BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/JP/ 257 /2017]

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

In respect of:-

IFCI Limited (PAN: AAACT0668G)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') upon complaint regarding suspected price manipulation by promoter entities of the Glodyne Technoserve Ltd. **(GTL)** – a listed company, had conducted investigations in the shares for GTL for the period covering from January 2, 2012 to April 20, 2013 (**Investigation Period**) to find out the possible irregularities. Investigation *prima – facie* revealed that the IFCI Limited (hereinafter referred to as **'the Noticee / IFCI**") had indulged into violations of regulation 29 (1), 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations**") and regulation 13(3) read with 13 (5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and appointed undersigned as the Adjudicating Officer under section 15 I 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 May 25, 2016, to inquire into and adjudge under section 15A(b) of the SEBI Act, the aforesaid violations of SAST Regulations and PIT Regulations. The proceeding of appointment of undersigned as Adjudicating Officer was communicated vide communiqué dated January 18, 2017.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice bearing reference No. E&AO/RA/JP/2961/2017 dated February 07, 2017 (hereinafter referred to as **"SCN"**) was served upon 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 against it under section 15A (b) of the SEBI Act, for the alleged violation of failure to make the required disclosures upon acquisition / invocation of shares of GTL, in contravention of provisions of regulation 29 (1), 29(2) read with 29(3) of the SAST Regulations and regulation 13(3) read with 13 (5) of the PIT Regulations. The brief / core allegation levelled under SCN against the Noticee is as under.

I. That the Noticee had provided loan to M/s. Glodyne Ventures and Holdings Pvt. Ltd. for which the shares of GTL held by Mrs. Divvyani Sarnaaik (a Promoter and Whole Time Director of the GTL) were pledged with the Noticee. The Noticee had an aggregate of 5% or more of the share capital of GTL in the form of these pledged shares and subsequently, these pledged shares were invoked by the Noticee. The details of pledged share invoked by the Noticee due to default of payments by Mrs. Divvyani Sarnaaik resulting into 5% or more of shareholding in its account and also subsequent change in shareholding by 2%, has been shown in table at page 2-3 of the SCN.

II. That subsequent to invocation of pledge, the Noticee's shareholding was increased to 5% or more of the share capital of GTL and also thereafter, the change resulted in shareholding by 2% or more which required the Noticee to

make the disclosures in terms of regulation 29(1) & 29(2) read with 29(3) of SAST Regulations and regulation 13(3) read with regulation 13(5) of PIT Regulations.

III. *That BSE vide e-mail dated February 17, 2016 had confirmed that no disclosures were filed by the Noticee under SAST Regulations and PIT Regulation for the period October 2011 to July 2013. Copy of aforesaid BSE's e-mail was enclosed as Annexure IV along with SCN.*

IV. *Therefore, it was alleged that the Noticee had failed to make the required disclosures in terms of regulation 29(1) & 29(2) read with 29(3) of SAST Regulations and regulation 13(3) read with regulation 13(5) of PIT Regulations and thereby had violated the same. The aforesaid provisions of laws alleged to have been violated are produced as under;*

PIT Regulations

13 (1) Any person who holds 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 (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

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 acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

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

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

4. *It was stated in the SCN that aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under section 15 A (b) of the SEBI Act.*

5. In respect to the SCN, Noticee had submitted reply dated February 27, 2017. Thereafter, a notice of hearing dated September 06, 2017 was served upon the Noticee providing an opportunity of hearing on September 28, 2017. The hearing was attended by the Authorized Representatives (**ARs**) of the Noticee on September 28, 2017. During the course of hearing, the ARs reiterated as stated in aforesaid reply. It was also stated that the Noticee is a Public Financial Institution **(PFI)** and Govt. of India undertaking in the business of lending to large and medium corporates and as a process of lending, IFCI accepts pledge of shares as a security for loan. It was submitted that upon default in payment or shortfall, only to the extent of outstanding dues, IFCI as a rightful pledgee invokes its due security. Further, it was submitted by the Noticee that upon

occurrence of an event of default, invocation of pledge is a necessary action towards recovery and it did not have any intention to acquire the shares as the pledge was invoked for the purpose to realize the dues. Therefore, it had not violated the provision of SAST Regulations and PIT Regulations as alleged. During the hearing, the Noticee submitted copies of Demat Transaction Statement of DP: - Stock Holding Coprn. Ltd. and IFCI Financial Services Ltd. as proof of immediate sale of shares in the open market.

