BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/DS/DP/2022-23/16632-16638]

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

In respect of:

1. Nidhi Abhinav Aggarwal (PAN: AACPT0924G) 502, Vivarea 'D' Wing, Sane Guruji Marg, Mahalaxmi Mumbai – 400011	**2. Pushpa Rajkumar Thard (PAN: AAAPT8981F) Flat No. 21, Villa Capri, 2nd Floor, V P Road, Santacruz (West), Mumbai - 4000054**
3. Rajkumar Manmal Thard (PAN: AAAPT8621J) Flat No. 21, Villa Capri, 2nd Floor, V P Road, Santacruz (West), Mumbai - 4000054	**4. Anil Ratanlal Saraf (PAN: AAEPS0918H) 401 Saraf Apartment, 54 Rani Sati Marg, Malad (East) Mumbai – 400097**
5. Nupur International Private Ltd. (PAN: AABCN0684P) 9, Popat Bapa Shopping Centre, 2nd Floor, Station Road, Santacruz (West), Mumbai – 400054	**6. Dattaprasad Narhar Kulkarni (PAN: ACGPK7797J) B/102A, Gulmohar Complex, Phase – I, Ram Mandir Road, M B Estate Virar West - 401303**
7. Ophelia Rodriques (PAN: AJEPR4576P) 3 Mina Villa, Mt. Poinsur, I C Colony Road, Borivali West, Mumbai - 400103	

In the matter of
Nidhi Granites Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) conducted an examination into the dealings in the scrip of Nidhi Granites Ltd. (hereinafter referred

to as ‘**NGL**’ or ‘**Company**’). The shares of the company are listed on the BSE Ltd. (‘**BSE**’). The examination conducted by SEBI, *inter-alia*, revealed that there was change in shareholding of the promoters of the Company viz. Nidhi Abhinav Aggarwal (PAN: AACPT0924G), Pushpa Rajkumar Thard (PAN: AAAPT8981F), Rajkumar Manmal Thard (PAN: AAAPT8621J), Anil Ratanlal Saraf (PAN: AAEPS0918H), Nupur International Pvt. Ltd. (PAN: AABCN0684P), Dattaprasad Narhar Kulkarni (PAN: ACGPK7797J) and Ophelia Rodriques (PAN: AJEPR4576P) (hereinafter referred to as **Noticee No. 1 to 7** respectively or collectively referred to as ‘**Noticees**’).

2. It was observed that there was change of more than 2% shareholding of Noticee No. 1 during the Quarter ending March 2018 and March 2020 and therefore, the Noticees being the promoter group and persons acting in concert, were required to make the relevant disclosures mandated under Regulation 29 (2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as ‘**SAST Regulations’**) to the Company and to the stock exchange (i.e BSE) within two working days of the change in shareholding.. It was observed during the examination that the Noticees have failed to make such disclosures and therefore, it was alleged that Noticees have violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations. In view of the same, adjudication proceedings have been initiated against the Noticees under the provisions of section 15A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ‘**SEBI Act**’).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer in the matter, vide communique dated July 16, 2021, under section 19 of the SEBI Act read with section 15-I of SEBI Act and rule 3 of 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 in respect of the alleged violation

of provisions of regulations 29(2) read with 29(3) of SAST Regulations by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. SEBI/HO/DSR/19496/7/2021 dated August 13, 2021 (hereinafter referred to as '**SCN'**) was issued to the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on them under section 15A(b) of SEBI Act for the alleged violation of the provisions of SAST Regulations. The SCN, *inter alia*, alleged the following:

    i. SEBI received a Draft Letter of Offer (hereinafter referred to as "**DLOF**") in the matter of Open Offer made by Shri Darpan Shah and Shri Devan Pandya (the Acquirers) to the public shareholders of NGL. During the examination of said DLOF, SEBI observed that the Noticees are the promoter group of NGL and therefore, are "persons acting in concert".

    ii. It was observed from the DLOF that the Noticee No. 1 was holding 6.07% shareholding in NGL in the quarter ending December 2017. However, in the quarter ending March 2018, the shareholding of Noticee No. 1 increased by 2.15 % and total shareholding became 8.22% in NGL.

    iii. It was further observed that the Noticee No. 1 was holding 8.74% shareholding in NGL in the quarter ending September 2019. However, in the quarter ending March 2020, the shareholding of Noticee No. 1 increased by 2.06 % and total shareholding became 10.80% in NGL.

    iv. The aforesaid change in shareholding of the Noticee No.1 resulted in the change of shareholding of the promoter group in NGL. The Noticees being the promoter group of NGL and also persons acting in concert, were required to make disclosures to the Stock Exchange and the Company within two working days as per Regulation 29(2) read with Regulation 29(3) of SAST Regulations for the change in shareholding of the promoter group in the Quarters ending March 2018 and March 2020.

v. Since the Noticees failed to make the relevant disclosures, it was alleged that the Noticees violated the provisions of regulations 29(2) read with 29(3) of SAST Regulations.

5. In response to the SCN, the Noticees vide letter dated August 28, 2021, inter alia, submitted the following:
   - *The transactions referred to in the Notice as stated above are solely executed by Noticee No. 1. The noticees 2 to 7 are not persons acting in concert as defined in Regulation 29(1) of SAST Regulations. Therefore, we submit that they be relieved from this enquiry and the notice be withdrawn as Noticee No. 1 has acquired shares on its own accord and Noticee Nos. 2 and 7 are not having any locus standi.*

   - *Noticee No. 6 and 7 vide letter dated 06.11.2020 made an Application to the BSE Limited ("BSE") under Regulation 31A of SEBI (Listing Obligations and Disclosures Requirements) Regulations, 2015 for re-classification of promoter group. The Application made was to re-classify Noticee No. 6 and 7 from "Promoter Category" to "Public Category".*

   - *The Application was approved vide letter dated 01.04.2021, the shareholding pattern for quarter ended June 2021 reflects the revised promoter categorization.*

   - *Noticee No. 1 while executing the transaction was under the impression that the disclosure under Regulation 29(3) of SAST Regulations are to be made when any single transaction executed causes a change that exceeds two percent of total shareholding or voting rights.*

6. Subsequently, vide letter dated 15.09.2021, Noticee No. 1 filed an application to SEBI under the SEBI (Settlement Proceedings) Regulations, 2018 for the settlement of the instant proceedings.

7. SEBI vide email dated 20.01.2022, informed Noticee No. 1 that the settlement application has been rejected.

8. In terms of the Adjudication Rules, vide hearing notice dated May 20, 2022, Noticees were provided with an opportunity of personal hearing in the matter on May 27, 2022 at 11.00 AM. The Authorised Representative (AR) of the Noticees, Shri Nrupang Dholakia, Company Secretary appeared for the hearing and reiterated the submissions made by them vide letter dated August 28, 2021. The AR submitted that the violation is technical in nature and there was no *malafide* intention. The AR further submitted that Noticee No. 1 had made independent acquisitions, therefore Noticee No. 2 to 7 be absolved from any liability. The AR also submitted that BSE allowed reclassification of promoters on April 01, 2021 and subsequent to such reclassification, Noticee No. 6 and 7 do not form a part of the promoter group. The AR also submitted that the noticees had offered their shareholding in the open offer made by Shri Darpan Shah and Shri Devan Pandya and exited the company.

9. Vide email dated May 27, 2022, the AR forwarded the BSE's letter dated April 01, 2021 approving the reclassification of the promoter/promoter group.

CONSIDERATION OF ISSUES AND EVIDENCE

10. I have carefully perused the allegations levelled against the Noticees in the SCN, the replies of the Noticees and the material/documents available on record. It was alleged in the SCN that change in shareholding of the Noticee No.1 resulted in the change of shareholding of the promoter group in NGL the Noticees being the promoter group of NGL and also persons acting in concert, failed to make the required disclosure under regulations 29(2) read with 29(3) of the SAST Regulations.

11. Before moving forward, the provisions of SAST Regulations allegedly violated by Noticees are mentioned below:

29(2)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 sub-regulation (1) or under this sub-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.

29(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal 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."

12. It is observed that the Noticees form the promoter/promoter group of the company during the relevant period were also 'persons acting in concert' ("**PACs**") within the meaning of regulation 2(1)(q)(2)(iv) of the SAST Regulations. Regulation 2(1)(q)(2)(iv) of the SAST Regulations is produced as under;

(q) "persons acting in concert" means, —

(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,

(iv) promoters and members of the promoter group;

13. For the quarter ending March 31, 2018, the promoter group of the target company comprised the following promoters (Source: BSE Website)-

Name	Total No. of Shares Held	Shareholding (%)
Anil Ratanlal Saraf	5,000	0.67
Dattaprasad Narhar Kulkarni	13,230	1.76
Nidhi Abhinav Aggarwal	61,651	8.22
Ophelia Rodrigues	8,550	1.14
Pushpa Rajkumar Thard	1,59,500	21.27
Rajkumar Manmal Thard	1,21,731	16.23
Nupur International Pvt Ltd	95,875	12.78
Total	4,65,537	62.07

14. It is further observed that for the quarter ending September 30, 2019, promoter group of the target company comprised the following promoters (Source: BSE Website)-

Name	Total No. of Shares Held	Shareholding (%)
Anil Ratanlal Saraf	5,000	0.67
Dattaprasad Narhar Kulkarni	19,180	2.56
Nidhi Abhinav Aggarwal	65,587	8.74
Ophelia Rodrigues	8,550	1.14
Pushpa Rajkumar Thard	1,59,500	21.27
Rajkumar Manmal Thard	1,24,309	16.57
Nupur International Pvt Ltd	95,875	12.78
Total	4,78,001	63.73

15. From the material available on record, I find that Noticee No. 1 admittedly had traded in the scrip of NGL during 2018 and 2020 and there was a change in shareholding. It is not in dispute that the Noticee No. 1 was holding 6.07% shareholding in NGL in the Quarter ending December 2017. However, in the Quarter ending March 2018, the

shareholding of Noticee No. 1 increased by 2.15 % and total shareholding became 8.22% in NGL. Further, Noticee No. 1 was holding 8.74% shareholding in NGL in the Quarter ending September 2019. However, in the Quarter ending March 2020, the shareholding of Noticee No. 1 increased by 2.06 % and total shareholding became 10.80% in NGL.

16. The Noticees collectively held 59.93% shareholding in the company prior to the acquisition made by Noticee No. 1. Subsequent to the acquisitions made by Noticee No. 1, the collective shareholding of the Noticees in the company became 62.07 % and 63.73 % for the Quarter ending March, 2018 and Quarter ending March, 2020 respectively, in promoter group category. I find that the aforementioned acquisition of shares by Noticee no. 1 had crossed the threshold limit of change in shareholding of the promoters by more than 2% during Quarter ending March 2018 and Quarter ending March 2020 as stated in the SCN which is not in dispute. The submission of the Noticee(s) that the shareholding of Noticee No. 6 and 7 were reclassified into "Public Category in April 2021 which is reflected in Quarter ending June 2021, would not support the case of Noticee No. 6 and 7 as such reclassification took place only from April 2021 onwards, however, they (Noticee No. 6 and 7) were in the 'promoter group' category during the period of alleged violation during Quarter ending March 2018 and Quarter ending March 2020.

17. Therefore, Noticees being part of the promoter group, were required to make the necessary disclosures under regulation 29(2) read with regulation 29(3) of SAST Regulations to the company and to BSE within two working days of the acquisition of shares which resulted in the change in their shareholding in the company.

18. In view of the above observations, I conclude that the acquisition of shares of the company by Noticee no. 1, which resulted in change in shareholding of the promoters had triggered the obligation on their part to make the relevant disclosures to the Company and BSE within two working days of the acquisition of shares. In this regard, I find that BSE informed vide its email dated 29.01.2021 that the stock exchange had

not received any disclosures from the Noticees in respect of the aforementioned acquisition of shares. In view of the same, I hold that Noticees have violated the provisions of Regulations 29(2) read with 29(3) of the SAST Regulations.

19. The Noticees have contended that the non-disclosures under the Regulations were due to inadvertence. The contentions of the Noticee cannot be accepted. It is pertinent to mention that the disclosure requirements under the respective Regulations serve very important purpose. The stock exchange is informed so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Timely disclosure of change in the shareholding of promoters is very important in that such disclosure enables SEBI to monitor such acquisitions. In the matter of Ashok Jain Vs SEBI (Appeal No 79 of 2014 dated June 09,2014), Hon'ble SAT has held that "…… *under SAST Regulations 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations*".

20. In the matter of Virendrakumar Jayantilal Patel Vs SEBI (Appeal No 299 of 2014 and Order dated October 14, 2014), Hon'ble SAT has 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 the disclosures* ".

21. Therefore, considering the above facts, I conclude that the Noticees have violated the provisions of regulations 29(2) read with 29(3) of the SAST Regulations and the case deserves imposition of monetary penalty under section 15A(b) of the SEBI Act, which reads as under:

SEBI Act

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 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;

22. The Hon'ble Supreme Court of India in the matter of SEBI Vs. 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, therefore, the intention of the parties committing such violation becomes wholly irrelevant…*".

23. While determining the quantum of penalty under section 15A(b) of the SEBI Act, it is important to consider the relevant factors as stipulated in section 15J of the SEBI Act, 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.

24. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the defaults of the Noticees are repetitive in nature in that the threshold limit of 2% change in the shareholding of the

promoters had crossed twice during Quarter ending March 2018 and also Quarter ending March 2020. I note that the Regulations seek to achieve fair treatment by, inter alia, mandating disclosure of timely and adequate information to enable shareholders to make an informed decision. Therefore, correct and timely disclosures play an important role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed decision.

ORDER

25. Having considered all the facts and circumstances of the case 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 a penalty of Rs.5,00,000/- (Rupees Five Lakh only) on the Noticees viz. Nidhi Abhinav Aggarwal, Pushpa Rajkumar Thard, Rajkumar Manmal Thard, Anil Ratanlal Saraf, Nupur International Pvt. Ltd., Dattaprasad Narhar Kulkarni and Ophelia Rodriques under the provisions of section 15A(b) of the SEBI Act. The liability to pay the penalty is joint and several. I am of the view that the said penalty is commensurate with the violations committed by the noticees.

26. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) 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 in the payment link:

    Enforcement → Orders → Orders of AO → PAY now.

27. The Noticees shall forward the said demand draft or the details/ confirmation of payment of penalty so paid through e-payment to the Division Chief, Enforcement Department - I , Division of Regulatory Action - IV , SEBI Bhavan-2 , Plot No.C4-A,‘

G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 and also send an email to tad@sebi.gov.in with the following details:

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

28. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : May 30, 2022

Place : Mumbai

D SURA REDDY

CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER