BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2021-22/15785-15787]

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) RULES, 1995

In respect of

Navalben Gangji Gala (PAN: AAFPG8145H)

Gangji Arjan Gala (PAN: - AAFPG8144G)

Dhiren Dharamdas Agarwal-HUF (PAN: AAGHD9696H)

In the matter of Dune Mercantile Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted an investigation w.r.t. trading in the scrip of Dune Mercantile Ltd. (hereinafter referred to as '**Dune/Company/DML'**) for the period, April 20, 2016 to October 17, 2016, (herein after referred to as '**Investigation Period/IP'**). The focus of investigation was to ascertain any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), SEBI (Prohibition of Insider Trading Regulations, 2015(hereinafter referred to as **"PIT Regulations, 2015"**) and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST Regulations, 2011/SAST Regulations"**) in respect of trading in the scrip of Dune during the IP.

2. Dune Mercantile Limited was a Public limited company incorporated on December 20, 1984. The registered address of the company is situated at Shop No. 7, IInd Floor, Guru Har Rai Complex, Miller Ganj, Opp. Manju Cinema, Ludhiana, Punjab-141003. The Company was listed on BSE Ltd. ("**BSE/Exchange**").

3. The summary of the shareholding pattern of DML for the quarter ended March 2016 to December 2016 is given below:

Category of Shareholders	Quarter Ended on March 2016		Quarter Ended on June 2016		Quarter Ended on September 2016		Quarter Ended on December 2016	
	No. of shares held	**% of total shares held**	**No. of shares held**	**% of total shares held**	**No. of shares held**	**% of total shares held**	**No. of shares held**	**% of total shares held**
Promoters	1,22,000	2.44	0	-				
Public Shareholders	48,78,000	97.56	50,00,000	100	50,00,000	100	50,00,000	100
Total	**50,00,000**	**100.00**	**50,00,000**	**100**	**50,00,000**	**100**	**50,00,000**	**100**

4. During the course of investigation, SEBI observed that Navalben Gangji Gala (herein after referred to as "**Noticee 1/By name"**), Gangji Arjan Gala (herein after referred to as "**Noticee 2/By name"**), and Dhiren Dharamdas Agarwal-HUF (herein after referred to as "**Noticee 3 /By name**") (Noticees 1 to 3 are collectively being referred to as "**Noticees"**) transacted in the scrip of Dune on multiple occasions during the Investigation Period. However, it was observed that Noticees failed to make necessary disclosures in terms of SAST Regulations, 2011 for the transactions carried out in the scrip of Dune. Therefore, SEBI initiated adjudication proceedings against Noticees 1 and 2 under the provisions of Section 15A(b) of SEBI Act, for the alleged violations of provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011, by them and against Noticee 3 for alleged violation of provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011 by it, w.r.t. their trading in the scrip of Dune.

APPOINTMENT OF ADJUDICATING OFFICER

5. Vide order dated April 07,2021, the undersigned was appointed as the Adjudicating Officer under Section 15(I) of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995(herein after referred to as "**Adjudication Rules**") to inquire and adjudge under the provisions of Section 15A(b) of the SEBI Act, the alleged violations of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 by Noticee 1 and Noticee 2, and

Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011 by Noticee 3 w.r.t. their trading in the scrip of Dune.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A show-cause notice dated August 04, 2021 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Section 15A (b) of the SEBI Act for the aforesaid violations alleged to have been committed by them.

7. The allegations levelled against Noticees in the SCN are as under:

A. Noticee 1:-

i. The details of transactions of Noticee 1 during the investigation period, indicating the requirement of disclosures under SAST Regulations, 2011, is given below:

Date	***No of shares held – before transaction***	***No of shares acquired***	***No of shares sold***	***% of shares sold / acquired***	***Disclosure required under SEBI (SAST), 2011***	***Required Date of disclosure to company and Exchange***	***Disclosure to Company and to stock exchange***	***Violation of Regulation(s) under SAST 2011***
01.04.2016	***300000 (6%)***		***0***	***0***				
27.04.2016	*300000*	*0*	*11500*	*0.23%*	*NO*	*NA*	*NA*	*NA*
28.04.2016	*288500*	*0*	*17750*	*0.36%*				
29.04.2016	*270750*	*0*	*10500*	*0.21%*				
02.05.2016	*260250*	*0*	*29300*	*0.59%*				
03.05.2016	*230950*	*0*	*6600*	*0.13%*				
04.05.2016	*224350*	*0*	*26200*	*0.52%*	***YES. Change of 2.04 %***	***06.05.2016***	***Not disclosed.***	***29(2) r/w 29(3)***
05.05.2016	*198150 (3.96 %)*	*0*	*25250*	*0.51%*	*NO*	*NA*	*NA*	*NA*
06.05.2016	*172900*	*0*	*29050*	*0.58%*				
09.05.2016	*143850*	*0*	*23500*	*0.47%*				

