**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/BM/GN/2022-23/21229]**

**UNDER SECTION 23-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992, READ WITH RULE 5 OF SECURITIES CONTRACT REGULATION (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005**

**In respect of:**

**Dilip Hanmant Jambhale (PAN-** AGTPJ9641F**)**

In the matter of
**Indo Pacific Software and Entertainment Limited**

## BACKGROUND:

1. Hon'ble Securities Appellate Tribunal (SAT), vide Order dated April 07, 2022, in appeal no. 149 of 2022, in the matter of Indo-Pacific Software and Entertainment Limited quashed the Adjudication Order dated March 30, 2012 and made the following observations:-

   *"It will be open to the AO to issue the Show Cause Notice at the correct address and proceed from there onwards."*

## APPOINTMENT OF ADJUDICATING OFFICER

2. Pursuant to aforementioned order of Hon'ble SAT, the undersigned was appointed as Adjudicating Officer vide Order dated April 26, 2022 under section 23I of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **SC(R) Rules**) to inquire into and adjudge under Section 23H of Securities Contract Regulation Act, 1956 (hereinafter referred to as **SCR Act**), the alleged violations of Section 13 and 18 read with Section 2(i) of SCR Act, committed by Shri. Dilip Hanmant Jambhale hereinafter referred to as the **"Noticee").**

3. Securities and Exchange Board of India ("SEBI / Board") conducted investigation into trading in the scrip of M/s Indo Pacific Software and Entertainment Ltd. ("IPSE/Company") which was incorporated on 26th October 1999 and was in the business of providing software development, entertainment activities, development of multiplexes etc. SEBI had conducted an investigation into the dealing in the shares of IPSE during 2007.

4. The investigations revealed that 16 entities had entered into off market transactions in the shares of IPSE, during the period of investigation. It was observed that out of these 16 entities, ten entities had transferred / received shares in off market transactions. In all, 70,78,108 shares have been transacted off-market amongst the entities in question. Noticee was also one of the entities who had undertaken off market transfer in the shares of IPSE.

5. It is alleged that the Noticee entered into 6 off market transfers with 4 entities and thereby he had violated Sections 13 and 18 r/w Section 2(i) of Securities Contracts (Regulation) Act, 1956 ("SCR Act") and was liable for penalty under section 23H of SCR Act.

6. SEBI had therefore, initiated adjudication proceedings under the SCR Act to enquire and adjudge under Section 23H of the SCR Act for the aforementioned alleged violations.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

7. Show Cause Notice no. EAD-5/PG/PR/21204/2011 dated July 04, 2011 (hereinafter referred to as "SCN") was issued by, the erstwhile Adjudicating Officer to the Noticee to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under Section 23H of SCR Act for the alleged violations specified in the said SCN. A person named Sakharam Janu More replied stating that the Noticee was his tenant 4 years ago and he is not aware of the address of the Noticee.

8. The Board also issued a corrigendum to appointment order of the Adjudicating Officer and in order to inform the Noticee about the corrigendum, an SCN dated March 7, 2012 ("SCN") under Rule 4 of the SCR Rules was sent afresh. The said SCN was affixed on the last known address of the Noticee. No reply was received for the SCN within the stipulated time.

9. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, the Noticee was granted an opportunity of hearing on March 28, 2012 vide notice dated March 21, 2012. The said hearing notice was affixed at the last known address of the Noticee. The Noticee did not appear for the hearing and did not file any submissions with regard to the SCN.

10. Erstwhile Adjudicating Officer proceeded ex-parte and after considering the facts and circumstances of the case and the material available on record, passed Adjudication Order

dated March 30, 2012 imposing penalty of Rs 1,00,000/- (Rupees One lakh only) under section 23H of SCR Act for the violation of section 13 and 18 r/w Section 2(i) of the SCR Act on the Noticee.

11. Pursuant to the restoration of the case to the file of AO, the SCN dated July 04, 2011 was issued to the Noticee vide letter dated June 06, 2022 along with copy to the Authorised Representative (hereinafter referred to as AR) of the Noticee. The said SCN was returned unclaimed from the Noticee, though it was delivered to the AR of the Noticee. Subsequently, vide email dated June 24, 2022 AR of the Noticee provided the mobile number of the Noticee and said that the Noticee was out of home, hence the post had returned from his address. SCN was served on the Noticee vide E-mail dated June 24, 2022 which was duly delivered to the Noticee at the e-mail address jambhaledj@gmail.com (as provided by the Noticee telephonically) and the same was acknowledged by the Noticee.

