

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. EAD-2/DSR/JAK/798-800 /2017]**

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

**In respect of:**

- 1. Giant Sales Private Limited [PAN:AADCG6450A]**
- 2. Shri Kailash Prasad Purohit [PAN:AFQPP2675H]**
- 3. Nouveau Global Ventures Limited[PAN:AABCN0827A]**

**In the matter of**

**JMD Telefilms Industries Limited**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted examination in the trading activities of Giant Sales Private Limited(hereinafter referred to as 'GSPL/Noticee'),Shri Kailash Prasad Purohit (hereinafter referred to as 'Kailash Purohit/Noticee') and Nouveau Global Ventures Limited(hereinafter referred to as 'NGVL/Noticee') in the scrip of JMD Telefilms Industries Limited(hereinafter referred to as 'JMD / Company') for the period February 03, 2014 to June 30, 2014 for possible violations of the provisions of the SEBI Act, 1992, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'SAST Regulations') and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations'). It is alleged that GSPL had violated Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations ,Shri Kailash Purohit had violated Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(3),13(4) and 13(4A) read with 13(5) of PIT

Regulations and NGVL had violated Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations. SEBI has, therefore, initiated Adjudication Proceedings against the Noticees for the alleged violations.

### **Appointment of Adjudicating Officer**

2. I have been appointed as the Adjudicating Officer vide order dated March 22, 2016, under Section 15 I of the 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 the 'Rules') to inquire into and adjudge the alleged violations of the provisions of law by the noticees under Section 15A(b) of the SEBI Act .

### **Show Cause Notice, Reply and Personal Hearing**

3. Show Cause Notices dated August 19, 2016 (hereinafter referred to as SCNs) were issued to all three Noticees in terms of Rule 4 of the said Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of provisions of law.
4. The SCN issued to GSPL returned undelivered. Since the SCN returned undelivered, the SCN was affixed on the last known address of GSPL on October 04, 2016. Affixture report is available on record. The said SCN was also published on SEBI website under the section 'Enforcement/Unserved Summons/Notices'. SCN was also published in two newspapers i.e. The Asian Age and The Bartaman Patrika on April 25, 2017 and May 23, 2017 respectively, informing GSPL to collect the said SCN and submit reply within 21 days. However, no reply has been received till date. In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the said Rules, an opportunity of personal hearing was granted to the Noticees on September 06, 2017 vide letter dated August 22, 2017. Vide e-mail dated September 04, 2017, Shri K C Jacob, Advocate, Corporate Law Chambers India representing Shri

Kailash Purohit and NGVL, informed that their Counsel expressed inability for appearing for the hearing in the captioned matter on the said date and time and requested for granting an adjournment of hearing by 2 weeks. Further, Shri K C Jacob also submitted that the noticees would be filing their reply to the SCN in that week. The noticee viz., Shri Kailash Purohit vide letter dated September 08, 2016 requested for granting 3 weeks time i.e. till September 30, 2016 for submitting his reply. However, no reply has been received till date. Shri Kailash Purohit did not attend the said hearing. I am convinced that ample opportunities have been granted to GSPL & Shri Kailash Purohit to present their case. In view of the above, I am proceeding further in the matter on the basis of material available on record in terms of Rule 4(7) of the said Rules. The noticee viz., NGVL received the SCN and submitted reply vide letter dated September 12, 2017

### **Consideration of Issues, Evidence and Findings**

I have carefully perused the charges levelled against the Noticees as per the SCNs and the material as available on record. The issues that arise for consideration in the present case are:

- (a) Whether the Noticees have violated the provisions of Regulation 29(1), and 29(2) read with 29(3) of the SAST Regulations and Regulation 13(1), 13(3), 13(4) and 13(4A) read with 13(5) of PIT Regulations?***
- (b) Do the violations, if any, on the part of the Noticees attract any penalty under Section 15 A(b) of the Act?***
- (c) If yes, what should be the quantum of penalty?***

5. The relevant provisions of law are reproduced as under:

#### **Relevant provisions of SAST Regulations:**

##### ***Disclosure of acquisition and disposal.***

**29(1)** Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

**29(2)** Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shares or voting rights, even if such change results in shareholding falling below five per cent, if there has been a change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

**29(3)** The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to, -

- (a) Every stock exchange where the shares of the target company are listed; and
- (b) The target company at its registered office.