Date	No of shares held – before transaction	No of shares acquired	No of shares sold	% of shares sold / acquired	Disclosure required under SEBI (SAST), 2011	Required Date of disclosure to company and Exchange	Disclosure to Company and to stock exchange	Violation of Regulation(s) under SAST 2011
11.05.2016	120350	0	4000	0.08%				
12.05.2016	116350	0	26200	0.52%				
13.05.2016	90150	0	19450	0.39%				
16.05.2016	70700	0	34200	0.68%				
17.05.2016	36500	0	26500	0.53%				
18.05.2016	10000	0	10000	0.20%				

ii. *It was observed that Noticee 1 was holding (6%) shares of DML at the beginning of IP i.e. April 20, 2016. It was observed that during the period April 27, 2016 to May 04, 2016, Noticee 1 sold 101850 (11500+17750+10500+29300+6600+26200) shares of company due to which the shareholding of Noticee 1 reduced by more than 2% of total shareholding of the company on May 04, 2016. It was submitted by Company (Annexure- 4) and Exchange (Annexure- 5) that no disclosure were filed by Noticee 1 under Regulation 29(2) read with Regulation 29(3) SAST Regulations, 2011 for the aforesaid changes in shareholding by more than 2%.*

iii. *In view of the foregoing, it is alleged that Noticee 1 has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulation, 2011.*

B. Noticee *2*

i. *The details of transactions of Noticee 2 during the investigation period, indicating the requirement of disclosures under SAST Regulations, 2011, is given below:*

Date	No of shares held – before transaction	No of shares acquired	No of shares disposed off	% of shares diposeoff / acquired	Disclosure required under SEBI (SAST), 2011	Required Date of disclosure to company and Exchange	Disclosure to Company and to stock exchange	Violation of Regulation(s) under SAST 2011
01.04.2016	**300000 (6%)**		**0**	**0**				
27.04.2016	300000	0	8500	0.17%	No	NA	NA	NA
28.04.2016	291500	0	18150	0.36%				
29.04.2016	273350	0	10545	0.21%				
02.05.2016	262805	0	29055	0.58%				
03.05.2016	233750	0	6800	0.14%				
04.05.2016	226950	0	29150	0.58%	**YES. Change of 2.04 %**	**06.05.2016**	No disclosure.	**29(2) r/w 29(3)**
05.05.2016	197800 (3.96%)	0	27250	0.55%	No	NA	NA	NA
06.05.2016	170550	0	29750	0.60%				
09.05.2016	140800	0	23300	0.47%				
11.05.2016	117500	0	3800	0.08%				
12.05.2016	113700	0	26400	0.53%				
13.05.2016	87300	0	19300	0.39%				
16.05.2016	68000	0	32500	0.65%				
17.05.2016	35500	0	25500	0.51%				
18.05.2016	10000	0	10000	0.20%				

ii. It was observed that Noticee 2 was holding (6%) shares of DML at the beginning of IP i.e. April 20, 2016. It was observed that during the period April 27,2016 to May 04, 2016,Noticee 2 sold 1,02,200 (8500+18150+10545+29055+6800+29150) shares of company due to which the shareholding of Noticee 2 reduced by more than 2% of total shareholding of the company on May 04, 2016. It was submitted by Company and Exchange that no disclosure were filed by Noticee 2 under Regulation 29(2) read with Regulation 29(3) SAST Regulations, 2011 for the aforesaid changes in shareholding by more than 2%.

iii. In view of the foregoing, it is alleged that Noticee 2 has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011.

