BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No. Order/SS/LD/2024-25/30349]

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

in respect of: Sundae Capital Advisors P. Ltd

(PAN: AAXCS5517J)
(Registration No. INM000012494)

In the matter of **Hexa Tradex Ltd.**

BACKGROUND :

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination pursuant to a complaint dated July 08, 2022, received by SEBI with respect to the delisting of M/s. Hexa Tradex Ltd, **(Hexa)** a company listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). Based on the complaint received, SEBI had sought a joint report from NSE and BSE in the matter of delisting of Hexa Tradex Ltd. Both the exchanges submitted a joint report to SEBI vide letter dated March 10, 2023.

2. During the course of examination, it was observed that M/s. Sundae Capital Advisors P. Ltd. (hereinafter referred to as "**Noticee** ") had allegedly failed to comply with the requirements of the provisions of Regulation 29(2) of the SEBI (Delisting of Equity Shares) Regulations, 2021 (hereinafter referred to as the "**Delisting Regulations")**, by having allegedly failed to do proper due diligence resulting in inadequate disclosure in detailed public announcement by acquirers. A due diligence on the part of Noticee would have shown in disclosure to stock exchanges that promoter's holding had increased from 46% in June 2018 to

56.91% in September 2018. Since promoters are permitted to acquire upto 5% holding in any financial year, thus increase should have been allowed with open offer. However, no open offer was made. A closer scrutiny would have shown that increase was due to reclassification of holder of Sigmatech BVI from public to promoter group. This due diligence would have enabled Noticee to obtain necessary details of communications from Hexa including copy of the SCN by SEBI. Therefore, Noticee had allegedly failed to ensure that the contents of public announcement were complete, true and adequate in all material aspects and in compliance with the requirements as per applicable securities laws and adjudication proceedings against Noticee was initiated for aforesaid alleged non-compliance in accordance with the requirement of the Delisting Regulations.

APPOINTMENT OF ADJUDICATING OFFICER ::

3. SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as "AO") vide order dated October 06, 2023 under Section 15-I of the SEBI Act, 1992 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'**) read with Section 19 of the SEBI Act, 1992 to inquire into and adjudge the violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING :

4. A Show Cause Notice no. EAD-11/ADJ/SKS/LD/OW/42670/2023 dated October 17, 2023 (hereinafter referred to as "**SCN**") was issued in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act, 1992 calling upon Noticee to show cause as to why an inquiry should not be held and a penalty be not imposed upon it under Section 15HB of the SEBI Act for alleged violation of Regulation 29(2) of the Delisting Regulations.

5. The said SCN was served upon the Noticee via digitally signed email dated October 19, 2023, which was received by it. The SCN was also served upon the Noticee vide Registered Post AD. However, the same returned undelivered which was then hand delivered to the Noticee in person and delivery was acknowledged

by it. The proof of service is on record. As Noticee had not submitted its reply to the SCN as on the date of the hearing, it was advised to submit the same on or before November 06, 2023. Vide email dated November 06, 2023, the Authorized Representatives of Noticee requested for extension of time till November 10, 2023 to reply to the SCN. However, the said Noticee submitted its reply vide email dated November 11, 2023.

6. In the interest on natural justice, the said Noticee was afforded an opportunity of personal hearing on October 27, 2023 vide email dated October 25, 2023. The said hearing was attended by the Director and Vice President of Noticee who made the following submission during the course of hearing:

   a) *Regulation 10(2) of the SEBI Delisting Regulations, 2021 requires that a Peer Review Company Secretary appointed by the Board of Directors (BoD) in order to carry out due-diligence had to provide details of buying, selling and dealing in the equity shares of the company by the acquirer or its related entities and also details of off-market transactions of all the shareholders for a period of two years prior to the date of Board meeting held to consider the proposal for delisting.Accordingly, the same was considered by the Company Secretary for certification.*
   b) *Further as per the Regulation 12 of the Delisting Regulations, the company had made an application to relevant stock exchanges for in-principal approval of the proposed delisting of its equity shares.*
   c) *Pending proceedings in which SCN was issued by SEBI was disclosed by the Company in the application for in-principal approval by NSE as required by NSE. However the information was not submitted to BSE as the same was not stipulated by it.*

