels Pvt. Ltd. ("Aries") and Ahilya Hotels Ltd ("Ahilya") in the Noticee during the period between June 30, 2005 and March 31, 2006 (the "Relevant Period" and such change the "Change in Shareholding") and that the Noticee is liable for monetary penalty under Section 15A(b) of the SEBI Act.

Relevant facts pertaining to the Change in Shareholding

g) The equity shares of the Noticee were listed on BSE Limited ("BSE"), Vadodara Stock Exchange ("VSE"), Ahmedabad Stock Exchange Limited ("ASE") , Madhya Pradesh Stock Exchange ("MPSE") and under the permitted category on National Stock Exchange of India Limited ("NSE" together with BSE, VSE, ASE and MPSE referred to as the "Stock Exchanges"). Since the time of listing of the equity shares of the Noticee on the Stock Exchanges, the promoter group of the Noticee has (a) held a substantial portion of the issued and outstanding equity shares in the Noticee, and (b) been in "control" (as such term is defined under Regulation 2(l)(e) the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011) of the Noticee.

h) Ahilya acquired 725,000 (Seven Lakh Twenty Five Thousand) shares of the Noticee on March 2, 2006. Pursuant to this acquisition by Ahilya, Ahilya submitted the relevant disclosure in accordance with the provisions of Regulation 13(1) of the 1992 PIT Regulations to the Noticee on March 6, 2006. A copy of this disclosure is set out in Annexure 1.

i) Aries sold 6,00,000 (Six Lakh) shares of the Noticee on September 6, 2005 and Aries' shareholding in the Noticee changed from 7.63% to nil. Pursuant to this change in shareholding of the Noticee held by Aries, Aries submitted the relevant disclosure in accordance with the provisions of Regulation 13(3) of the 1992 PIT Regulations to the Noticee on September 10, 2005. A copy of this disclosure is set out in Annexure 2.

Unavailability of documentary evidence of filing under the 1992 PIT Regulations by the Noticee

j) To the best of the knowledge of the Notice, the Noticee was in compliance with Regulation 13(6) of the 1992 PIT Regulations in respect of the transactions relating to the Change in Shareholding during the Relevant Period.

k) Given that the Change of Shareholding took place more than 12 years ago, the Noticee does not appear to have copies of the disclosures that would have been made in due course by the Company. In this regard, it is relevant to note the following:

l) Given that these communications were being made by fax, it would not be possible for the Noticee to demonstrate or maintain records of such fax transmission which would have been done over 12 years ago;

m) In addition to the above, it is relevant to note that Section 128(5) of the Companies Act, 2013 sets out that the books of accounts of a company and records need to be maintained for a period of eight financial years only. Given the importance of such documents to a company, it is worthwhile to note that the regulators and legislators have set out an eight years cut-off period. In this context, it would be harsh to penalize a company (the Noticee) for not maintaining records of a fax that would have been sent across in the ordinary course by the Noticee;

n) The Noticee would like to further submit that SEBI (and BSE) have not provided any substantiation or confirmation that the filing under Regulation 13(6) of the 1992 PIT Regulations was not made by

the Noticee. In this regard, it is relevant to note that the Supreme Court of India has observed that in the case of Nandkishor Prasad vs. State of Bihar 13 that:
"The minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take place of proof even in domestic enquiries."

o) *In the matter of Sterlite v. SEBI, the Hon'ble SAT has observed as follows:*
"Evidence merely probabalising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of market manipulation. When such a serious offence is investigated and the charge is established, the fall out of the same is multifarious. .... Mere conjunctures and surmises are not adequate to hold a person guilty of such a serious offence."

p) *The Noticee would also like to point out, even if the Noticee has indeed not sent across a notice to the Stock Exchanges in accordance with Regulation 13(6) of the 1992 PIT Regulations, the information in relation to the Change in Shareholding of Ahilya in the Relevant Period was already available in public domain and on the Stock Exchanges on account of subsequent listing of the equity shares allotted to Ahilya and approval of Stock Exchanges for the same.*

q) *At no point in time, the Noticee intended to violate any provision of the 1992 PIT Regulations and the same may have been a procedural irregularity, if at all.*

r) *Based on the above, the Noticee submits that the allegations against it have not been established (leave alone established beyond reasonable doubt) and consequently, all allegations in the Notice should be set aside.*

