

WTM/AB/IVD/ID13/15754/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER

Under Section 15-I (3) read with Section 19 of the Securities and Exchange Board of India, 1992 – In respect of Adjudication order dated May 28, 2021 passed against Sohan Lal Agarwal (PAN: AIFPA5183P), Websol Energy System Limited (PAN: AAACW3039L) and Sima Jhunjhunwala (PAN: AEOPM9836Q) in the matter of Websol Energy System Limited.

1. Present proceedings have emanated from a show cause notice dated August 13, 2021 (hereinafter referred to as “**SCN**”) issued by Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) under Section 15-I (3) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act, 1992**”) to Sohan Lal Agarwal (hereinafter referred to as “**Noticee no. 1**”), Websol Energy System Limited (hereinafter referred to as “**Noticee no. 2**” or “**the Company**”) and Sima Jhunjhunwala. (hereinafter referred to as “**Noticee no. 3**”) calling upon them to show cause as to why appropriate penalty should not be imposed against Noticees no. 1 and 3 in terms of Section 15A(b) and Section 15HB of SEBI Act, 1992 and against Noticee no. 2 in terms of Section 15A(b) of SEBI Act, 1992 and Section 23E of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as “**SCRA, 1956**”) for the violation as alleged in the show cause notice dated December 01, 2020 issued to the Noticees and Supplementary show cause notice dated March 12, 2021 issued to Noticee no. 1, by the adjudicating officer which led to passing of Adjudication Order dated May 28, 2021 (hereinafter referred to as the ‘**AO Order**’).
2. Show Cause Notice dated December 01, 2020 and Supplementary show cause notice dated March 12, 2021 came to be issued as SEBI had initiated adjudication proceedings against:
 - (i) Noticee 1 under Section 15A(b) of SEBI Act, 1992 for alleged violation of Regulation 7(2)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as, ‘**PIT Regulations, 2015**’) and Regulation 29(2) read

with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and under Section 15HB of SEBI Act, 1992 for alleged violation of Code of conduct as prescribed under Clause 4 and 6 of Schedule B of Regulation 9(1) of PIT Regulations, 2015.

(ii) Noticee 2 under Section 15A(b) of SEBI Act, 1992 for alleged violation of Regulation 7(2)(b) of PIT Regulations, 2015 and under Section 23E of SCRA, 1956 for alleged violation of Regulation 31 (1) read with Regulation 4 (1)(e) of SEBI (LODR) Regulations, 2015 (hereinafter referred to as, '**LODR Regulations, 2015**').

(iii) Noticee 3 under section 15A(b) of SEBI Act, 1992 for alleged violation of Regulation 7(2)(b) read with Regulation 9(3) of PIT Regulations, 2015 and under Section 15HB of SEBI Act, 1992 for alleged violation of Regulation 6 (2) (a) & (b) read with Regulation 31(1) read with Regulation 4 (1) (e) of LODR Regulations, 2015.

3. Thereafter, the AO Order under Section 15-I of the SEBI Act, 1992 came to be passed wherein the adjudication proceedings initiated against the Noticee were disposed of by the adjudicating officer vide Order dated May 28, 2021 with the following observations:

"71. I note from the material on record that SCN has not brought out any facts relating to payment leg of the aforesaid transactions. Noticee 1 has stated in his reply that no payment was made for the aforesaid transactions as the shares were given as security for loan. This contention has not been negated in the material placed before me. Hence, I find that while share transfers took place in the depository, no corresponding payment was made to complete the transactions. A sale or purchase transaction cannot be said to be complete without the settlement of the transaction by payment of consideration. In view of the above, I agree with the contention of the Noticee that the said transactions were not sale transactions but were loan transactions, whereby the shares were provided as security for a loan transaction. I further note that no charge of violation of Regulation 31 of SAST Regulations has been made, which requires disclosure of shares encumbered by promoters.

72. In view of the above, considering that no sale of shares took place, I find that violation of Regulation 7(2)(a) of PIT Regulations and Regulation 29(2) read with Regulation 29(3) of SAST

Regulations and the Code of conduct as prescribed under Clause 4 and 6 of Schedule B of Regulation 9(1) of PIT Regulations is not established against Noticee 1.

73. I further note that as the impugned transactions of Noticee 1 were not sale transactions, the buy trade of 42600 shares by Noticee 1 on 07/05/2018 is not a contra trade. In this context, I note that the company in its letter dated February 25, 2020 continued to reiterate that Noticee 1 had given shares as security against loans and remitted Rs. 44730 by way of Demand draft dated 18th of February 2020 SEBI IPEF without confirming or denying any violation of the PIT Regulations.