6. The core submissions made by the Noticee in its aforesaid reply dated February 27, 2017 in this proceeding and submissions made under investigation vide letter dated February 19, 2016 (Annexure III of SCN), is as under;

a. At the outset, we would like to submit that IFCI Ltd. has not violated the provisions of law under regulations 29(1) & 29(2) read with 29(3) of SEBI (SAST) Regulations 2011 and regulation 13(3) read with regulation 13(5) of PIT Regulations. We would again like to submit that IFCI Ltd. is a Public Financial Institution and Government of India Undertaking engaged in the business of lending to companies and the shares were taken as security by way of pledge for securing the loans sanctioned to GVHPL with a purpose to fall back upon these pledged shares for recovering IFCI's dues in case of failure by GVHPL to repay. For the recovery of our dues, which is public money, the pledge was invoked when the event of default in terms of security documents was triggered, and the shares were sold in the open market. Hence, being a Public Financial Institution, IFCI is under no obligation to make disclosures of pledged invoked shares. In respect to PIT Regulations, we would also like to submit that IFCI was only a pledgee and not Acquirer of shares and hence was under no obligation to disclose.

b. IFCI Ltd. was acting as a Pledgee and the entire exercise of invoking the pledge was only for selling the shares and recovering the dues. Therefore in real terms, IFCI does not fall into the definition of an "acquirer". An Acquirer includes persons acting in concert and mean any individual/company/any other legal entity which intends to acquire or acquires substantial quantity of shares or voting rights of target company or acquires or agrees to acquire control over the target company.

c. IFCI Ltd. had granted three loans to Glodyne Ventures and Holding Private Limited ("GVHPL") aggregating to ` 100.00 crore. The First disbursement was made on 08.07.2010 and the outstanding as on 31/03/14 was ` 170.66 crore. GVHPL started defaulting in making payments and the security cover fell

drastically. IFCI Ltd. as a part of recovery process invoked the pledge of shares and sold the shares with intention of recovery of outstanding dues in terms of the financing documents and pledge agreements executed between the company, pledgers and IFCI Ltd. The action was taken only for the purpose of recovery of our dues and having no intention at all of acquiring and consolidating stake in the shareholding of GTL. IFCI Ltd., as other recovery measure, also filed OA No.21/2013 before DRT-I, Delhi against the company/promoters and other group companies for recovery.

d. The process of invocation of shares pledged and selling was simultaneous. In the table provided in the show cause notice only shows the details of shares acquired by way of invocation of pledge. However, the details of shares sold is not reflected. Even in the details of Top 10 Net buy and sell clients concentration on BSE & NSE during the price rise of the investigation period, IFCI Ltd. has sold 75000 shares at one point of time and 163500 shares at another point of time. It is our submission that IFCI Ltd. was invoking the pledge and selling the shares simultaneously for the recovery of its dues as a pledgee and never as an acquirer. Therefore, a situation where percentage trigger of more than 5% and subsequent change of more than 2% attracting disclosures under regulation 29(1), 29(2) read with 29(3) of SAST Regulations and regulation 13(3) read with 13(5) of PIT Regulations, did not arise.

e. It is submitted that the shares were invoked and sold in the open market simultaneously. In order to substantiate the above, we enclose herewith the transaction statement evidencing the transactions of invocation of pledge and the consequential sale of shares. On a cursory glance of the transactions, it is evident that IFCI has immediately sold the shares that were acquired by invocation of pledge. As you are aware that since the shares were given as security, it is legally not possible to sell the shares without first invoking the pledge. This act of invocation cannot be construed as an acquisition warranting disclosure requirements under the regulations 29(1) & 29(2) read with 29(3) of SEBI (SAST) Regulations 2011 and regulation 13(3) read with regulation 13(5) of PIT Regulations.

f. We request you to kindly consider our reply and drop all proceedings against IFCI as it has never violated any of the Regulations in the course of invocation and sale of the pledged shares.