s) *Section* 15-1(2) of the SEBI Act specifies that the Hon'ble Adjudicating Officer may impose such penalty as he thinks fit in accordance with the relevant provisions of the SEBI Act (i.e., Section 15A of the SEBJ Act in the present case). *In Samrat Holdings Limited v. SEBJ (Appeal No. 2312000 decided in January 2001), the Securities Appellate Tribunal held that imposition of penalty in terms of Section 15-1 of the SEBI Act: "...is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section 15J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment. "Further, the Finance Act 2017 amended Section 15 J of the SEBI Act to include the explanation stating "For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudicate the quantum of penalty under Section l 5A to l 5E, clauses (b) and (c) of Section J 5F, Section l5G, Section l5H and 151-IA shall be and shall always be deemed to have been exercised under the provisions of this section." The requirement to exercise discretion in accordance with the parameters set out in Section I 5J of the SEBI Act has been reiterated by Hon'ble SAT in the matter Alok Electricals Private Limited & Ors. v. SEBI order dated April 20, 2017.*

No disproportionate gain/unfair advantage

t) Even if it is assumed, though not admitted, that the Noticee failed to disclose the Change in Shareholding, it is relevant to the note that the Change in Shareholding did not: (a) adversely impact any third party; or (b) result any advantage for the Noticee. Consequently, we respectfully submit that the non-disclosure of the Change in Shareholding did not provide the Noticee with any disproportionate gain or unfair advantage.

u) We further respectfully submit that there is no evidence that would suggest that non- disclosure of the Change in Shareholding under Regulation 13(6) of the 1992 PIT Regulations resulted in any disproportionate gain/unfair advantage for the Noticee.

No loss to investors

v) Ahilya and Aries have always been part of the promoter group of the Noticee. It is relevant to note that the promoter group of the Noticee have been in the control of the Noticee and there has been no change in control since the listing of the equity shares of the Noticee. Further, the Noticee and its promoters have always strived to achieve better results for all its stakeholders. This is evident from the fact that in the year 2006, Clearwater Capital Partner Cyprus Ltd., a renowned private equity investor had invested in the Noticee in the year 2006. The purpose of the raising of funds from Clearwater Capital Partner Cyprus Ltd. was to expand the business of the Noticee. It is noteworthy, that reputed private equity investor invested in the Noticee, which would have not been the case, if the stakeholders of Noticee were negatively impacted during the same period.

w) We respectfully submit that the non-disclosure of Change in Shareholding in the Relevant Period did not deprive the investors of any significant information that could have induced them to buy or sell shares of the Company or otherwise harm the interests of the investors in any manner. We further respectfully submit that there is no evidence that would suggest that these transactions caused any loss to any investor or any group of investors.

No repetitive default

x) The non-disclosure of the Change in Shareholding undertaken in the Relevant Period was a "one off" isolated incident and the Noticee has not engaged in any repetitive or systematic violations of the 1992 PIT Regulations read with Regulation 12 of the 2015 PIT Regulations. The Noticee has always acted in good faith, and made best efforts to comply with applicable laws and regulations.

Procedural Irregularity

y) The Hon'ble SAT in the case of DSE Financial Services Ltd v SEBI, while dealing with the allegations of certain deficiencies with regard to manipulation of records maintained by stock-broker, observed: As per the observations made by the adjudicating officer himself, the violations committed by the appellant are mostly technical in nature; some of them are solitary instances and for others the appellant has mostly taken/initiated corrective measures. In view of this, we are of the view that the adjudicating officer was not justified in taking punitive action. "

z) In Sunil Engineering Corporation v Union of India, while dealing with non- compliance of the requirement of furnishing bill of entry within three months of remittance, the Delhi High Court held: "There was hardly any doubt left regarding genuineness of the transactions which fact is not even disputed by the respondents. In these circumstances. The omission of the petitioners is merely a

procedural irregularity. Reference is invited to the judgment of the Supreme Court in M/s Hindustan Steel Ltd v. The State of Orissa [1972)83 ITR 26 (SC) wherein the court while dealing on the question of imposition of penalty observed as under:-

"Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. "

aa) In view of the foregoing discussion. The impugned order is not sustainable and is liable to be set aside and is quashed

bb) In Bata India Ltd v. Special Director, Enforcement Directorate, the Calcutta High Court, elaborated on the requirement of mens rea for determining the quantum of penalty for violation of provisions of FERA.