74. It was alleged in the SCN that Noticee 2 has failed to disclose the change in shareholding and it has made wrong disclosure with respect to change in shareholding of the company for the quarter ended June 2018. Further, it was alleged that as acting compliance officer of the company, Noticee 3 has made wrong disclosure of quarterly shareholding of the company and filed wrong quarterly shareholding pattern for the quarter ended June 2018. In this regard, I note that, it has been established in preceding paragraphs that the aforesaid off market transactions were not sell transactions, but a loan transaction. Therefore, there was no change in shareholding of the Company as a result of the aforesaid transactions. Hence, the quarterly shareholding was not wrongly disclosed by Noticee 2 or 3.

75. In view of the above, I find that violation of 7(2)(b) of PIT Regulations and Regulation 31 (1) read with regulation 4 (1)(e) of LODR Regulations is not established against Noticee 2. Further, violation of Regulation 7(2)(b) read with regulation 9(3) of PIT Regulations and Regulation 6 (2) (a) & (b) read with Regulation 31(1) read with Regulation 4 (1) (e) of LODR Regulations by the Noticee 3 is not established.”

Personal Hearing, Replies and Submissions:

4. The SCN dated August 13, 2021 was delivered to all the Noticees. The Noticee no. 1 filed its merit based reply vide letter dated August 17, 2021. The Noticee no. 2 filed its merit based reply vide letter dated August 30, 2021 and Noticee no. 3 filed its merit based reply vide letter dated August 28, 2021. Thereafter the matter was placed before me on September 23, 2021. Following the principles of natural justice, opportunity of personal hearing was granted to the Noticees on December 07, 2021, wherein the Noticee no. 1 appeared on behalf of himself and Noticee no. 2, via videoconferencing, and made submissions and Noticee no. 3 appeared via videoconferencing and made submissions. The Noticees no. 1 and 2 filed their additional replies vide emails dated December 07, 2021. The Noticee no. 3 has filed

its additional reply vide letter dated December 15, 2021.

5. The following is a gist of the contentions raised by the Noticees in their replies and in their oral submissions made during the personal hearing:

Noticees no. 1 and 2:

- (i) *There was a technical default and that too was unknowingly. As you have also rightly said we did not follow the process of pledge creation in the right manner though it was pledge only and loan was taken.*
- (ii) *the transaction was purely a loan transaction and was not a sale or purchase transaction because no sales consideration was received or purchase consideration was paid.*
- (iii) *To avoid any complication, the loan was converted into unsecured loans against PDCs.*
- (iv) *Also based on the investigation made earlier a warning letter has already been received by me and I assure you that such type of mistake will not happen again.*

Noticee no. 3:

- a. *I have left Websol Energy System Ltd on August 07, 2020. I was working in Websol Energy System Ltd as CFO and was looking after accounts and related functions. I was never designated as compliance officer in the company.*
- b. *After the resignation of compliance officer and company secretary, Ms Swati Agarwal I started coordinating and liasoning with the stock exchanges in my capacity as a CFO with the help of professionals like merchant bankers and since there was high employee turnover for this position of CS, to keep a track of the regular compliances to be done on time, all stock exchange filings were also done using my registered mobile No. for generating OTP.*
- c. *The role and responsibility of the Company Secretary and Compliance Officer flows from the CoA and the SEBI Listing Regulations and other applicable laws of the Company. Ms. Sweta Biyani being a qualified company secretary cannot*

be absolved of her responsibilities as the Company Secretary and Compliance Officer. She held the said position for more than 24 months (from 29-02-2017 and 29-03-2019) and cannot be absolved of her responsibilities, basis her statement “I haven’t received any documented letter/paper which signifies my role and responsibility as a Compliance Officer”, since the roles and responsibilities of a Company Secretary are expressly stated in the applicable laws.

- d. The duty of compliance of the provisions of SEBI Listing Regulations and SEBI PIT Regulations was assigned to Ms. Sweta Biyani at the Board Meeting held on 14-02-2017.*
- e. Non-mentioning of “Compliance Officer” in the offer letter cannot absolve Ms. Sweta Biyani from her responsibility. If the same logic is to be applied, then your kind attention is drawn to the Notice of AGM dated 14-08-2015 wherein the terms of my appointment are mentioned and it doesn’t include “Compliance Officer” and my appointment letter issued by the company in March 2015 which does not include appointment as compliance officer.*
- f. I was only coordinating with the Company Secretary that too whenever it was required and I was never designated as Compliance Officer by the Company anytime and no document has been ever made appointing me as compliance officer in the Company and hence I cannot be penalised for the same. The company secretary reports to the Board, any negligence on her part towards her duty, if any cannot be lifted on my head.*

Consideration of submissions and findings thereon:

- 6. Before dealing with the issue, it would be appropriate to refer to the relevant provisions of law which are alleged to have been violated by the Noticees and relevant extract thereof is reproduced hereunder:

Relevant extract of provisions of the PIT Regulations, 2015:

Regulation 7.

(2) Continual Disclosures.

- (a). Every promoter, employee and director of every company shall disclose to the company the**

number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

- (b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.*

Explanation. — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).

Regulation 9. Code of Conduct.

(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

.....