7. Since, the hearing / inquiry is concluded, therefore, taking into account the allegations, submissions of the Noticee and evidences available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

8. The issues that arise for consideration in the present case / SCN are :

a) Whether the Noticee was liable to make the required disclosures under regulation 29 (1), 29(2) read with 29(3) of the SAST Regulations and regulation 13(3) read with 13 (5) of the PIT Regulations as alleged in the SCN?

b) If yes, then, whether the Noticee had failed to make the required disclosures in terms of aforesaid provisions of SAST Regulations and PIT Regulations?

c) If yes, then, whether such failure would attract monetary penalty under section 15 A (b) of the SEBI Act?

d) If yes, then, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

ISSUE NO. 1 & 2

Whether the Noticee was liable to make the required disclosures under regulation 29 (1), 29(2) read with 29(3) of the SAST Regulations and regulation 13(3) read with 13 (5) of the PIT Regulations as alleged in the SCN? And If yes, then, whether the Noticee had failed to make the required disclosures in terms of aforesaid SAST Regulations and PIT Regulations?

9. The facts / details as shown in the SCN regarding holding / acquisition of 5% or more of the share capital of GTL and subsequent change in shareholding by more than 2% due to invocation of pledge by the Noticee as alleged, are not in dispute. The details of such pledged shares invoked by the Noticee due to default of payment by Mrs. Divvyani Sarnaaik (a Promoter and Whole Time Director of the GTL) is shown in table below;

Sr. No.	Date of invocation	No of shares invoked	% to total share capital of Glodyne	Shares acquired by way of invocation of pledge. Percentage trigger of more than 5% and subsequent change of more than 2% attracting disclosures under Reg. 29(1), 29(2) read with 29(3) of SAST Regulations and Reg. 13(3) read with 13(5) of PIT Regulations.

1	08-May-2012	238,500	0.53	
1	23-Oct-2012	28,362	0.06	
2	25-Oct-2012	8,138	0.02	
3	02-Nov-2012	73,000	0.16	
4	15-Nov-2012	22,371	0.05	
5	16-Nov-2012	56,979	0.13	
6	19-Nov-2012	11,368	0.03	
7	20-Nov-2012	245,484	0.54	
8	23-Nov-2012	41,923	0.09	
9	26-Nov-2012	383,692	0.85	
10	27-Nov-2012	178,862	0.40	
11	03-Dec-2012	260,000	0.58	
12	04-Dec-2012	400,000	0.89	
13	04-Dec-2012	7,700	0.02	
14	06-Dec-2012	352,184	0.78	
15	12-Dec-2012	53,304	0.12	
16	14-Dec-2012	17,396	0.04	Cumulative holding of 5.28% (disclosure required under Reg. 29(1) of SAST Reg. for acquisition of more than 5%)
17	17-Dec-2012	424,000	0.94	
18	18-Dec-2012	100,000	0.22	
19	19-Dec-2012	100,000	0.22	
20	20-Dec-2012	50,000	0.11	
21	21-Dec-2012	76,781	0.17	
22	27-Dec-2012	35,146	0.08	
23	28-Dec-2012	30,000	0.07	
24	31-Dec-2012	30,000	0.07	
25	01-Jan-2013	100,000	0.22	Change of 2.10% in shareholding (disclosure required under Reg. 29(2) of SEBI (SAST) & 13(3) of SEBI(PIT))
26	02-Jan-2013	100,000	0.22	
27	03-Jan-2013	19,006	0.04	
28	04-Jan-2013	20,000	0.04	
29	07-Jan-2013	30,000	0.07	
30	08-Jan-2013	19,039	0.04	
31	10-Jan-2013	25,000	0.06	
32	10-Jan-2013	5,000	0.01	
33	14-Jan-2013	30,000	0.07	
34	15-Jan-2013	10,036	0.02	
35	16-Jan-2013	4,522	0.01	
36	17-Jan-2013	10,000	0.02	
37	18-Jan-2013	10,000	0.02	
38	21-Jan-2013	20,000	0.04	
39	23-Jan-2013	10,000	0.02	
40	23-Jan-2013	26,994	0.06	