12. Vide e-mail dated June 09, 2022, AR of the Noticee submitted the Authority Letter June 06, 2022, to appear before Adjudicating Officer (hereinafter referred to as **AO**) to make written as well as oral submissions, to take inspection of the documents and to receive all the documents from SEBI on behalf of the Noticee in the instant matter.

13. Vide email dated June 09, 2022, AR of the Noticee sought copy of the Investigation Report along with annexure thereto, copy of the Noticee's Demat Statement and appointment letter of AO in the captioned matter.

14. Vide email dated July 08, 2022, scanned copy of the following documents were provided to the Noticee and AR of the Noticee-

- Relevant extract of the Investigation Report in the captioned matter along with annexures.
- Scanned copy of the Noticee’s Demat Statement.
- Copy of communique dated April 26, 2022 for appointment of AO in the captioned matter.

15. Further, the Noticee was advised to submit the reply to the SCN on or before July 18, 2022. Vide email dated July 09, 2022, AR made the following submissions-

*In the captioned matter vide Email dated 08-07-2022, I was provided Appointment Order, extract of the investigation report, demat statement of the Noticee i.e. Mr. Dilip Hanmant Jambhale and Annexures to the Investigation Report. On perusal of the investigation report and other documents on records, I found that*

i. *During the course of Investigation, SEBI has issued Summons to the Noticee i.e. Mr. Dilip Hanmant Jambhale. However, admittedly the Summons issued to Mr. Dilip Hanmant Jambhale could not be delivered. (Please see Para 63 and 64 f the IR). Thus, no reply had been received from Mr. Dilip Hanmant Jambhale. Further, in the extract of the investigation report it is not specifically stated that SEBI has examined the bank statement of Mr. Dilip Hanmant Jambhale. However, in case of other Noticees, clear finding has been recorded in paras 66 to 71 of the Investigation Report.*

ii. *Further, in the Investigation Report, the period of the investigation is mentioned as 05-02-2007 to 30-08-2007 whereas all except one off market transaction executed in October, 2007. Thus, 5 out of 6 credit entries in the account of Mr. Dilip Hanmant Jambhale are out of the period of the investigation.*

iii. *Further, at S. No. 16 in Table provided in the Annexure 3 enclosed with the SCN, it is stated that the Noticee had executed 6 payment transactions. However, no details of 6 payments made by the Noticee is provided with the SCN as well as vide Email dated 08-07-2022.*

iv. *Further, In the Annexure 2 enclosed with the SCN, copies of the Summons issued to Mr. Dilip Hanmant Jambhale have been annexed. In the Annexure to the Summons and Annexure to the IR, details of only 4 off market transaction out of 6 have been provided. In case of 2 remaining off market transactions, the names of target names have not been provided. Further, in the said Annexures it is stated that Shares have been transferred from (source) the account of Mr. Dilip Hanmant Jambhale to 6 entities (2 target names not mentioned) (target). However, in the Demat Statement of the Noticee provided vide Email dated 08-07-2022 does not record any debit entries in the scrip of Indo Pacific.*

v. *Despite all these, in para 73 of the Investigation Report it is stated the entities including Mr. Dilip Hanmant Jambhale had not settled the transactions, the transactions entered by them in the off market may not be considered as spot transactions.*

vi. *In light of the aforesaid discrepancies, I humbly request your goodself to provide me proper findings, if any, recorded in the investigation report which substantiates the conclusion recorded in Para 73 of the Investigation Report.*

*Further, please explain that in case of 6 off market transactions names of only 4 counterparties mentioned in the Annexures and names of 2 remaining counterparties are not disclosed. Out of the said 6 entities (2 names not disclosed), SEBI has not initiated any proceeding against 5 counterparties. Kindly explain the reasons for not initiating proceeding against them as they are the counterparties to the said alleged off market transactions and the allegations according to the relevant provisions applies on both the parties of a transaction.*

*The alleged transactions pertain to the year 2007 therefore I may require some more time to gather information.*

