BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : ORDER/VKV/HKS/2019-20/5148]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995, IN RESPECT OF SHRI AMUL GAGABHAI DESAI [PAN – AHDPD3526G] IN THE MATTER OF PARICHAY INVESTMENTS LIMITED.

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had conducted the Investigation in the matter relating to the trading activity of certain entities, in the scrip of Parichay Investments Limited (hereinafter referred to as **"PIL or Scrip"**). During the relevant time the shares of PIL was listed on BSE Limited (hereinafter referred to as **"BSE"**).

2. Pursuant to the Investigation, SEBI initiated adjudication proceedings under Section 15H of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as **"SEBI Act"**) against Shri Amul Gagabhai Desai (hereinafter referred to as **"Noticee"**) for the alleged violation of the provisions of Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulation 35 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST Regulations"**) for the alleged failure to make public announcement to acquire shares of PIL (Target Company).

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Sahil Malik was appointed as the Adjudicating Officer **(AO)** by SEBI, under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, referred to as **"Adjudication Rules"**) to conduct adjudication proceedings *inter-alia* in respect of the Noticee, in the manner specified under Rule 4 of the Adjudication Rules read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and in terms of Section 15H of the SEBI Act. Subsequently, in the matter, the undersigned has been appointed as AO by SEBI, on August 13, 2019, in the place of Shri Sahil Malik to inquire into and adjudge, the violation of Regulation 10 of the SAST Regulations alleged to has been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated August 24, 2017 read with supplementary Show Cause Notice dated October 24, 2018 (hereinafter collectively referred to as **"SCN"**) was issued to the Noticee in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15H of the SEBI Act, on the Noticee for the alleged violation of Regulation 10 of the SAST Regulations.

5. The Authorised Representative **(AR)** of the Noticee filed reply to the SCN vide letter dated November 06, 2017. The relevant extracts of the aforesaid reply, mainly to the effect the aforesaid allegation against the Noticee, are *inter-alia* reproduced hereunder.

a) *“The Noticee stated that, the cumulative shareholding considered on 20-01-2011 for computation of trigger limits is not as per record. The Noticee further stated that, he never held 1,72,900 equity shares as at January 19, 2011.*

b) *The Noticee stated as at January 19, 2011, the Market Price of share of Parichay was Rs.190/- and at 1,72,900 cumulative quantities, the value of such shares would have been Rs.3.28 Crores. The Noticee stated that, he never traded for such value of shares in Parichay Investments and never had ability to hold shares worth Rs.3.28 Crores on the given date.*

c) *The Noticee states that, there is miscalculation in arriving at cumulative shareholding considered to arrive at trigger points.*

d) *The Noticee denied to have triggered Open Offer as disclosed at Table 6.4 of the SCN.”*

6. Subsequent to my appointment as the Adjudicating Officer in the matter, vide Hearing Notice dated August 19, 2019, the Noticee was provided an opportunity of personal hearing on August 29, 2019. However, vide email dated August 29, 2019, AR of the Noticee sought adjournment of the said hearing and requested for another opportunity of personal hearing. Therefore, in the interest of natural justice vide Hearing Notice dated August 29, 2019, the Noticee was provided one more opportunity of hearing on September 11, 2019. However, the Noticee has failed to attend the said hearing scheduled on September 11, 2019.

7. Thereafter, vide email dated September 12, 2019 the Noticee requested for time to file written submissions without availing opportunity of personal hearing. Considering the said request, the Noticee has been provided additional time to file written submissions in the matter. Consequently, vide letter dated September 19, 2019 the Noticee has made the following submissions in the matter.

1. *At Page No. 10 of the SCN dated August 24, 2017, the alleged trigger points are provided to disclosure violation of regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 by us. We submit that, the Ld. Adjudicating Officer has not provided complete information to justify the trigger of regulation 10 of SEBI Takeover Regulations on January 20, 2011, January 25, 2011, January 31, 2011, February 16, 2011, February 21, 2011 and March 15, 2011. In the said table, the cumulative pre shareholding is not provided in the SCN.*

2. *We state that, it is incumbent and mandatory upon the Ld. Adjudicating Officer to provide the cumulative existing holding prior to adding the net buy quantity in order to identify the cumulative resultant quantity and basis which the violation of regulation 10 of SEBI Takeover Regulations, 1997 can be alleged or identified on January 20, 2011, January 25, 2011, January 31, 2011, February 16, 2011, February 21, 2011 and March 15, 2011.*

