BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/PM/SM/2022-23/17383-17384

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

1. Coffee Day Enterprises Ltd., 23/2, Coffee Day Square Vittal Malya Road Bengaluru – 560001.	**2. Coffee Day Trading Ltd.,** 23/2, Coffee Day Square Vittal Malya Road Bengaluru – 560001.

In the matter of dealing in the scrip of Mindtree Ltd.

BACKGROUND

1. Securities and Exchange Board of India (*hereinafter referred to as 'SEBI'*) conducted an investigation in the scrip of Mindtree Ltd.(hereinafter referred to as Company/Mindtree/Scrip), to ascertain whether the Coffee Day Enterprises Ltd., (hereinafter referred to as Noticee 1) and Coffee Day Trading Ltd., (hereinafter referred to as Noticee 2) have made any fraudulent pledging of shares of the Company and whether adequate disclosures had been made in accordance with SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 *{hereinafter referred to "SAST Regulations"}*, during the period during the period May 15, 2015 to March 31, 2018 (hereinafter referred to as "Investigation period").

2. It was observed that Mr. V. G. Siddhartha was the Director of Mindtree Ltd., since year 1999 and he resigned from its directorship on March 09, 2018. It was also observed that Mr. V. G. Siddhartha was the promoter of Coffee Day Enterprise Ltd (CDEL) (Noticee 1) holding 32.75% of the total shares of CDEL as on December 31, 2018 and that Coffee Day Trading Ltd (CDTL) (Noticee 2) is the subsidiary of CDEL.

3. It was observed that during the investigation period, the Noticees were found to have pledged / unpledged the shares of Mindtree Ltd., The shareholding of the Noticees in the scrip of Mindtree Ltd., during the investigation period is as under:

Table 1

Sl.No.	**Entity**	**March-2015**		**Jun-2015**	
		No. of shares	**% of total no. of shares**	**No. of shares**	**% of total no. of shares**
1	Coffee Day Enterprises Pvt Ltd	8730884	10.43	8730884	10.42
2	Coffee Day Trading Ltd	-	-	5297122	6.32
Total		**8730884**	**10.43**	**14028006**	**16.74**
Sl. No.	**Entity**	**Sep-2015**		**Dec-2015**	
		No. of shares	**% of total no. of shares**	**No. of shares**	**% of total no. of shares**
1	Coffee Day Enterprises Pvt Ltd*	8730884	10.41	7883084	9.40
2	Coffee Day Trading Ltd	5297122	6.32	5297122	6.31
Total		**14028006**	**16.73**	**13180206**	**15.71**

** Name changed from Coffee Day Enterprises Pvt Ltd to Coffee Day Enterprises Ltd i.e., January 21, 2015 (listed on stock exchange: - November 2015)*

Table 2

Sl. No.	Entity	March-2016		Jun-2016	
		No. of shares	% of total no. of shares	No. of shares	% of total no. of shares
1	Coffee Day Enterprises Ltd	17461768	10.41	17461768	10.40
2	Coffee Day Trading Ltd	10594244	6.31	10594244	6.31
Total		**28056012**	**16.72**	**28056012**	**16.71**
Sl. No.	**Entity**	**Sep-2016**		**Dec-2016**	
		No. of shares	**% of total no. of shares**	**No. of shares**	**% of total no. of shares**
1	Coffee Day Enterprises Ltd	17461768	10.40	17461768	10.39
2	Coffee Day Trading Ltd	10594244	6.31	10594244	6.31
Total		**28056012**	**16.71**	**28056012**	**16.71**

Table 3

Sl. No.	Entity	March-2017		Jun-2017	
		No. of shares	% of total no. of shares	No. of shares	% of total no. of shares
1	Coffee Day Enterprises Ltd	17461768	10.39	17461768	10.39

2	Coffee Day Trading Ltd	10594244	6.31	10594244	6.30
Total		**28056012**	**16.7**	**28056012**	**16.69**
Sl. No.	**Entity**	**Sep-2017**		**Dec-2017**	
		No. of shares	**% of total no. of shares**	**No. of shares**	**% of total no. of shares**
1	Coffee Day Enterprises Ltd	17461768	10.65	17461768	10.65
2	Coffee Day Trading Ltd	10594244	6.46	10594244	6.46
Total		**28056012**	**17.11**	**28056012**	**17.11**
Sl. No.	**Entity**	**March-2018**		**Jun-2018**	
		No. of shares	**% of total no. of shares**	**No. of shares**	**% of total no. of shares**
1	Coffee Day Enterprises Ltd	17461768	10.46	17461768	10.65
2	Coffee Day Trading Ltd	10594244	6.46	10594244	6.46
Total		**28056012**	**16.92**	**28056012**	**17.11**

4. It was observed that Coffee Day Enterprises Limited (CDEL) is a listed company and Coffee Day Trading Limited (CDTL) is a subsidiary of CDEL. It was further observed from the shareholding pattern as mentioned in above paragraphs that CDEL & CDTL were holding more than 5% shares of Mindtree Ltd., during the Investigation period. Further, CDEL is a listed entity and CDTL is a subsidiary of CDTL, hence, CDEL & CDTL are person acting in concert (PACs).