41	24-Jan-2013	15,000	0.03	
42	28-Jan-2013	10,000	0.02	
43	29-Jan-2013	10,000	0.02	
44	30-Jan-2013	3,744	0.01	
45	30-Jan-2013	7,495	0.02	
46	31-Jan-2013	10,000	0.02	
47	05-Feb-2013	28,000	0.06	
48	05-Feb-2013	29,000	0.06	
49	06-Feb-2013	20,000	0.04	
50	07-Feb-2013	15,000	0.03	
51	08-Feb-2013	15,000	0.03	
52	11-Feb-2013	5,000	0.01	
53	12-Feb-2013	10,000	0.02	
54	13-Feb-2013	9,500	0.02	
55	14-Feb-2013	51,000	0.11	
56	15-Feb-2013	10,000	0.02	
57	19-Feb-2013	15,000	0.03	
58	21-Feb-2013	15,000	0.03	
59	21-Feb-2013	15,000	0.03	
60	22-Feb-2013	15,000	0.03	
61	25-Feb-2013	15,000	0.03	
62	26-Feb-2013	15,000	0.03	
63	27-Feb-2013	15,000	0.03	
64	28-Feb-2013	15,000	0.03	
65	01-Mar-2013	6,249	0.01	
66	05-Mar-2013	15,000	0.03	
67	06-Mar-2013	15,000	0.03	
68	07-Mar-2013	15,000	0.03	
69	08-Mar-2013	10,000	0.02	
70	15-Mar-2013	15,000	0.03	

10. The main contentions of the Noticee towards alleged non-disclosure is that it is a PFI and Government of India Undertaking engaged in the business of lending to companies and being the Pledgee it had invoked the pledge only for selling the shares to recover dues. The Noticee Submitted that in real terms, it does not fall into the definition of an "acquirer" as the acquirer mean any individual/company/any other legal entity which intends to acquire or acquires substantial quantity of shares or voting rights of target company or acquires or agrees to acquire control over the target company and since it had immediately sold the invoked shares, hence, it cannot be termed as acquirer. Therefore, the

Noticee submitted that it had not violated regulation 29(1), 29(2) read with 29(3) of SAST Regulations and regulation 13(3) read with 13(5) of PIT Regulations.

11. Taking into account section 4A of the Companies Act 1956 (since repealed) now section 2 (72) of The Companies Act 2013, Notification issued by Central Government S.O. No. 98(E) dated 15th February 1995 read with The Industrial Finance Corporation of India Act, 1948 of Parliament (repeal of this Act in 1993), it is observed that the IFCI / Noticee is a PFI.

12. Since, the alleged transactions / invocation of pledge are not in dispute, therefore, only issue needs to be examined as to whether the Noticee being the PFI, is liable to make disclosures for invocation of shares. I have taken into account regulation 29 (4) of the SAST Regulations which states as under-

"For the purpose of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly, in such form as may be specified:

Provided *that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business".*

13. The expression "encumbrance" is defined under regulation 28(3) of the SAST Regulations which includes a pledge, lien or any such transaction by whatever name called. From the bare perusal of the said regulation 29 (4) of the SAST Regulations, it is noted that scope of exemption from making disclosure by the Scheduled Commercial Bank or PFI is limited only in case of creation / release of pledge and exemption from making required disclosures is not applicable in case of invocation of pledge.