16. Noticee vide letter dated August 05, 2022 made further submission, which has been provided below:

i. *In the Para 2 of the SCN, it is stated that*

*"It has been revealed by the investigation that 16 entities namely: Kishor Babula! Chauhan, Mukund Yadu Jambhale, Chandrakant Keru Shinde, Kirti Electro Systems(P) Ltd., Anand Kalu Marathe, Dilip Sadanand Utekar, Prem Mohanlal Parikh, Vinayak Maruti Bhanage, Rakesh Singhvi, Bhavesh Prakash Pabari, Shitole Hambirrao Anandrao, Macro Soft Technology Pvt. Ltd., Bharat Shantilal Thakkar, Amar Premchand Walmiki, Dilip Hanmant Jambhale, and Hemant Madhusudan Sheth (hereinafter refered to as the "Entities/ you"), had entered into off market transactions in the shares of IPSE, during the period of investigation (Details of off market transactions of the entities is attached as Annexure "1 '. It was observed that out of the above entities, ten entities namely: Bhavesh Prakash Pabari, Hemant Madhusudan Sheth, Macro Soft Technology Pvt. Ltd., Bharat Shantilal Thakkar, Kirti Electro systems (P) Ltd., Dilip Sadanand Utekar, Anand Kalu Marathe, Vinayak Maruti Bhanage, Prem Mohal Lal Parikh and Kishore Balubhai Chauhan had transferred I received shares in off market transactions. In all 70, 78,108 shares have been transacted off-market amongst the entities in question. It was observed that Mala Hemant Sheth, Prem Mohanlal Parikh, Bhavesh Prakash Pabari, Bharat Shantilal Thakkar, Hemant Madhusudan Sheth and Kishor Balubhai Chauhan*

*transferred the shares among themselves off- market. Some of entities namely Chandrakant Keru Shinde, Ankit Rajendra Sanchaniya, Bhupesh Harishchandra Rathod, Dilip Hanmant Jambhale. Mukund Yadu Jambhale, Macrosoft Technology Pvt. Ltd. and Kirti Electro Systems (P) Ltd. had also undertaken off market transfers with the group but they had not traded in the market. However, no particular pattern of these off-market transactions vis-a-vis the market transactions could be observed. "*

ii. *Further, in the Annexure 1 enclosed with the SCN on Page No. 16, following Table has been provided:*

| *Further, in the* | *Quantity* | *SOURCE BOID* | *SOURCE_Name* | *TARGET_Boid* | *TARGET_Name* |
|---|---|---|---|---|---|
| *25-Apr-07* | *548641* | *1201370000083991* | *DILIP HANMANT JAMBHALE* | */N30015910776292* | *V/NAYAK MARUTI BHANAG£* |
| *11-0ct-07* | *30000* | *1201370000083991* | *DILIP HANMANT JAMBHALE* | *1202890000227826* | *SANTOSH SHUKLA* |
| *12-0ct-07* | *20000* | *1201370000083991* | *DJLJP HA.'I/!v/ANT JAMBHALE* | *1202890000292153* | *DINESH RAMCHANDRA PANDEY* |
| *12-0ct-07* | *28000* | *1201370000083991* | *DILIP HANMANT JAMBHALE* | *!N30i 774 10757241* | *NA* |
| *12-0ct-07* | *20000* | *120/370000083991* | *DILIP HAN!viANT JAMBHAL£* | *IN302822 /0087092* | *VIJAY KUMAR BOHRA* |
| *24-0ct-07* | *250000* | *1201370000083991* | *DILIP HANMANT JAMBHAL£* | *IN300749 /0768051* | *NA* |

iii. *In the Para 15(b) of the SCN, it is thus alleged that*

*"Three of the remaining six notices are charged with violation of the provisions of Section 13 and 18 r/w Section 2(i) (a) of SCRA namely: Shitole Hambirrao Anandrao, Mukund Yadu Jambhale and Dilip Hemand Jambhale."*

iv. *At the outset, I deny and refute each and every allegation made against me in the SCN. I further refute and deny that I have violated the provisions of Section 13 and 18 read with Sections 2 (i) (a) of Securities Contract (Regulations) Act, 1956.*

v. *The allegation made against me m the SCN are based on surmises, conjectures, assumptions and presumptions.*

vi. *I further submit that though the present SCN has been issued to me only, however, allegation has been made against 16 entities including me. I, therefore, restrict myself to the allegations specifically made against me in the SCN.*