3. *The Ld. Adjudicating Officer is obligated under law to provide full information to enable the delinquent to provide explanation and rebut each and every allegation as contained in the SCN and in-absence of pre trigger or pre acquisition shareholding of the Noticee, the SCN is void and any adjudication proceedings basis such SCN is bad in law.*

4. *We as Noticee to said show cause are not in position to put forth defense to allegation of violation of regulation 10 of SEBI Takeover Regulations on January 20, 2011, January 25, 2011, January 31, 2011, February 16, 2011, February 21, 2011 and March 15, 2011 in absence of complete information.*

5. *As per the said Table at page No. 10 of SCN dated August 24, 2017, it is not clear, whether the Ld. AO has negated the effect of Inter-se trades, Self-Trades and Match trades between parties. To arrive at trigger points on*

each date, all prior inter-se trades, Self-Trades and Match trades must be negated to have clear perspective of resulting voting power of the group.

6. *Therefore, the computation of percentages need revisit to arrive at the trigger limits of SEBI Takeover Regulations, 1997.*

7. *We rely upon judgement of Hon'ble "Securities Appellate Tribunal, Mumbai in following cases:* ***Appeal No: 417 of 2018, 440 of 2018- Ashok Shivlal Rupani*** *Vs.* ***SEBI (Dated August 22, 2019). In Mr. Rakesh Kathotia & Ors.*** *vs.* ***SEBI (Appeal No. 07 of 2016 decided on May 27, 2019)*** *proceedings were quashed on account of inordinate delay.*

8. *As per the above judgements, it is mandatory for SEBI to explain the delay in issuance of Show Cause Notice in the Notice itself. It is admitted fact that, all allegations are of the year 2010 as such the investigation period July 21, 2010 to August 30, 2011. The first SCN is dated August 24, 2017 and second SCN is dated October 24, 2018. It is not in dispute the SCN is issued after 7-8 years of relevant investigation period and the both SCN do not provide any reasons for this inordinate delay in issuance of SCN. Since, no reasons are specified in the SCN for the delay, the SCN itself becomes infructuous as per the Hon. SAT Judgement Appeal No: 417 of 2018, 440 of 2018- Ashok Shivlal Rupani Vs. SEBI (Dated August 22, 20 19). In Mr. Rakesh Kathotia & Ors. Vs. SEBI (Appeal No. 07 of 2016 decided on May 27, 20 19).*

9. *If the Ld. AO still proceeds to adjudicate basis of these SCN upon us, it will be held as deliberate contempt of judgements of Hon. SAT, wherein the judgement of SAT is absolutely clear that, if the delay is inordinate and the reasons for such delay is not provided in the SCN, the SCN itself is bad in law and any resultant adjudication proceedings will be void-ab-initio. Therefore this instant adjudication proceedings as per the Hon. SAT Judgement in Ashok Rupani case and Rakesh Kathothia case is bad in law.*

10. *Without generality to above in the event the Ld. Adjudicating Officer records a finding that, we has not complied with the provisions of Regulation 10 of SEBI Takeover Regulations, 1997 and proceeds to levy penalty, it is urged that , following grounds be also considered u/s 15J of SEBI Act, 1992. In terms of Apex Court Judgement dated February 28, 2019 in Bhavesh Pabari V s. SEBI, the Honorable Apex Court has held that:*

> *"Therefore, to understand the conditions stipulated in clauses (a), (b) and (c) of Section 15 J to be exhaustive and admitting of no exception or vesting any discretion in the Adjudicating Officer would be virtually to admit/concede that in adjudications involving penalties under Sections 15 A, 15 B and 15 C, Section 15 J will has no application. Such a result could not has been intended by the legislature. We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15 J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15 J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty."*

11. *It is a matter of record that, there are more than 7 separate Adjudication Order are passed against us thereby levying penalty of Rs.96 Lakh. Our income levels are very less and it is impossible to pay up these penalties. We state that, we have incurred losses in our trades executed in Parichay Investments Limited during the investigation period. Therefore, no profit has been made by us out of our trades executed in Parichay Investments Limited.*

12. *No intention to make any substantial acquisition of shares of Parichay Investments Limited.*

ISSUES FOR CONSIDERATION AND FINDINGS

8. I have carefully perused the SCN, the documents / material available on record and submissions of the Noticee. The issues that arise for consideration in the present case are:

   1) Whether the Noticee violated the provisions of Regulation 10 of the SAST Regulations?

   2) Whether the Noticee is liable for imposition of monetary penalty under Section 15H of the SEBI Act?

   3) If yes, then what should be the quantum of monetary penalty?

9. It is pertinent to mention here that a common SCN dated August 24, 2017 was issued against the Noticee along with other 17-entities, pertaining to the violations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, certain Disclosure violations under SAST Regulation as well as Disclosure violations under SEBI (Prohibition of Insider Trading) Regulations, 1992. In addition to the above, in the same SCN it was also alleged that the Noticee has failed to make public announcement to acquire shares of PIL in terms of Regulation 10 of SAST Regulations. Subsequently, a supplementary SCN dated October 24, 2018, was issued to the Noticee in respect of the connection of the Noticee with other entities.

10. It is noted from the records available to me that the separate Adjudication Orders were passed against the Noticee and other entities in respect of violations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, certain Disclosure violations under SAST Regulation as well as Disclosure violations under SEBI (Prohibition of Insider Trading) Regulations, 1992.

11. The extant Order is dealing with the allegations against the Noticee mainly to the effect that the Noticee has failed to make public announcement to acquire shares of PIL in terms of Regulation 10 of SAST Regulations, as alleged in the SCN dated August 24, 2017 read with supplementary SCN dated October 24, 2018.

12. It is pertinent to mention here the relevant provisions of Regulation 10 of SAST Regulations, allegedly violated by the Noticee:-

Regulation 10. Acquisition of fifteen per cent or more of the shares or voting rights of any company.

"No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations."

13. I note that the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 has been repealed by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. In terms of Regulation 35 of the SAST Regulations, 2011, specifically, Regulation 35(2) (a) and (b), any obligation or liability acquired, accrued or incurred under SAST Regulations, 1997 or any legal proceedings initiated under the SAST Regulations, 1997 shall remain unaffected and proceeded with as if the SAST Regulations, 1997 has not been repealed.

14. I note that the Noticee is alleged to has been violated the provisions of Regulation 10 of SAST Regulations on the following dates during the FY 2010-11:-

Transaction Date	Buy	Sell	Net	Cumulative shareholding	Percentage shareholding	Violating Provisions of SAST Regulations
20-Jan-11	12,600	5,000	7600	1,80,500	15.04%	Regulation 10
25-Jan-11	700	0	700	1,80,650	15.05%	Regulation 10
31-Jan-11	13,000	3,800	9200	181,450	15.12%	Regulation 10
16-Feb-11	9,100	1,100	8,000	183,550	15.30%	Regulation 10
21-Feb-11	13,400	300	13,100	191,500	15.96%	Regulation 10
15-Mar-11	15,800	0	15,800	189,950	15.83%	Regulation 10

15. It is noted that this is the case where the Noticee has traded in the scrip of PIL (Target Company) during the investigation period consequently, his shareholdings in the scrip crossed the threshold limit of 15.00% on six occasions i.e. on January 20, 2011, January 25, 2011, January 31, 2011, February 16, 2011, February 21, 2011 and March 15, 2011 as tabulated above. Thus, the Noticee was required to make public announcement to acquire shares of PIL in terms of Regulation 10 of SAST Regulations. It is observed that the Noticee did not make any public announcement to acquire shares of PIL in terms of Regulation 10 of SAST Regulations. Therefore the Noticee has violated the provisions of Regulation 10 of SAST Regulations on the aforesaid dates during the financial year 2010-11.

16. With regard to the details of shareholdings, the Noticee has contended that his pre shareholding was not provided in the SCN and therefore he is not in position to put forth defence to allegation of violation of Regulation 10 of SAST Regulations. In this regard, I note that at page No.11 of the SCN the Noticee has been provided summary of his shareholding on those particular dates when his shareholding crossed 15% threshold, thus triggering the requirement of public announcement to acquire shares of PIL in terms of Regulation 10. Further, the day wise transactions in detail were provided to the Noticee in the form of trade and order logs as Annexure to the SCN and the summary of the shareholding of the Noticee on the particular dates are based on the aforesaid day wise transactions. The details of the trading done by the Noticee in the shares of PIL as observed from trade and order log during the investigation and the consequent holding of shares/voting rights of PIL by the Noticee are given hereunder.