C. <u>Noticee *3*</u>

i. The details of transactions of Noticee 3 during the investigation period, indicating the requirement of disclosures under SAST Regulations, 2011, is given below:

Date	***No of shares held – before transaction***	***No of shares acquired***	***No of shares disposed off***	***No of shares held – after transaction/s***	***% of shareholding***	***Disclosure required under SEBI (SAST), 2011***	***Required Date of disclosure to company and Exchange***	***Disclosure to Company and to stock exchange***	***Violation of Regulation(s) under SAST 2011***
01.04.2016	***0 (0%)***		***0***		***0***				
29.06.2016	*0*	*200000*	*0*	*200000*	*4.00%*	*No*	*NA*	*NA*	***NA***
01.07.2016	*200000*	*48750*	*0*	*248750*	*4.98%*	*No*			
04.07.2016	*248750*	*0*	*30610*	*218140*	*4.36%*	*No*			
05.07.2016	*218140*	*63444*	*98597*	*182987*	*3.66%*	*No*			
07.07.2016	*182987*	*0*	*97970*	*85017*	*1.70%*	*No*			
08.07.2016	*85017*	*0*	*27234*	*57783*	*1.16%*	*No*			
08.08.2016	*57783*	*51807*	*0*	*109590*	*2.19%*	*No*			
08.08.2016	*109590*	*0*	*99504*	*10086*	*0.20%*	*No*			
09.08.2016	*10086*	*5*	*10000*	*91*	*0.00%*	*No*			
10.08.2016	*91*	*300000*	*45000*	*255091*	***5.10%***	***YES. acquired 5.10 %***	***12.08.2016***	***Not disclosed.***	***29(1) r/w 29(3)***
11.08.2016	*255091*	*262699*	*272058*	*245732*	*4.91%*	*No*	*NA*	*NA*	*NA*

ii. It was observed that Noticee 3 was not holding any shares of DML at the beginning of IP i.e. April 20, 2016. It was observed that during the period June 29, 2016 to August 10, 2016, Noticee 3 acquired 6,64,006 (2,00,000+48,750+63,444+51,807+5+3,00,000) shares and disposed of 4,08,915(30,610+98,597+97,970+27,234+99,504+10,000+45, 000) shares of the company due to which the shareholding of Noticee 3 came to 2,55,591 shares. On account of these transactions, the shareholding of Noticee exceeded 5% of total shareholding of company on August 10, 2016. It was submitted by Company (refer Annexure-4) and Exchange (refer Annexure-

5) that no disclosure was filed by Noticee 3 under Regulation 29(1) read with Regulation 29(3) SAST Regulation, 2011 for the aforesaid changes in shareholding by more than 5% .

iii. In view of the foregoing, it is alleged that Noticee 3 has violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011.

8. The SCN was sent to Noticees through Speed Post Acknowledgement Due (herein after referred to as '**SPAD**') and digitally signed email dated August 04, 2021. SCN sent through SPAD and digitally signed email to Noticee 3 was duly served upon him. SCN sent to Noticees 1 and 2 through SPAD were returned undelivered, however SCN was served to Noticees 1 and 2 through digitally signed email. Vide email dated August 16, 2021, Noticees 1 and 2 requested extension of one week to submit their replies and also desired personal hearing in the matter. Vide email dated August 23, 2021, Noticees 1 and 2 submitted their replies to SCN.

9. Vide Hearing Notice dated November 24, 2021, an opportunity of personal hearing were granted to Noticees on December 16, 2021. Hearing Notice was duly served on Noticees through SPAD and through digitally signed email. Vide email dated December 15, 2021, Authorized Representative (**AR**) of Noticees 1 and 2, R.V. Legal, requested for annexures forming part of SCN. On the scheduled date of hearing, AR of Noticees 1 and 2 requested adjournment in the matter and requested for annexures of SCN. Noticee 3 failed to attend the hearing. A copy of SCN along with annexures was once again sent to Noticees 1 and 2 vide email dated December 16, 2021. Further, another opportunity of hearing was granted to Noticees 1 and 2 on January 21, 2022, vide Hearing Notice dated December 16, 2021 and duly served upon Noticees 1 and 2 through SPAD and digitally signed email dated December 16, 2021.

10. As Noticee 3 failed to attend the opportunity of hearing granted to him on December 16, 2021, vide Hearing Notice dated December 16, 2021, another opportunity of personal hearing was granted to Noticee 3 on January 21, 2022. The said hearing notice was duly served upon Noticee 3 through SPAD and digitally signed email.

11. On January 18, 2022, Noticee 3 submitted the reply to SCN and vide letter dated January 20, 2022 appointed R.V. Legal, as its AR for the present proceeding. On the scheduled date of hearing i.e. January 21, 2022, AR attended the hearings and reiterated the contents of replies filed by Noticees. On January 21, 2022, AR submitted judgments of various Adjudication orders in support of their contention. Further, vide email dated January 24, 2022, AR filed additional submission on behalf of Noticees.

12. On perusal of replies submitted by Noticees, I note that Noticees had made identical replies, which are summarized below: -

    a) The allegations framed in the SCN relate to the investigation period (20th April, 2016 to 17th October, 2016) and the SCN was issued on August 04, 2021, i.e., after a delay of about 5 years. The SCN does not provide any explanation to justify the inordinate and unconscionable delay in initiation of proceedings against Noticees at such a belated stage. It is respectfully submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of Noticees to adequately respond to the SCN since the documents/ facts pertaining to the alleged non-disclosure by Noticees are not readily available with them. To support their contention, Noticees submitted the judgment of Hon'ble Supreme Court of India in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim ((1997) 6 SCC 71 and Ram Chand v. Union of India (1994) 1 SCC 44)); Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of Rajeev Bhanot & Anr. versus SEBI (Order dated 09th July, 2021 in Appeal No. 396 of 2018)
    b) The charge which flows from paragraph no. 7, of the SCN against Noticees 1 and 2 pertains to the charge non-disclosure by Noticees 1 and 2 of the change of more than 2% in his shareholding on May 04, 2016, which triggered disclosure requirement under Regulation 29(2) read with Regulation 29 (3) of the SAST Regulations, 2011.
    c) Noticees contended that throughout the entire investigation period, only in a single instance, the disclosure requirement under Regulation 29 (2) and (3) of the SAST Regulations,2011 w.r.t. change in Noticee's shareholding

on May 04, 2016 was triggered by a marginal 0.5 %. The alleged singular instance of non-disclosure w.r.t. change in Noticee's shareholding on May 04, 2016 was merely a meagre default of a technical nature which was over-looked by accident and it was not a deliberate attempt to achieve any other ulterior motive.

d) Noticees 1 and 2 were the public shareholders in Dune at the relevant time, however they were uneducated, and they were not having knowledge w.r.t compliance of disclosures which required to be made under various SEBI Regulations.

e) Initiating adjudicatory proceedings against them at such a belated stage (after 5 years) for what appears to be only a meagre default of a technical nature causes grave prejudice to them which further gets exacerbated by the on-going Covid-19 crisis due to which Noticees are already undergoing financial hardships. Imposing any penalty at this belated stage serves no regulatory purpose but instead causes undue hardships to them. To support their contention Noticees have submitted the judgment of Hon'ble SAT in the matter of Parag Sarda vs SEBI (Order dated 12th November, 2020 in Appeal No. 279 of 2020).

f) Noticees have not taken the present regulatory proceedings in a nonchalant manner. Noticees are not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. Noticees have not acted in defiance of law. The actions of Noticees were not in any manner detrimental to the securities market and Noticees conducted all their operations with integrity and in the best interest of its shareholders.

g) Noticees have not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. Further, no loss has been caused to any investor or group of investors as a result of the alleged default.

h) SEBI ought to even consider the current situation due to the COVID-19 pandemic. Any penalty or adverse direction will have a catastrophic effect on Noticees causing loss of employment and other such dire consequences leading to the financial death of the not just Noticees but their entire family. Thus, for these reasons alone no penalty is called for. In support of their contention Noticees have submitted the judgment of Hon'ble SAT in P. G.

Electroplast Ltd. & Ors. V. SEBI (Appeal no. 281 of 2017, order dated February 2, 2019) and M/s. Hindustan Steel Ltd. vs. State of Orissa, 1969(2) SCC 627.

i) The alleged violation has not resulted in any harm or loss caused to the securities market. No such allegation sits in the SCN as well. The Hon'ble Supreme Court in the matter of M/s Hindustan Steel Ltd. v. State of Orissa reported in 1969 (2) SCC 627 has held that a penalty should not be imposed for the sake of it and should be utilized to achieve a specific purpose, rather than as an end in itself. Further, Noticees quoted judgment of SEBI Adjudication Order viz. Adjudication order no. EAD-2/AO/DSR/BKM/647/2017 dated June 30, 2017, in the matter of Rathi Bars Limited; Adjudication order no.EAD-12/SM/217-222/2018 dated March 15, 2018, in the matter of Inanna Fashion and Trends Limited (earlier lmown as Frontline Business Solutions Limited); Adjudication Order No. RA/JP/310-319/2018, dated March 21, 2018, in the matter of Tricom Fruit Products Limited; Adjudication Order No. EAD-PM-RR/AO/53-56/2017-18 dated March 22, 2018, in the matter of Marg Limited, , wherein penalty were imposed in the range of Rs. 1, 00,000 to Rs. 3,00,000/- for disclosures violations.

j) Noticees 1 and 2 have submitted that the disclosure to be made under Regulation 29(2) of the Substantial Acquisition of Shares and Takeover Regulations, 2011 for change in shareholding pattern exceeding 2% in the year 2016 have been made via email and speed post by Noticees 1 and 2 to BSE Ltd. and Dune Mercantile Limited (company) vide letter dated January15, 2022.

k) Noticees requested to dispose of SCN.