(3) Every listed company and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

Schedule B

Clause 4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

Clause 6. When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

Relevant extract of the provisions of LODR Regulations, 2015:

Regulation 4

(1) (e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

Regulations 6

(2) The compliance officer of the listed entity shall be responsible for-

(a) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

(b) co-ordination with and reporting to the Board, recognised stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.

Holding of specified securities and shareholding pattern.

Regulation 31.

(1) The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines -

(a) one day prior to listing of its securities on the stock exchange(s);

(b) on a quarterly basis, within twenty one days from the end of each quarter; and,

(c) within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital:

Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end of each half year.

7. I note that proceedings under Section 15-I(3) of SEBI Act, 1992 can be undertaken if an order passed by the adjudicating officer is erroneous to the extent that it is not in the interests of securities market. In this regard, I note that the SCN dated August 13, 2021 alleges that SEBI after examining the records of the adjudication proceedings, is of the opinion that the Adjudication Order dated May 28, 2021 is erroneous and not in the interest of the securities market, as the Adjudicating Officer had accepted that there has been a transaction and the shares were transferred in off-market, however, held that there was no violation of Regulation 7(2)(a) of the PIT Regulations, 2015 and the Code of conduct as prescribed under Clause 4 and 6 of Schedule B of Regulation 9(1) of PIT Regulations, 2015 against Noticee no. 1. Further, it is alleged

that there had been change of beneficial ownership by transferring shares in the off market from one demat account to the other demat account and that Noticee no. 1 had not disputed about the transfer of shares in off market and had also accepted that he did not follow the process of pledge creation.

8. I note that the allegation against Noticee no. 1 in the SCN dated December 01, 2020 and supplementary SCN dated March 12, 2021 is that Noticee no. 1, who was the Managing Director of Noticee no. 2, had transferred 15,00,000 shares in off-market accounting for 5.62% of total shareholding in the Company, details of which are as under:

Sr No	Date	Buy quantity	Sell quantity	Buy Value (in Rs lakh) (from BSE)	Sell Value (in Rs lakh)
1	02/05/2018	0	1250000	0.00	851.88
2	21/05/2018	0	100000	0.00	51.90
3	07/06/2018	0	72000	0.00	37.33
4	13/06/2018	0	78000	0.00	42.67
	Total		15,00,000		

9. From the above table I note that during the quarter April 2018-June 2018, Noticee no. 1 entered into 4 sale transactions. As on quarter ended March 31, 2018 Noticee no. 1 was holding 1872108 shares (7.02%) of the Company. Upon execution of sell transaction of 1250000 shares, the shareholding of the Noticee 1 in the Company changed by 4.68% i.e. from 7.02% to 2.33%.
10. I have considered the AO Order, the SCN dated August 13, 2021 issued to the Noticees along with its annexures and the replies filed by the Noticees and the submissions made before me during the course of hearing. I note that it is not in dispute that Noticee no. 1 transferred 15 Lakh shares on four different dates in May & June, 2018. It is also not in dispute that these shares were transferred from the beneficial account of Noticee no. 1. Therefore, it was alleged that in terms of Regulation 7(2)(b) of PIT Regulations, 2015, Noticee no. 1 was required to make disclosure to the Company. Noticee no. 1 before the adjudicating officer submitted that the transaction was purely a loan transaction and was not a sale or purchase transaction because no sale consideration was received or purchase consideration

was received. I note that the AO Order accepted the submission made by Noticee no. 1.

11. In this regard, I note that pledging of securities under the Depositories Act, 1996 read with Regulation 79 of the SEBI (Depositories and Participants) Regulations, 2018 (hereinafter referred to as “**DP Regulations, 2018**”) does not require the transfer of securities from the pledgor to the pledgee and hence, the question of disclosure under the PIT Regulations, 2015 does not arise as there is no transfer of securities. However, in the present case, I note that the Noticee no. 1 has claimed he has transferred shares to the lender as security for a loan transaction. In this regard, I note that Section 12 of the Depositories Act, 1996 read with Regulation 79 of the DP Regulations, 2018 and the relevant Bye Laws of the Depositories clearly enumerate the manner of creating pledge of the dematerialised securities and any procedure followed other than as specified under the aforesaid provisions of law for creating pledge of the dematerialised securities shall not be treated as pledge under the Depositories Act, 1996 and DP Regulations, 2018. In this regard, reference is made to the Order of the Hon’ble Bombay High Court in the matter of **JRY Investments P. Ltd. vs. Deccan Leafline Services Ltd. and Ors (2003) SCC Online Bom 1134**, wherein, while considering the provisions of the Depositories Act, 1996 and the Indian Contract Act, 1872 with respect to pledge, it was held that:

“21. It is, therefore, clear that the Act and the regulations contain a whole and self-contained procedure for the creation of pledges. In any case, since it is not possible to physically deliver demated shares and therefore pledge them in accordance with the Indian Contract Act, 1872, it must be held that a pledge of such shares can only be validly created in accordance with the provisions of the Depositories Act, 1996.