**Relevant provisions of PIT Regulations:**

**Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies -**

**Continual disclosure.**

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

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

**13(3)** 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.

**13(4)** 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 subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

**13(4A)** Any person who is a promoter or part of the 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 or voting rights, whichever is lower.

**13(5)** The disclosure mentioned in sub-regulation (3), (4) and (4A) shall be made within two working days of :

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

6. It is observed that the shares of the company are listed on the Bombay Stock Exchange (BSE). The shareholding pattern as per the BSE website is as under:

	Mar-2014	Dec-2013	Sep-2013	Jun-2013
Promoter and Promoter Group	21.21%	21.21%	21.21%	21.21%
Public	78.79%	78.79%	78.79%	78.79%
Total	7,21,46,000	7,21,46,000	7,21,46,000	7,21,46,000

7. Shareholding of the promoters is as under:

Sl. No.	Name	No. of shares	% of total share capital	No. of pledged shares
1	Kailash Prasad Purohit	1,25,00,000	17.33	0

2	Unisys Softwares & Holding Ind Ltd	20,00,000	2.77	0
3	JMD Sounds Ltd	3,00,000	0.42	0
4	Jagdish Pd Purohit Saurabh Family Trust	1,25,000	0.17	0
5	Pawan Kr Purohit Adarsh Trust	1,00,000	0.14	0
6	Kailash Prasad Purohit Renuka Trust	75,000	0.1	0
7	Sushil Kr Purohit Priyanka Trust	75,000	0.1	0
8	Anil Kr Purohit Madhav Trust	75,000	0.1	0
9	Anil Kr Purohit Madhav Vinyas	50,000	0.07	0
	<b>Total</b>	<b>1,53,00,000</b>	<b>21.21</b>	<b>0</b>

8. It was further observed that on April 22, 2014, GSPL had received 18,63,701 shares of JMD from Topwell Properties Private Limited in off market transfers. The said shares were received through seven transactions on the said date and the details of the quantities is as under:

<b>Date of transfer</b>	<b>No. of Shares</b>
April 22, 2014	1,13,701
	2,50,000
	3,00,000
	3,00,000
	3,00,000
	3,00,000
	3,00,000

9. The change in the shareholding of GSPL is as under:

<b>Date</b>	<b>Holding (no. of shares)</b>	<b>Holding(%)</b>
21/04/2014	18,63,701	2.58%
22/04/2014	37,27,402	5.17%

10. It is noted that the shareholding of GSPL increased from 2.58% to 5.17%. and as a result GSPL was required to make necessary disclosures as prescribed under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and under Regulation 13(1) of the PIT Regulations. JMD vide e-mail dated July 08, 2014 stated that it had received telephonic communication from GSPL and no

documentary disclosures were received in this regard. Also, vide email dated January 29, 2015, BSE confirmed that GSPL did not make any disclosures under the SAST Regulations and PIT Regulations. Therefore, it can be concluded that GSPL, by failing to make the necessary disclosures, had violated the provisions of Regulation 29(1) read with 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations.

11. Further, it was observed that Shri Kailash Purohit, promoter of JMD, had made a disclosure on May 06, 2014 to the company under Regulation 31(1) read with Regulation 31(3) of the SAST Regulations stating that he had pledged 1,25,00,000 shares (17.33% of the total paid up capital) to NGVL on April 25, 2014. However, it was observed that the same had not been shown as a pledge transaction in the demat account of Shri Kailash Purohit as required under Section 12 of the Depositories Act, 1996 read with Regulation 58 of SEBI (Depositories and Participants) Regulations, 1996. Hence, the said transaction cannot be treated as a pledge transaction and Shri Kailash Purohit should have made the disclosures under Regulation 29(2) read with 29(3) of the SAST Regulations and Regulation 13(3), 13(4) and 13(4A) read with Regulation 13(5) of the PIT Regulations.