13. Further, I note that Noticee 3 had made some additional submission, which is summarized as under :-

a) Noticee 3 in its reply dated January 18, 2022, stated that that throughout the entire investigation period, only in a single instance, the disclosure requirement under Regulation 29 (1) and (3) of the SAST Regulations, 2011 w.r.t. change in its shareholding on August 10, 2016, is triggered by 5.10 %. The alleged singular instance of non- disclosure w.r.t. change in

Noticee's shareholding on August 10, 2016 was merely a default of a technical nature which was over-looked by accident and it was not a deliberate attempt to achieve any other ulterior motive.

b) In the shareholding for the period ended September, 2016 the company had already disclosed its holding. It was already out in the public domain within a month's time of said purchase.

c) Necessary disclosure form was submitted by it on January 15, 2022.

<u>CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS</u>

14. I have carefully perused the charges levelled against Noticees, replies/submissions filed by them and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    I. Whether Noticees 1 & 2 have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and whether Noticee 3 has violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011?

    II. Do the violations, if any, attract monetary penalty under Section 15A (b) of SEBI Act?

    III. If so, what should be the quantum of monetary penalty?

15. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations,2011 which are reproduced as under:

    SAST Regulations, 2011

    Regulation 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.*

Regulation 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 shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the target company, in such form as may be specified.*

Regulation 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. "

16. Before going into the merits, I would like to first deal with the preliminary objection raised by Noticees w.r.t. delay in initiating proceedings. Noticees in their replies, have contended that the allegations framed in the SCN relate to the investigation period i.e., from April 20, 2016 to October 17, 2016 and the SCN was issued on August 04, 2021, i.e., after a delay of about 5 years. They have also contended that the SCN failed to provide any explanation to justify the inordinate and unconscionable delay in initiation of proceedings against Noticees at such a belated stage and this long delay had prejudiced the ability of the Noticees to adequately respond to the SCN since the documents/ facts pertaining to the alleged non-disclosure by Noticees were not readily available with them. Noticees in their replies relied on the judgment of Hon'ble Supreme Court of India in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim(1997), Ram Chand v. Union of India (1994) 1 SCC 44) and Hon'ble SAT order in the matter Rajeev Bhanot & Anr. v/s SEBI (Order dated July 09, 2021, in Appeal No. 396 of 2018).

17. In this regard, I note from the material available on record that investigation in the present matter was initiated in the month of September 2018. During the course of

investigation, SEBI had gathered information from various sources such as BSE, company, Registrar and Share transfer agent etc. Investigation involved collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the Exchange. After the fact finding, recommended actions pursuant to the investigation were approved on February 22, 2021.Thereafter, the undersigned was appointed as Adjudicating officer by SEBI vide order dated April 07, 2021 and the SCN was issued on August 04, 2021. In view of the aforesaid chronology of events, I find that SCN in the present proceedings has been issued within a reasonable period of time and there has been no delay in issuance of SCN. After issuance of SCN, adequate opportunities were granted to Noticees to represent their cases and replies were also received from Noticees with regards to the allegations against them in the SCN. Further, I note that Noticees were provided relevant details w.r.t. entities holding more than 5% shares of the company during the Investigation Period, changes in their shareholding during the Investigation period as provided by Company, Exchange and the Registrar and Share Transfer Agent of Company, trade log received from the Exchange as Annexures to the SCN. Thus, looking at the material available at the disposal of the Noticees, I find that Noticees have been provided with all the material that would have been abundantly adequate to facilitate recollection of events or collection of relevant data and thereby enabling them to form a definite defense to the charges in the SCN, which Noticees have provided through their individual replies/ submissions. Hence, I note that Noticees have failed to show that, how delay, if any, in the instant matter has prejudiced their interest. Therefore, I do not find any merit in the contention raised by Noticees that there have been inordinate delay in issuance of SCN due to which prejudice has been caused to them.

