BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/PM/PA/2021-22/14600

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

In respect of

Prarthana Tarunkumar Brahmbhatt
(PAN: AGLPB2425P)

In the matter of Sampada Chemicals Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"SEBI"***) conducted an investigation in the scrip of Sampada Chemicals Ltd., (hereinafter referred to as ***"SCL" / "Company"***) for the period October 1, 2010 to March 21, 2011 (hereinafter referred to as ***"Investigation Period"***) to ascertain any violation of the provisions of SEBI Act and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 {*hereinafter referred to as "SEBI (PFUTP") Regulations}.* The shares of SCL were listed on the Bombay Stock Exchange (BSE). The investigation revealed that Prarthana Tarunkumar Brahmbhatt *(hereafter referred to as "**Noticee**")* received 5,00,000 shares of SCL from its sole promoter viz., Shyam Alcohol and Chemicals Ltd., *(hereinafter referred to as **"SACL"**),* in off-market without payment of consideration and thereby alleged to have violated the provisions of Section 16 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as ***"SCRA"***) read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956.

2. The investigation also found that the Noticee pursuant to change in her shareholding in the scrip of SCL had failed to make the requisite disclosures under the provisions of SEBI (Substantial Acquisition of Shares & Takeovers), 1997 *(hereinafter referred to "SAST Regulations")* and SEBI (Prohibition of Insider Trading) Regulations, 1992 *(hereinafter referred to "PIT Regulations")* to the Company and to BSE. Therefore, it is alleged that the Noticee had violated the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

3. Based on the findings of investigation, SEBI initiated Adjudication proceedings against the Noticee and appointed the undersigned as Adjudicating Officer vide Order dated May 18, 2017 under Sub-section (1) of Section 23-I of SCRA and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (*hereinafter referred to as "SCR Adjudication Rules")* and under Section 19 read with Sub-section (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 violations committed by the Noticee under Section 23H of SCRA and Section 15A(b) of SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/ADJ/PM/AA/OW/29502/2017 dated November 24, 2017 was issued to the Noticee under Rule 4 SCR Adjudication Rules and Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against her in terms of Rule 4 of the SCR Adjudication Rules and Rule 4 of SEBI Adjudication Rules and penalty be not imposed under Section 23H of SCRA and Section 15A(b) of the SEBI Act, 1992, for the violations alleged to have been committed by the Noticee. I note that the SCN sent by Speed Post to the

Noticee was delivered at her address. The Noticee vide letter dated January 24, 2018 had made a request for carrying out inspection of documents, however, I note that the Noticee did not carry out the inspection of documents despite provided with an opportunity to do so. Thereafter, in the interest of natural justice and in terms of the provisions of Rule 4(3) of SCR Adjudication Rules and Rule 4(3) of SEBI Adjudication Rules, the Noticee was given an opportunity of hearing on February 24, 2021, which was communicated through email at the Noticee's ID: PRATHANA.BHATT@GMAIL.COM on February 11, 2021. The Authorized Representative (AR) of the Noticee vide email dated February 22, 2021 expressed her inability to attend the hearing owing to pre-occupation with other hearings before the Hon'ble SAT. Subsequently, vide email dated April 22, 2021, the Noticee was given an opportunity of hearing on May 7, 2021, which was communicated to the Noticee and her AR by email. The AR of the Noticee vide email dated May 5, 2021 had once again requested for adjournment of hearing owing to Covid-19 pandemic, which was considered favourably and accordingly the hearing was adjourned to May 21, 2021, which was communicated to the Noticee and AR through email on May 6, 2021. The Noticee vide emails dated May 19, 2021 and May 21, 2021 submitted her reply to the charges alleged in the SCN.

5. In view of Covid-19 Pandemic, the hearing was scheduled through videoconference on WebEx platform on May 21, 2021, which was attended by the AR of the Noticee. The AR reiterated the submissions made by the Noticee on May 19, 2021 and May 21, 2021 and sought additional time of 2 days make fresh submissions, which was acceded to. The AR vide email dated May 26, 2021 had made additional submissions on behalf of the Noticee. The reply furnished by the Noticee on May 19, 2021, May 21, 2021 and May 26, 2021 is summarized hereunder:

   (a) There has been an inordinate and unconscionable delay in commencing the proceedings under this SCN. The allegation framed in the SCN relate to the investigation period October 2010 to March 21, 2011 and the SCN issued on November 24, 2017 i.e., after a delay of 7 years. This delay has caused severe prejudice to the Noticee as they have been handicapped in adducing sufficient evidence for the purpose

of filing adequate reply. In these circumstances, the SCN ought to be discharged vis-à-vis the Noticee.

(b) In this regard, the Noticee would like place reliance on the judgment of the Hon'ble Supreme Court in the matter of Mohamad Kavi Mohamad Amin Vs Farmabai Ibrahim and the Orders of the Hon'ble SAT viz., HB Stockholding Ltd., Vs SEBI, Rakesh Kathotia & Ors., Vs SEBI, Libord Finance Ltd., Vs Whole Time Member, SEBI.

(c) The Noticee received from 5,00,000 shares of Sampada Chemicals Ltd from M/s Shyam Alcohol on 31.03.2011. Mr. Vipul Vidur Bbatt (Director of M /s Shyam Alcohol) was in need of some funds and he asked Mr. Jinesh Bhatt to generate funds from loan against shares. Mr . Jinesh Bhatt who was the common friend of the Noticee and Vipul Vidur Bhatt recommended the Noticee regarding the aforesaid proposal of loan against shares as collateral and for the same, the Noticee received 5,00,000 shares of Sampada Chemicals Ltd., from M/s Shyam Alcohol. However, the aforesaid arrangement did not go through and the Noticee returned the shares.

(d) The Noticee reiterates that the Noticee received 5,00,000 shares of Sampada from M/s. Shyam Alcohol Pvt. Ltd. on 31.03.2011 under the proposal of raising funds by Mr. Vipul Vidur Bhatt against shares kept as collateral. The Noticee on the very next day i.e., 01.04.2021 transferred 2,50,000 shares and 1,00,000 shares to Mr. Tarunkumar Bramhbhatt and Mr. Jinesh Bhatt on 01.04.2021. However, since the aforesaid arrangement of generating funds against shares kept as collateral did not go through, the Noticee returned the remaining 1,50,000 shares to M/s Shyam Alcohol on 05.04.2021 and the shares received by Mr. Tarunkumar Bramhbhatt and Mr. Jinesh Bhatt from the Noticee on 01.04.2021 was also returned by them to M/s Shyam Alcohol Pvt., Ltd., on 05.04.2021. In view thereof, the Noticee did not pay any consideration for the off-market transfer of the said 5,00,000 shares of Sampada Chemicals and immediately returned them to its rightful owner M/s Shyam Alcohol within five days.

(e) In view of the above, it is respectfully submitted that there was no real buying and selling of shares from M/ s. Shyam Alcohol to the Noticee and subsequently by the Noticee to M/s. Shyam Alcohol Pvt. Ltd., Accordingly, Section 2(i)(a) read with Sections 13, 16, and 18 of SCRA is not triggered in the present case.

(f) Attention is drawn to the circulars of Central Depository Services (India) Limited ("CDSL") dated August 17, 2016, September 11, 2017 and July

15, 2019 by way of an email dated 21st May, 2021. It is essential to see how the law has evolved in relation to off-market transactions. By reading of August 17, 2016 circular of CDSL, it is abundantly clear that as on August 2016 off-market transactions without actual fund movement was permissible under the category of 'Others'. In fact, the requirement to insert 'Consideration Amount' as a mandatory field was only applicable when the transaction was 'For Off-Market Sale/ Purchase". In the present case, the shares of Sampada Chemicals Ltd. were transferred from Shyam Alcohol Ltd. only for the purpose of a raising funds against shares kept as collateral. Thus, such transactions fall under the category of 'Others'. Pertinently, the objectionable off-market transfers occurred in 2011. Thus, there was no violation of the SCRA at such time. The fact that the depository participant did not cancel the transaction further is demonstrative of the fact that the transactions were legitimate. It is only by way of July 15, 2019 circular of CDSL were the reason codes for transactions between the categories of 'Others' and 'Transfer Between Family Members' was discontinued.

(g) Thus, it is clear from CDSL circulars that every offmarket transfer need not be for consideration. This is further confirmed from the DIS also being enclosed in these submissions. In view thereof, there was no trigger of Section 2(i)(a) read with Sections 13, 16, and 18 of SCRA in the present case. Accordingly, there was no violation of the SCRA as alleged by SEBI in the SCN.

(h) As already stated above that the aforesaid off-market transfer did not result into any acquisition of shares and the shares were eventually returned by the Noticee to M/s Shyam Alcohol on 05.04.2021. Therefore, the Noticee was not required to file any disclosure regarding the aforesaid change in her share-holding as the off-market transfer of shares was not in the nature of acquisition of shares. On the contrary, had the Noticee made disclosures under SAST Regulation and PIT Regulations, that would have sent wrong signals to the market.

(i) The Noticee has not made any disproportionate gain or gained any unfair advantage, whether quantifiable or otherwise. Further, no loss has been caused to any investor or group of investors as a result of the alleged default.

(j) The Noticee craves leave to refer to and rely upon the ratio laid down in the judgement of the Hon'ble SAT in the matter of P. G. Electroplast Ltd. & Ors. V. SEBI in Appeal no. 281 of 2017, as regards imposition of monetary penalty.

(k) *The Noticee says that her transaction cannot further be equated with any undesirable speculation that is sought to be prohibited by Section 16 of SCRA as well as by the Notification dated 01st March, 2000. Further, there is no charge that the impugned transaction is a result of excessive or undesirable speculation or that it had any market wide adverse impact. The mitigating factors as enumerated in Section 23J of SCRA, 1956 need to be considered.*

CONSIDERATION OF ISSUES

6. I have taken into consideration the facts and material available on record. After perusal of the material available on record, I have the following issues for consideration, viz.,

   (I) *Whether the Noticee has violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956?*

   (II) *Whether the Noticee has violated the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015?*

   (III) *Does the violation, if any, attract monetary penalty under Section 23H of SCRA and Sections 15A(b) of SEBI Act?*

   (IV) *If so, what would be the monetary penalty that can be imposed on the Noticee taking into consideration the factors mentioned in Section 23J of SCRA and 15J of SEBI Act?*

ISSUE-I: Whether the Noticee has violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March

02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956?

7. Before moving forward, it is pertinent to refer to the relevant provisions of SCRA and SEBI Notification dated March 2, 2000, which reads as under:

Section 2 (i) of SCRA
In this Act, unless the context otherwise requires,—
spot delivery contract" means a contract which provides for,-
(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository

Section 13 of SCRA
If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal.

Section 16 of SCRA
If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

Section 18 of SCRA
Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

SEBI Notification G.S.R 219(E) dated March 2, 2000
"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992, (See [1992] 75 Comp Cas (St.) 216.) and Notification No. 183(E), dated 1st March, 2000, (See page 53 supra.) issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as "the

Board") being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992), and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange

Provided that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with-

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992), or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934), or the Banking Regulation Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973), by the Reserve Bank of India;

(c) the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956)

8. I note that during the Investigation Period, it was noticed that there were off-market transfers in the scrip of SCL, wherein the sole promoter of SCL viz., SACL had inter-alia transferred 5,00,000 shares in off-market to the Noticee on March 31, 2011, which is not disputed by the Noticee of having received the said shares from the promoter of SCL. The Noticee admittedly accepted 5,00,000 shares from SACL at the request of Jinesh Devendra Bhatt. She also stated that these shares were transferred as collateral in order to raise finance from them and subsequently the shares were transferred back to SACL and Jinesh Devendra Bhatt in off-market by herself and by her husband Tarunkumar Gurucharan Brahmbhatt. She further stated that out of the 5,00,000 shares received from SACL, she had transferred 1,00,000 & 2,50,000 shares to Jinesh Devendra Bhatt and Tarunkumar Brahmbhatt respectively on April 1, 2011. The remaining 1,50,000 shares were transferred back to SACL on April 5, 2011.

9. It is pertinent to note that as per the extant statutory provisions governing dealing in securities which happens outside the market platform of a recognized stock exchange, the settlement relating to such transfer of securities and the payment of consideration required to be made against such transfer, shall have to be either on the same day or at the most next day. It is pertinent to note that the in respect of the off-market transactions, it is seen from the facts of the case and from the submissions made by the entities who had received shares in off-market that there was no consideration paid by the Noticee for the 5,00,000 shares received from SACL.

10. I note that off-market transfer of shares leads to change in beneficial ownership. If the shares were received by the Noticee as a collateral, then the procedure as mentioned in Depositories Act, 1996 and SEBI (Depositories and Depository Participants) Regulations, 1996 along with the relevant Bye-laws prescribed by the Depositories should have been followed. However, in the instant case, I note that no such procedure was followed by the Noticee. I am of the view that for off-market transaction to be executed successfully, the buyer and seller should know each other and subsequently negotiate the price and quantity of the shares to be transacted. It is pertinent to note that the volume of the off-market transactions done by the Noticee is substantial, yet the Noticee failed to enter into any agreement with the promoter of SCL.

11. Another significant factor to be noted is that the shares were transferred to the demat accounts of the Noticee, which implies transfer of beneficial ownership of the shares. The transfer of beneficial ownership comes along with the rights and liabilities attached to the ownership of shares. The conduct of the parties, which is important in any transaction, establishes that there was a transfer of the shares. The conduct of the parties and nature of the transactions establishes that the Noticee had entered into a transaction in off-market, without payment of consideration, which is in contravention of the provisions relating to spot delivery contracts. The contention of the Noticee that the 5,00,000 shares of SCL were received as a collateral and since the loan agreement did not fructify, the said shares were returned to the promoter entity of SCL from whom the shares were received, is devoid of any merit, since

Section 10 of the Depositories Act, 1996 envisages a person in whose name the shares are recorded with the depository is deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner.

12. The Securities Contracts (Regulation) Act, 1956 or the SCRA is the earliest piece of legislation on capital markets. The Securities Contracts (Regulation) Act, 1956 came into force on February 20, 1957 aims to prevent undesirable transactions in securities by regulating the business of dealing therein. The SCRA defines critical terms including derivatives, securities, specific and spot delivery contracts. In this regard, I would like to draw reference to Section 16 of SCRA, which provides that if the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified therein. Sub section of section 16 declares that all contracts in contravention of the provisions of sub section (1) entered into after the date of the notification issued thereunder shall be illegal. The central Government had issued a notification in the year 1969, and thereafter SEBI issued a similar Notification on March 2, 2000 in exercise of its delegated authority under section 16 of SCRA prohibiting any person in the territory of India to enter into any contract for sale or purchase of securities other than spot delivery or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under SCRA or the Act and the Rules and Regulations made there under and Rules, Regulations and Bye laws of a recognized stock exchange. In other words, the prohibition contained in the Notification means that no security could be traded in an off-market transaction except by way of spot delivery contract as defined in section 2(i) of SCRA. Further this was made applicable to the whole of India vide notification dated SO 3644 dated November 29, 1962.

13. Further, it may be noted that the “Spot Delivery Contract” is defined under section 2(i)(a) of SCRA as “a contract which provides for, actual delivery of

securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore, through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality." Thus, in terms of the aforesaid Section 2(i)(a) of the SCRA, a contract in securities market will be completed on actual delivery of shares and payment of consideration either on the same day or the next day of the contract. In other words, a spot contract in securities market is said to be completed only if delivery/transfer of securities and payment therefore has been made within the time limit prescribed under Section 2(i)(a) of SCRA.

14. As per SEBI Notification G.S.R 219(E) dated 2nd March, 2000 no person in the territory to which SCRA extends, shall, save with the permission of SEBI, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said SCRA or the SEBI Act and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange.

15. Every contract in securities must be executed through the stock exchange mechanism unless it is a spot delivery contract. Since, the transaction entered into by the Noticee is an off-market transaction, it is not in conformity with Section 13 of SCRA. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e., actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day.

16. The Noticee contended that that in view of August 17, 2016 circular of CDSL, as on that date off-market transactions without actual fund movement were permissible under the category of 'Others' and that the requirement to insert 'Consideration Amount' as a mandatory field was only applicable when the transaction was 'For Off-Market Sale/ Purchase". Accordingly, the Noticee sought to contend that the shares of Sampada Chemicals Ltd., were transferred from Shyam Alcohol and Chemicals Ltd., only for the purpose of a

raising funds against shares kept as collateral. Thus, such transactions fall under the category of ‘Others’ and therefore is not covered within the ambit of SCRA.

17. It is pertinent to note that in order to prevent undesirable transactions in securities that such provisions were inserted in the Act and subsequent notification was issued to prevent dealings outside the stock exchange mechanism. In order to be a legal transaction, it would have to qualify as a spot delivery contract as defined under section 2(i) of SCRA i.e., actual delivery/ transfer of shares and the payment should be on the same day as date of contract or the next day. As evident from the discussion above, in this case, the payment has not taken place as per spot delivery contract as defined in SCRA. Therefore, the contention raised by the Noticee by citing the Bye-laws of CDSL is devoid of any merit, since the same are misconceived.

18. The Hon’ble Securities Appellate Tribunal in its order dated July 17, 2007 in the matter of Alok Kehtan Vs. SEBI, Appeal No. 55 of 2007, upheld that:

“………..it is clear that the appellant sold his unlisted shares on 25.08.1999 in an off market transaction and received the sale consideration of ₹ 22,50,000/- only in January, 2000 which is much beyond the time permitted by section 2(i) of the SCRA. Since the transaction was off market the contract for the sale of shares could only be by way of spot delivery in view of the restriction imposed by the Board under section 16 of SCRA which mandates that the sale consideration ought to have been received either on the same day of the transaction or on the following day. It is, thus, clear that the sale of shares by the appellant on 25.08.1999 in the off-market transaction is violative of the restriction imposed under section 16 read with section 2(i) of SCRA.”

19. The above-mentioned rules of interpretation have been followed by various judicial forums and in the light of the foregoing, it would be pertinent to refer to the observations and decision of the Hon’ble Securities Appellate Tribunal in its decision in the case of Mrs. Bhanuben Jaisukhlal Shah v. SEBI (Appeal No. 271 decided on March 5, 2010) in which the above-mentioned issue has been elaborately dealt with and the Hon’ble SAT has stated as follows:

“A spot delivery contract has been defined in section 2(i) of the Act the provisions of which, before and after the amendment, have been reproduced hereinabove. Since all the securities prior to the coming into force of the Depositories Act were held in the physical form, spot delivery contract was defined to mean a contract which provided for the actual delivery of the securities and the payment of price therefor either on the same day as the date of the contract or on the next day. In other words, a spot delivery contract is a contract between two persons buying and selling securities off-market where the delivery and payment is effected either on the same day or on the next day. As already observed, such contracts are permissible being exempt from the provisions of section 13 of the Act. When the securities are held in the physical form, it is possible for the seller to physically deliver the same to the purchaser at the time of effecting the sale but this was not possible with effect from September 20, 1995 in respect of the securities that are held with the depositories in dematerialised form. The Parliament then inserted clause (b) in Section 2(i) of the Act. This clause did not bring about any change in the definition of spot delivery contract. Clause (a) of the amended definition remains the same as the definition prior to the amendment. Clause (b) was inserted only to explain what “actual delivery” would mean in respect of the securities held in dematerialised form. According to clause (b), when securities are transferred from one beneficial account to another, it would be treated as “actual delivery” of securities within the meaning of clause (a). It is, thus, clear that clause (b) is not an independent clause but only an explanation to the words “actual delivery” as used in clause (a). We cannot, therefore, accept the argument of the appellant that clause (b) is an independent clause and that the spot delivery contract is complete with the mere transfer of securities from the account of one beneficial owner to that of another without reference to the payment of consideration. This could never be. If that were so, the contract itself would become void being without consideration. Clause (b) cannot be picked up and interpreted in a manner which defeats the very purpose for which it was enacted. While interpreting the provisions of Section 2(i) of the Act, we have to keep in mind the consequences which are likely to flow from the intended interpretation. We cannot but hold that clause (b) in Section 2(i) was not meant to stand on its own and it has to be read in conjunction with clause (a).”

20. If the facts of the present case are tested in the light of the observations/decisions of the Hon’ble SAT in the above matter and on the need for harmonious construction or interpretation of the provisions of the statute, as mentioned above, it would follow that the transactions were in violation of the provisions of section 16 of Securities Contracts (Regulation)

Act, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, sections 13 and 18 read with Section 2(i) of SCR Act, 1956.

21. Accordingly, I hold that the allegation of violation of the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956 by the Noticee stands established.

ISSUE-II: Whether the Noticee has violated the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015?

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

Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 *provides that any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed, within two days of the receipt of intimation of allotment of shares or acquisition of shares or voting rights.*

Regulation 35 of SEBI (SAST) Regulations, 2011

The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.
(2) Notwithstanding such repeal, —
(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;
(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.
(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Regulation 13(1) of PIT Regulations, 1992 *provides that any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.*

Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992 *requires that any person who holds more than 5% shares or voting rights in any listed company, shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company, within two working days of the receipt of allotment of shares or acquisition of shares or voting rights as the case may be.*

Regulation 13 (5) of SEBI (PIT) Regulations, 1992 - *The disclosures mentioned in sub-regulations (3), and (4) shall be made within two working days of*

(a) the receipt of intimation of allotment of shares or

(b) the acquisition or sale of shares or voting rights, as the case may be.

Regulation 12 of SEBI (PIT) Regulations, 2015
(1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal, —

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

23. It is an admitted fact that the Noticee had received 5,00,000 shares of SCL in off-market transfers from SACL the sole promoter of SCL on March 31, 2011.The day wise holdings calculation of Noticee on the basis of her demat statement is as under:

Transaction details	**No. of Shares**
a) Opening Balance as on 01.10.2010	0
b) Net quantity purchased/(sold) during 01.10.2010 to 30.03.2011	3332
c) Closing Balance as on 30.03.2011(a=b+c)	3332
d) % of 'c' to total outstanding shares of the company **(Total O/s shares - 4980000 shares)**	**0.07%**
e) Net Off market receipt/(transfers) on 31.03.2011	500000
f) Net quantity purchased / (sold) on 31.03.2011	0
g) Closing Balance as on 31.03.2011 **(f=c+d+e)**	503332
h) % of 'f' to total outstanding shares of the company **(Total O/s shares - 4980000 shares)**	**10.11%**
i) Net off-market receipt/(transfers) on 01.04.2011	**(3,50,000)**
j) Closing balance as on 01.04.2011	**1,53,332**
k) % of 'j' to total outstanding shares of the company **(Total O/s shares - 4980000 shares)**	**3.08%**
l) Net off-market receipt/(transfers) during 02.04.2011 to 05.04.2011	**(1,50,000)**
m) Closing balance as on 05.04.2011**(m=j+l)**	**3,332**
n) % of 'm' to total outstanding shares of the company	**0.07%**

(Total O/s shares - 4980000 shares)	

24. I note from the above table that pursuant to receipt of 5,00,000 shares in off-market from SACL, the Noticee's shareholding in SCL reached 10.11% of the total share capital of SCL on March 31, 2011. Since, the shareholding of the Noticee in SCL breached the threshold limit of 10% on March 31, 2011, the Noticee was required to make the disclosure within 2 days of transaction i.e. by April 04, 2011 to the company and to the stock exchange/s where the shares of the company are listed regarding such acquisition as stipulated under Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and to the company in Form A as stipulated under Regulation 13(1) read with 13(5) of SEBI (PIT) Regulations, 1992.

25. It is further noted that, the Noticee transferred 3,50,000 shares of Sampada in off-market on April 01, 2011, which resulted into change of more than 2% in her shareholding requiring disclosure to the company in Form C as stipulated under Regulation 13(3) read with 13(5) of PIT Regulations, 1992 to the company by April 05, 2011.

26. I note from the records that no disclosure as stipulated under the afore-mentioned Regulations were made by the Noticee, which is corroborated from the reply of the Noticee. The Noticee contended that she was not required to make any disclosure under SEBI (SAST) Regulations, 1997 and /or SEBI (PIT) Regulations, 1992 since there was no actual transfer of ownership and no consideration was paid by her towards the said transfer. However, I note that on account of transfer of shares through off-market, there is change in beneficial ownership in respect of the aforementioned two transactions, which obligated the Noticee to make the requisite disclosures as stated above. Further, in view of the findings as mentioned in pre-paragraphs, the contention of the Noticee that there was no actual transfer of ownership, since no consideration was paid by her, is devoid of any merit.

27. In the matter of Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI–the Hon'ble SAT, vide its order dated April 15, 2005 also held that, *"the purpose of these disclosures is to bring about transparency in the*

transactions and assist the Regulator to effectively monitor the transactions in the market."

28. Further, the Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had held that:

    "*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.*"

29. In view of the above, I am inclined to hold that the Noticee had violated the provisions of Regulation 7(1) read with Regulation 7(2) of SEBI (SAST) Regulations, 1997 and Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 13(1) and 13(3) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 and Regulation 12 of SEBI (PIT) Regulations, 2015.

30. The Noticee further submitted that there has been extraordinary inordinate delay in the issuance of SCN, which has prejudiced her and, on this ground, the SCN out to be dropped. I note that investigation in the instant matter was initiated based on an alert generated by BSE in the scrip of Urja Global Ltd., Sampada Chemicals Ltd., and IFL Promoters Ltd., wherein it was observed that certain Chetan Dogra Group entities had transacted in the scrips to support price/volume during the period from October 01, 2010 to March 21, 2011. Therefore, the investigation was done in three scrips as mentioned above, which involved voluminous collection of data, summoning various entities, analysis of trading pattern, examination of demat statements, bank statements, analysing trade and order logs, ascertaining connection based on KYC documents etc., Pursuant to conclusion of investigation, the undersigned has been appointed as Adjudication Officer in May 2017, the SCN in was issued in November 2017. Thus, it can be seen that there is no delay in

initiation of the instant proceedings given the voluminous processes involved in the matter, wherein 3 scrips were taken together for investigation. Therefore, I find no merit in the contentions raised by the Noticee that there is delay in issuing the SCN and find no reason to squash the SCN on this ground.

31. In this context, I find it relevant to refer to the order passed by Hon'ble SAT in the case of Metex Marketing Pvt., Ltd., vs.SEBI (order dated June 4, 2019) wherein Hon'ble SAT held that: "*This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."*

32. Further, I deem it appropriate to refer to the observations made by Hon'ble SAT in the matter of Vaman Madhav Apte & Ors. Vs. SEBI vide Order dated March 04, 2016, which reads as follows:

    "Argument of the appellants that the proceedings initiated against the appellants suffer from gross delay and laches and, therefore, the impugned order is liable to be quashed and set aside is without any merit, because firstly, neither the SEBI Act nor the regulations framed thereunder prescribe any time limit for initiating proceedings against the persons who have violated the securities laws. Secondly, neither the SEBI Act nor the regulations framed thereunder provide that if there is delay in initiating proceedings, no action can be taken against the person who has committed violations of the securities laws."

33. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Hon'ble Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Hon'ble Supreme Court in Bhavnagar University

v.Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd., (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Hon'ble Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

34. In Ravi Mohan & Ors. v. SEBI and other connected appeals decided on August 27, 2013, the Hon'ble SAT while referring to its own decision in HB Stockholdings Ltd. v. SEBI (Appeal no. 114 of 2012 decided on August 27, 2003) and decision of Hon'ble Supreme Court in Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.), held as under:

"....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

35. In the light of the aforesaid observations of the Hon'ble Supreme Court and Hon'ble SAT and from the above facts and circumstances of the case, it

cannot be said that there was inordinate and unnecessary delay in the matter as contended by the Noticee. Therefore, in the absence of any prejudice, the proceedings cannot be quashed simply on the ground of delay in launching the same, which is not found in this case.

36. From the summary of findings as mentioned above, I conclude that the Noticee received shares in off market from the promoter of the Company Sampada Chemicals Ltd., without payment of any consideration and also failed to file the requisite disclosures upon change in shareholding under SEBI (SAST) Regulation and SEBI (PIT) Regulations.

ISSUE – III: Does the violations, if any, attract monetary penalty under Section 23H of SCRA and Sections 15A(b) of SEBI Act?

37. It is established from the foregoing paragraphs that the Noticee had received shares through off-market without payment of consideration and thereby violated the provisions of Section 16 of SCRA, 1956 read with SEBI Notification G.S.R 219 (E) dated March 2, 2000, Section 13 and Section 18 of SCRA, 1956 read with Section 2(i) of SCRA, 1956. Since the aforesaid violations stands established against the Noticee, the Noticee is liable for monetary penalty under Section 23H of SCRA, the provisions of which are reproduced hereunder:

Section 23H of SCRA - Penalty for contravention where no separate penalty has been provided

> *"Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees".*

38. It is a well-known fact and practice that as per the requirements of SEBI (SAST) & (PIT) Regulations, there is a requirement of timely disclosure of change in shareholding beyond certain threshold limits. It is obligatory on the part of the person to make timely disclosures to Stock Exchange and to the

Company. By not making the requisite disclosures under SEBI (SAST) & (PIT) Regulations, the Noticee has failed to comply with the statutory requirements of Law. The timely disclosure is mandated under these Regulations for the benefit of the investors at large. There can be no dispute that compliance with the provisions of the Regulations is mandatory and it is the duly of SEBI to enforce compliance of these Regulations.