12. NGVL vide letter dated September 12, 2017 inter-alia submitted as follows:

*" On 23.04.2014, we had entered into pledge agreement with Shri Kailash Purohit, vide which Shri Kailash Purohit had transferred 1,25,00,000 equity shares of Rs.1/- each of JMD to us, inter alia, for the purpose of raising finances for the working capital requirements, As per the agreement, on pledge of the shares Shri Kailash Purohit would be having a credit limit of Rs. 75,00,000/- @ 15% per annum.*

*It is denied that the said transaction cannot be treated as pledge transaction as alleged. Merely because the said transaction has not been marked as pledge*

*transaction, it cannot automatically result in transaction being branded as transaction other than pledge. In this context, it is submitted that the surrounding factors pertaining to transfer of shares by Shri Kailash Purohit to us viz. pledge agreement dated 23.04.2014, its various clauses , the contemporaneous public disclosure made by Shri Kailash Purohit to the stock exchange under SAST Regulations and the shareholding pattern of JMD clearly disclosing the number of shares pledged and the party in whose favour shares were pledged etc, cannot be ignored and overlooked.*

*Post execution of the said pledge agreement, Shri Kailash Purohit had transferred the shares to us as pledge to be kept as security against the amounts to be taken by Shri Kailash Purohit, in future, from us. Though the said agreement was initially only for a period of six months, but both the parties had renewed the same subsequently for a period of 3 years.*

*From the aforesaid, it is clear that the shares of JMD were transferred by Shri Kailash Purohit to us in context of pledging and the same was not in the nature of sale or otherwise. Further, the same is adequately corroborated by the underlying pledge agreement and its contents, coupled with the public disclosure made by Shri Kailash Purohit to the stock exchange under the SAST Regulations, specially disclosing to the world at large that Shri Kailash Purohit had pledged 1,25,00,000 shares of JMD in our favour.*

*Additionally, we may point out that all along under various annual disclosures, which are all available under public domain, to be filed under SAST Regulations Shri Kailash Purohit has inter alia disclosed his shareholding as 17.33%. Similarly, in all quarterly disclosures filed by JMD with Stock Exchange, which are all available under public domain, Shri Kailash Purohit's shareholding has been disclosed as 17.33%. The said disclosures also further fortify and reinforce our submission that the shares were transferred by Shri Kailash Purohit to us a*



*pledge only and at all points of time Shri Kailash Purohit continued to be the owner of the said shares".*

13. Further, NGVL, vide the said reply also relied upon the order dated 28.08.2017 passed by the Whole Time Member of SEBI (hereinafter referred to as WTM's Order) in the matter of Anshus Clothing Limited in support of its contentions in the matter. I have perused the WTM's order. I note that WTM vide the said order at para no. 18 has observed as under:

*"At this juncture, I feel it is relevant to consider the question as to whether any transfer of shares in demat account from one party to another, as a security for a loan promised by lender, without following the procedure prescribed for creation of pledge on the said shares would change the nature of transaction from intended pledge to "acquisition" or transfer of ownership of shares. I am of the opinion that there cannot be a definite answer to the said question in affirmative or negative which may be applicable to all cases and circumstances at all times. In my opinion, the said question has to be decided in the context of the facts and circumstances specific to each case, rather than merely by literal interpretation of the provisions of the applicable statutes.....".*

14. I further note that the said WTM's order has been passed in the context of Regulation 3 of SAST Regulations and the same has no bearing with the facts of the present case inasmuch as the present case has been initiated for the alleged violation of the provisions of Regulation 29(1), read with 29(3) of SAST Regulations and 13(1) of PIT Regulations by NGVL.