7. Following submission was made by the said Noticee vide its email dated November 11, 2023:

   d) *" While carrying out the due diligence of Hexa Tradex Limited under the SEBI (Delisting of Equity Shares) Regulations, 2021 ("SEBI Delisting Regulations"), we have examined the change in shareholding for last 2 years and have relied on the certificate issued under Regulation 10(3) by Practicing Company Secretary inter alia certifying the compliance with the applicable provisions of Regulation 10(2) of the SEBI Delisting Regulations for dealing in shares of the Company in last 2 years (i.e. March 2020 to March 2022). We also perused the Annual Secretarial Audit Report of the Company and the in principle delisting approval received from the stock exchanges after compliance of the provisions of the SEBI Delisting Regulations.*

   e) *Further, we submit that the disclosure made under the DPA were in accordance with the requirements of SEBI Delisting Regulations. In view of above we submit that we have complied with the requirements of the SEBI Delisting Regulations."*

8. Further, vide email dated May 17, 2024, the Noticee was advised to make additional submissions, if any, in the matter within 7 days. The said Noticee made additional submission in the matter vide email dated May 14, 2024.The submission made by the Noticee vide its aforesaid email is mentioned as under:

a) *Hexa Tradex Limited had suo moto rectified the erroneous classification of Sigmatech Inc as public category shareholder in the past (which formed part of the Promoter Group) and was also disclosed by the Company as part of Promoter and Promoter Group in their quarterly shareholding pattern filed for the period ended September 30, 2018 (filed on October 03, 2018) and thereafter. Further, Sigmatech was also included as Promoter Group shareholder under MGT-9 ('Extract of Annual Return') in the Directors Report of the Company for the financial year ended March 31, 2019. Since then, the re-classification of Sigmatech as Promoter Category shareholder had always been in the public domain.*

b) *Later, Jindal Saw Limited, along with Hexa Tradex Limited and JITF Infralogistics Limited, which got listed by way of demerger from Jindal Saw Limited, and promoter have approached SEBI for settlement of the erroneous disclosures. SEBI approved the settlement of such erroneous disclosure by the Company, Jindal Saw Limited, JITF Infralogistics Limited and its Promoter by passing a Settlement Order No. SO/SM/AD/2023-24/6837 dated December 01, 2023. In the Settlement Order, SEBI settled the erroneous disclosure under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2011 and delayed filing of exemption report and periodic disclosure under erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("Erstwhile SEBI Takeover Regulations"). The error was not considered as a trigger of open offer violation under the Erstwhile SEBI Takeover Regulations. Hence, with the acceptance of the rectified disclosure of shareholding and the report filed for claiming exemption from creeping acquisition limit, it is clear that there was no violation of the 5% annual creeping acquisition limit and no requirement of giving open offer.*

c) *While carrying out the due diligence of Hexa Tradex Limited under the SEBI (Delisting of Equity Shares) Regulations, 2021 ("SEBI Delisting Regulations"), we have relied on (i) then submissions and filings made by the Company under SEBI LODR Regulations, (ii) the rectified re-classification of Sigmatech as Promoter Group shareholder, (iii) certificate issued under Regulation 10(3) by Practicing Company Secretary certifying the compliance with the applicable provisions of Regulation 10(2) of the SEBI Delisting Regulations for dealing in shares of the Company in last 2 years (i.e. March 2020 to March 2022) by the promoter and promoter group and the top 25 shareholders of the Company and (iv) the confirmation of the Board of Directors that the Company is in compliance with securities law as on the date of passing of such resolution. Hence, in terms of Regulation 10(4)(a) of the SEBI Delisting Regulations, the Company stands compliant with the applicable provisions of the securities law as on the date of Board Meeting approving the delisting proposal having rectified the error.*

d) *We humbly submit that the details of the erroneous classification of the shareholder was rectified in all the disclosures since September 2018 and such correct shareholding patterns were already in public domain and therefore, non-inclusion of the 2022 SCN in the Detailed Public Announcement has not impacted the interest of public category shareholder of the Company. Further, the said incorrect disclosure was on part of the Promoter / Company and hence outcome of such proceedings would not have a material bearing on the public shareholders.*