14. I am of the view that regulation 29(4) creates a deeming fiction wherein the acquisition of shares by way of encumbrance is treated as deemed acquisition

and the giving back of shares upon release of encumbrance is deemed disposal. Therefore, the exemption provided to PFI from making disclosures is only limited to cases of deemed acquisition of shares by way of creation or deemed disposal through release of shares, in course of their business for securing indebtedness. It is also pertinent to mention that upon invocation of pledge, the Noticee / Pledgee became the beneficial owner of the invoked shares and therefore, the same attracts disclosure requirement in terms of SAST Regulations and PIT Regulations. Needless to say that no such exemption from making disclosures (in case of creation/release/invocation of pledge) is stipulated in PIT Regulations and therefore, the Noticee is also liable to make the aforesaid required disclosures under PIT Regulations.

15. At this juncture, it would be appropriate to refer a judgment of the Hon'ble Securities Appellate Tribunal (**Hon'ble SAT**) in case of ***SICOM Ltd. vs. SEBI (Appeal No. 190/2014 decided on October 28, 2014)*** held as under-

"17. Argument that the expression "shares taken by way of encumbrance" in regulation 29(4) would mean taking shares into the account of the pledgee on invocation of pledge is without any merit, because, firstly, object of regulation 29(4) is to introduce a deeming fiction and to treat shares taken by way of encumbrance to be deemed acquisition, even though taking shares by way of encumbrance does not involve actual acquisition of shares by a pledgee and the borrower continues to be registered as well as beneficial owner of the encumbered shares. To illustrate, where shares are encumbered by creation of pledge, pledgee does not acquire the shares till the pledge is invoked. However, under regulation 29(4), by a deeming fiction, the pledgee is treated to have acquired shares and is required to make disclosures. Where the shares are acquired on invocation of pledge, question of introducing deemed fiction would not arise because, in such a case, shares are actually acquired on invocation of pledge. Thus it is evident that the expression "taken" used in regulation 29(4) is used in the context of deemed acquisition of shares on creation of pledge and not actual acquisition of shares on invocation of pledge. Secondly, if the contention of the appellant that the expression "taken" in regulation 29(4) applies to taking shares into the account of the pledgee on invocation of pledge is accepted, then it would lead to absurdity, because, in such a case, Scheduled Commercial Banks/ PFI"s would be exempt from making disclosures when shares are actually acquired on invocation of pledge and they are required to make disclosures when shares are deemed to be acquired under regulation 29(4). Since taking shares by

creation of pledge to secure indebtedness and to release the shares on discharge of indebtedness is a rule and acquisition of shares on failure to discharge indebtedness is an exception, proviso to regulation 29(4) provides that Scheduled Commercial Banks and PFI"s shall be exempt from making disclosures when shares are taken by them to secure indebtedness in the ordinary course of business. Since the object of regulation 29(4) is to relieve Scheduled Commercial Banks and PFI"s from disclosure requirements arising from deemed acquisitions specified under regulation 29(4), it is evident that the expression "taken" used in regulation 29(4) relates to deemed acquisitions and not actual acquisition.

18. A legal fiction is created to assume existence of a fact which does not really exist. When a pledge is invoked and shares are acquired, actual acquisition of shares is a fact. When a pledge created and shares are taken by way of encumbrance to secure indebtedness, there is no acquisition of shares, because, the borrower continues to be the registered as well as beneficial owner of pledged shares. Therefore, it is reasonable to hold that regulation 29(4) as well as the proviso to regulation 29(4) apply to deemed acquisitions".

"23. Similarly, in the absence of any exemption, under PIT Regulations, 1992 SEBI is justified in holding that on acquisition of shares by invocation of pledge, appellants were required to make disclosures under regulation 13 of PIT Regulations, 1992……".

16. From the above, it is evident that the Noticee was required to make disclosures upon invocation of pledge. As the non-disclosure to the Stock Exchange / GTL regarding holding / acquisition of 5% or more of the share capital of GTL and subsequent change in shareholding by more than 2% due to invocation of pledge by the Noticee (as shown in aforesaid table or page 2-3 of the SCN) remained undisputed, therefore, in view of such non discourse, it is established that the Noticee had violated regulation 29 (1), 29(2) read with 29(3) of the SAST Regulations and regulation 13(3) read with 13 (5) of the PIT Regulations.