15. NGVL further relied on the Order dated 13/01/2015 passed by the Adjudicating Officer in the matter of Parekh Aluminex Ltd. I note that the said adjudication order is not relevant in the facts of the present case in that the same was in the context of NBFC whereas the present case involves a loan agreement between two private parties. Further, said adjudication order was in the context of violation of provisions of Clause 4.2 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies under part A of Schedule I

under Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Regulations 3 (a), 4 (1), 4 (2) (a) and 4 (2) (g) of the SEBI (Prohibition of Fraudulent Trade Practices) Regulations, 2003. Whereas, the present case has been initiated for the alleged violation of the provisions of Regulation 29(1), read with 29(3) of SAST Regulations and 13(1) of PIT Regulations by NGVL.

16. I also note that NGVL vide the said reply also submitted as follows:

*" ..... it is submitted that at the relevant time, inadvertently, we missed making the requisite disclosures under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations. In fact, we were of the mistaken impression if the share are accepted by way of pledge no disclosure is required from the end of pledge and its promoter-pledgor only who has to make the disclosure. On becoming aware of our mistake, we immediately filed the requisite disclosures under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations, albeit belatedly. We submit that same was bonafide mistake on our part".*

From the above submissions of the NGVL, I note that NGVL made the necessary disclosures under *Regulation 29(1) read with Regulation 29(3) and 29(4) of the SAST Regulations* belatedly on September 08, 2017 to the company and also to BSE. I also note that NGVL made the necessary disclosures under Regulation 13(1) of *the PIT Regulations* belatedly on September 09, 2017 to the company. Whereas, NGVL should have made the said disclosures in April 2014 itself. By making the said disclosures belatedly, NGVL had admitted the violation of the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations

17. In view of the above, GSPL, Shri Kailash Purohit and NGVL are liable for monetary penalty under Section 15A(b) of the SEBI Act which reads as under:

*If any person, who is required under this Act or any rules or regulations*

*made hereunder,—*

*To file any return or furnish any information, books or other documents within the time specified there for in the regulations, fails to file return or furnish the same within the time specified there for 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.*

18. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the Act, 1992 which reads as under:-

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

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

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

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

19. I observe, from the material available on record, that it is not possible to quantify, any gain or unfair advantage accrued to the Noticees or the extent of loss

suffered by the investors as a result of the default committed by the Noticees. I find that the default of the Noticees is not repetitive in nature.

20. At this juncture, I would like to quote the observations from the Order dated 4.9.2013 passed by Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Private Limited Vs SEB wherein Hon'ble SAT had observed that "It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other".

21. In the light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(1) of the PIT Regulations, 1992 and Regulation 29(1) of the SAST Regulations, 2011 committed by the Noticee are not substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the Noticees i.e. GSPL and NGVL.

### **ORDER**

22. In view of the above, after considering all the facts and circumstances of the case and in exercise of the powers conferred under Section 15-I of the Act and Rule 5 of said Rules, I hereby impose monetary penalties as under:

<b>Sr. No.</b>	<b>Name of the Noticee</b>	<b>Provisions of law violated</b>	<b>Penal Provisions</b>	<b>Penalty Amount (in ₹)</b>
1.	Giant Sales Pvt Ltd.	Regulation 29(1) of the SAST	15A(b) of the SEBI Act, 1992	2,00,000/- (Rupees Two Lakh Only)

		Regulations and 13(1) of PIT Regulations		
2.	Shri Kailash Prasad Purohit	Regulation 29(2) of the SAST Regulations and 13(3), 13(4) and 13(4A) of PIT Regulations	15A(b) of the SEBI Act, 1992	3,00,000/- (Rupees Three Lakh Only)
3.	Nouveau Global Ventures Ltd.	Regulation 29(1) of the SAST Regulations and 13(1) of PIT Regulations	15A(b) of the SEBI Act, 1992	1,00,000/- (Rupees One Lakh Only)

23. In my view, the penalties are commensurate with the defaults committed by the noticees.

24. The Noticees shall remit / pay the said amount of penalties within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

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

25. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to "The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052."

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

26. In terms of Rule 6 of the said Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date: September 27, 2017**  
**Place: Mumbai**

**D. SURA REDDY**  
**GENERAL MANAGER &**  
**ADJUDICATING OFFICER**