BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/16205]

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

In respect of

M/s. Aashish Developer (AAQFA3264Q)

In the matter of Sawaca Business Machines 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 Sawaca Business Machines Limited (hereinafter referred to as '**Sawaca/Company/SBL**) for the period, September 01, 2011 to February 29, 2012 and from September 06, 2012 to March 31, 2013, (herein after referred to as '**Investigation Period/IP'**). The focus of investigation was *inter-alia*, 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, 1992 (herein after referred to as "**PIT Regulations1992 / PIT Regulations**") read with 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/SAST Regulations 2011**") in respect of trading in the scrip of Sawaca during the IP. The Company is listed on BSE Ltd. ("**BSE/Exchange**").

2. The summary of the shareholding of the promoters of the Company from quarter ending June 2011 to June 2013 is as under:

S. No.	Name	QE June 2011 – QE Dec 2012		QE March 2013 – QE June 2013	
		No. of Shares	% of Shareholding	No. of Shares	% of Shareholding
1	Satish R. Shah	10,93,092	10.51	15,93,189	15.31
2	Shetal S. Shah	10,10,600	9.72	8,60,600	8.27

3	Vishal S. Shah	8,00,000	7.69	6,50,000	6.25
4	Jyotsna S. Shah	2,00,000	1.92	1,91,000	1.84
5	Yatin G. Shah	96,308	0.93	96,308	0.93
Total		**32,00,000**	**30.77**	**33,91,097**	**32.60**

3. It was observed that promoter shareholding remained unchanged at 30.77% of total shareholding of the Company from quarter ending June 2011 to quarter ending December 2012. It changed from 30.77% in quarter ending December 2012 to 32.60% of total shareholding in quarter ending March 2013. Promoter shareholding remain unchanged at 32.60% of total shareholding from quarter ending March 2013 till quarter ending June 2013.

4. During the course of investigation, SEBI observed that M/s. Aashish Developer (herein after referred to as "**Noticee / By Name**") transacted in the scrip of Sawaca on multiple occasions during the Investigation Period. However, it was observed that Noticee failed to make /made delayed disclosures in terms of PIT Regulations, 1992. Therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15A (b) of SEBI Act, for the alleged violation of provisions of Regulation 13(3) read with Regulation 13(5) of SEBI PIT Regulations, 1992 and Regulation 29(2) read with 29(3) of SAST Regulations, by Noticee w.r.t. its trading in the scrip of Sawaca.

APPOINTMENT OF ADJUDICATING OFFICER

5. Vide communique dated January 14, 2021, Shri. Amit Pradhan was appointed as Adjudicating Officer ("**AO**") under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer Rules, 1995 (hereinafter referred to as '**Adjudication Rules 1995/ Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15A (b) of the SEBI Act, the aforesaid alleged violations committed by Noticee. Subsequently the undersigned was appointed as the AO in the matter by SEBI vide order dated June 18, 2021.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show-Cause Notice dated February 22, 2021 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of Adjudication Rule to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under the provision of Section 15A (b) of the SEBI Act for the aforesaid violations alleged to have been committed by it.

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

7.1. *During investigation, SEBI observed that the M/s Aashish Developer (hereinafter referred as "Noticee") was part of the top 10 buy clients and sell clients concentration on BSE during the investigation period. It was observed that the Noticee was highest buyer, buying 5,95,650 shares (3.77% of total market volume) of the Company and was highest seller, selling 9,76,048 (6.19% of total market volume) shares of the Company. Pursuant to its trading in the scrip of the Company during the investigation period, the Noticee was required to make disclosures to the Company and BSE in compliance of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred as "PIT Regulations") and SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter referred as "SAST Regulations"). The details of the Noticee trading in the scrip of the Company during the investigation period (**Annexure - A**) and subsequent disclosures obligations is as follows:*

Sr No	Transaction Dates	No of Shares held before transaction	No of shares Bought(B) / Sold(S)	No of Shares Held after Transaction	% of Shares held after Transaction to Total Share Capital	Observation w.r.t. bridge of threshold Limit under provisions of SAST & PIT Reg	Disclosures Required	Disclosures Made
1	12/09/2012	5,15,398 (4.955%)	25,000 **(B)**	5,40,398	**5.196%**	**Crossed 5%** threshold limit	29(1) of SAST Reg & 13(1) of PIT Reg	Yes
2	Time Period- **(**From 13/09/2012 to 25/09/2012 **)**	5,40,398 (5.196%)	1,89,846 **(B)**	7,30,244	7.021%	Did not cross threshold limit	No	NA
3	26/09/2012	7,30,244 (7.021%)	30,000 **(B)**	7,60,244	**7.309%**	**Crossed 2%** limit by buying shares when already holding more than 5%	29(2) of SAST Reg & 13(3) of PIT Reg	**No**
4	Time Period- **(**From 27/09/2012 to 22/01/2013 **)**	7,60,244 (7.309%	1,86,286 **(S)**	5,73,958	5.518%	Did not cross threshold limit	No	NA
5	23/01/2013	5,73,958 (5.518%)	28,061 **(S)**	5,45,897	**5.249%**	**Crossed 2%** limit by selling shares when already holding more than 5%	29(2) of SAST Reg& 13(3) of PIT Reg	**No**

Sr No	Transaction Dates	No of Shares held before transaction	No of shares Bought(B) / Sold(S)	No of Shares Held after Transaction	% of Shares held after Transaction to Total Share Capital	Observation w.r.t. bridge of threshold Limit under provisions of SAST & PIT Reg	Disclosures Required	Disclosures Made
6	Time Period- **(**From 24/01/2013 to 17/03/2013 **)**	5,45,897 (5.249%)	1,70,798 **(S)**	3,75,099	3.606%	Did not cross threshold limit	No	NA
7	18/03/2013	3,75,099 (3.606%)	3,75,099 **(S)**	0	**0**	**Crossed 2%** limit by selling shares when already holding more than 5%	29(2) of SAST Reg & 13(3) of PIT Reg	**No**

7.2. *It was observed that on account of its trading in shares of the Company, the shareholding of the Noticee in the Company changed by more than 2% of total share capital on September 26, 2012, January 23, 2013 and March 18, 2013, wherein, it was already holding more than 5% of total share capital. Accordingly, in terms of provisions of Regulation 13(3) read with 13(5) of the PIT Regulations, the Noticee was required to make disclosure to the Company and in terms of provisions Regulation 29(2) read with 29(3) of the SAST Regulations, the Noticee was required to make disclosure to the Company and BSE regarding such changes in his shareholding in the Company. However, it was observed that no disclosure was made by the Noticee with regard to its trading in the scrip of the Company during investigation period.*

7.3. *As per the Noticee reply dated July 31, 2015 (**Annexure - B**), the Noticee confirmed that it had not made the required disclosures under Regulation 13(3) of the PIT Regulations and under Regulation 29(2) of the SAST Regulations.*

7.4. *In view of above, it was alleged that the Noticee failed to make disclosures to the Company and BSE, respectively on 3 occasions under Regulation 13(3) read with 13(5) of the PIT Regulations and under Regulation 29(2) read with 29(3) of the SAST Regulations.*

8. The SCN was sent to Noticee through Speed Post Acknowledgement Due (herein after referred to as '**SPAD**') dated February 22, 2021. SCN sent through SPAD was returned undelivered. Accordingly, SCN was served to Noticee through newspaper publication

dated May 15, 2021, in the national and regional newspapers. However, Noticee failed to submit any reply to SCN.

9. Subsequent to appointment of undersigned as AO, an opportunity of personal hearing was granted to Noticee vide hearing notice (‘**HN’**) dated March 10, 2022. The aforesaid HN was sent to Noticee through “*Hand delivery/ Affixtures*”. However, HN could not be delivered to Noticee through “*Hand delivery/Affixture*”. Accordingly, Noticee was granted an opportunity of personal hearing on April 08, 2022 through newspaper publication dated March 23, 2022 in the national and regional newspapers. However, I note that Noticee failed to submit any reply and failed to appear for the personal hearing.

10. I note that sufficient opportunities have been given to Noticee to represent itself and the principles of natural justice has been complied with. However, despite service of the SCN and hearing notice, none of the given opportunity of personal appearance was availed of by Noticee. The Hon’ble Securities Appellate Tribunal **(“SAT”)** in the matter of Classic Credit Ltd. v. SEBI [2007] 76 SCL 51 (SAT - MUM), *inter alia*, held that – “*the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*”. Similarly, the Hon'ble SAT also, in the case of Sanjay Kumar Tayal & Ors. v. SEBI (in appeal No. 68/2013) decided on February 11, 2014, held that *“…appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices*”. Since no reply to the SCN has been filed by Noticee, it can be reasonably presumed that the allegations have been admitted to by Noticee in this case.

11. In view of the above, I am compelled to proceed ex- parte in the matter against Noticee. I am of the view that Noticee has nothing to submit and in terms of Rule 4(7) of SEBI Adjudication Rules, the matter can be proceeded ex-parte on the basis of material available on record. Therefore, the present proceedings against Noticee is undertaken ex-parte on the basis of available documents and information.

12. While deciding the case, I also cannot lose sight of settled position of law that the charges in the SCN should be established with valid reasons and in accordance with law. I, therefore, deem it necessary to examine the charges based on the trades of Noticee and supporting material as provided in the SCN.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

13. I have carefully perused the charges levelled against Noticee and documents/ evidence available on record. The issues that arise for consideration in the present case are:

    Issue No.1: Whether Noticee has violated the Regulation 13(3) read with 13(5) of the PIT Regulations, 1992 and under Regulation 29(2) read with 29(3) of the SAST Regulations?

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

    Issue No. 3:- If so, what should be the quantum of monetary penalty?

14. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations, 1992 and SAST Regulations which are reproduced as under:

PIT Regulations, 1992

Continual Disclosure

13. (3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

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

- ***(a)*** *the receipts of intimation of allotment of shares, or*
- ***(b)*** *the* **acquisition** *or sale of shares or voting rights, as the case may be.*

SAST Regulations, 2011

Disclosure of acquisition and disposal

29(2) *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.”*

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

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

15. Before going into the merits, I note from the material available on record that investigation in the present matter was initiated in the month of March 2015. During the course of investigation, SEBI had gathered information from BSE, company, Registrar and Share transfer agent etc. After the fact finding, investigation was completed in the month of September 2015. After completion of investigation, Shri S.V. Krishna Mohan was appointed as the Adjudicating Officer by SEBI vide order dated November 30, 2015. However, from the material available on record, I note that appointment of Shri S.V. Krishna Mohan was not communicated to him. Later on, Shri Amit Pradhan was appointed as Adjudicating Officer vide order dated December 24, 2020, which was communicated to him vide communique dated January 14, 2021. Thus, I note that there was a delay in appointment of Adjudicating Officer due to some procedural lapse. Subsequent to appointment of Shri. Amit Pradhan, SCN in the matter had been issued to Noticee on February 22, 2021. After issuance of SCN, adequate opportunities were granted to Noticee to represent its case. I further note that Noticee was provided relevant details w.r.t. trading by it in the scrip of company as well as provided with the reply received from it as a part of Annexure to SCN. Therefore, I find that Noticee has 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 it to form a definite defense to the charges in the SCN.

16. The first issue for consideration is whether Noticee has violated the Regulation 13(3) read with 13(5) of the PIT Regulations and Regulation 29(2) read with 29(3) of the SAST Regulations.

17. I note from the material available on record that during the period of investigation, Noticee had transacted in the shares of Sawaca. The details of transactions by Noticee and the status with respect to disclosures to be made under PIT Regulations, 1992 as well as under SAST Regulations is given below:

Table -1

Sr No	Transaction Dates	No of Shares held before transaction	No of shares Bought(B) / Sold(S)	No of Shares Held after Transaction	% of Shares held after Trans to Total Share Capital	Observation w.r.t. bridge of Threshold Limit under provisions of SAST & PIT Reg	Disclosures Required
1	12/09/2012	5,15,398 (4.955%)	25,000 **(B)**	5,40,398	**5.196 %**	**Crossed 5%** threshold limit	29(1) of SAST Reg & 13(1) of PIT Reg
2	Time Period- **(**From 13/09/2012 to 25/09/2012 **)**	5,40,398 (5.196%)	1,89,846 **(B)**	7,30,244	7.021 %	Did not cross threshold limit	No
3	26/09/2012	7,30,244 (7.021%)	30,000 **(B)**	7,60,244	**7.309 %**	**Crossed 2%** limit by buying shares when already holding more than 5%	29(2) of SAST Reg & 13(3) of PIT Reg
4	Time Period- **(**From 27/09/2012 to 22/01/2013 **)**	7,60,244 (7.309%	1,86,286 **(S)**	5,73,958	5.518 %	Did not cross threshold limit	No
5	23/01/2013	5,73,958 (5.518%)	28,061 **(S)**	5,45,897	**5.249 %**	**Crossed 2%** limit by selling shares when already holding more than 5%	29(2) of SAST Reg& 13(3) of PIT Reg
6	Time Period- **(**From 24/01/2013 to 17/03/2013 **)**	5,45,897 (5.249%)	1,70,798 **(S)**	3,75,099	3.606 %	Did not cross threshold limit	No
7	18/03/2013	3,75,099 (3.606%)	3,75,099 **(S)**	0	**0**	**Crossed 2%** limit by selling shares when already holding more than 5%	29(2) of SAST Reg & 13(3) of PIT Reg

18. From the aforesaid table, I note that before September 12, 2012, Noticee was holding 5,15,398 i.e. 4.955% of total paid up share capital of the company. On September 12, 2012, Noticee acquired 25,000 shares. On account of such acquisition, the total shareholding of Noticee became 5,40,396 shares, i.e. 5.196% of total share capital of the company. I note from the SCN that Noticee had duly made disclosures under Regulation 29(1) and 29(3) of SAST Regulations, 2011 in respect of aforesaid acquisition.

19. I also note from the aforesaid table that on September 26, 2012, Noticee acquired 30,000 shares of the company. Due to such acquisition, the total shares held by Noticee increased to 7,60,244 i.e. 7.309% of the total share capital of the company. I note that the aforesaid acquisition of shares by Noticee resulted in change of more than 2% of shareholding in the company and therefore, in terms of provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, Noticee was required to make necessary disclosures to the company and BSE. Further, Noticee was required to make necessary disclosures under Regulation 13(3) read with Regulation 13(5), to the Company for such acquisition. From the material available on record, I note that Noticee failed to make requisite disclosures under Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992 to company and under Regulation 29(2) read with Regulation 29(3) of SAST Regulations to company and BSE, for the acquisition shares on September 26, 2012. I note that Noticee, in its reply dated July 31, 2015 to SEBI admitted that no disclosures were made by it under Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992 to company and under Regulation 29(2) read with Regulation 29(3) of SAST Regulations to BSE and company, for the transactions carried out during the Investigation Period. In view of the same, I find that allegation levelled against Noticee that it has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulation and Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992, stands established for the aforesaid transactions.

20. I further note that, on January 23, 2013, Noticee sold 28,061 shares of the company, due to which, Noticee's holding reduced to 5,45,897 shares of the company i.e. 5.249% of the total share capital of the company i.e. s Noticee's, shareholding changed by more than 2%, since September 12, 2012.

21. During the period January 24, 2013 to March 17, 2013, Noticee sold 1,70,798 shares. Due to such disposal, Noticee was holding 3,75,099 shares i.e. 3.606% of the total share capital of the company. On March 18, 2013, Noticee sold 3,75,099 i.e. its entire shareholding in the company. Thus, Noticee's total shareholding changed more than 2% from January 23, 2013 to March 18, 2013.

22. It has been alleged in the SCN that for change in shareholding more than 2% of the total share capital of the company on January 23, 2013 and March 18, 2013, Noticee failed to make necessary disclosures under Regulation 29(2) read with Regulation 29(3) of SAST Regulations to the company and BSE. Further, it has been alleged that for the

aforesaid transactions, Noticee failed to make necessary disclosures to the company under Regulation 13(3) read with Regulation 13(5) of PIT Regulations.

23. W.r.t. allegation for non-disclosures under SAST Regulations, I note that Regulation 29 (2) of SAST Regulations specifically mentions about disclosure of acquisition as well as disposal of shares. However, I observe that Regulation 29 (3) of SAST Regulations, as applicable at the time of the impugned transactions, mentions the timelines for disclosures in case of acquisition of shares only and not for disposal of shares. In this regard, I would like to rely on the decision of Hon'ble SAT in **Vizwise Commerce Pvt. Ltd Vs. SEBI (Appeal No. 383 of 2014, decided on January, 28, 2015)**, wherein, the Learned Member of Hon'ble SAT had held as follows:

" It may be pointed out that Regulation 29(3) of SAST Regulations is not in consonance with Regulation 29(2), since Regulation 29(2) requires intimation for every acquisition or disposal, but Regulation 29(3) requires such disclosure "to be made within two days of receipt of intimation of allotment of shares or the acquisition of shares or voting rights in the target company" and there is no time limit for disclosure of disposal of shares or voting rights, although there is a requirement under Regulation 29(2)"

24. I also note that the words "or the disposal" were inserted in Regulation 29 (3) of SAST Regulations by an amendment with effect from September 11, 2018. In this context, I would further like to rely upon judgment of Hon'ble SAT in the matter of the Ravi Mohan vs. SEBI (Appeal No. 97 of 2014, decided on December 16, 2015) involving the interpretation of provisions of Regulation 7 (1A) of the erstwhile Takeover Regulations 1997, which is similar to Regulation 29 (2) and 29 (3) of SAST Regulations. The Hon'ble SAT in the aforesaid decision had held as follows :

"………

27. It is relevant to note that while inserting regulation 7(1A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1A) has to be made within two days of the events specified in regulation 7(2). On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting rights in excess of the limits prescribed under *regulation 7(1A). As a result, even though regulation 7(1A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Since regulation 7(2) as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1A), the question of discharging that obligation arising under regulation 7(1A) read with regulation 7(2) does not arise at all.*

28............ *Thus, by 2002 amendment it is made clear that although disclosure of purchase or sale referred to under regulation 7(1A) has to discharged within two days of purchase or sale, of shares referred to therein, by amending regulation 7(2) it is provided that two days time to make disclosure under regulation 7(1A) shall commence on the happening of events specified under regulation 7(2). Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1A), the question of complying with regulation 7(1A) within two days of sale of shares does not arise at all*.

29.......... *Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants*. ....

For all the aforesaid reasons, the issues raised in these appeals are answered as follows:-

a)...

b) Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) *within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained ...."*

25. I note that the ratio of the above judgments apply with equal force to the facts of the present case. In view of the aforesaid judgments, I find that Regulation 29 (2) read with Regulation 29(3) of SAST Regulations is not applicable to for the aforesaid disposal of shares by Noticee on January 23, 2013 and March 18, 2013. Therefore, I find that the allegation that Noticee has violated the provisions of Regulations 29(2) read with 29(3) of the SAST Regulations for the aforesaid disposal of shares is not tenable.

26. W.r.t. allegation regarding non-compliance with Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992, for disposal of shares, I note upon perusal of Table-1 above that the Noticee's shareholding reduced by more than 2% on the following dates:

    a) **23-01-2013:** Noticee's shareholding reduced to 5,45,897 shares (5.249% of the total share capital) as compared to Noticee's shareholding as on 26-09-2012 which was 7,60,244 shares (7.309% of total share capital of the company)
    b) **18-03-2013:** Noticee's shareholding reduced to NIL (0.00% of the total share capital) as compared to Noticee's shareholding as on 23-01-2013, which was 5,45,897 shares (5.249% of the total share capital of the company)

27. Therefore, in terms of Regulation 13(3) read with Regulation 13(5), Noticee was required to make necessary disclosures to the company for the change in shareholding exceeding more than 2% for the total share capital of the company on January 23, 2013 and March 18, 2013.

28. From the material available on record, I note that Noticee failed to make disclosures in terms of aforesaid Regulations for the aforesaid transactions. I also note that Noticee, in its reply to SEBI dated July 31, 2015, admitted that no disclosures were made by it under Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992 for the transactions carried during the investigation period to the company.

29. Therefore, in view of the foregoing, I find that the allegation levelled against Noticee that it has violatioed Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992 stands established for the aforesaid disposal of shares by Noticee.

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

30. 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......".

31. Therefore, in view of the violations as established against Noticee and placing reliance on the aforesaid judgments, I find that Noticee is 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 therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

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

32. 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.*

33. 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. 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 Noticee in making disclosures or the consequent loss caused to investors as a result of the default. Material on record does not show that failure on the part of Noticee is repetitive in nature. It has been noted in the earlier part of the order that there was a procedural delay in issuance of SCN to Noticee. Therefore, I am inclined to consider this as a mitigating factor while assessing the quantum of penalty.

ORDER

34. Having considered all the facts and circumstances of the case, the material available on record, and also the factors mentioned in Section 15J of the SEBI and mitigating circumstances, 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 penalty of Rs.1,00,000/-(Rupees One lakh only) on Noticee for the violations committed by Noticee as discussed in this order.

35. I am of the view that the aforesaid penalty is commensurate with the lapses/ omissions on the part of Noticee.

36. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

37. 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)	

38. 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 Noticee 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 Noticee.

39. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee i.e. M/s. Ashish Developers and also to the Securities and Exchange Board of India.

Place: Mumbai **SOMA MAJUMDER**

Date: April 27,2022 **ADJUDICATING OFFICER**