18. In this regard, I am inclined to place reliance on the judgement of Hon'ble SAT in the matter of Girrajkumar Gupta HUF (Appeal No. 424/ 2019) dated August 11, 2021, wherein Hon'ble SAT held that, "*We find that the investigation started in the year 2015 which involved examining several entities in the order logs, trade logs, off market transactions and gathering evidence from the Stock Exchange. The show cause notice was issued in the October, 2017 and accordingly we find that*

there is no inordinate delay in the initiation of the proceedings. The contention raised is, thus, erroneous and cannot be accepted."

19. In view of aforesaid Judgment, I conclude that there is no merit in the preliminary objection made by Noticees regarding the delay in issuance of SCN in the instant proceedings and prejudice caused to them for delay in issuance of SCN. I also note that the facts and circumstances of the present proceedings are not similar to those in the judgments quoted by Noticees in this regard.

20. Now I proceed to deal with the case on merits. The first issue for consideration is whether Noticees 1 and 2 have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Noticee 3 has violated Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011?

21. I note from the material available on record that during the period of investigation, Noticee 1 had transacted in the shares of Dune, the details of which along with the compliance status w.r.t. disclosures made by her in the aforesaid transactions is given below:

Date	**No of shares held – before transaction**	**No of shares acquired**	**No of shares sold**	**% of shares sold / acquired**	**Disclosure required under SEBI (SAST), 2011**	**Required Date of disclosure to company and Exchange**	**Disclosure to Company and to stock exchange**
01.04.2016	300000 (6%)		**0**	**0**			
27.04.2016	300000	0	11500	0.23%	NO	NA	NA
28.04.2016	288500	0	17750	0.36%			
29.04.2016	270750	0	10500	0.21%			
02.05.2016	260250	0	29300	0.59%			
03.05.2016	230950	0	6600	0.13%			
04.05.2016	224350	0	26200	0.52%	**YES. Change of 2.04%**	**06.05.2016**	**Not disclosed.**

22. From the aforesaid table, I note that as on April 01, 2016, Noticee 1 was holding 3,00,000 shares (i.e. 6% of total paid up share capital) of the company. I note that

while dealing in the shares of Dune, from the April 27, 2016 to May 04, 2016, Noticee 1 disposed-off 1,01,850 shares of the company on a cumulative basis, which was 2.4% of the total paid up share capital of the company. From the submissions made by Noticee 1, I note that Noticee 1 has not disputed the impugned transactions in the scrip of Dune as specified above.

23. I note that as the aggregate shareholding of Noticee 1 reduced more than 2% of total paid up share capital of the company, in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011, Noticee 1 was required to make necessary disclosures to company and to the Exchange on or before May 06, 2016. From the material available on record, I note that Noticee 1 failed to make necessary disclosures in this regard.

24. Further, from the material available on record, I note that during the period of investigation, Noticee 2 had transacted in the shares of Dune, as per details given below:-

Date	**No of shares held – before transaction**	**No of shares acquired**	**No of shares disposed off**	**% of shares diposeoff / acquired**	**Disclosure required under SEBI (SAST), 2011**	**Required Date of disclosure to company and Exchange**	**Disclosure to Company and to stock exchange**
01.04.2016	**300000 (6%)**		**0**	**0**			
27.04.2016	300000	0	8500	0.17%	No	NA	NA
28.04.2016	291500	0	18150	0.36%			
29.04.2016	273350	0	10545	0.21%			
02.05.2016	262805	0	29055	0.58%			
03.05.2016	233750	0	6800	0.14%			
04.05.2016	226950	0	29150	0.58%	**YES. Change of 2.04%**	**06.05.2016**	No disclosure.

25. From the aforesaid table, I note that as on April 01, 2016, Noticee 2 was holding 3,00,000 shares (i.e.6% of total paid up share capital of the company). I note that while dealing in the shares of Dune, from the April 27, 2016 to May 04, 2016, on a cumulative basis, Noticee 2 disposed-off 1,02,200 shares of the company which was 2.04% of the total paid up share capital of the company. From the submissions

made by Noticee 2, I note that Noticee 2 has not disputed the impugned transactions in the scrip of Dune as specified above.

26. I note that as the aggregate shareholding of Noticee 2 reduced more than 2% of total paid up share capital of the company, in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011, Noticee 2 was required to make necessary disclosures to company and to the Exchange on or before May 06, 2016. From the material available on record, I note that Noticee 2 failed to make necessary disclosures in this regard.