Date	Buy	Sell	Net	Cumulative	%
16-Dec-10	0	6,500	-6,500	1,19,200	9.93
21-Dec-10	1,000	6,000	-5,000	1,14,200	9.52
22-Dec-10	15,950	1,700	14,250	1,28,450	10.70
23-Dec-10	0	2,150	-2,150	1,26,300	10.53
24-Dec-10	24,400	50	24,350	1,50,650	12.55
27-Dec-10	4,600	5,200	-600	1,50,050	12.50

Date	Buy	Sell	Net	Cumulative	%
28-Dec-10	2,450	3,000	-550	1,49,500	12.46
29-Dec-10	0	3,250	-3,250	1,46,250	12.19
30-Dec-10	0	2,800	-2,800	1,43,450	11.95
31-Dec-10	15,500	1,000	14,500	1,57,950	13.16
04-Jan-11	0	3,550	-3,550	1,54,400	12.87
05-Jan-11	11,350	1,850	9,500	1,63,900	13.66
06-Jan-11	8,100	13,000	-4,900	1,59,000	13.25
07-Jan-11	9,650	0	9,650	1,68,650	14.05
10-Jan-11	8,000	7,400	600	1,69,250	14.10
11-Jan-11	0	7,500	-7,500	1,61,750	13.48
12-Jan-11	0	8,050	-8,050	1,53,700	12.81
13-Jan-11	16,300	0	16,300	1,70,000	14.17
14-Jan-11	5,550	6,250	-700	1,69,300	14.11
17-Jan-11	500	6,200	-5700	1,63,600	13.63
18-Jan-11	2,950	7,050	-4100	1,59,500	13.29
19-Jan-11	27,000	13,600	13400	1,72,900	14.41
20-Jan-11	**12,600**	**5,000**	**7600**	**1,80,500**	**15.04**
21-Jan-11	4,300	4,650	-350	1,80,150	15.01
24-Jan-11	0	200	-200	1,79,950	14.99
25-Jan-11	**700**	**0**	**700**	**1,80,650**	**15.05**
27-Jan-11	0	5,600	-5600	175,050	14.59
28-Jan-11	3,000	5,800	-2800	172,250	14.35
31-Jan-11	**13,000**	**3,800**	**9200**	**181,450**	**15.12**
01-Feb-11	1,400	10,800	-9400	172,050	14.34
02-Feb-11	1,900	3,400	-1500	170,550	14.21
03-Feb-11	0	5,400	-5400	165,150	13.76
04-Feb-11	5,750	1,900	3,850	169,000	14.08
07-Feb-11	5,500	0	5,500	174,500	14.54
08-Feb-11	500	10,500	-10,000	164,500	13.71
09-Feb-11	5,000	3,500	1,500	166,000	13.83
10-Feb-11	10,500	2,250	8,250	174,250	14.52
11-Feb-11	5,350	500	4,850	179,100	14.93
14-Feb-11	550	1,200	-650	178,450	14.87
15-Feb-11	0	2,900	-2,900	175,550	14.63
16-Feb-11	**9,100**	**1,100**	**8,000**	**183,550**	**15.30**
17-Feb-11	400	3,500	-3,100	180,450	15.04
18-Feb-11	0	2,050	-2,050	178,400	14.87
21-Feb-11	**13,400**	**300**	**13,100**	**191,500**	**15.96**
22-Feb-11	0	2,600	-2,600	188,900	15.74
23-Feb-11	800	100	700	189,600	15.80
24-Feb-11	1,000	0	1,000	190,600	15.88
28-Feb-11	0	100	-100	190,500	15.88
01-Mar-11	0	3,500	-3,500	187,000	15.58
03-Mar-11	800	9,050	-8,250	178,750	14.90
11-Mar-11	0	11,500	-11,500	167,250	13.94
14-Mar-11	6,900	0	6,900	174,150	14.51
15-Mar-11	**15,800**	**0**	**15,800**	**189,950**	**15.83**
31-Mar-11	0	100	-100	189,850	15.82
06-Apr-11	0	29,150	-29,150	160,700	13.39
15-Apr-11	2,200	7,050	-4,850	155,850	12.99
18-Apr-11	500	0	500	156,350	13.03

Date	Buy	Sell	Net	Cumulative	%
19-Apr-11	16,650	0	16,650	173,000	14.42
20-Apr-11	1,650	0	1,650	174,650	14.55
21-Apr-11	100	2,100	-2,000	172,650	14.39
25-Apr-11	0	33,450	-33,450	139,200	11.60
26-Apr-11	0	2,650	-2,650	136,550	11.38
27-Apr-11	0	8,900	-8,900	127,650	10.64
28-Apr-11	8,650	3,550	5,100	132,750	11.06

17. Besides the Noticee has been provided all the relevant information relied upon in the SCN, the Noticee has not submitted any details or documentary evidences, such as his statement of shareholdings from the depositories in the scrip of PIL which prove contrary to the shareholding details provided in the SCN. Therefore, I do not find merit in the said contention of the Noticee.

18. With regard to the trading details, the Noticee denied to hold 1,72,900 shares on January 19, 2011. Therefore, the Noticee has denied to trigger the threshold of 15% on January 20, 2011, January 25, 2011, January 31, 2011, February 16, 2011, February 21, 2011 and March 15, 2011.

19. From the table mentioned at para 16 above it is observed that as on December 16, 2010 the Noticee was holding 1,19,200 shares (09.93%) of PIL. Thereafter the Noticee purchased / sold shares of PIL and his holdings exceeded 15.00% of the paid up capital of PIL on January 20, 2011 (15.04%), January 25, 2011 (15.05%), January 31, 2011 (15.12%), February 16, 2011 (15.30%), February 21, 2011 (15.96%) and March 15, 2011 (15.83%). I note from the trade and order log that the Noticee has bought 12,600 and sold 5,000 shares on January 20, 2011, bought 700 shares on January 25, 2011, bought 13,000 and sold 3,800 shares on January 31, 2011, bought 9,100 and sold 1,000 shares on February 16, 2011, bought 13,400 and sold 300 shares on February 21, 2011 and bought 15,800 shares on March 15, 2011 which lead to cross the threshold of 15% on the aforesaid dates. It is also pertinent to note that the change in shareholdings of the Noticee is net of his buy and sell of shares of PIL. Therefore, I find that the

Noticee has crossed the threshold of 15.00% on the aforesaid six occasions, consequently in terms of Regulation 10 of the SAST Regulations the Noticee was required to make public announcement to acquire shares of PIL. However, the Noticee did not make any public announcement to acquire shares of PIL. Therefore, I find that the Noticee has repeatedly breached the provisions of Regulation 10 of SAST Regulations on January 20, 2011, January 25, 2011, January 31, 2011, February 16, 2011, February 21, 2011 and March 15, 2011.

20. The Noticee has submitted that there was inordinate delay in the issuance of SCN and therefore the SCN become infructuous as per the Hon'ble Securities Appellate Tribunal (**"SAT"**) judgement in the matter of *Ashok Shivlal Rupani Vs. SEBI* (Order dated August 22, 2019) and in *Rakesh Kathotia & Ors. Vs. SEBI* (Order dated May 27, 2019). In this regard, I note from the records that the involvement of the Noticee in various scrips came to the attention of SEBI and the stock exchanges through various market alerts. It is observed from the records that during the period from January 2010 to August 2011 the Noticee alongwith other connected entities were indulged in irregular/manipulative trading activities in the various scrips (as many as in 5 scrips) including the scrip of PIL. I find that the SEBI initiated the investigation as soon as information regarding malafide actions came to its notice. The investigation process is a detailed one which passes through various levels of analysis. This consumes considerable time depending on the number of entities involved, scrips involved and the complexity of the transactions. After completion of the Investigation, in the year 2017, SEBI initiated Adjudication proceedings and the proceedings under Section 11 and 11B of the SEBI Act. Consequently, the SCN was issued to the Noticee in the instant matter on August 24, 2017 and a supplementary SCN on October 24, 2018. The Noticee has also made several correspondences and also sought extensions to make submissions in the matter. Further, in the interest of natural justice the Noticee has been provided several opportunities to make their submissions in the instant proceeding. Considering the aforesaid, I note that

there was no inordinate delay on the part of SEBI. It is further noted that in the instant matter the Noticee has repeatedly failed to make public announcement to acquire shares of PIL on six occasions and deprived the shareholders at the relevant time of their statutory rights / opportunity to exit from the Target Company and therefore they breached the provisions of SAST Regulations. Such charges against the Noticee make the instant matter very grave, which do not warrant the delay to be considered as a mitigating factor. In this regard, it is relevant to refer here the observations of Hon'ble SAT in the matter of ***Ranjan Varghese Vs. SEBI (Appeal No.177 of 2009 and Order dated April 08, 2010)***, as under:-

> *"The fact that the appellants acting in concert with each other had made the acquisitions which triggered the Takeover Code, it was incumbent upon them to make a public announcement which, admittedly, they has failed to do so. This failure has seriously prejudiced the public investors/shareholders of the company who has been deprived of their valuable right to exit by offering their shares to the acquirer. We cannot lose sight of the fact that one of the primary objects of the Takeover Code is to allow the public shareholders an exit route when the target company is either taken over by an acquirer or an acquirer makes a substantial acquisition therein."*

21. Without prejudice to above, even if it is presumed that there was delay in initiating the proceedings, this itself should not be a ground for discharging the Noticee from such grave charges. In this, I would like to refer the observations of Hon'ble Supreme Court of India in the matter of ***State vs. R. Vasanthi Stanley*** reported in AIR 2015 SC 3691. The Apex Court has held that *"…a serious economic offence or the offences that has the potentiality of creating a dent in the financial health of the institution cannot be quashed on the ground that there is delay in the trial…"*

22. In connection with the enforcement of the provisions of Regulation 10 of the SAST Regulation, it is pertinent to note the observations of Hon'ble SAT in the matter of ***Nirvana Holdings Private Limited vs. SEBI*** **(Appeal no. 31/2011 decided on September 08, 2011)**. The relevant paragraph of the aforesaid judgment of Hon'ble SAT is reproduced as under:

> *"The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."*

23. It is pertinent to mention here that in the same matter an Order was passed by the Hon'ble Whole Time Member, SEBI on July 31, 2019 in the proceedings under Sections 11 and 11B of the SEBI Act, 1992, read with Regulation 44 of the SAST Regulations in respect of the Noticee and *inter-alia* debarred the Noticee to access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly for a period of 5-years for the violation of Regulation 10 of the SAST Regulations.

24. In view of the foregoing, I am of the opinion that the Noticee, has failed to make public announcement to acquire shares of PIL on January 20, 2011, January 25,

2011, January 31, 2011, February 16, 2011, February 21, 2011 and March 15, 2011 in terms of Regulation 10 of SAST Regulations. Therefore, it is stablished that the Noticee has violated the provisions of Regulation 10 of SAST Regulations.

25. Violation of Regulation 10 of the SAST Regulations by the Noticee attract monetary penalty under Section 15H of the SEBI Act, i.e. at the relevant time *inter-alia* reads as follows:

"Penalty for non-disclosure of acquisition of shares and takeovers.

***15H**. If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price; or

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,]

he shall be liable to a penalty twenty-five crore rupees or six times the amount of profits made out of such failure, whichever is higher."

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

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall has 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 has been exercised under the provisions of this section.]"*

27. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India 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….."

28. In the instant matter, it is difficult to quantify the gains made by the Noticee or the loss caused to investors as a result of the failure of Noticee to make public announcement to acquire shares of PIL. The purpose of Regulation 10 of SAST Regulations was to ensure that the public gets an exit opportunity once there is a breach of the threshold. It is also noted that at present the shares of the company are suspended from trading due to surveillance measures and the scrip was last traded at Rs.7.98. In the circumstances, it is noted that existing investors lost to avail valuable opportunities to exit from the scrip due to failure by the Noticee to make public announcement at six occasions they were required to do so, in terms of the Regulations applicable in this regard. The Noticee has breached the provisions of the aforesaid SAST Regulations on six occasions in the instant matter and it is also observed that the Noticee has breached the SEBI

Act and the Regulations made thereunder in various other scrips, thus the contraventions by the Noticee are repetitive in nature.

29. Since, the Noticee deprived the public shareholders from their valuable right and the default on the part of the Noticee are repetitive in nature, I am of the view that this is a fit case to impose such penalty that commensurate with the gravity of the violations committed by the Noticee.

ORDER

30. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the Adjudication Rules, I hereby impose penalty of Rs.20,00,000/- (Rupees Twenty Lakh Only) payable by the Noticee viz. Shri Amul Gagabhai Desai in terms of Section 15H of the SEBI Act, for his failure to make public announcement to acquire shares of PIL in terms of Regulation 10 of SAST Regulations, 1997 read with Regulation 35 (2) of SAST Regulations, 2011.

31. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

32. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-I), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – 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 is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

33. 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 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.

34. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date : October 24, 2019
Place : Mumbai

Vijayant Kumar Verma
Adjudicating Officer