ISSUE 3 & 4

If yes, then whether such failure would attract monetary penalty under section 15 A (b) of the SEBI Act? AND If yes, then, what would be the monetary penalty that can be imposed upon the Noticee taking into

consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

17. Since, the violation of regulation 29 (1), 29(2) read with 29(3) of the SAST Regulations and regulation 13(3) read with 13 (5) of the PIT Regulations have been established, therefore, I am of the view the penalty upon the Noticee needs to be imposed under section 15 A (b) of the SEBI Act.

18. The Hon'ble Supreme Court of India in case of ***The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*** *inter-alia* 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".*

19. It is relevant to mention here that ratio of said case of *Shri Ram Mutual Fund* (*supra*) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of ***Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008*** on the issue related to income tax act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation and is mandatory and the *mens- rea* is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of *Shri Ram Mutual Fund* (*supra*) has been analysed in the legal position and in the correct perspectives

20. Also, it is relevant here to mention the judgment of the Hon'ble SAT in case of ***MiIlan Mahendra Securities Pvt. Ltd. vs. SEBI* (*Appeal No. 66/2003 decided on November 15, 2006)*** wherein it was observed that *the purpose of the SAST Regulation is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market, and therefore, it cannot be subscribed to the view that the violations are technical in nature.*

21. Thus, the aforesaid violations committed by the Noticee makes it liable for penalty under Section 15A (b) of the SEBI Act which read 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,—
(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;

22. While determining the quantum of penalty under sections 15A (b), it is important to consider the factors stipulated in section 15J of SEBI Act read with rule 5 (2) of the Adjudication Rules, 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."

23. No specify disproportionate gains / unfair advantage made by the Noticee or the specific loss suffered by the investors due to such non disclosures is on records. However, past action (administrative warning) against the Noticee has been revealed under the Investigation Report at page 30.

24. I cannot ignore that in case of *SICOM* (*supra*) the Hon'ble SAT while upholding penalty of ` 5 Lakh had *inter –alia* held as under -

"25. Although penalty is imposed on the appellants for the first time for violating disclosure provisions that triggered on acquisition of shares by invocation of pledge, it is a matter on record that various Scheduled Commercial Banks have been making disclosures as and when disclosure provisions are triggered on acquisition of shares by invocation of pledge. If various Scheduled Commercial Banks have been making disclosures from time to time, there is no reason as to why penalty ought not to be imposed on appellants for not complying with the disclosure provisions contained in

Takeover Regulations, 2011. In these circumstances, we see no reason to interfere with the quantum of penalty imposed against the appellants".

25. Considering the facts / circumstance of the case (including the administrative warning earlier issued against the Noticee), the purpose of the SAST and PIT Regulation and aforesaid judgments of the Hon'ble SAT, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

26. After taking into consideration all the aforesaid facts / circumstances of the case, therefore, in exercise of the powers conferred upon me under section 15 I (2) of the SEBI Act and rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticee under section 15 A (b) of the SEBI Act, as shown in table below;

Name of the Noticee	**Amount of Penalty / Provisions of Laws Violated**
IFCI Ltd. / Noticee	` **7,00,000/- (Rupees Seven Lakh only)** For violation of regulation 29 (1) read with 29 (3) of the SAST Regulations. AND ` **7,00,000/- (Rupees Seven Lakh only)** For violation of regulation 29 (2) read with 29 (3) of the SAST Regulations and 13 (3) read with 13 (5) of the PIT Regulations.

27. I am of the view that the said penalty would commensurate with the violations committed by the Noticee.

28. 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

29. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Enforcement Department – Division of Regulatory Action –I 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 `)	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

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

Date: December 22, 2017
Place: Mumbai

(RACHNA ANAND)
GENERAL MANAGER &
ADJUDICATING OFFICER