e) *The statements in the initial public announcement, the detailed public announcement, the letter of offer and the post-bidding advertisement(s) included all material information for the public shareholders, which may have impacted their decision making with respect to the delisting and other information as specified under Schedule I (Regulation 15(2) of the SEBI Delisting Regulations). Further, all disclosures as required under SEBI Delisting Regulations and other applicable securities laws were adequately made in the initial public announcement, the detailed public announcement, the letter of offer and the post-bidding advertisement(s) and were true and fair.*

f) *Further, the stock exchange was made aware of the 2022 SCN even before the issue of detailed public announcement, grant of the in-principle delisting approval and offer opening and therefore, we have undertaken adequate diligence and reasonable steps for disclosure of the same.*

9. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticee ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and reply submitted by the Noticee.

ISSUES FOR CONSIDERATION AND FINDINGS :

10. I have carefully perused the submissions made by the Noticee and the documents available on record, and the issues that arise for consideration in the present case are :

a) ***Whether the Noticee has violated the provisions of Regulation 29(2) of the SEBI Delisting Regulations, 2021.***

b) ***If yes, does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15HB of the SEBI Act, 1992?***

c) ***If so, what would be the monetary policy that can be imposed taking into consideration the factors mention in Section 15 J of the SEBI Act, 1992*?**

11. Before moving forward, it is pertinent to refer to the relevant provision of the Delisting Regulations, which reads as under:

SEBI Delisting Regulations, 2021 ***:***

Regulation 29(2)

"The Manager to the offer shall ensure that the contents of the initial public announcement, the detailed public announcement, the letter of offer and the post-bidding advertisement(s) are complete, true, fair and adequate in all material aspects, based on reliable sources and are in compliance with the requirements under these regulations and other applicable securities laws."

FINDINGS :

a) Whether the Noticee has violated the provisions of Regulation 29(2) of the SEBI Delisting Regulations, 2021.

Alleged Violation: Failure to do proper due diligence resulting in inadequate disclosure in Detailed Public Announcement by acquirers

11.1 As regards captioned allegation, I note that Regulation 10(2) of the SEBI Delisting Regulations, 2021 clearly states that the Board Of Directors (BoD) of a company shall appoint a Peer Review Company Secretary and provide details of buying, selling and dealing in the equity shares of the company by the acquirer or its related entities and also details of off-market transactions of all the shareholders for a period of two years prior to the date of Board meeting held to consider the proposal for delisting, to the Company Secretary for carrying out due diligence. Accordingly, I note that the BoD had appointed a Peer Review Officer for obtaining a certification of compliance with the securities laws.

11.2 Further, I note that as per Regulation 12 of the SEBI Delisting Regulations, the company had to make an application to the relevant stock exchange for in-principal approval for the proposed delisting of its equity shares. The Stock Exchanges (NSE & BSE) on satisfaction w.r.t the compliance of the securities law shall give an in-approval to the proposed delisting of equity shares of the Company. As per the examination report, the same was done by the Company and as submitted by the Noticee, neither NSE or BSE raised any concerns pertaining to the SCN issued by SEBI on February 01, 2018 at the time of giving in-principal approval for delisting nor any condition was imposed on the acquirer to disclose the matter in Public Announcement or Letter of Offer.

11.3 In this regard, I note that the said Noticee has contended that it had examined the change in shareholding for last 2 years and had relied on the certificate issued under Regulation 10(3) by Practicing Company Secretary inter alia certifying the compliance with the applicable provisions of Regulation 10(2) of the SEBI Delisting Regulations for dealing in shares of the Company in last 2 years (i.e. March 2020 to March 2022). It further submitted that it relied on (i) then submissions and filings made by the Company under SEBI LODR Regulations, (ii) the rectified re-classification of Sigmatech as Promoter Group shareholder, (iii) certificate issued under Regulation 10(3) by Practicing Company Secretary certifying the compliance with the applicable provisions of Regulation 10(2) of the SEBI Delisting Regulations for dealing in shares of the Company in last 2 years (i.e. March 2020 to March 2022) by the promoter and promoter group and the top 25 shareholders of the Company and (iv) the confirmation of the Board of Directors that the Company is in compliance with securities law as on the date of passing of such resolution. Hence, in terms of Regulation 10(4)(a) of the SEBI Delisting Regulations, the Company stood compliant with the applicable provisions of the securities law as on the date of Board Meeting approving the delisting proposal having rectified the error.

11.4 With regard to the Noticee's aforesaid submission, I note that Noticee is now making a blanket statement by submitting that it had relied upon the reports mentioned hereinabove. Further, I note that it was the responsibility of the Noticee to ensure that the contents of the public announcements were true and fair. In this regard, I also note that the delisting Regulations has put the responsibility of due diligence and ensuring compliance with the Delisting Regulations and applicable securities law on the Merchant Banker. However, Noticee accepted the statement of the company that the company was in compliance with all securities laws despite being aware of the fact that the company was in alleged violation of the securities law and SCN had been issued by SEBI, for which a resolution by circulation was approved by the Directors, stating *"…. The company along with the noticees would opt for settlement of the proceedings as the above was genuine and bona fide mistake brought in to the attention of the SEBI by the Company itself."* Further, I note that the outcome of the Board meeting was duly disclosed by Hexa to stock exchanges letter dated March 21, 2022.

11.5 Accordingly, in view of the above, it stands established that the Noticee by not bringing the aforesaid SCN and Board of Directors Resolution in the delisting Offer Document has violated Regulation 29(2) of Delisting Regulations by having failed to ensure that the contents of public announcements were complete, true fair and adequate in all material aspects and were in compliance with the securities laws.

<u>Issue b): If yes, does the violations, if any, attract monetary penalty under section 15HB of the SEBI Act, 1992?</u>

12. As it has been established that the Noticee has violated following provisions of SEBI Delisting Regulations.

    a) Regulation 29(2) of the SEBI (Delisting of Equity Shares) Regulations, 2021.

13. In the context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, ***SEBI vs. Shriram Mutual Fund*** {[2006] 5 SCC 361} wherein the Hon'ble Court had 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.......".*

14. Therefore, in view of the foregoing and placing reliance on the above judgement of the Hon'ble Apex Court, I am of the view that the Noticee is liable for imposition of monetary penalty Section 15HB of the SEBI Act, which is reproduced hereunder:

SEBI Act, 1992

Penalty for contravention where no separate penalty has been provided

15HB *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue c): If so, 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?

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

SEBI Act, 1992

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.

16. I observe, that the material available on record and the fact that the equity shares of the company have not been delisted till date, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to such violations on the part of the said Noticee.

17. From the document available on record, it is not ascertainable whether the acts of the Noticee are repetitive in nature. However, it is pertinent to note that the role of a Merchant Banker (MB) is crucial to the development of the securities market, especially for the company's involved/interested in raising capital from market for whom the Merchant Banker is responsible for due diligence and proper disclosures in the offer document relied upon by the investors. In this regard, the role of a MB is crucial as a facilitator to such companies in the securities market. So, it is of utmost importance that every MB abides by the relevant regulations, provisions of SEBI/Exchange circulars and various guidelines issued by SEBI/Exchanges.

ORDER

18. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, and also taking into account judgment of the Hon'ble Supreme Court in ***SEBI vs. Bhavesh Pabari (2019)***5 SCC 90 and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under Section 15HB of the SEBI Act on the Noticee for violations of the following provisions of Delisting Regulations:

    a) Regulation 29(2) of the SEBI (Delisting of Equity Shares) Regulations, 2021.

Name of the Noticee	Penal provisions	Penalty
Sundae Capital Advisors P. Ltd	Section 15HB of the SEBI Act	Rs 1,00,000/- (Rupees One Lakh Only)

19. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: **ENFORCEMENT → Orders → Orders of AO → PAY NOW**

20. The forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
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 etc.)	

21. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

22. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: May 22, 2024

SANTOSH KUMAR SHARMA
ADJUDICATING OFFICER