27. In this regard, Noticees 1 and 2 have contended that throughout the entire investigation period, only in a single instance, the disclosure requirement under Regulation 29 (2) read with Regulation 29(3) of the SAST Regulations, 2011 w.r.t. change in their shareholding on May 04, 2016 was triggered by a marginal 0.5 %. They have also stated that the alleged singular instance of non-disclosure w.r.t. change in Noticee's shareholding on May 04, 2016 was merely a meagre default of a technical nature which Noticees 1 and 2, over-looked by accident and it was not a deliberate attempt to achieve any other ulterior motive. In this regard, I note that disclosure requirements in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations,2011, are triggered on specific events and do not distinguish between manner or mode of transactions. In terms of requirement of aforesaid SAST Regulations, 2011, requisite disclosures are to be made based on every event of either acquisition or disposal of shares/voting rights in excess of the limits specified therein in terms of number/value/percentage. In the instant matter, disclosure requirements were triggered because of changes in the shareholding of Noticees 1 and 2 beyond the threshold levels as specified in the aforesaid Regulations. I also note that Noticees 1 and 2 have admitted to the default, albeit calling it a technical one. Therefore, I am not inclined to accept this contentions of Noticees 1 and 2.

28. From the submissions of Noticees 1 and 2, I find that they have admitted that they had no knowledge of disclosure requirements as mandated under various SEBI Regulations. In this regard, I note that statement made by Noticees 1 and 2 are not justified. As postulated by legal maxim "*ignorantia juris non excusat*", ignorance

of law is no excuse and everyone is presumed to know the law of the land. A person cannot defend his illegal actions by stating that he was not aware his actions were illegal, even if he honestly believed that they were not breaking the law. Therefore, I do not find any merit in this contention of Noticees 1 and 2.

29. I also note that AR, vide its email dated January 24, 2022, submitted that on January 15, 2022, disclosures to be made under Regulation 29(2) of SAST Regulations,2011 were made by Noticees 1 and 2 to the company as well as to the Exchange for the transactions carried out on May 04, 2016. However, I find that such disclosure is a belated one. Therefore, I do not find any merit in this contention of Noticees 1 and 2.

30. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation The Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that –

"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

31. In view of the aforesaid findings and considering the above order of Hon'ble SAT, I find that Noticees 1 and 2 failed to comply with the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 in respect of the aforementioned transactions by them in the scrip of Dune. Therefore, I find that allegation levelled against Noticees 1 and 2 that they have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011, stands established.

32. From the material available on record, I note that during the period of investigation, Notice 3 had transacted in the shares of Dune, as per details given below:-

Date	No of shares held – before transaction	No of shares acquired	No of shares disposed off	No of shares held – after transaction/s	% of share holding	Disclosure required under SEBI (SAST), 2011	Required Date of disclosure to company and Exchange	Disclosure to Company and to stock exchange
01.04.2016	**0 (0%)**		**0**		**0**			
29.06.2016	0	200000	0	200000	4.00%	No	NA	NA
01.07.2016	200000	48750	0	248750	4.98%	No		
04.07.2016	248750	0	30610	218140	4.36%	No		
05.07.2016	218140	63444	98597	182987	3.66%	No		
07.07.2016	182987	0	97970	85017	1.70%	No		
08.07.2016	85017	0	27234	57783	1.16%	No		
08.08.2016	57783	51807	0	109590	2.19%	No		
08.08.2016	109590	0	99504	10086	0.20%	No		
09.08.2016	10086	5	10000	91	0.00%	No		
10.08.2016	91	300000	45000	255091	**5.10%**	**YES. acquired 5.10%**	**12.08.2016**	**Not disclosed.**

33. From the aforesaid data, I note that as on April 01, 2016, Noticee 3 was not holding any shares of the Dune. From June 29, 2016 onwards Noticee 3 started acquiring /disposing off the shares of Dune. While dealing in the shares of Dune, I note that on August 10, 2016, the transactions by Noticee 3 resulted in the total shareholding of Noticee 3 exceeding 5% of total paid up capital of the company. I note that in terms of Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011, Noticee 3 was required to make necessary disclosures on August 12, 2016. However, I find that Noticee 3 failed to make the requisite disclosures under Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011 to the company and Exchange.

34. Noticee 3, in its reply, has contended that throughout the entire investigation period, only in a single instance, the disclosure requirement under Regulation 29 (1) and (3) of the SAST Regulations, 2011 w.r.t. change in Noticee's

shareholding on August 10, 2016 was triggered by 5.10% and singular instance of non- disclosure w.r.t. change in Noticee 3 shareholding on August 10 2016, was merely a default of a technical nature which was over-looked by it and it was not a deliberate attempt to achieve any other ulterior motive.

35. I also note that Noticee 3, in its submission, has also stated that in the shareholding for the period ended September 2016, the company had already disclosed its holding and it was already out in the public domain within a month's time of said purchase.

36. As stated earlier, disclosure requirements in terms of Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011 are triggered on specific events and do not distinguish between manner or mode of transactions. In terms of requirement of aforesaid SAST Regulations,2011, requisite disclosures are to be made based on every event of either acquisition or disposal of shares/voting rights in excess of the limits specified therein in terms of number/value/percentage. In the instant matter, I find that disclosure requirements were triggered because of changes in the shareholding of Noticee 3 beyond the threshold levels as specified in the aforesaid regulations. Regarding the contention of Noticee 3, I note that the disclosures of quarterly shareholding of Noticee 3 as disseminated by the Company for the quarter ended September 2016, will not meet the event wise specific disclosure requirements as mandated under Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011. I also note that Noticee 3 has admitted to the default, albeit calling it a technical one. Therefore, I am not inclined to accept this contention of Noticee 3.

37. Noticee 3 has also submitted that on January 15, 2022, it had submitted the disclosure form. However, I note that there is no evidence provided by Noticee 3 in this regard and in any case, the purported disclosure, if made, is a belated one. Therefore, I do not find any merit in this contention of Noticee 3.

38. In view of the aforesaid observations, I find that Noticee 3 failed to comply with the provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011. Therefore, I find that allegation levelled against Noticee 3, that it has violated,

Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011 stands established.

Issue No. 2: Do the violations attract monetary penalty under Section 15A(b) of SEBI Act.?

39. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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......".

40. Therefore, in view of the violations as established against Noticees and placing reliance on the aforesaid judgments, I find that Noticees are liable for monetary penalty under Section 15A (b) of the SEBI Act. The text of Section 15A(b) of the SEBI Act is reproduced below:

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 there under,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Issue No. 3: What should be the quantum of monetary penalty to be imposed?

41. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J *- 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 the 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.*

42. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. Noticees, in their replies, have contended that they had not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. They have further contended that no loss has been caused to any investor or group of investors as a result of the alleged default. Noticees have also requested to consider the hardship faced by Noticees due to COVID-19 pandemic. In this regard, from the material available on record, I note that there is no evidence placed on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticees in making disclosures or the consequent loss caused to investors as a result of the default.

43. Noticees, in their replies, have relied on the judgments of Hon'ble SAT in the matter of P. G. Electroplast Ltd. & Ors. V. SEBI in Appeal no. 281 of 2017 and Hon'ble Supreme Court in the matter of M/s Hindustan Steel Ltd. v. State of Orissa reported

in 1969 (2) SCC 627 for not imposing any penalty and have also quoted SEBI Adjudication Orders viz. Adjudication order no.EAD-2/AO/DSR/BKM/647/2017 dated June 30, 2017 in the matter of Rathi Bars Limited, Adjudication order no.EAD-12/SM/217-222/2018 dated March 15, 2018, in the matter of Inanna Fashion and Trends Limited (earlier lmown as Frontline Business Solutions Limited), Adjudication Order No. RA/JP/310-319/2018, dated March 21, 2018, in the matter of Tricom Fruit Products Limited and Adjudication Order No. EAD/PM-RR/AO/53-56/2017-18 dated March 22, 2018, in the matter of Marg Limited, wherein penalties imposed were in the range of Rs. 1,00,000/- to Rs. 3,00,000/- for disclosure violations.

ORDER

44. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees and also the factors mentioned in Section 15J of the SEBI Act including the various SEBI Adjudication Orders quoted by Noticees, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose the minimum penalties upon Noticees, under the provisions of Section 15A (b) of SEBI Act as detailed hereunder:-

Sr. No.	Name of Noticees	Penalty
1	Navalben Gangji Gala	Rs. 1,00,000/- (Rupees One Lakh only)
2	Gangji Arjan Gala	Rs. 1,00,000/- (Rupees One Lakh only)
3	Dhiren Dharamdas Agarwal-HUF	Rs. 1,00,000/- (Rupees One Lakh only)

I am of the view that the aforesaid penalties are commensurate with the lapses/ omissions on the part of Noticees.

45. Noticees 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. In case of any

difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

46. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of 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)	

47. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticees under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

48. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees viz. Navalben Gangji Gala, Gangji Arjan Gala and Dhiren Dharamdas Agarwal-HUF and also to the Securities and Exchange Board of India.

Place: Mumbai **SOMA MAJUMDER**

Date: March 31,2022 **ADJUDICATING OFFICER**