vii. *I further submits that the SCN fails to bring on record the specific allegation made against me for alleged violation of the provisions of Section 13 and 18 read with Sections 2 (i) (a) of Securities Contract (Regulations) Act, 1956.*

viii. *In the Para 1 of the SCN, the period of Investigation is mentioned as 05-02- 2007 to 30-08-2007. Further, in Para 2 of the SCN, it is specifically stated that the allegation has been made against the off-market transactions executed during the period of Investigation i.e. 05-02-2007 to 30-08-2007. The details of off-market transactions executed by me are provided in the Annexure 1. On perusal of the Annexure 1 enclosed with the SCN, it is revealed that out of 6 off-market transaction executed by me in the scrip of IPSE, only 1 transaction was executed during the period of Investigation. Thus, all the remaining 5 transactions were executed in October, 2007 i.e. admittedly out of the Investigation Period. I humbly submit that the said 5 off-market transactions are out of purview of the present SCN and therefore, I am not making any submissions on the same.*

ix. *It is further to be noted that out of the 6 off-market transactions executed by me, details of counterparties in case of 2 transactions have not been shared with me. Since, no allegation has been made against 5 off-market transactions including the said 2 off-market transactions, the same is however not relevant.*

x. *I further submit that the alleged sole one off-market transaction i.e. executed on 25-04-2007 belongs to 15 years ago and therefore, I am unable to recollect the circumstances under which the said alleged off-market transaction was executed. I after receipt of the SCN tried to gather the information relating to the said off-market transaction but failed to get the relevant information as the transactions pertains to year 2007. I am therefore unable to submit any documentary evidence regarding payment, etc.*

xi. *Vide email dated 09-07-2022, copy of my Demat Statement has been shared with me. It is very pertinent to mention that the status of the said Demat Account is showing closed.*

xii. *I further submit that in the Para 2 of the SCN, it is specifically stated that I had not executed any on-market transaction and further, the Investigation Department of SEBI did not find any particular pattern of trading in case of mine.*

xiii. *I further say and submit that like in the case of other 10 entities, no finding has been recorded against me that I had not made any payment to the entity from whom I had received shares of the Company through off-market transaction. Since, there is no prima facie finding has been recorded in the SCN as well as in the Investigation Report that whether I made payment or not, no adverse Order should be passed against me.*

xiv. *The finding recorded in paragraph 73 of the Investigation Report cannot be used against me as there is no material on record which establishes the fact that the alleged sole one off-market transaction was executed in non- compliance of the Securities Contract (Regulations) Act, 1956.*

xv. *It is an admitted fact that SEBI has issued Summons to me during the course of Investigation, however, the same could not be served to me due to change in my address. Therefore, I could not provide the relevant information to SEBI during the course of Investigation.*

xvi. *I further say and submit that I am admittedly not facing any allegation for non-compliance of Summons issued by the SEBI like other certain entities.*

xvii. *In light of the aforesaid submission, I humbly request your goodself to dispose-off the present SCN without passing any adverse Order.*

xviii. *Without prejudice to whatever stated hereinabove, in case if your goodself is not agree with my aforesaid submissions, I make my submissions on the quantum of the penalty.*

xix. *I am not active in the Securities Market from last 12-13 years. I presently have a job of driving and my wife is a house maid. We hardly earn to meet our daily needs.*

xx. *In the matter of Amol Sadashiv Solaskar, an order dated 08.05.2017 absolving the Noticee therein, of liability for belated payment in respect of 15000 shares transfetTed off-market to the said Noticee in the light of the total facts and circumstances of that case. It was observed that "Although the impugned transaction does not fulfil the spot delivery contract norms in as much as the consideration did not pass within the time limit for the same, it 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. 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.".*

*xxi. Further, in the case of Umang Dilipbhai Patel, vide Order dated 31-01-2020, Ld. AO has imposed penalty of Rs. 25000/- only for the same alleged violation as made against me.*

*xxii. In case your goodself does not agree with my submissions made in the matter, kindly consider my submissions of quantum of penalty.*

17. Vide hearing notice dated October 19, 2022, sent via digitally signed mail and SPAD, Noticee was provided an opportunity of hearing on November 03, 2022. The AR of the Noticee appeared personally for the hearing conducted on November 03, 2022 . The AR reiterated submissions already made vide letter dated August 05, 2022.

## ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

18. I have taken into consideration the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:

**ISSUE I: Whether Noticee has violated the provisions Sections 13 and 18 read with Section 2(i) of the SCR Act?**

**ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section 23H of SCR Act?**

**ISSUE III: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 23J of the SCR Act?**

19. Before proceeding further, it will be appropriate to refer the provisions of Sections 13 and 18 r/w Section 2(i) of the SCR Act alleged to have been violated by the Noticee. The texts of the alleged provisions are as under-

***SCR Act***

*Definitions*

*2. In this Act, unless the context otherwise requires, -*

*(i) 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 dispatch 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;*

***Contracts in notified areas illegal in certain circumstances***

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

*[Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—*

*(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;*

*(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.]*

***Exclusion of spot delivery contracts from sections 13, 14, 15 and 17***

*18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.*

*(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contract*

*for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provision of that section shall so apply.*

## FINDINGS

20. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee I record my findings hereunder:

**ISSUE I: Whether Noticee has violated the provisions Sections 13 and 18 read with Section 2(i) of the SCR Act?**

21. During investigation, it was observed that Noticee was a party to 6 off market transfers of shares, the details of which are specified in Table I. Noticee were issued summonses for clarifications regarding the off market transaction, however, summons could not be served upon the Noticee and there was no proof as to payment by/to the Noticee to/from the counterparties.

**Table I: Off-Market Transactions of Dilip Hanmant Jambhale**

| Date | Quantity | Transferor | Transferee |
|---|---|---|---|
| 25-Apr-07 | 548641 | DILIP HANMANT JAMBHALE | VINAYAK MARUTI BHANAGE |
| 11-Oct-07 | 30000 | DILIP HANMANT JAMBHALE | SANTOSH SHUKLA |
| 12-Oct-07 | 20000 | DILIP HANMANT JAMBHALE | DINESH RAMCHANDRA PANDEY |
| 12-Oct-07 | 28000 | DILIP HANMANT JAMBHALE | NA |
| 12-Oct-07 | 20000 | DILIP HANMANT JAMBHALE | VIJAY KUMAR BOHRA |
| 24-Oct-07 | 250000 | DILIP HANMANT JAMBHALE | NA |

22. A reading of Section 13 of SCR Act makes it clear that it empowers the Central Government to make the provisions of this section applicable in any State or States or area and upon its doing so, every contract in such State, States or area is required to be entered into from the date of the notification only between the members of a recognized stock exchange or recognized stock exchanges or through or with such member(s). Section 13 also provides

that contracts entered into in any other manner shall be illegal. The Central Government by its notification dated 29.11.1957 had made the provisions of Section 13 applicable to the area comprising Greater Bombay, which is the relevant area here. Going only by the provisions of Section 13 of the Act read with the notification issued by the Central Government, no person could execute transactions in securities in Greater Bombay otherwise than through members of a recognized stock exchange(s) or through or with such member(s).

23. Section 18(1) of the SCR Act, however, carves out an exception. It provides that nothing contained in Section 13 shall apply to spot delivery contracts. When Sections 13 and 18(1) are read together, it can be said that as a general rule, every contract in securities in notified areas should be executed through members of recognized stock exchange(s) or through or with such member(s) and the only exception thereto is spot delivery contract(s). In other words, every contract in securities in notified areas must be executed through the stock exchange mechanism unless it is a spot delivery contract.

24. Thus, the transactions entered into by the Noticee would violate Sec. 13 unless they were spot delivery contracts. Sec. 2(i) of the SCR Act defines spot delivery contracts. Sec. 2(i)(a) was a part of the original enactment. However, after introduction of Depositories Act, 1996, Sec. 2(i)(b) was inserted so as to cover transactions done through depository mechanism as well.

25. 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 a recent decision in the case of Mrs. Bhanuben Jaisukhlal Shah v. SEBI (Appeal No. 271 decided on March 5, 2010) in which the SAT has discussed on the interplay between Section 13 and Section 2(i) of the SCR Act. While discussing the issue of spot delivery contract the SAT 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."*

26. From the foregoing I note that to establish that the off-market transfers were in violation of the SCR Act, it is to be established that there were off-market transfers and payment has not been made within 24 hours of the transfer.

27. Vide email dated July 09, 2022, AR of the Noticee submitted that in the Investigation Report, the period of the investigation is mentioned as 05-02-2007 to 30-08-2007, however, 5 out of 6 transactions were executed in the month of October, 2007 i.e. out of the period of investigation.

28. Further, AR of the Noticee submitted that in the Annexure to the SCN and Annexure to the Investigation Report, shares have been transferred from (source) the account of Noticee to 6 entities in 6 transactions whereas name of only 4 counterparty to off market transaction out of 6 off market transactions have been provided. In case of 2 remaining off market transactions, the target names (names of counterparties) have not been provided. Further the Demat Statement of the Noticee with Central Depository Service (I) Ltd. (hereinafter referred to as **CDSL**) does not record any debit entries in the scrip of Indo Pacific Software & Entertainment Limited, for the period from April 01, 2007 to October 31, 2007.

29. Noticee vide reply dated August 05, 2022 submitted that the status of his Demat Account with CDSL is showing closed. Noticee further submitted that in Para 2 of the SCN, it is specifically stated that he had not executed any on-market transaction and further, the Investigation Department of SEBI did not find any particular pattern of trading in his case.

30. Noticee further submitted that no finding has been recorded against him that he had not made any payment to the entity from whom he had received shares of the Company through off-market transaction, since, there is no prima facie finding has been recorded in the SCN as well as in the Investigation Report that whether he made payment or not, no adverse Order should be passed against him. Noticee further submitted that he tried to gather the information relating to the said off-market transaction but failed to get the relevant information as the transactions pertains to year 2007, therefore he is unable to submit any documentary evidence regarding payment, etc.

31. I note that the period of investigation in the instant matter is from February 05, 2007 to August 30, 2007. I also note that the Noticee executed 6 off-market transactions, out of

which 1 off-market transaction was executed on April 25, 2007, 1 was executed in October 11, 2007, 3 were executed on October 12, 2007 and last 1 was executed on October 24, 2007. Therefore, I observe that the out of the 6 off-market transactions of the Noticee five were out of the investigation period.

32. On perusal of the Demat Statement of the Noticee with CDSL, I observe that Demat statement of the Noticee have 6 credit entries in the scrip of Indo Pacific Software & Entertainment Limited for the period from April 01, 2007 to October 31, 2007 which is provided in the below Table II :-

Table II

| Date | Credit | Debit | Current Balance |
|---|---|---|---|
| 25/04/2007 | 548641.000 | - | 548641.000 |
| 11/10/2007 | 30000.000 | - | 578641.000 |
| 12/10/2007 | 20000.000 | - | 598641.000 |
| 12/10/2007 | 28000.000 | - | 626641.000 |
| 24/10/2007 | 20000.000 | - | 646641.000 |
| 31/10/2007 | 250000.000 | - | 896641.000 |

33. Thus, I note from the above table that Noticee received shares from April 25, 2007 to October 31, 2007. The above table does not record any debit entries for the period from April 01, 2007 to October 31, 2007 as alleged in the SCN. In order to establish that these transactions of the Noticee are not spot delivery contracts, documents like Bank statements etc. are required to show that payment was not made within 24 hours. However, no documentary evidence's are available before me to show that Noticee has not made payment for the abovementioned transactions within 24 hours. Noticee also could not produce any documentary evidence as the matter is 15 years old.

34. In view of the above and in absence of any documentary proof, the allegation for violation of provisions of Sections 13 and 18 read with Section 2(i) of the SCR Act does not stand established. I am therefore, inclined to give benefit of doubt and abate the proceedings initiated against the Noticee.

35. In this connection, I have been guided through decisions of the Hon'ble Supreme Court in the matter of Hindustan Steel Limited vs State of Orissa, AIR 1970 SC 253, wherein it was held that, *"Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

36. Further, considering that the alleged violation against the Noticee does not stand established, I note that Issues II and III do not require any consideration.

**ORDER**

37. Accordingly, taking into account the aforesaid findings, the Adjudication proceedings initiated against the Noticee i.e., Dilip Hanmant Jambhale vide SCN dated July 04, 2011 and March 07, 2012 stands disposed of without any penalty.

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

**Place: Mumbai** **BARNALI MUKHERJEE**

**Date: November 15, 2022** **ADJUDICATING OFFICER**