22. In the present case, it is an admitted fact by the plaintiffs that the plaintiffs did not make any application to the depository for the creation of a pledge as contemplated by regulation 58. In any case, there is no dispute about the fact that after the plaintiffs transferred the shares in favour of defendant No. 1 under the loan agreement, the shares were held with the depository, i.e., National Securities Depository Ltd. and defendant No. 1 was shown as the beneficial owner of the shares with the depository participant, i.e., defendant No. 22. It is the depository participant who holds the account of various beneficial owners for the purpose of transfer of share transactions of the clients with the depository.

23. It is, therefore, evident that the plaintiffs conveyed their property in the shares to defendant No. 1 and defendant No. 1 has been shown as a beneficial owner in the depository participant account. If the plaintiffs intended to transfer the shares in favour of defendant No. 1 on account of the pledge they could have done so in the manner provided by regulation 58, i.e., by making an application to the depository through defendant No. 2 depository participant, whereupon the depository participant would have made a note that the securities are available in the pledge in accordance with Section 58(2). The important thing is that the security would have been accepted by the depository as a pledger and the record would have shown the plaintiffs as the pledger, and defendant No. 1 as pledgee. This has an important bearing on the question whether the plaintiffs intended to convey title in the shares in favour of defendant No. 1, or merely intended to create a pledge, In view of the fact that the plaintiffs did not follow the procedure provided by regulations for creating pledge, I am of the view, prima facie, that the plaintiffs had not intended to create a pledge but intended to transfer and that in any case has been the effect. In any case, in fact they did not create a pledge, but transferred the shares.”

12. Further, I note that the Hon’ble Securities Appellate Tribunal has taken the same view of the Bombay High Court quoted above in its Order dated February 18, 2022 in the matter of **HDFC Bank vs. SEBI**, wherein it *inter alia* held that:

“43. From the aforesaid provisions of the Depositories Act, the Companies Act and the decisions cited aforesaid it is clear that the Depositories Act is a complete Code by itself. Further, the Depositories Act and the regulations framed thereunder contains a whole and self-contained procedure for creation of pledges. Once the shares are dematerialised and are kept in fungible form as per Section 9(1) of the Depositories Act such shares could only be pledged in accordance with the provisions of the Depositories Act read with the regulations and cannot be pledged in accordance with the provisions of the Indian Contract Act. Thus, shares which are dematerialised under Section 9 of the Depositories Act is to be governed under Section 10 of the said Act. A perusal of Section 10 would indicate that it begins with a non obstante clause and, therefore, excludes the provisions of the Contract Act or of the Transfer of Property Act. Thus, ownership and transfer of dematerialised shares would be squarely covered in accordance with the provisions of Section 12 of the Depositories Act which provides that a beneficial owner may with the previous approval of the Depository create a pledge in respect of a security owned by him.”

13. From the aforesaid, it is clear that pledging of demat shares can only be validly created in accordance with the provisions of the Depositories Act, 1996 read with provisions of the DP Regulations, 2018. In this regard, I note that Noticee no. 1 has admittedly not complied with the aforesaid provisions of the Depositories Act, 1996 and the DP Regulations, 2018 for his alleged loan transaction and therefore, the transfer of the 15 lakh shares amounts to disposal under Regulation 7(2)(a) of the PIT Regulations, 2015 and thus requiring disclosure. Hence, I find the findings of the AO Order to be erroneous that it has not considered the fact that the process of creation of pledge based on the loan agreement by Noticee no. 1 was not in accordance with applicable law i.e. the Depositories Act, 1996 and the DP Regulations, 2018 and therefore, the pledge created by Noticee no. 1 could not be treated as pledge under the Depositories Act, 1996 and DP Regulations, 2018. Therefore, AO Order was erroneous when it agreed with the submission of the Noticee no. 1 that it was a loan transaction despite shares being in dematerialized form were transferred from the BO account of Noticee no. 1 to the account of the lender. In view of this, I note that Noticee no. 1 has violated Regulation 7(2)(a) of the PIT Regulations, 2015, as disclosure for the disposal of the 15 lakh shares were not made by Noticee no. 1 to the Company.
14. I note that information was sought from Noticee no. 2 with respect to pre-clearances sought by Noticee no. 1. Noticee no. 2 in its reply *vide* email dated August 26, 2019 *inter-alia* submitted that, *"Please note that no preclearance was sought by Mr Sohan Lal Agarwal in respect of the Transaction mentioned by us hereinabove. However, during the same period, he had sought pre-clearance for receipt of certain shares in a gift from his mother Mrs Indermani Devi Agarwal and the same was duly provided by the company...."*. Further, I note that Noticee no. 1 has not made any submission in his replies before me that he had sought preclearance for the aforesaid transactions. In view of the above, I find that Noticee no. 1 as a designated person failed to seek pre-clearance on 4 occasions (i.e. transactions on May 02, 2018, May 21, 2018, June 07, 2018 and June 13, 2018) in violation of Clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9(1) of PIT Regulations, 2015.
15. Further, I note from the corporate announcements available on BSE, that Noticee no.