39. In this connection, I would like to rely upon the Hon'ble SAT's judgment dated September 04, 2013 in the matter of Vitro Commodities Private Limited v/s SEBI (Appeal No. 118 of 2013), wherein inter alia it was held that *"it may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone regulations and one is corollary to each other".*

40. As per the ratio decidendi in the aforesaid judgment, I am of the view that in the facts of this case, the violation of the provisions of Regulation 7(1) read with Regulation 7(2), SEBI (SAST) Regulations, 1997 and Regulation 13(1) read with Regulation 13(5) of SEBI (PIT) Regulations, 1992 are not substantially different and can be considered as a single violation by the Noticee for the purpose of adjudication in the matter. Since the violation of the statutory obligation under the provisions of SEBI (SAST) and SEBI (PIT) Regulations has been established against the Noticee, the Noticee is liable for monetary penalty under Section 15A(b) of SEBI Act, the provisions of which are reproduced hereunder:

Section 15A of SEBI Act– 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*

ISSUE – IV: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 23J of SCRA and 15J of SEBI Act?

41. While determining the quantum of monetary penalty under Section 23H of SCRA and Section 15A(b) of SEBI Act, I have considered the factors stipulated in Section 23J of SCRA and Section15J of SEBI Act, respectively, which reads as under:

Section 23J of SCRA & Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer

While adjudging quantum of penalty under Section 23-I (SCRA) and Section 15I (SEBI Act), 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.

42. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default.

43. The Noticee submitted that pursuant to receipt of shares in off-market without consideration which resulted in disclosure requirements had not caused loss to any investor. In this regard, I would like to draw reference to the Order of

the Hon’ble SAT in the matter of Komal Nahata Vs. SEBI (Order dated January 27, 2014), wherein Hon’ble SAT held as under:

> *“Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15-J of the SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure”.*

44. In view of the above, I find no merit in the contention of the Noticee that non-disclosure had not caused any loss to investors. I find that the Noticee had received 5,00,000 shares, without any payment. Considering the large number of shares involved in such dubious deals and that the shares were sold outside the mechanism of stock exchange in contravention of the provisions of the Law, I am of the view that the Noticee should be penalised suitably for the said acts of omissions and commissions.

45. It is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision. I note that, in the facts and circumstances of this case, lack of relevant information in public domain with regard to change in shareholding of the Noticee would create information asymmetry, at relevant times and the failure to make disclosure as found in this case would also defeat the purpose of the provisions of SEBI (SAST) and SEBI (PIT) Regulations.

ORDER

46. In view of the foregoing, after taking into consideration all the facts and circumstances and in exercise of power conferred upon me under Section 23I of SCRA read with Rule 5 of SCR Adjudication Rules and Section 15I of SEBI Act read with Rule 5 of SEBI Adjudication Rules, I hereby impose a penalty of ₹ 5,00,000/- (Rupees Five lakhs only) under Section 23H of SEBI Act and

₹ 2,00,000/- (Rupees Two lakhs only) under Section 15A(b) of SEBI Act on the Noticee i.e., Prarthana Tarunkumar Brambhatt.

47. The said penalty imposed on the Noticee, as mentioned above is commensurate with the violation committed by the Noticee and acts as a deterrent factor for the Noticee and others in protecting the interest of investors.

48. The Noticee shall remit / pay the said amount of penalty within 45 days from the date of receipt of this Order, either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link. ENFORCEMENT → Orders → Orders of AO → PAY NOW

49. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-II, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

50. In terms of Rule 6 of the SCR Adjudication Rules and Rule 6 of the SEBI Adjudication Rule, copies of this order are sent to the Noticee and to SEBI.

Date: December 28, 2021
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER