BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO. Order/GR/RK/2022-23/20709 - 20712]**

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23–I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 AND RULE 5 OF SECURITIES CONTRACT (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect of

S. No.	Name of Noticee	PAN
1	Man Industries (India) Ltd.	AAACM2675G
2	Rameshchandra Mansukhani	AACPM2146H
3	Nikhil Mansukhani	AACPM2145E
4	Rishikesh Vyas	AFUPV8907L

In the matter of Man Industries (India) Ltd.,

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as *"**SEBI**"*) had conducted an investigation in the matter of Man Industries (India) Ltd ("**MIL**"), a company listed on Bombay Stock Exchange ("**BSE**") and National Stock Exchange

("**NSE**") in order to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Insider Trading) Regulation, 1992 (hereinafter referred as "**PIT Regulations**") and of Securities Contract Regulation Act, 1956(hereinafter referred as "**SCRA**") by certain entities for the period from June 01, 2010 to July 31, 2011 (hereinafter referred to as "**investigation period/IP**"). However, wherever deemed necessary, reference has been made outside this period.

2. Investigation revealed that MIL (Noticee No.1) , Mr. R C Mansukhani, Executive Chairman and Director (Noticee No. 2), and Mr. Nikhil Mansukhani, Executive Director (Noticee No.3) and Mr. Rishikesh Vyas, Group Company Secretary, and Chief Compliance Officer (Noticee No. 4) had allegedly made a delayed disclosure to the exchanges about the letter of the depository bank of its resignation along with GDR programme termination with a further information to GDR holders about the aforementioned after 217 days from the issue of Notice thereby leading to violation of

a) Clause 2.1 of Schedule II as contained in Regulation 12(2) of SEBI PIT Regulation and Clause 36(7) of BSE Equity Listing Agreement (hereinafter referred to as "**Listing Agreement**") read with Section 21 of SCRA by Noticee No.1

b) Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations, Clause 36(7) of Listing Agreement read with Section 21 of SCRA, and Section 24(1) of SCRA by Noticee No. 2 and Noticee No.3 and

c) Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations read with Clause 1.2 of Code of Conduct for prevention of Insider Trading for

Listed companies prescribed in Part A in Schedule I under Regulation 12(1) of PIT Regulations, Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA by Noticee No.4

APPOINTMENT OF ADJUDICATING OFFICER

3. In this regard, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as Adjudicating Officer, communicated vide communique dated March 11, 2022 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 *(*hereinafter referred to as ***Adjudication Rules)*** to inquire into and adjudge under Section 15A(b) of the SEBI Act and under Section 23-I of SCRA read with Rule 3 of the Securities contracts Regulation (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("**SCR Adjudication Rules**") to inquire into and adjudge under and Section 23E of SCRA for the aforesaid violation alleged to have been committed by the Noticees as specified in the SCN.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated May 27, 2022 (hereinafter referred to as SCN) was issued to the Noticees in terms of Section 15-I of the SEBI Act read with Rule 4 of the Adjudication Rules and Rule 4 of SCR Adjudication Rules read with Section 23-I of SCRA to show cause as to why an inquiry should not be held against them and why penalty, if any, under Section 15A(b) of the SEBI Act and Section 23E of SCRA be not imposed upon the Noticees.

5. The said SCN was issued to the Noticees via SPAD and also through email dated June 06, 2022, which were duly delivered. However, since no reply was received in the matter, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on September 07, 2022 vide Hearing Notice dated August 30, 2022 served through email on the same day. However, in response, the AR of the Noticees vide email dated September 02, 2022, sought for adjournment. Accordingly, another opportunity of personal hearing was granted to the Noticees on September 13, 2022 vide email dated September 07, 2022.The said hearing was attended to by the AR of the Noticees who reiterated the submissions made vide their letter September 09, 2022 sent through email dated September 12, 2022 .The reply of the Noticees vide the aforesaid letter is summarised as under :

- *Notice has been issued after an inordinate delay of about 10 years causing serious prejudice, on which ground itself the present Notice ought not to be proceeded with as the same suffers from Doctrine of Laches.*
- *At the outset, it must be noted that request of the depository bank to look for another depository bank cannot be said to be UPSI by any stretch of imagination.*
- *The letter stated that if the Company did not appoint a successor depository bank on or before 31 August 2012 (the SCN erroneously refers to the year as 2020), the bank would terminate the GDR programme in 90 days from 31 August 2012 i.e. 30 November 2012 (the SCN erroneously refers to the year as 2020). Therefore, as on 19 April 2012, it was a notice to resign and appoint another banker.*