2 on May 24, 2018 at 18:57:20 *inter alia* announced that the trading window in respect of dealings in the Equity Shares of the Company will remain closed for the Directors and other designated persons of the Company from May 25, 2018 till the expiry of 48 hours after the declaration of financial results. The meeting of the Board of Directors of the Company for declaration of financial results was initially scheduled to be held on May 30, 2018. However, on May 30, 2018 at 16:17:14 the Company announced /informed that the meeting of the Board of Directors of the Company is postponed and rescheduled to June 11, 2018. On June 11, 2018 financial results of the company for FY 2017-18 were announced. I note that Noticee no. 1 had transacted in the scrip on June 07, 2018 and June 13, 2018 i.e. when the trading window closure was applicable. Further, I note that Noticee no. 1 has not made any submission in his replies before me with regard to the said allegation. In view of the above, I find that Noticee 1 has violated clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9 (1) of PIT Regulations, 2015, by trading in the scrip during trading window closure.

16. In view of the above, I find that the AO Order was erroneous in holding that the off-market transfers i.e. transactions on May 02, 2018, May 21, 2018, June 07, 2018 and June 13, 2018 were not sale transactions but were loan transactions, whereby the shares were stated to be provided as security for a loan transaction and consequently, the AO Order held that the transactions did not attract Regulation 7(2) of PIT Regulations, 2015. In view of the findings in the above paras, the same cannot be treated as pledge for the reasons stated in paras 11 to 15 and accordingly, I find that Noticee no. 1 has violated Regulation 7(2)(a) of PIT Regulations, 2015 and the Code of conduct as prescribed under Clause 4 and 6 of Schedule B of Regulation 9(1) of PIT Regulations, 2015.

17. Further, I note that the Adjudication Order upon reaching a finding that the impugned transactions of Noticee no. 1 were not sale transactions but a loan transaction, held that the quarterly shareholding was not wrongly disclosed by Noticees no. 2 and 3 and in this regard, observed that:

“74. It was alleged in the SCN that Noticee 2 has failed to disclose the change in

shareholding and it has made wrong disclosure with respect to change in shareholding of the company for the quarter ended June 2018. Further, it was alleged that as acting compliance officer of the company, Noticee 3 has made wrong disclosure of quarterly shareholding of the company and filed wrong quarterly shareholding pattern for the quarter ended June 2018. In this regard, I note that, it has been established in preceding paragraphs that the aforesaid off market transactions were not sell transactions, but a loan transaction. Therefore, there was no change in shareholding of the Company as a result of the aforesaid transactions. Hence, the quarterly shareholding was not wrongly disclosed by Noticee 2 or 3.

75. In view of the above, I find that violation of 7(2)(b) of PIT Regulations and Regulation 31 (1) read with regulation 4 (1)(e) of LODR Regulations is not established against Noticee 2. Further, violation of Regulation 7(2)(b) read with regulation 9(3) of PIT Regulations and Regulation 6 (2) (a) & (b) read with Regulation 31(1) read with Regulation 4 (1) (e) of LODR Regulations by the Noticee 3 is not established. “

18. In this regard, since it has been established to the contrary in the aforesaid paras that the impugned transactions of Noticee no. 1 on May 02, 2018, May 21, 2018, June 07, 2018 and June 13, 2018, resulted in change of ownership of shares from Noticee no. 1 to the alleged lender, I note that it must be examined as to whether Noticee no. 2 has violated Regulation 7(2)(b) of PIT Regulations, 2015 and Regulation 31 (1) read with Regulation 4 (1)(e) of LODR Regulations, 2015, and whether Noticee no. 3 has violated Regulation 7(2)(b) read with Regulation 9(3) of PIT Regulations, 2015 and Regulation 6 (2) (a) & (b) read with Regulation 31(1) read with Regulation 4 (1) (e) of LODR Regulations, 2015, as alleged in the SCN dated December 01, 2020.

19. In this regard, with respect to Noticee no. 2, I note that vide email dated March 02, 2020, information was sought from Noticee no. 2 i.e. Company as to when did the transactions executed during April 01, 2018 to June 01, 2018 by Noticee no. 1 come to initial notice of Noticee no. 2. In reply vide email dated March 02, 2020, Noticee no. 2 *inter alia* stated that “....it is submitted that the transactions executed by Mr. Sohan Lal Agarwal from 1 April 2018 to 30 June 2018 came to the knowledge/notice of the Company vide BSE Limited’s emails dated 19th September 2018. Copies of the said e-mails are annexed hereto and marked as “clarification required from the company” to this letter.” Further, information was sought from the Registrar and Transfer Agent

of the Company about the information being given to Noticee no. 2. The Registrar and Transfer Agent of the Company, R & D Infotech Pvt. Ltd (hereinafter referred to as “**R&D**”), vide its letter dated November 05, 2019 forwarded copy of emails which it had forwarded to Noticee no. 2. From these emails it was observed that, R&D had forwarded BENPOS report dated May 04, 2018 (for the week ending May 04, 2018), May 25, 2018 (for the week ending May 25, 2018), June 08, 2018 (for the week ending June 08, 2018) and June 15, 2018 (for the week ending June 15, 2018) to Noticee no. 2 on May 09, 2018, May 28, 2018, June 11, 2018 and June 19, 2018 respectively. The BENPOS report for the week ending May 04, 2018 indicates that Noticee no. 1 was holding 13,80,000 shares as on April 27, 2018, 1,30,000 shares as on May 05, 2018 and transferred 12,50,000 shares. Further, the BENPOS report for the week ending May 25, 2018 indicates that Noticee no. 1 was holding 1,72,600 shares as on May 18, 2018, 72,600 shares as on May 05, 2018 and transferred 1,00,000 shares. The BENPOS report for the week ending June 08, 2018 indicates that Noticee no. 1 was holding 72,600 shares as on June 01, 2018, 600 shares as on June 08, 2018 and transferred 72,000 shares. The BENPOS report for the week ending June 15, 2018 indicates that Noticee no. 1 was holding 4,75,508 shares as on June 08, 2018, 3,97,508 shares as on June 15, 2018 and transferred 78000 shares. The abovementioned BENPOS reports clearly show the transfer of shares by Noticee no. 1 which are detailed in Table no. 1 at para 6(iv) above.

20. Further, I note that Noticee no. 2 in its email dated November 11, 2019 has also provided the copy of these emails received by them from R&D thereby confirming the submission made by R&D. Based on analysis of information / details submitted by the company, correspondences made with R&D i.e. the Registrar and Transfer Agent and the disclosure related information submitted by both the exchanges, I note that Noticee no. 2 through the BENPOS reports submitted by the Registrar and Transfer Agent on May 09, 2018, May 28, 2018, June 11, 2018 and June 19, 2018 was aware of the off-market transfer of shares by Noticee no. 1 on May 02, 2018, May 21, 2018, June 07, 2018 and June 13, 2018. I note that as per Regulation 7 (2) (b) of PIT Regulations, 2015, every company shall notify the particulars of such trading to the stock exchanges within two trading days of receipt of the disclosure or from becoming aware of such information. I note that Noticee no. 2 was aware of such trading by Noticee no. 1 but failed to disclose the change in shareholding of Noticee 1 on 4

occasions to the stock exchanges under Regulation 7 (2) (b) of PIT Regulations, 2015, pursuant to receipt of the same from its Registrar and Transfer Agent. Hence, I find that Noticee 2 has violated Regulation 7 (2) (b) of PIT Regulations, 2015 by not disclosing the sale transactions of Noticee 1 on 4 occasions.

21. Further, I note that as per Regulation 31(1) read with Regulation 4(1) (e) of LODR Regulations, 2015, the Company was *inter alia* required to submit to the stock exchanges a statement showing holding of securities and shareholding pattern separately for each class of securities on a quarterly basis, within twenty one days from end of each quarter. I note that from the replies of RTA, BSE and NSE, as mentioned in the aforesaid paras, that Noticee no. 2 had made wrong disclosure with respect to change in shareholding of Noticee no. 1 for the quarter ended June 2018, even though its Registrar and Transfer Agent had submitted BENPOS reports to Noticee no. 2 on May 09, 2018, May 28, 2018, June 11, 2018 and June 19, 2018 that made Noticee no. 2 aware of the off-market transfer of shares by Noticee no. 1 on May 02, 2018, May 21, 2018, June 07, 2018 and June 13, 2018. Hence I find that Noticee 2 has violated Regulation 31(1) read with Regulation 4(1) (e) of LODR Regulations, 2015 by filling wrong quarterly shareholding pattern for the quarter ended June 2018.

22. Further, with regard to the allegations against Noticee no. 3, I note that the information pertaining to person in charge of and responsible for submitting all disclosure requirement to the exchange(s) on behalf of the company during the period April 01, 2018 to June 30, 2018 as required under PIT regulations, 2015 was sought from Noticee no. 2. Noticee no. 2 in its reply dated September 26, 2019 and its letter dated November 11, 2019 had *inter alia* stated that “*The responsibility of submitting all disclosures to the exchanges was originally required to be complied with by Ms. Sweta Biyani. However, Ms. Sweta Biyani left the Company on 29.03.2019...*”. Noticee no. 2 also furnished the copy of minutes of the meeting of Board of Directors of the company dated February 14, 2017 which mentions Ms. Sweta Biyani was appointed as company secretary and compliance officer. In this email Noticee no. 2 had *inter alia* stated that the minutes of the Board meeting dated February 14, 2017 and offer letter were given by Noticee no. 2 to her. However, Noticee no. 2 could not provide any acknowledgment by Ms. Sweta Biyani with regard to receipt of board

minutes. Further, the offer letter mentions appointment of Ms. Sweta Biyani as Company Secretary. Information was also sought from Ms. Sweta Biyani relating to her appointment and her responsibilities. Ms. Sweta Biyani in her reply vide email dated March 04, 2020 had *inter alia* stated that “*apart from the appointment letter, I haven’t received any documented letter/paper which signifies my role and responsibility as a Compliance officer.*” She also stated that “*Sir, I was never assigned to make any correspondence with the Stock Exchanges.*”

23. I note that Information was also sought from both BSE and NSE to provide the details (Name, Phone number, Mobile number, Designation, etc.) of the person/s of the Company, who was/were filing the disclosures, on behalf of the Company with BSE/NSE under PIT Regulations, 2015 and SAST Regulations, 2011 for the period of FY 2018-19. BSE and NSE in their reply vide email dated March 04, 2020 and March 04, 2020, respectively *inter alia* mentioned that Noticee no. 3 had filed the disclosures, on behalf of the Company with NSE under PIT Regulations, 2015 for the period of FY 2018-19. Also, the Registrar and Transfer Agent vide its letter dated November 08, 2019 had forwarded copy of the complete BENPOS report file for 4 dates and the screen printout of first page of the respective emails forwarded to the company. From the copy of these emails it was observed that all 4 emails were marked to Noticee no. 3 only. Subsequently, comments were again sought from Noticee no. 2. Noticee no. 2 in its reply vide email dated March 11, 2020 had *inter alia* stated that “*We would like to clarify that due to the bad financial position our loan accounts had turned NPA and the company was referred to BIFR. As a result, we always used to have vacancy for the post of company secretary and independent director for which company has paid huge penalties to both the stock exchanges in the past. It is in view of these issues that Ms. Sima Jhunjunwala being a senior official and a regular in the Company used to correspond with the authorities to maintain continuity and to ensure timely compliances. However, Sweta Biyani was assisting Sima Jhunjunwala in complying all the compliances with the stock exchanges. Further in the year 2016 the previous company secretary, Ms Swati Agarwal had resigned. Accordingly, it was intimated to the RTA that the Benpose should be forwarded to sima@webelsolar.com. However, the RTA was never directed to not to send the same to the company secretary.*”

24. Based on the abovementioned information / submissions by the Company, Registrar and Transfer Agent, BSE and NSE and Ms. Sweta Biyani, it was alleged that for the abovementioned period / dates, Noticee no. 3 was receiving the BENPOS details from the Registrar and Transfer Agent and Noticee no. 3 was also filing the necessary disclosures under PIT Regulations, 2015 with the exchanges (BSE and NSE). In view of the above, it was alleged that Noticee no. 3, CFO of the company was acting as a compliance officer of the Company. Therefore, it was alleged that Noticee no. 3 failed to make necessary disclosures to the stock exchange with respect to the transactions executed by Noticee no. 1 on 4 occasion (i.e. May 02, 2018, May 21, 2018, June 07, 2018 and June 13, 2018) and thereby violated Regulation 7 (2) (b) read with regulation 9(3) of PIT Regulations, 2015.
25. I note that Noticee no. 3 vide her reply dated December 15, 2021 has *inter alia* submitted that Ms Sweta Biyani was appointed as company secretary and compliance officer in the company which was also approved by the Board Resolution submitted to ROC-Kolkata. Further, that she was never designated as compliance officer in the Company and after the resignation of the then compliance officer and company secretary Ms Swati Agarwal, she started co-ordinating and liaising with the stock exchanges in her capacity as a CFO with the help of professionals like merchant bankers and since there was high employee turnover for this position of company secretary, to keep a track of the regular compliances to be done on time, all stock exchange filings were also done using her registered mobile number for generating OTP. Noticee no. 3 has submitted that she was only co-ordinating with the Company Secretary that too whenever it was required and that she was never designated as Compliance Officer by the Company and no document has been ever made appointing her as compliance officer in the Company and hence she cannot be penalised for the same.
26. I note that Noticee no. 3, who was a Whole Time Director/Chief Financial Officer of the Company, was in the absence of the Compliance Officer, receiving the BENPOS details from the Registrar and Transfer Agent and filing the necessary disclosures under the PIT Regulations, 2015 with the stock exchanges in order to maintain continuity and to ensure timely compliances. I note from the submissions of Noticee no. 2 that due to the bad financial position, the loan accounts of the Company had