"....What is important is whether the appellant had any ma/a fide intention of violating the law. Our enquiry is only limited to the question of quantum of punishment. In this case it has not been argued that mens rea is necessary to be proved for finding of guilt. What is argued is that the lack of mens rea was a relevant consideration in determining the quantum of penalty. In view of the authorities on the point. The argument must be accepted"

cc) In view of the above, it is respectfully submitted, that if the Hon'ble Adjudicating Officer is of the view, that there was a breach of Regulation 13(6) of the 1992 PIT Regulations, the same be considered to be a technical I minor breach only and no penalty should be imposed.

dd) We humbly request the Hon'ble Adjudicating Officer to consider: (a) the unique factual circumstances of the present case, the good faith conduct of the Noticee and the technical nature of the alleged violations; and (b) the factors stipulated in Section 15-J of the SEBI Act having not been met. Therefore, the Noticee craves the indulgence of the Hon'ble Adjudicating Officer for not imposing any penalties on the Noticee under the provisions of the SEBI Act.

ee) On the basis of the submissions made and the explanations provided above, the Noticee respectfully submits that the Noticee not be penalised given that: (a) the time period that has lapsed since the alleged default, which renders it difficult for the Noticee to adduce evidence of its compliance; and (b) no clear establishment of the Noticee's non-compliance on the same basis.

12. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd*. held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F(a) and 15HB of the SEBI Act). The issue involved in *Roofit* case

was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and 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. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticee on October 4, 2017 vide notice dated September 8, 2017. Hearing on October 4, 2017 was attended by the authorized representative (AR) of the Noticee. AR reiterated as submitted in its reply dated April 29, 2017 and submitted that we don't have any other material documents for submissions in this regard.

CONSIDERATION OF ISSUES AND FINDINGS:-

14. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

a. *Whether the Noticee had failed to make the disclosures to BSE, as stated at Para 4 – 7 of the SCN?*
b. *If the disclosures were not made by the Noticee then, whether the Noticee is in violation of regulation 13(6) of PIT Regulations?*
c. *If yes, then, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act?*
d. *If yes, then, what would be the monetary penalty that can be imposed upon the Noticee?*

15. I have perused the available records and replies of the Noticee in respect of the allegations alleged in the SCN. From the perusal of the SCN at para 4 - 7, it is observed that Ahilya acquired 7,25,000 shares of the company on March 2, 2006 and Ahilya has made disclosure u/r 13(1) of PIT Regulations, to the Noticee on March 6, 2006. However, the Noticee failed to make the disclosure to BSE u/r 13(6) of PIT Regulations, which has been confirmed by BSE vide its email dated October 9, 2015.

16. It is also observed that Aries sold 6,00,000 shares of the company on September 6, 2005 and Aries has made disclosure u/r 13(3) of PIT Regulations, to the Noticee on September 10, 2005. However, the Noticee failed to make the disclosure to BSE u/r 13(6) of PIT Regulations, which has been confirmed by BSE vide its email dated October 9, 2015.

17. Noticee in its reply dated April 29, 2017, submitted that, Noticee was in compliance with Regulation 13(6) of the PIT Regulations. Change in shareholding took place more than 12 years ago and disclosures were being made by fax. Noticee submitted that it would not be possible for the Noticee to demonstrate or maintain records of such fax transmission which would have been done over 12 years ago and does not have the copies of the disclosures that have been made. Noticee also relied on Section 128(5) of the Companies Act, 2013 sets out that the books of accounts of a company and records need to be maintained for a period of eight financial years only. I do not agree with the contention of the Noticee on the following grounds. Firstly, on perusal of section 128(5) of the Companies Act, 2013 states that, "*The books of account of every company relating to a period of not less than eight financial years immediately preceding a financial year, or where the company had been in existence for a period less than eight years, in respect of all the preceding years together with the vouchers relevant to any entry in such books of account shall be kept in good order".* Thus section 128(5) of the Companies Act deals with the books of account related to financial statement of the company to be maintained for a period of eight years and therefore it is not relevant in the present case. Thus Noticee

cannot take a plea that it is not able to demonstrate or maintain records of such fax transmission which was done 12 years ago is not at all acceptable. Further, as the Noticee is a listed company it will be governed according to the listing agreement entered into between the Noticee and the recognised stock exchange(s) and currently such listing agreement is also a requirement under Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. As per regulation 13(6) of PIT Regulations, sole responsibility is cast upon every listed company to disclose to exchange, so that it is disseminated in exchange website and achieve the underlying policy goals of PIT Regulations. Therefore, just by sending the said disclosure by fax to BSE, Noticee liability is not over. Noticee being a listed company, Noticee had a responsibility to comply with the disclosure requirements under PIT Regulations, in accordance with their spirit, intention and purpose. BSE vide email dated October 9, 2015 has also confirmed that no disclosures were received under regulation 13(6) of PIT Regulations in both the instances from the Noticee.

18. Noticee also submitted in its reply that SEBI (and BSE) have not provided any substantiation or confirmation that the filing under Regulation 13(6) of the PIT Regulations was not made by the Noticee and relied on judgements of the Supreme Court of India in the case of Nandkishor Prasad vs. State of Bihar 13 and Hon'ble SAT judgement in the matter of Sterlite vs. SEBI. I do not agree with the aforesaid contention of the Noticee on the following grounds. Firstly, as per Regulation 13(6) of PIT Regulations, the disclosures is to be made by a listed company i.e. Noticee to the Stock Exchanges in which the company is listed and here I note that Stock Exchange (BSE) vide its email dated October 9, 2015 has confirmed that in both the instances Noticee has not made disclosure to BSE u/r 13(6) of PIT Regulations, which was also provided to the Noticee as Annexure – 3 of SCN. However, Noticee in its reply was unable to provide the documentary evidence regarding the said disclosures which were made by fax to BSE. Thus it is clear that Noticee has not made disclosure to BSE u/r 13(6) of PIT Regulations.

19. Noticee also submitted that even if the Noticee has indeed not sent across a notice to the Stock Exchanges in accordance with Regulation 13(6) of the PIT Regulations, the information in relation to the Change in Shareholding of Ahilya in the Relevant Period was already available in public domain and on the Stock Exchanges on account of subsequent listing of the equity shares allotted to Ahilya and approval of Stock Exchanges for the same and in no point in time, Noticee intended to violate any provisions of the PIT Regulations and the same may have been a procedural irregularity. I note that Noticee is also not clear in its reply whether it had complied with with Regulation 13(6) of PIT Regulations. Noticee being a listed company cannot make such a blatant statement that even if the Noticee has indeed not sent across a notice to the Stock Exchanges in accordance with Regulation 13(6) of the PIT Regulations, Noticee has not violated any provisions of the PIT Regulation, as the information in relation to the change in shareholding of Ahilya was already available in public domain on account of subsequent listing. However, those who bear the responsibility cannot take shelter that it was already in public domain on account of subsequent listing, cannot be a defense to get exemption from liability arising under law due to such non-compliance. Here I refer to the Judgements in **CG-Vak Software and Exports Limited Vs. SEBI [Appeal No. 38 of 2014 decided on 23.04.2014], the Hon'ble SAT had observed** *....that case related to violations committed by appellant therein under regulation 13(1) of PIT Regulations which relates to disclosures to be made by a person acquiring shares or voting rights of any listed company in excess of the limits prescribed therein whereas in the present case, we are concerned with violation of regulation 13(6) of PIT Regulations which relate to the disclosures to be made by a listed company to the Stock Exchanges in which the company is listed. Thus the two provisions operate in different fields.*

20. **Hon'ble SAT** while dealing with **Ram Piari and 11 others vs SEBI (Appeal No. 484 of 2015 decided on 20.11.2017) and Bikramjit Ahluwalia vs SEBI (Appeal No. 485 of 2015 decided on 20.11.2017)**, **the Hon'ble SAT had again** referred the Judgements in **CG-Vak Software and**

Exports Limited Vs. SEBI [Appeal No. 38 of 2014 decided on 23.04.2014], has once again observed …. *the two provisions operate in different fields.*

21. Noticee in its reply also submitted that, there is no evidence that would suggest that non-disclosure of the change in shareholding resulted in any disproportionate gain or unfair advantage to the Noticee. Ahilya and Aries have always been part of the promoter group of the Noticee. It is relevant to note that the promoter group of the Noticee have been in the control of the Noticee and there has been no change in control since the listing of the equity shares of the Noticee. No investor or group of investors have suffered any amount of loss due to such alleged non-disclosure and the provisions of Regulation 13(6) of the PIT Regulations is only a technical / inadvertent non-compliance / minor breach only and no penalty should be imposed. Notice also submitted that the non-disclosure of the Change in Shareholding was one off isolated incident and the Noticee has not engaged in any repetitive or systematic violations of the PIT Regulations. Here I note that Noticee being a listed company, Noticee had a responsibility to comply with the disclosure requirements under the PIT Regulations, as applicable, in accordance with their spirit, intention and purpose. Noncompliance with the disclosure requirements by a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

22. *Further Noticee had relied on Judgements of* SAT – ***DSE Financial Services Ltd v SEBI*** (Appeal No. 153 of 2012), *Delhi High Court judgement* - ***Sunil Engineering Corporation v Union of India*** *(117(2005) DLT 525), Judgement of the Supreme Court in* ***M/s Hindustan Steel Ltd v. The State of Orissa*** *[1972)83 ITR 26 (SC) and Judgement of the Calcutta High Court* - ***Bata India Ltd v. Special Director, Enforcement Directorate***. Here I refer to the judgement of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the*

Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

23. It is noted that the violation of aforesaid non disclosures had been resulted during FY 2005 - 06 and as per records no disclosures were made by the Noticee despite the requirement of making the same within five days of receipt. Therefore, there has been a delay of around 12 years in making the disclosure and the aforesaid violation continues till dated as the Noticee has not made the said disclosure till date to exchange (BSE).

24. In view of the aforesaid observation and established violations against the Noticee, it is a fit case for imposing monetary penalty upon the Noticee under Section 15A(b) of the SEBI Act which read as follows:

SEBI Act:
Penalty for failure to furnish information, return, etc.
15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*
(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

25. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of 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."

26. In the matter of ***Gurmeet Singh Dhingra Vs. SEBI (Appeal No. 353 of 2014) decided on December 13, 2014***:- *"...as per regulation 13(3) read with regulation 13(5) of the PIT Regulations, appellant was obliged to make disclosures within two working days of acquisition or sale of shares or voting rights as the case may be. In the present case, the appellant has neither made disclosure when regulation 13(3) got triggered on account of acquiring 2,49,300 shares of Trinity on September 28, 2009 nor the appellant has made disclosures on sale of shares on December 30, 2009, January 5, 2010, January 8, 2010 and January 23, 2010 when on all the four occasions the sale resulted in decrease in shareholding by more than 2%. Thus, on all the five occasions, it was obligatory on part of the appellant to make disclosure under regulation 13(3) within the time stipulated under Regulation 13(5) of the PIT Regulations. Penalty imposable under Section 15A(b) of SEBI Act for failure to make such disclosure is ₹1 lac each day during which such failure continues or ₹1 crore whichever is less. Since the appellant has failed to make disclosure on all the aforesaid five occasions, penalty imposable for aforesaid five violations would be ₹1 crore each i.e. ₹5 crore in all. As against penalty of ₹5 crore imposable on the appellant for not making disclosure under Regulation 13(3) read with Regulation 13(5) of PIT Regulations on the aforesaid five occasions, the adjudicating officer after considering all mitigating factors has imposed penalty of ₹5 lac which cannot be said to be excessive, arbitrary or unreasonable.*

27. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticees, the specific loss suffered by the investors due to such violations; nor the violations as repetitive in nature. Thus before arriving to the quantum of penalty in the matter, it is necessary to refer the importance of such disclosures. The main objective of the PIT Regulations is to afford fair treatment to shareholders as regards their holdings in the company. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. I also note that as per SAT judgements, the regulation 13(1) and regulation 13(6) of PIT Regulations the two provisions operate in different fields. I note that Noticee being a listed company, Noticee had a responsibility to comply with the disclosure requirements under the PIT Regulations, as applicable, in accordance with their spirit, intention and purpose.

Noncompliance with the disclosure requirements by a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals. Therefore, taking into consideration the facts / circumstance of the case and the mitigating factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

28. After taking into consideration all the aforesaid facts and circumstances of the case, the mitigating factors mentioned above, I, hereby impose a penalty of ₹ 15,00,000/-(Rupees Fifteen Lakh only) on the Noticee / M/s Sayaji Hotels Limited, in terms of the provisions of section 15A(b) of the SEBI Act. I am of the view, that the said penalty would commensurate with the violations committed by the Noticee.

29. 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;

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

30. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the "Enforcement Department (DRA III) of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID - tad@sebi.gov.in.

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	Bank name and Account number from which payment is remitted	UTR No

31. In terms of rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to the SEBI.

DATE: JANUARY 31, 2018 **RACHNA ANAND**

PLACE: MUMBAI **ADJUDICATING OFFICER**