- *The GDR programme was not terminated as on the said date and the Company was actively looking for a banker. In any event, cancellation of GDR programme cannot per se be said to be UPSI.*
- *No change in capital structure occurs, no additional capital flows in, no impact on price is caused. It is merely a foreign traded derivative instrument being cancelled in lieu of which the holders are entitled to the underlying security, i.e. the shares of the Company. Even if it is to be assumed that the cancellation could result in increased volumes in shares of the Company, the same can only occur when the programme is cancelled and not upon the resignation of the depository banker. Therefore, no UPSI came into existence on 19 April 2012.*
- *It is quite surprising that even though the disclosure was made on 21 September 2012 itself, the investigation department of SEBI has ignored the said disclosure and alleged that the said fact was only disclosed on 22 November 2012.*
- *It is not SEBI's case that the said information, when disclosed has any impact on the price of the shares of the Company. It is not even alleged that any person traded in the scrip of the Company while in possession of the said UPSI. The only issue is one of alleged delayed disclosure and that too for an event which occurred more than 10 years ago.*
- *Directors and Company Secretary & Compliance Officer(Noticee No. 2 to Noticee No. 4) cannot be charged for such technical / venial violations.*

6. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticees ample opportunities for replying to the SCN and of being heard. But before delving into the issue further I would deal with the preliminary issue raised by the Noticees. They have contended that there is an inordinate delay in issuance of the SCN owing to which it suffers

from doctrine of latches and that the present proceedings need to be dropped on this very ground.

7. In this regard, I note that the Noticees at no point of the present proceedings, have demonstrated successfully as to how exactly their interest in defending their case stands prejudiced due to any delay in the matter. SEBI initiated the investigation as soon as information regarding mala fide actions came to its notice. Further, under the SEBI Act there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. Also, these do not prescribe any fixed limitation period for completion of the proceedings. Without prejudice to the above, I note that pursuant to the completion of investigation, SCN has been issued on May 27, 2022. Also, the proceedings in the present matter have been affected due to spread of Covid-19 Pandemic.

8. I further note that the investigation with regards to violation of PIT Regulations, is an exhaustive and time consuming process, which may require detailed analysis of the case facts. In this regard, I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI**(Appeal No. 152 of 2019 decided on March 17, 2020) held that, *"The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same"*.

9. I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs SEBI**(decided on March 22, 2006) held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these*

contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".

10. In view of the above, and considering the facts and circumstances, the contention of the Noticees does not hold any ground for granting discharge from the charges as alleged in the SCN, so the contentions of the Noticees in this regard are without merits. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and reply submitted by the Noticees

CONSIDERATION OF ISSUES AND FINDINGS

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

Issue I:

(a) *Whether Noticee No. 1 has violated the provisions of Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA?*

(b) Whether Noticee No. 2 and Noticee No. 3 have violated the provisions of have violated Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT

Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA? And

(c) Whether Noticee No. 4 has violated the provisions of Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations read with Clause 1.2 of Code of Conduct for prevention of Insider Trading for Listed companies prescribed in Part A in Schedule I under Regulation 12(1) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA?

Issue II: Does the violation, if any, on the part of the Noticees attract penalty under Section 15A(b) of the SEBI Act and Section 23E of SCRA?

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

12. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the PIT Regulations, SCRA and Listing Agreement alleged to have been violated by the Noticees. The same are reproduced below:

PIT Regulations, 1992

12(2) *The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations*

SCHEDULE II

[See under regulation 12(2)]

CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING

2.1 *Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis*

SCHEDULE I

[Under regulation 12(1)]

PART A MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.2 *The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.*

Listing Agreement

36. *Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the performance/operations of the company as well as price sensitive information. The material events may be events such as:*

….

(7) *Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;*

i) Issue of any class of securities.

ii) Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.

iii) Change in market lot of the company's shares, sub-division of equity shares of company.

iv) Voluntary delisting by the company from the stock exchange(s).

v) Forfeiture of shares.

vi) Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.

vii) Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.

viii) Cancellation of dividend/rights/bonus, etc.

The above information should be made public immediately.

SCRA, 1956

Conditions for listing*.*

21. *Where securities are listed on the application of any person in any recognized stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

24(1) *Where an offence has been committed by a company, every person who, at the time when the offense was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:*

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offense was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offense.

Issue I:

(a) Whether Noticee No. 1 has violated the provisions of Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA?

(b) Whether Noticee No. 2 and Noticee No. 3 have violated the provisions of have violated Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA? And

(c) Whether Noticee No. 4 has violated the provisions of Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations read with Clause 1.2 of Code of Conduct for prevention of Insider Trading for Listed companies prescribed in Part A in Schedule I under Regulation 12(1) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA?

Delayed disclosure by the Noticees

13. In respect of the aforesaid alleged violation against the Noticees, I note from the IR that the Noticee No.1 in March 2006 had issued 67,30,770 Global Depository Receipts (GDRs) and the underlying shares represented 26.15% of the post conversion issued, subscribed and paid up capital of the Company.

a) Issue Date: March 22, 2006

b) Offer Price: USD 5.20

c) Total GDRs: 67,30,770

d) Total fund raised: USD 35 million

e) Lead Manager: Dubai Bank, and ICICI Securities

f) Depository: Bank of New York Mellon

g) Custodian of the underlying shares of the GDRs: ICICI Bank

14. The depository bank of the GDR issue was Bank of New York Mellon (hereinafter referred to as "**Depository Bank/ DB**") and a deposit agreement dated March 21, 2006 was entered into between Depository Bank and Noticee No.1. The GDRs were listed on the Dubai International Financial Exchange (also known as NASDAQ Dubai Stock Exchange). I further note from IR that on April 19, 2012, the depository bank addressed a letter to Noticee No.1 stating under condition 20 and 21 of the Depository Agreement, they were resigning as the depository bank for the GDRs of Noticee No.1. The letter further stated that if Noticee No.1 did not appoint a successor depository bank on or before August 30, 2012, the Depository Bank would terminate the GDR programme in 90 days from August 30, 2012.

15. Further, I note from IR that subsequently, on September 06, 2012, the depository bank issued a notice to the GDR holders informing them that they shall terminate the GDR programme w.e.f. November 30, 2012, by which date the GDR holders may surrender to receive the corresponding shares held with Noticee No.1. It was further informed that if the GDR holders did not surrender the GDRs by that date, then the GDR holders would be entitled to receive the net proceeds of sale of corresponding shares which the depository shall sell.

16. I further note that on November 22, 2012, Noticee No.1 also addressed a letter to the exchanges stating that GDRs numbering 44,56,462 (7.46% of the capital of Noticee No.1) was outstanding and further informed the exchanges that the DB had issued a notice dated September 06, 2012 to the GDR holders informing them about their resignation as DB and that GDRs may be converted into shares on or before November 30, 2012.

17. Further, I note from IR that the GDR Programme was finally terminated by the DB on November 30, 2012. However, no timely disclosure of the aforesaid information was made to the exchanges under Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA by the Noticee No.1

18. It is pertinent to mention here that during the financial year 2012-13, Noticee No.2 and Noticee No. 3 were the Executive / Whole time directors of Noticee No.1 and Noticee No. 4 was the Group Company Secretary and Chief Compliance Officer of Noticee No. 1. I also note from IR that subsequent to the aforementioned letter of intimation dated April 19, 2012, DB had also informed Noticee No. 1 vide its email dated August 20, 2012 with copies to the Noticee No. 2 and Noticee No. 4 that it has closed their books for cancellation of GDRs which is in response to Noticee No. 1's letter dated July 04, 2011. Further, I also note that the DB also exchanged other emails dated August 21, 22, and 24, 2012 regarding the cancellation of GDRs with Noticee No. 1 with copies marked to Noticee No. 2 and Noticee No. 4.

19. In view of the aforementioned facts, I note that Noticee No. 2- 4 were fully aware of the developments regarding closure of the books for cancellation of GDRs, the decision of DB to withdraw its association as depository Bank for the GDRs of Noticee No. 1 and termination of GDR agreement by DB, which is a price sensitive information requiring disclosures. However, Noticee No. 2 and 3 failed to make timely disclosure under Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations, and Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA. Further, Noticee No. 4 also failed to make timely disclosure as is warranted under Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations read with Clause 1.2 of Code of Conduct for prevention of Insider Trading for Listed companies prescribed in Part A in Schedule I under Regulation 12(1) of PIT Regulations, and Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA.

20. In this regard, the Noticees have submitted that the request of the DB to look for another depository bank cannot be termed as UPSI by any stretch of imagination. Further, they submitted that Noticee No.1 did not appoint a successor depository bank on or before 31 August 2012 (the SCN erroneously refers to the year as 2020), as deadline for termination of the GDR programme by Bank was 90 days from 31 August 2012 i.e. 30 November 2012 and not 31 August, 2012. Therefore, as on 19 April 2012, it was only a notice to resign and appoint another banker. The Noticees further stated that said GDR programme was not terminated on the said date and that the Noticee No.1 was actively looking for a banker. In any event, cancellation of GDR programme cannot per se be said to be UPSI. In this regard I note from IR and the submission of the Noticees that they have fallaciously interpreted price

sensitive information as alleged in SCN as UPSI whereas both are diametrically different. Further, I find it pertinent to mention an excerpt of the said letter by the Noticee No. 1 to exchange dated November 22, 2012 wherein para 5 of the letter declaims as mentioned below:

"The company believes that the said information may be price sensitive in nature and accordingly as a measure of Good corporate Governance the same must be disclosed to all the stakeholders and to the concerned regulators."

21. The bare reading of excerpt above reveals that the Noticee No.1 had admitted that the information may be price sensitive in nature as is evident from above. I also find it pertinent to rely at this juncture on the recent Supreme Court judgment **SEBI Vs Abhijit Rajan** (Civil Appeal No.563 of 2020) dated September 19, 2022 wherein para10 of the said judgement has dealt with the ambit of price sensitive information as mentioned below:

" *10 In exercise of the powers conferred by Section 30 of the Act, the Board issued a set of Regulations known as "Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992", with the previous approval of the Central Government.* ***Regulation 2(ha)*** *of these Regulations defines the expression "price sensitive information as follows*:

"

2(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—The following shall be deemed to be price

sensitive information :

i) periodical financial results of the company;
(ii) intended declaration of dividends (both interim and final);
(iii) issue of securities or buyback of securities;
(iv) any major expansion plans or execution of new projects.
(v) amalgamation, mergers or takeovers;
(vi) disposal of the whole or substantial part of the undertaking;
(vii) and significant changes in policies, plans or operations of the company."…….

"22 Before we proceed to find an answer to the above questions in the context of the present appeal we must take note of one important fact namely, that the price sensitivity of an information has a correlation directly to the materiality of the impact that it can have on the price of the securities of the company. An information may materially affect the price of the security of a company either positively or negatively. The impact may be beneficial or adverse. The information should have the potential either to catapult the price of the securities of the company to a higher level or to make it plunge. The effect can be bullish or bearish. But the effect should be material and not completely insignificant.""

22. Thus, from the above it is concluded that the communication by DB to the Noticee No. 1 vide email dated April 19, 2012 was a price sensitive information which Noticee No. 1 failed to disclose within the stipulated time frame. However, Noticee No. 1 made a delayed disclosure to that effect. Accordingly, the aforesaid submission of the Noticees is untenable.

23. Noticees further submitted that the Directors, Company Secretary & Compliance Officer (Noticee No. 2 to Noticee No. 4) cannot be charged for such technical/venial violations. In view of the aforesaid submission I note that the Noticee No.1 did not make disclosure to the exchange regarding the termination of agreement by the DB. In this regard, I further note that, the Hon'ble SAT through various judgment has consistently observed that these factors are not

valid grounds for not complying with the mandatory disclosure obligations under the PIT regulation. Hon'ble SAT in the matter of, **Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014)**, had held that *"……. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures*."

24. In view of the aforesaid, being a Directors ,Company Secretary & Compliance Officer(Noticee No. 2 to Noticee No. 4) of the Company it can be fairly assumed that they are well versed and aware of the statutory requirements under the SEBI Act, Rules, Regulations and circulars and in this case regarding disclosure requirements under the PIT Regulations and were duty bound to disclose the same.

25. Noticees further contented that no change in capital structure occurred , no additional capital inflow took place and no impact on price was caused. It was merely a foreign traded derivative instrument which was being cancelled in lieu of which the holders were entitled to the underlying security, i.e. the shares of the Company. Even if it was to be assumed that the cancellation could have resulted in increased volumes in shares of the Company, the same could have only occurred when the programme was cancelled and not upon the resignation of the depository banker. In this regard, I note the allegation on the Noticees is regarding non-disclosure which ought to have been made timely by the Noticee No.1. Further, as already established above it was

a price sensitive information as admitted by the Noticees in its letter. So, the contention of the Noticees is devoid of merits.

26. The upshot of the above discussion is that Noticees made a delayed disclosure to the exchanges despite the information by the DB on April 19, 2012 about their resignation and about the termination of GDR programme in 90 days from August 31, 2012 and the same has been established in the preceding paragraphs.

Issue (II) - Does the violation, if any, attract penalty under Section 15A(b) of the SEBI Act and Section 23E of SCRA ?

27. 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 and hence the intention of the parties committing such violation becomes wholly irrelevant……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

28. I also note that in Appeal No. 66 of 2003 –**Milan Mahendra Securities Pvt. Ltd. Vs. SEBI**–the Hon'ble Securities Appellate Tribunal (SAT) has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market".*

29. 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 and penalty is imposed for non-compliance of the mandatory obligation.

30. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15A(b) of SEBI Act and Section 23 E of SCRA for the aforementioned violations. The provisions of Section 15A(b) of the SEBI Act, 1992 read as under:

SEBI Act, 1992

15A. Penalty for failure to furnish information, return, etc.

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 there for 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.

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 not exceeding twenty-five crore rupees***.**

Issue (III) - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

31. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992 and Section 23E of SCRA, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 and Section 23 J of SCRA read with Rule 5 of SC(R) Rules, which read as under:

SEBI Act, 1992

Factors to be taken into account by the adjudicating officer

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.

32. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the their failure. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it

and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticees Hence, I note that the Noticees made a delayed disclosure to the exchanges about the letter of the depository bank about its resignation along with GDR programme termination with a further information to GDR holders about the said intimation and accordingly violated the relevant provisions of PIT Regulations, Listing Agreement, SCRA, etc., as mentioned above.

ORDER

33. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and Section 23 J of SCRA in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, 1995 and Section 23-I of the SCRA read with Rule 5 of SC(R) Rules, I hereby impose the following penalties under Section 15 A (b) of SEBI Act, 1992 and Section 23E of SCRA, on the Noticee for the violations as specified in this order;

Name of the Noticee	Violations	Penal provisions	Penalty (Rs)
Man Industries (India) Ltd. (Noticee No. 1)	Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA	Section 15A(b) of SEBI Act, 1992 and Section 23E of SCRA, 1956	Under Section 15A(b) of SEBI Act

Rameshchandra Mansukhani (Noticee No. 2)	Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA	Section 15A(b) of SEBI Act, 1992 and Section 23E of SCRA, 1956	**Rs. 3,00,000 /-** (**Rupees Three Lakh Only**) jointly and severally on Noticees No. 1 to 4 Under Section 23E of SCRA***** **Rs. 2,00,000/-** (**Rupees Two Lakh Only**) jointly and severally on Noticee No. 1 to 4
Nikhil Mansukhani (Noticee No. 3)	Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA and Section 24(1) of SCRA	Section 15A(b) of SEBI Act, 1992 and Section 23E of SCRA, 1956	
Rishikesh Vyas (Noticee No. 4)	Clause 2.1 of Schedule II as contained in Regulation 12(2) of PIT Regulations read with Clause 1.2 of Code of Conduct for prevention of Insider Trading for Listed companies prescribed in Part A in Schedule I under Regulation 12(1) of PIT Regulations and Clause 36(7) of Listing Agreement read with Section 21 of SCRA, 1956 and Section 24(1) of SCRA	Section 15A(b) of SEBI Act, 1992 and Section 23E of SCRA, 1956	

34. I am of the view that the said penalty is commensurate with the violation committed by the Noticees in this case.

35. ******As noted above, in light of the fact that an appeal has been before the Hon'ble Supreme Court in the Suzlon Energy (supra) matter, the monetary penalty imposed on the Company under section 23E of the SCRA shall be payable depending upon the outcome of the aforesaid appeal before the Hon'ble Supreme Court.

36. The Noticees shall remit / pay the said amount of penalty either 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 AO → PAY NOW.

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

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

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

39. In terms of the provisions of Rule 6 of the Adjudication Rules and Rule 6 of the SC(R) Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: October 25, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**