5. It was observed from the pledge data received from depositories that total 6,81,66,778 shares of Mindtree Ltd., were pledged and 4,85,09,445 shares were un-pledged by CDEL and CDTL during the Investigation period, i.e., May 15, 2015 to March 31, 2018. The details of pledge created by the Noticees (disposal of shares) which exceeds 2 % or more of share voting rights are as under:

Period	**Total number of shares pledged by CDTL and CDEL**	**Date on which exceeds the 2 % share holding**	**% of share**
18 May 2015- 09 Jun 2015	18,09,000	09 Jun 2015	2.15 %
11 Jun 2015 – 22 Jun 2015	21,50,400	22 Jun 2015	2.56%
23 Jun 2015- 23 Nov 2015	20,70,600	23 Nov 2015	2.46%
25 Nov 2015- 30 Dec 2015	26,90,000	30 Dec 2015	3.20%
05 Jan 2016 – 15 March 2016	87,45,192	15 March 2016	5.77%
16 March 2016- 28 March 2016	40,59,000	28 March 2016	2.41%
29 March 2016- 12 April 2016	45,06,500	12 April 2016	2.68%
29 April 2016- 25 Jul 2016	37,85,000	25 Jul 2016	2.255%
26 Jul 2016- 07 Sep 2016	34,14,936	07 Sep 2016	2.03%
08 Sep 2016-27 Oct 2016	36,27,000	27 Oct 2016	2.15%
28 Nov 2016- 31 March 2017	40,17,000	31 March 2017	2.39%
05 April 2017- 13 April 2017	53,31,500	13 April 2017	3.17%
17 April 2017-22 May 2017	37,75,500	22 May 2017	2.24%
30 May 2017- 27 Jul 2017	34,37,950	27 Jul 2017	2.06%

Period	Total number of shares pledged by CDTL and CDEL	Date on which exceeds the 2 % share holding	% of share
28 Jul 2017 -17 Aug 2017	37,66,500	17 Aug 2017	2.29%
18 Aug 2017 – 15 Nov 2017	34,46,300	15 Nov 2017	2.10%
27 Nov 2017 – 14 Feb 2018	38,91,400	14 Feb 2018	2.37%
19 Feb 2018- 28 March 2018	36,43,000	28 March 2018	2.22 %

6. During the following period CDEL and CDTL have unpledged the shares (acquiring of shares) which exceeds 2 % or more of share voting rights.

Period	Total number of shares un-pledged by CDEL and CDTL	Date on which exceeds the 2 % share holding	% of share
15 May 2015- 22 Jun 2015	23,78,800	22 June 2015	2.84%
23 Jun 2015- 23 Nov 2015	17,32,750	23 Nov 2015	2.06%
24 Nov 2015- 11 Jan 2016	22,59,500	11 Jan 2016	2.69%
12 Jan 2016- 21 Mar 2016	24,57,000	21 March 2016	2.05%
22 Mar 2016- 02 Apr 2016	34,87,059	02 Apr 2016	2.07%
04 Apr 2016 – 24 Jun 2016	39,86,000	24 Jun 2016	2.37%
25 Jul 2016 – 27 Sep 2016	44,04,000	27 Sep 2016	2.62%
26 Oct 2016 – 31 Mar 2017	49,76,512	31 Mar 2017	2.96%
05 Apr 2017 – 13 April 2017	49,30,500	13 April 2017	2.93%
21 Apr 2017- 02 Jun 2017	34,49,700	02 Jun 2017	2.05%
06 Jun 2017 – 09 Aug 2017	42,74,000	09 Aug 2017	2.58%
10 Aug 2017 – 23 Aug 2017	35,18,800	23 Aug 2017	2.14%

Period	Total number of shares un-pledged by CDEL and CDTL	Date on which exceeds the 2 % share holding	% of share
07 Sep 2017 – 29 Nov 2017	34,69,455	29 Nov 2017	2.11%

7. In terms of the provisions of Regulation 29 (2) r/w Regulation 29(3) & 29(4) of SEBI (SAST) Regulations, 2011, the Noticees were under an obligation to disclose pledged/unpledged transactions to the company and stock exchanges within two working days of the disposal (pledged) /acquisition (unpledged) of shares exceeding 2 % of total shareholding or voting rights in the company. However, it was observed during investigation that no such disclosures were made by the Noticees, as per the submissions made by Mindtree Ltd., Bombay Stock Exchange, National Stock Exchange, CDEL and CDTL. In view of the above, it is alleged that the Noticees have violated the provisions of Regulation 29 (2) read with Regulation 29(3) & 29(4) of SEBI (SAST) Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

8. Pursuant to investigation, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated February 08, 2021 under Section 19 of SEBI Act read with Subsection (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as *"SEBI Adjudication Rules")* to inquire into and adjudge the alleged violation of the provisions of Regulation 29 (2), 29 (3) read with Regulation 29 (4) of SEBI (Substantial Acquisition of Shares & Takeovers), 2011 committed by Coffee Day Enterprises Ltd., (Noticee 1) and Coffee Day Trading Ltd., (Noticee 2), under Section 15A(b) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

9. A Show Cause Notice (hereinafter referred to as *"SCN"*) bearing ref. no. EAD8/PM/NJMR/10246/2021/1-2 dated May 12, 2021 was served on the Noticees under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the SEBI Adjudication Rules and penalty be not imposed under Sections 15A (b) of SEBI Act, 1992 for the violations alleged to have been committed by them. I note that the SCN was duly served on the Noticees.

10. The Noticees vide letter dated July 12, 2021 made a request to grant inspection of all the records and documents in possession of SEBI which resulted in issuance of the present SCN issued against them. Vide letter dated July 12, 2021, the Noticees were informed to carry out inspection of documents. I note that the Noticees carried out inspection of documents on July 23, 2021 (Noticee1) & July 29, 2021 (Noticee 2) through its Authorised Representatives *(hereinafter referred to as "ARs")*.

11. Vide email dated August 25, 2021. Noticees were granted personal hearing on September 02, 2022. However Noticees requested adjournment of the said hearing which was acceded to. Noticees vide email dated August 31, 2021 informed that they have filed settlement application dated August 25,2021.From the material available on record I note that Noticees did not filed revised and complete application, required as per the Settlement Regulations 2018. Vide email dated September 23, 2021 Noticees submitted reply to the SCN. Subsequently, an opportunity of personal hearing was granted to the Noticees on October 04, 2021 *vide* email, dated September 24, 2021. On the scheduled date of hearing, the Authorized Representatives of the Noticees appeared before me through video conference and reiterated the submission made by Noticees on September 23, 2021. AR requested time to make further submission, which was acceded to. Subsequently, vide letter dated October 11, 2021, Noticees made additional submissions.

12. Vide letter dated September 23, 2021 & October 11, 2021 Noticees have made the following submissions for consideration:

a. *SEBI vide its email dated July 20, 2021 fixed the inspection of documents on July 23, 2021. Thereafter, the Noticee No. 1(July 29, 2021 for Noticee 2) conducted the inspection of documents on July 23, 2021 wherein SEBI gave inspection only of certain documents. A letter dated July 31, 2021 recording the inspection of documents was also addressed by the Noticees to SEBI. A reply to the same is awaited. The Noticees also addressed a detailed letter dated July 31, 2021 recording the reasons provided by SEBI while refusing to give inspection of all the documents as sought for by the Noticees in its letter dated July 07, 2021. The Noticees recorded thåt the inspection of documents therefore remained incomplete. It was also stated that the documents that were sought for inspection by the Noticees are necessary for the Noticees to effectively reply to the SCN. However, till date neither has SEBI responded to the Noticees letter nor has SEBI provided the Noticees with inspection of documents. The Noticees submits that the denial of complete inspection and copies of documents as requested is in gross violation of the basic principles of natural justice which has impaired and prejudiced the ability of Noticees to put in an effective reply to the SCN.*

b. *Noticee No. 1 is a listed entity and Noticee No. 2, is a subsidiary of Noticee No. l. Each of Noticee No. 1 and Noticee No. 2, have a board of directors who determine operational matters such as taking loans and providing relevant security for such loans. The shares of Mindtree Ltd. were pledged by the Noticees as security for various loans availed by Noticees during the period May 15, 2015 to March 31, 2018 i.e the Investigation Period. As per the terms and conditions of those Loan Agreements, the Noticees were required to provide certain security in order to secure the amount of loan provided by the lender to the Noticees. Therefore, based on the market price fluctuations, the Noticees would be required to either pledge more shares to secure the stipulated share cover or the lender would release the excess shares of Mindtree Ltd. depending on the circumstances from time to time. Thereafter, authorised signatories who have been appointed to operate the demat accounts of Noticee No. 1 and Noticee No. 2 would complete all formalities regarding creation of pledge over the shares of Mindtree Ltd. including signing of pledge creation request form etc*.

c. *Upon closure of any loans for which shares of Mindtree Limited had been pledged by the Noticee No. 1 and/or Noticee No. 2, the lenders/security trustees would release pledged shares to Noticee No. 1 and/or Noticee No. 2. Pertinently in the present case, the pledges were never invoked and there was no actual acquisition or disposal of shares resulting in change in voting rights and shareholding in Mindtree Ltd.*

d. *It can be seen from a plain reading of Regulation 29 (2) of the SAST Regulations, the same requires disclosure in case of change in shareholding or voting rights in the target company i.e. Mindtree Ltd. in the present case. Further, a reading of Regulation 29 (3) of the SAST Regulations makes it clear that a disclosure is to be made upon receipt of intimation of allotment of shares or the acquisition or the disposal of shares or voting rights in the target company. The present transaction entails creation and release of pledge of shares of Mindtree Ltd. These pledges were never invoked. Neither were any shares or voting rights acquired or disposed off nor was there any alloünent of shares. The requirement of disclosure would only arise upon acquisition of shares on invocation of pledge thereby resulting in a change in shareholding which is not the case in the present matter. Accordingly, Regulation 29 (2) and 29 (3) of the SAST Regulations are not friggered and in the present case there is no violation on part of Noticees. There was never any change in shareholding or voting rights of Noticees pursuant to the pledge transactions as mentioned in the SCN*

e. *Further, a plain reading of Regulation 29 (4) of the SAST Regulations would clearly show that the said provision applies only to "a pledgee" and not a "pledgor". The Noticees are pledgor in connection with the concerned transactions and the provisions of Regulation 29 (4) of the SAST Regulations are 'not applicable to Noticees*

f. *In this regard, it may be noted that Regulation 29 (4) of the SAST Regulations refers to shares taken by way of encumbrance shall be treated as an acquisition. shares given upon release of encumbrance shall be treated as a disposal. and disclosures shall be made by such person accordingly in such form as may be specified. The aforesaid language of Regulation 29 (4) of the SAST Regulations makes it clear that the disclosure requirement under the said Regulation relates to a pledgee. Further, the proviso to Regulation 29 (4) of the SAST Regulations also supports the aforesaid interpretation where an exemption from disclosure has been made where it is stipulated that the disclosure requirement shall not apply to a scheduled commercial bank or public financial institution or a housing finance company or a systemically important non-banking financial company as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.*

g. In view of the above, it is submitted that the Noticees have not violated Regulation 29 (2) read with Regulation 29 (3) and Regulation 29 (4) of the SAST Regulations as alleged in the SCN. In view of the same, the Noticees submits that the provisions of Regulation 29 (4) of the SAST Regulations as well are not applicable to the Noticees Therefore, the Noticees denies the allegation in the SCN that it has violated the provisions of Regulation 29 (4) of the SAST Regulations.

h. Without prejudice to the submissions made hereinabove, in any case, it is submitted that the transactions with lenders named in Annexure 1 of the present Reply pertains to "pledgees" who are exempted from making disclosures in terms of the proviso of Regulation 29 (4) of the SAST Regulations. A list of the said lenders which are exempt from any disclosure in terms of the proviso to Regulation 29(4) of the SAST Regulations is annexed hereto.

i. Without Prejudice to the submissions hereinabove, in any case, the Noticees submits that the conclusions arrived at in paragraphs 6 and 7 of the SCN are erroneous. The contents of paragraph 6 and 7 of the SCN including the calculations relating to the threshold limits relatable to the dates mentioned therein are denied.

j. Reference is drawn to the tables contained in paragraphs 6 and 7 of the SCN which are stated to be prepared on the basis of the information contained in Annexure B of the SCN. In this regard it is humbly submitted that the transactions listed in paragraph 6 of the SCN, which refers to pledge created by the Noticees, while arriving at the dates on which the 2% shareholding has allegedly been exceeded, inter-alia, does not take into account the unpledging of shares during the same period. The same also applies in case of transactions in paragraph 7 of the SCN. Therefore, in view of the transactions of creation as well as release of pledge during the same period, the threshold of 2% stipulated in Regulation 29(2) of the SAST Regulations was not exceeded on any of the dates alleged in paragraphs 6 & 7 of SCN. It is further submitted that while computing the data for the period "January 05, 2016 to March 15, 2016' in paragaph 6 of the SCN read with Annexure B of the SCN, SEBI erroneously considered the issue of bonus shares on March 15, 2016 as a creation of pledge. The Noticees submits that such issue of bonus shares does not result in any change in the percentage ofshareholding or voting rights. The Noticees submits that SEBI ought to have taken this fact also into consideration while computing the threshold of 2% in paragraph 6 of the SCN. Hence in any case the computations in paragraph 6 of the SCN are not correct.

k. Further SEBI has also failed to consider that the lenders as named in Annexure 1 are anyway exempt from any disclosure in terms of the proviso to Regulation 29 (4) of the SAST Regulations and therefore, the transactions with the said lenders ought not to have been considered in the present case.

l. Without prejudice to the submissions made hereinabove, the Noticees submits that the Regulation 29 (3) of the SAST Regulations was amended by SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations 2018 wherein "disposal" of shares was also brought within the purview of disclosure required to be made under Regulation 29(3) of SAST Regulations. The said amendment came into effect only from September 11, 2018. Pertinently, the Investigation Period under the SCN pertains to May 15, 2015 to March 31, 2018. Therefore, the Noticees submits that in any case there is no violation in connection with the transactions referred to in paragraph 6 of the SCN (i.e. the pledging (disposal of shares) as per SEBI) as the said amendment cannot retrospectively apply to the Noticees.

m. It is well settled that Regulation 29 (4) of the SAST Regulations introduces a deeming fiction where "the pledgee" is treated to have acquired shares and is required to make disclosures. The words "taken" and "given" used in Regulation 29 (4) of the SAST Regulations supports the aforesaid interpretation. Regulation 29 (4) of the SAST Regulations does not cast a disclosure obligation on "a pledgor". As stated above, in the present case there was never any change in shareholding or voting rights or acquisition or disposal pursuant to the pledge transactions. Accordingly, Regulation 29 (4) of the SAST Regulations does not apply to Noticees.

n. In support of its submissions, the Noticees further relies on the judgment in the matter of SICOM vs. SEBI dated October 28, 2014, wherein the Hon'ble Securities Appellate Tribunal at paragraphs 10, 1 1 and 17 has stated that:

o. Regulation 29(4) of the Takeover Regulations, 2011, however, creates a deeming fiction and provides that for the purposes of regulation 29(1)/29(2) taking shares by way of encumbrance shall be treated as an acquisition and giving back shares upon release of encumbrance shall be treated as disposal and in both cases disclosures shall be made by such person in such form as may be specified. Since expression "encumbrance " is defined under regulation 28(3) to include a pledge, lien or any such transaction by whatever name called, it is evident, that "taking shares by way of encumbrance " under regulation 29(4) is referable to pledge or lien, where shares are encumbered with a view to secure indebtedness. When a pledge is created, the pledged shares continue *to be in the name of the borrower and till the date of invocation of pledge, the pledgee does not actually acquire the shares…*…..

p. *Moreover, the language used in the proviso to regulation 29(4) does not even remotely suggest that the exemption contained therein is intended to cover categories other than those specified under regulation 29(4). Very fact that the proviso to regulation 29(4) uses the expression 'such requirement....as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business ' instead of using the expression "such requirement arising on acquisition of shares by invocation of pledge " clearly shows that the proviso to regulation 29(4) is obviously referable to disclosure requirements which the Scheduled Commercial Banks/ PFI's are required to discharge as pledgee when shares are taken by way of pledge for securing indebtedness in the ordinary course of business….*

q. *Argument that the expression "shares taken by way of encumbrance " in regulation 29(4) would mean taking shares into the account of the pledgee on invocation of pledge is without any merit, because, firstly, object of regulation 29(4) is to introduce a deeming fiction and to treat shares taken by way of encumbrance to be deemed acquisition, even though taking shares by way of encumbrance does not involve actual acquisition of shares b)' a pledgee and the borrower continues to be registered as well as beneficial owner o/the encumbered shares. To illustrate, where shares are encumbered by creation of pledge, pledgee does not acquire the shares till the pledge is invoked. However, under regulation 29(4), by a deeming fiction. The pledgee is treated to have acquired shares and is required to make disclosures. Where the shares are acquired on invocation of pledge, question of introducing deemed fiction would not arise because, in such a case, shares are actually acquired on invocation of pledge. Thus it is evident that the expression "taken" used in regulation 29(4) is used in the context of deemed acquisition of shares on creation of pledge and not actual acquisition of shares on invocation of pledge... ".*

r. *The Noticees submits that upon considering the pledging and concurrent unpledging of shares during the period, it becomes clear that the threshold of 2% stipulated in Regulation 29 (2) of the SAST Regulations is not exceeded as alleged by SEBI. As and by way of illustration, annexed hereto is Annexure C providing the transaction details in connection with the pledging and concurrent unpledging of shares from May 15, 2015 to June 09, 2015 which is shown to be the first alleged breach as per paragraph 6 of the SCN. As per paragraph 6 of the SCN, in the first entry i.e. the data for the period "May 18, 2015 to June 09, 2015" read with Annexure B of the SCN, SEBI has erroneously computed that on June 09, 2015 the percentage of pledge of shares was 2.15%.*

s. Noticees submits that, as can be seen from Annexure C hereto, upon considering the pledging / creation of pledge of shares and concurrent unpledging/ release of pledged shares during the period "May 18, 2015 to June 09, 2015" the actual percentage of pledge of shares on June 09, 2015 was 0.86% and not 2.15% as computed by SEBI. The Noticees therefore submits that the basis of SEBI's computation in paragraph 6 and paragraph 7 of the SCN is erroneous. The Noticees further submits that a conjoint reading of the pages / part of Annexure B of the SCN concerning the entries of pledging / creation of pledge of shares and the pages / part of Annexure B of the SCN concerning the entries of unpledging / release of pledged shares, will show that the threshold of 2% stipulated in Regulation 29 (2) of the SAST Regulations was not exceeded on any of the dates alleged in paragraphs 6 and 7 of the SCN.

t. Without prejudice to the submissions hereinabove, the Noticees further submits that SEBI has also failed to consider that the lenders as named in Annexure B (i.e. also attached as Annexure I of the First Reply) are anyway exempt from any disclosure in terms of the proviso to Regulation 29 (4) of the SAST Regulations and therefore, the transactions with the said lenders referred to in Annexure B of the SCN ought not to have been considered in the present case to arrive at conclusions against the Noticees

u. Without prejudice to the submissions made hereinabove, the Noticees submits that the Regulation 29 (3) of the SAST Regulations was amended by SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations 2018 wherein "disposal" of shares was also brought within the purview of disclosure required to be made under Regulation 29 (3) of SAST Regulations, The said amendment came into effect only from September I l, 2018. Pertinently, the Investigation Period under the SCN pertains to May 15. 2015 to March 31, 2018, Therefore, the Noticees submits that in any case there is no violation in connection with the transactions referred to in paragraph 6 of the SCN (i.e. the pledging (disposal of shares) as per SEBI) as the said amendment cannot retrospectively apply to the Noticees.

CONSIDERATION OF ISSUES

13. I have taken into consideration the facts and material available on record. I observe that the allegations levelled against the Noticees that they had failed to make the requisite disclosures under Regulation 29(2) read with Regulations

29(3) and 29(4) of the SEBI (SAST) Regulations. After perusal of the material available on record, I have the following issues for consideration, viz.,

a. *Whether the Noticees have violated the provisions of Regulation 29 (2) read with Regulation 29 (3) and 29(4) of SEBI (SAST) Regulations, 2011?*
b. *Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act.?*
c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

14. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (SAST) Regulations, 2011, which reads as under:

Regulation 29 (2) of SEBI (SAST) Regulations, 2011
Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under subregulation (1) or under this subregulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified..

Regulation 29 (3) of SEBI (SAST) Regulations, 2011
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.

Regulation 29 (4) of SEBI (SAST) Regulations, 2011
For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified: Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business

15. I note that Noticees requested inspection of documents, which was provided to them on July 23, 2021 & July 29, 2021. However Noticees contended that inspection is incomplete. In view of the same vide email dated May 06, 2022, Investigation Report and emails between SEBI and NSDL/CDSL were provided to Noticees (as sought by them). However it is noted that Noticees didn't file any additional reply. Further vide email dated June 01, 2022 Noticees and their Authorised Representatives were once again provided with an opportunity to file additional reply, if any. Vide email dated June 09 2022, Noticees submitted their reply and reiterated the contention raised vide email dated September 23, 2021 & October 04, 2021. I note that all the documents which were relevant in the present proceedings were provided to the Noticees It is also pertinent to note that the present matter is related to non-disclosure of pledged and unpledged shares of the scrip of Mindtree by the Noticees. Vide email dated June 22,2020 Noticees submitted that "*Coffee Day Enterprises Limited and Coffee Day Trading Limited used to pledge shares held by them in Mindtree Limited for the loans availed by the Coffee Day Enterprises Limited & subsidiaries. The Loan agreement always has a clause of Top up and Top down of securities on the basis of Market values of the Mindtree shares. The Coffee Day Enterprises Limited and Coffee Day Trading Limited used to pledge and release Mindtree Shares from the period 15th May 2015 to 31 March 2018 as per terms of the agreement. However, we are not able to track any disclosures of such pledge/release, if required*." Further vide email dated November 11, 2020 Noticees themselves accepted the laps in disclosure which can be read as….***further due to pledge and unpledged of the Mindtree shares, the company did not gain any amount and the laps in disclosure is more of a technical nature****…* In view of the above I note that Noticees were provided with investigation report and all other documents requested by the Noticees. Therefore the contention of Noticees that denial copies of documents as requested is in gross violation of the basic principles of natural justice doesn't hold any merit.

16. Noticees argued that….. *It can be seen from a plain reading Regulation 29 (2) of the SAST Regulations, the same requires disclosure in case of change in shareholding or voting rights in the target company i.e. Mindtree Ltd. in the present case. Further, a reading of Regulation 29 (3) of the SAST Regulations makes it clear that a disclosure is to be made upon receipt of intimation of allotment of shares or the acquisition or the disposal of shares or voting rights in the target company. The present transaction entails creation and release of pledge of shares of Mindtree Ltd. These pledges were never invoked. Neither were any shares or voting rights acquired or disposed off nor was there any allotment of shares. The requirement of disclosure would only arise upon acquisition of shares on invocation of pledge thereby resulting in a change in shareholding which is not the case in the present matter…*In this regard I would place my reliance on the judgment of the Hon'ble Securities Appellate Tribunal in the matter of SICOM vs. SEBI dated October 28, 2014, wherein the Hon'ble Securities Appellate Tribunal at paragraphs no. 10 and 11 has stated that….*Regulation 29(4) of the Takeover Regulations, 2011, however, creates a deeming fiction and provides that for the purposes of regulation 29(1)/29(2) taking shares by way of encumbrance shall be treated as an acquisition and giving back shares upon release of encumbrance shall be treated as disposal and in both cases disclosures shall be made by such person in such form as may be specified. Since expression "encumbrance" is defined under regulation 28(3) to include a pledge, lien or any such transaction by whatever name called, it is evident, that "taking shares by way of encumbrance" under regulation 29(4) is referable to pledge or lien, where shares are encumbered with a view to secure indebtedness. When a pledge is created, the pledged shares continue to be in the name of the borrower and till the date of invocation of pledge, the pledgee does not actually acquire the shares. By a deeming fiction, regulation 29(4) provides that when shares are taken by way of encumbrance under a pledge to secure indebtedness the pledgee for the purposes of regulation 29 shall be deemed to have acquired the shares even though the shares are not actually acquired by the pledgee and such pledgee shall be liable to make disclosures.* In the present case Noticees had pledged/unpledged the shares of mindtree with the lenders. In view of the same

the contention of Noticees that Regulation 29(2) & 29(3) doesn't apply to them cannot be accepted.

17. I note that Noticees contended that …. *it may be noted that Regulation 29 (4) of the SAST Regulations refers to shares taken by way of encumbrance shall be treated as an acquisition. shares given upon release of encumbrance shall be treated as a disposal. and disclosures shall be made by such person accordingly in such form as may be specified. The aforesaid language of Regulation 29 (4) of the SAST Regulations makes it clear that the disclosure requirement under the said Regulation relates to a pledgee & placed reliance on the judgment in the matter of SICOM vs. SEBI dated October 28, 2014*.

18. I note that in terms of regulation 2(1)(q)(1) of SEBI (SAST) Regulations 2011 "person acting in concert"

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

(i) **a company, its holding company, subsidiary company and any company under the same management or control**;

(ii) a company, its directors, and any person entrusted with the management of the company

19. I note that in the present proceedings. V. G. Siddhartha was the director of Mindtree Ltd since 1999 and he resigned from its directorship on March 09, 2018. V. G. Siddhartha was the promoter of Coffee Day Enterprise Ltd (CDEL) holding 32.75% of the total shares of CDEL as on December 31, 2018 Coffee Day Trading Ltd (CDTL) is the subsidiary of CDEL. Coffee Day Enterprises Limited (CDEL) is a listed company and Coffee Day Trading Limited (CDTL) is a subsidiary of CDEL.(Therefore, in terms of regulation 2(1)q(2) of SEBI (SAST) Regulations, 2011, Coffee Day Enterprises Limited and Coffee Day Trading

Limited were PACs(Person acting in concert). I note from the shareholding pattern, that CDEL & CDTL were holding more than 5% shares of Mindtree limited during the Investigation period. Further, CDEL is a listed entity and CDTL is a subsidiary of CDTL, hence, CDEL & CDTL are PACs. Therefore, CDEL & CDTL were required to disclose the pledge/unpledged transactions which exceeds 2% of total shareholding of Mindtree Limited under Regulation 29 (2) r/w 29(3) & 29 (4) of SEBI (SAST) Regulations, 2011. Further I note that, provisions of regulations 29(4) read as: *For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified.* I note that the regulation states that the share taken/given as encumbrance shall be treated as an acquisition/ disposal as the case may be. Further I note that every transaction has two legs, in the present proceedings shares taken by way of encumbrance shall be treated as an acquisition for the pledgee, and the same transaction would be treated as disposal for the pledger and vice-versa. It is pertinent to note that as per Regulation 29(4) *any such person means*… any person who is involved in such kind of transaction needs to make the disclosure. Therefore In view of the above Noticees contention that being pledger, the regulation 29(4) doesn't apply to them can't be accepted.

20. I note that Noticees contended that…*SEBI has also failed to consider that the lenders as named in Annexure 1 are anyway exempt from any disclosure in terms of the proviso to Regulation 29 (4) of the SAST Regulations and therefore, the transactions with the said lenders ought not to have been considered in the present case…*.. Noticees has submitted Annexure 1 which has entities with whom the Noticees pledge/unpledged the shares, I note that list has name of systematically important NBFC & Scheduled Commercial Banks. First & Foremost the definition of NBFC & HFC was inserted by the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2018 and effective from 31-12-2018, whereas the period of Investigation is May 15, 2015 to March 31, 2018. Secondly, I note that the proviso is related to certain entities, which are exempted from making

disclosure as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business. I note that in the present proceedings Noticees acted as pledger. Therefore the contention of Noticees in this regard doesn't hold any merit.

21. I note that Noticees contended*….. Reference is drawn to the tables contained in paragraphs 6 and 7 of the SCN which are stated to be prepared on the basis of the information contained in Annexure B of the SCN. In this regard it is humbly submitted that the transactions listed in paragraph 6 of the SCN, which refers to pledge created by the Noticees, while arriving at the dates on which the 2% shareholding has allegedly been exceeded, inter-alia, does not take into account the unpledging of shares during the same period. The same also applies in case of transactions in paragraph 7 of the SCN. Therefore, in view of the transactions of creation as well as release of pledge during the same period, the threshold of 2% stipulated in Regulation 29(2) of the SAST Regulations was not exceeded on any of the dates alleged in paragraphs 6 d 7 of e SCN. It is further submitted that while computing the data for the period "January 05, 2016 to March 15, 2016' in paragaph 6 of the SCN read with Annexure B of the SCN, SEBI erroneously considered the issue of bonus shares on March 15, 2016 as a creation of pledge. The Noticees submits that such issue of bonus shares does not result in any change in the percentage of shareholding or voting rights. The Noticees submits that SEBI ought to have taken this fact also into consideration while computing the threshold of 2% in paragraph 6 of the SCN. Hence in any case the computations in paragraph 6 of the SCN are not correct*. In this regard I note that Noticees calculated net of pledge (i.e pledging of share in a particular period – unpledging of share in the same period). However, provisions of Regulations of 29(2) read as….*under this sub(1)regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.* I note that the threshold of 2% is on gross basis rather than the net of pledged/unpledged of shares, therefore the methodology used by the Noticees to calculate pledge/unpledged is not in line with the aforesaid regulation. Further, I note that Noticees contention regarding bonus share is erroneous. The threshold of 2% is

calculated by dividing pledge/unpledged of share by the Noticee to the total number of shares. I note that post bonus issue, the total number of share increases in the market and the same has be taken as dividing factor to calculate the threshold of 2% Therefore the contention of Noticees doesn't hold any merit.

22. I would also like to place my reliance on the judgment of the Hon'ble Securities Appellate Tribunal in the matter of SICOM vs. SEBI dated October 28, 2014, wherein the Hon'ble Securities Appellate Tribunal at paragraphs 7(a) has stated that…*Entire object and purpose of Takeover Regulations, 2011 is to provide an exit option to shareholders by way of an „open offer" in cases where there is a substantial acquisition of shares or a takeover of the Company by a third party. The concept is that shareholders invest in companies on the faith of the management of the company and its performance under such management. If the management changes or is likely to change by a substantial acquisition of shares or voting rights, apart from the normal option of divesting in the secondary market, the existing shareholders should also be given an exit option by an open offer, including the benefit of the „negotiated price.* Therefore In view of this I am of the opinion that shareholders have the right to know about the shareholding changes of the major shareholders, which can affect their interest and holding in the company.

23. In terms of the provisions of Regulation 29 (2) r/w Regulation 29(3) & 29(4) of SEBI (SAST) Regulations, 2011, the Noticees were under an obligation to disclose pledged/unpledged transactions to the company and stock exchanges within two working days of the disposal (pledged) /acquisition (unpledged) of shares exceeding 2 % of total shareholding or voting rights in the company. In view of the above facts I note that no such disclosures were made by the Noticees, and the same has been accepted by the Noticees. I agree with the charges alleged in the SCN i.e by non-disclosing pledged/unpledged transactions to the company and stock exchanges within two working days of the disposal (pledged) /acquisition (unpledged), Noticees have violated the

provisions of Regulation 29 (2) read with Regulation 29(3) & 29(4) of SEBI (SAST) Regulations, 2011.

Issue (b):Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act.?

24. It has been established in the foregoing paragraphs that Noticees have violated the provisions of Regulation 29 (2) read with Regulation 29(3) & 29(4) of SEBI (SAST) Regulations, 2011, and therefore, the aforesaid violations committed by the Noticees attract monetary penalty under section 15A(b) of SEBI Act.

25. *In this regard, reliance is placed upon the order of the* ***Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } –*** *wherein 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…………...."*

26. In view of the above, I conclude that the Noticees are liable for monetary penalty under the provision of section 15A(b) of SEBI Act, which reads as under during the relevant period:

***Section 15A of SEBI Act**– If any person, who is required under this Act or any rules or regulations made thereunder: -,*
(b) *to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.*

Issue (c): If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

27. While determining the quantum of penalty under section 15HA of the SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under:-

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.*

28. In the present matter, the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and also the loss suffered by the investors as a result of the Noticees' default. The consequences resulting from violations committed by the said Noticees are of grave nature where by non-disclosing pledged/unpledged transactions to the company and stock exchanges within two working days of the (pledged)/ (unpledged), Noticees deprive the shareholders from important information regarding major shareholding changes in the company. If violations of this nature and magnitude are not dealt with a firm hand then investors will lose faith in the Indian Securities Market.

ORDER

29. After taking into consideration the facts and circumstances of the case, material/facts on record, case laws submitted by the Noticees and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the Adjudication Rules, 1995, hereby impose the following penalty on the Noticees under section 15A(b) of SEBI Act, for the failure on their part to comply with the

provisions of Regulation 29 (2) r/w Regulation 29(3) & 29(4) of SEBI (SAST) Regulations, 2011:

Name of the Noticee	**Penalty Section**	**Penalty Amount (Rs.)**
Coffee Day Enterprises Ltd.	Section 15A(b) of SEBI Act, 1992	1,00,000/-
Coffee Day Trading Ltd.	Section 15A(b) of SEBI Act, 1992	1,00,000/-

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

30. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the 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, the Noticees may contact the support at portalhelp@sebi.gov.in.

31. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid to the Division Chief, Enforcement Department-I, DRA-I, SEBI. The Noticees shall provide the following details while forwarding DD/payment information:

    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment –Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

32. In terms of the provision of rule 6 of the Adjudication Rules, 1995, a copies of this order are being sent to the Noticees and also to SEBI.

Place: Mumbai	**PRASANTA MAHAPATRA**
Date: June 28, 2022	**ADJUDICATING OFFICER**