turned NPA and the Company was referred to BIFR. That as a result, the Company always used to have vacancy for the post of company secretary and independent director for which the Company had paid penalties to both the stock exchanges in the past. Therefore, I note that Noticee no. 3 has not taken over the position and responsibility of the Compliance Officer but has been performing the functions of the Compliance Officer with regard to making timely disclosures and compliances for the Company in the absence of the Compliance Officer. I note that there are no letters, documents or records of Board meetings before me to show that Noticee no. 3 was designated as the Compliance Officer or formally given the responsibility of taking up the role of the Compliance Officer. It appears that Noticee no. 3 has taken up the same on her own accord for the company. To penalize Noticee no. 3 for trying to ensure regulatory compliances of the Company even though that was not her responsibility would be counterproductive in ensuring that all Companies make timely compliances as required. Further, I note that the Board of Directors of the Company in their meeting dated February 14, 2017 had appointed one Ms. Sweta Biyani as company secretary and compliance officer of the Company. In this regard, I note that as per Regulation 9(3) of the PIT Regulations, 2015, every Company formulating a code of conduct must identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations. I note that a 'compliance officer' has been defined under Regulation 2(1)(c) of the PIT Regulations, 2015 as:

“compliance officer” means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.”

27. Therefore, from the above, I note that the compliance officer of a company must be designated as such and must be reporting to the board of directors or head of the

organisation. From the documents and records available before me, I find that Noticee no. 3 was not designated as the compliance officer and had only been performing the functions of the compliance officer in the initial absence of a compliance officer given that the Company was facing financial issues. Further, I note that the Company in its Board meeting on February 14, 2017 had appointed one Ms. Sweta Biyani as company secretary and compliance officer of the Company. I note that the obligations of the compliance officer in a listed company does not stem or is limited to the obligation given to the compliance officer in the mandate of his/her appointment by the Company but arises from the various provisions of the Acts and Regulations of Securities law which the company and the compliance officer must comply with. I note that under Regulation 6(2) the LODR Regulations, 2015, the compliance officer must *inter alia* ensure conformity with the regulatory provisions applicable to the listed entity in letter and spirit and co-ordinate and report to SEBI, stock exchanges and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time. Hence, the obligations and liability of the compliance officer of a listed company arises from the Regulations and not from the mandate given by the company. Therefore, the liability to make the disclosures and compliances of the Company lies with the compliance officer who has been appointed by Noticee no. 2, irrespective of whether she has been given the mandate by the Company when she was appointed.

28. In view of the above facts and circumstances and records available before me, I find that the Noticee no. 3 cannot be liable for the compliances and disclosures required to be made by the compliance officer of the Company, when a compliance officer was already appointed in the Company. Hence, I find that the allegations against Noticee no. 3 in the SCN dated December 01, 2020 cannot be sustained.

29. In view of the findings in paras 11 to 21 above, I find that Noticee no. 1 has violated Regulation 7(2)(a) of PIT Regulations, 2015 and the Code of conduct as prescribed under Clause 4 and 6 of Schedule B of Regulation 9(1) of PIT Regulations, 2015 and Noticee no. 2 has violated Regulation 7 (2) (b) of PIT Regulations, 2015 and Regulation 31(1) read with Regulation 4(1) (e) of LODR Regulations, 2015.

30. The aforesaid violations render the Noticees no. 1 liable for imposition of penalty

under Section 15A(b) and Section 15HB of the SEBI Act, 1992 and Noticee no. 2 liable for imposition of penalty under Section 15HB of the SEBI Act, 1992 and Section 23E of the SCRA, 1956, which at the relevant time read as follows:

SEBI Act, 1992:

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 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;

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.”

SCRA, 1956:

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees.

31. Before imposition of monetary penalty, adjudicating officer has to take into account the factors enumerated in Section 15J of the SEBI Act, 1992 while imposing penalties under Chapter VIA of the SEBI Act, 1992. Since the present proceedings are the extension of adjudication proceedings, therefore, it is incumbent upon me to take into account the factors enumerated under Section 15J of the SEBI Act, 1992 which

provides as under:

“Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 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.”

32. I note that material available on record does not indicate the amount of disproportionate gain or unfair advantage, made as a result of the default. However, from the material available on record and as discussed in the aforesaid paras, I note that the default by the Noticee no. 1 and 2 was repetitive in nature and they failed to make the required disclosures on 4 occasions. I also note that the material available on record does not indicate the amount of loss caused to any specific investor or specific group of investors.

Directions:

33. In view of the above, I, in exercise of the powers conferred by Section 15-I (3) read with Section 19 of the SEBI Act, 1992 impose penalty on the Noticees as follows:

- a) Rs. 6,00,000/- (Rupees six lakhs only) under Section 15A(b) and Section 15HB of the SEBI Act, 1992 on Noticee no. 1 (Sohan Lal Agarwal); and
- b) Rs. 6,00,000/- (Rupees six lakhs only) under Section 15HB of the SEBI Act, 1992 and Section 23E of the SCRA, 1956 on Noticee no. 2 (Websol Energy System Limited).

34. The aforesaid Noticees are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order, by way of Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai or 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 Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, Investigation Department, ID-13, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

35. Copy of the order shall be sent to the Noticees.

Date: April 01, 2022

Place: Mumbai

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA