BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/DD/2022-23/20851]

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

In respect of

Mr. Om Prakash Khandelwal (PAN – ABGPK4008D)

In the matter of Aadhar Ventures India Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation w.r.t. trading in the scrip of **Aadhar Ventures India Limited** (hereinafter referred to as '**AVIL/Company'**) for the period, January 01, 2009 to April 24, 2015 (hereinafter referred to as '**Investigation Period/IP**').The focus of investigation was to ascertain whether the disclosure requirements were met by the promoters under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992(hereinafter referred to as '**PIT Regulations,1992'**) and/or SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997(hereinafter referred to as '**SAST Regulations 1997'** and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations), 2011 (hereinafter referred to as '**SAST Regulations 2011'**) during the investigation period. (SAST Regulations 1997 and SAST Regulations 2011 collectively referred to as '**SEBI (SAST) Regulations').**

2. AVIL was incorporated on February 01, 1995, having NBFC registration with RBI. The company was promoted by Mr. Abhay Kumar Lodha, Mr. Om Prakash Khandelwal (i.e. Noticee) and Mr. Devendra Lodha. The activities of the company include financing periodical loans, supervisory and consultancy services, Leasing, Bill Discounting and Textile Industries. The shares of the company are listed on the Bombay Stock Exchange Ltd. (hereinafter referred to as the '**BSE / Exchange**'). As per BSE website, the registered address of the company is 10th Floor, Tataanium Business Hub, Surat-

Khajod Road, Bhimrad, Surat-395 007. After sub-division of shares on 19.04.2005, the face value of shares of the company became Rs.1 from Rs.10.

3. The details of the **management of the company** during the investigation period were as under: -

Sr. No	Name of Directors	Designation	Date of appointment	Date of Cessation
1	Omprakash Anandilal Khandelwal	Managing Director	01/02/1995	01/09/2013
2	Jills Raichand Madan	Director	08/05/2010	Till date
3	Ms. Jyoti Munver	Director	08/05/2010	Till date
4	Ashok Bothra	Additional Director	09/03/2009	08/05/2010
5	Rajeshree Omprakash Khandelwal	Director	28/01/2001	27/12/2010
6	Kiran Dilip Thakore	Director	30/09/2010	06/10/2011
7	Manish Bhupendra Thakkar	Director	19/05/2011	10/01/2017
8	Subramanya Kunsur	Director	21/05/2010	26/11/2013
9	Radheshyam Hanumanprasad Sharma	Director	29/07/2002	23/05/2011
10	Govind Sharma Prasad	Director	30/09/2003	23/05/2011
11	Somabhai Sunderbhai Meena	Additional Director	01/06/2013	Till date
12	Veenu Devidas Chougule	Additional Director	01/02/2017	Till date
13	Sanjay Atmaram Devlekar	Additional Director	10/12/2018	Till date

4. During the investigation period, the changes in promoter shareholding was observed as under :

Sr.no	Name of promoter	Pre-IP holding in % quarter ending Dec 2008	Shareholding (No. of shares before IP) Dec 2008	No. of shares bought during the IP	No. of shares sold during the IP	Shareholding (No. of shares after IP) Jun-2015	Post-IP holding in % Quarter ending June 2015
1	A K Lodha	0.11	87,400	0	87,400	Nil	0.00
2	Abhaykumar Lodha	0.02	18,650	0	18,650	Nil	0.00
3	Devendra Lodha	0.0012	1,000	0	1,000	Nil	0.00
4	Hemlata Lodha	0.05	43,650	0	43,650	Nil	0.00
5	Omprakash Khandelwal	1.99	16,21,000	0	Nil	16,21,000	0.10
6	Rajeshree Khandelwal	3.45	28,12,000	0	Nil	28,12,000	0.18
7	Emoi Garments Pvt Ltd	Nil	Nil	64,00,000	Nil	64,00,000	0.41

5. During the course of investigation, SEBI observed that Mr. Om Prakash Khandelwal (herein after referred to as "**Noticee /by name"**), failed to make/made delayed disclosures in terms of SAST Regulations, 1997 and SAST Regulations 2011 Therefore, SEBI initiated adjudication proceedings against Noticee under the provisions of Section 15A (b) of SEBI Act, for the alleged violations of provisions of:
   a. Regulation 8(2) of SAST Regulations,1997;
   b. Regulation 30(2) of SAST Regulations 2011 read with Regulation 30(3) of SAST Regulations 2011

   w.r.t. his dealing in the scrip of AVIL.

APPOINTMENT OF ADJUDICATING OFFICER

6. Vide order dated April 08, 2021, SEBI appointed the undersigned as the Adjudicating Officer under Section 15(I) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**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 the provisions of Section 15A (b) of the SEBI Act, the aforesaid alleged violations committed by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A Show Cause Notice dated September 22, 2021 (hereinafter referred to as "**SCN**") was issued to Noticee under Rule 4 of Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon them under the provisions of Section 15A (b) of the SEBI Act for the aforesaid violations alleged to have been committed by them.

8. The allegations levelled against Noticee in the SCN are as under:

   Violation of Regulation 8(2) of SAST Regulations, 1997

   i. It was observed during the course of Investigation that Noticee failed to make disclosures in terms of Regulation 8(2) of SAST Regulations, 1997 to the company for the financial years ended on March 31, 2009, March 31, 2010 and March 31, 2011 about the number and percentage of shares held by him.

ii. *It was further observed during the course of Investigation that the company had declared dividend for the Financial Year 2009-10 and the ex-date for the dividend was September 24, 2010. It was observed that Noticee failed to make disclosures in terms of Regulation 8(2) of SAST Regulations, 1997 to the company about his shareholding which he was required to make within 21 days from the record date of the company for the purposes of declaration of dividend.*

iii. *In view of the foregoing, it is alleged that Noticee has violated provisions of Regulations 8(2) of SAST Regulations, 1997.*

Violation of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011

iv. *As a promoter of AVIL, in terms of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011, Noticee was required to disclose his shareholding to the company and to the Exchange within seven working days from end of the financial year. Therefore, for the financial year ended on March 31, 2013, the due date for submitting the disclosures to Exchange was April 09, 2013, whereas, it was observed that the disclosure made by Noticee was submitted to Exchange on May 13, 2013. Thus, it was observed that there was a delay of 33 days in submitting the annual disclosures by Noticee to Exchange under Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011. Thus, it is alleged that Noticee has violated the provisions of Regulations 30(2) read with Regulations 30(3) of SAST Regulations, 2011 for the year ended March 31, 2013.*

9. The SCN was sent to Noticee address "*574/77, Beligum Square, Delhi Gate, Ring Road, Surat- 395 002, Email: - myprraneta@yahoo.com*" through Speed Post Acknowledgement Due (herein after referred to as "**SPAD"**) dated September 22, 2021. 22, 2021. SCN sent through SPAD was returned undelivered. Accordingly, SCN was delivered to Noticee by way of affixture on November 23, 2021. Report of affixture is available on record. Noticee was given fifteen (15) days' time to submit the reply to the SCN. Vide hearing notice dated July 13, 2022 an opportunity of personal hearing was granted to Noticee on August 03, 2022. The said notice was served through affixture at the aforesaid address. Further, a copy of SCN and hearing notice was sent to alternate address of Noticee, i.e., Village Deori, Post office Makrana, District-Nagaur, Rajasthan-341505 through SPAD. . The copy of SCN and hearing notice duly delivered at the said

address. Vide email dated July 25, 2022, Notice acknowledged that he had received the affixed copy of notice and Noticee provided his another address, i.e., A-401, Jain Nagar society, B/h Model Town, Parvat Patia, Surat. Vide email dated July 25, 2022 and July 27, 2022, Noticee requested for a copy of SCN and accordingly, vide email dated July 28, 2022, a digitally signed SCN dated September 22, 2021 was sent to Noticee and was duly served on him. Another opportunity of personal hearing was granted to Noticee on October 11, 2022 vide hearing notice dated September 29, 2022, which was duly served on Noticee. Noticee, vide his email dated October 10, 2022, requested for adjournment of the aforesaid hearing on October 11, 2022. Accordingly, vide email dated October 12, 2022, another opportunity of hearing was granted to Noticee on October 14, 2022. Vide email dated October 13, 2022, Noticee, through his Authorised Representative (**AR**), namely, R.V. Legal, informed that he had not received the SCN and requested for a copy of SCN and also requested to adjourn the hearing scheduled on October 14, 2022. Accordingly, vide email dated October 14, 2022, a copy of SCN along with its Annexures was emailed to Noticee and his AR. Further, vide said email, Noticee was granted a last and final opportunity of personal hearing in the matter on October 19, 2022. Vide email dated October 18, 2022, the AR of Noticee submitted the reply to the SCN. On October 19, 2022, AR attended the hearing and reiterated the earlier submission made.

10. The reply submitted by Noticee is summarised below:-
    a) Noticee is retired, who was a Promoter and Managing Director of Aadhar Venture India Limited (AVIL) at the relevant time and is not associated with the company since September 2013.
    b) Noticee submits that there is no change in the shareholding of Noticee in the entire period of investigation and it is pertinent to note that if there was a change in the shareholding then non-disclosure or delayed disclosure would have affected the market which is not the case here
    c) It is also pertinent to note that pursuant to SEBI Circular CIR/ CFD/DCR/17/2015 dated December 01, 2015, in the matter of "Introduction of system-driven disclosures in securities market", BSE Ltd. has started accepting system generated disclosures from the Registrars and Share Transfer Agents (RTAs) of BSE listed companies and displaying the same on website of BSE Ltd and hence it is no more dependent on the individual promoter.
    d) The allegations framed in the SCN regarding violation of Regulation 8 (2) of SAST relate to the investigation period (31st March 2009 to 31st March 2011)

and the SCN was issued on 22.09.2021 i.e., after a delay of about 14 years and allegations regarding SAST 30 (2) r/w 30 (3) refers to investigation period of 2013 which is after delay of about 9 years. The SCN does not provide any explanation to justify the inordinate and unconscionable delay in initiation of proceedings against Noticee at such a belated stage and he is not associated with the company since 2013 and a lot water has flown since then. It is submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of Noticee to adequately respond to the SCN since the documents/ facts pertaining to the alleged non-disclosure and delayed disclosure by Noticee are not available with him. It is pertinent to mention that the mandatory period to maintain the records under various authorities are maximum 6 years and the present SCN is issued after about 14 years which is a gross abuse of power.

e) Noticee has relied on the judgement of Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of Parag Sarda vs SEBI(Order dated 12th November, 2020 in Appeal No. 279 of 2020), Hon'ble Supreme Court judgement in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim ((1997) 6 SCC 71.

f) Consequently, Noticee would hereby like to place on record the fact that given the inordinate delay in issuance of the SCN, Noticee's ability to adequately respond to the SCN has been gravely jeopardized and Noticee cannot be called upon at this stage to respond to the SCN. It is also submitted that the gross delay was entirely attributable to SEBI and Noticee had no role to play in the same. It is relevant to note that much water has flown since the transaction i.e., in 2009. Imposing a monetary penalty so belatedly serves no purpose for what appears to be a mere technical violation. In fact, Noticee will be prejudiced, especially since Noticee is not in a position to defend himself appropriately.

g) On the above ground alone, the SCN stands vitiated and is liable to be set aside for violation of the principles of natural justice.

h) Noticee does not have records of disclosures for the financial years March 31, 2009, March 31, 2010, September 2010 and March 31, 2011.

i) Noticee's Shareholdings were already disclosed / submitted by the company in the Quarterly Shareholding Pattern for the quarter ended March 2009, March 2010, September 2010 and March 2011 within 30 days of the end of quarter as per norms. Shares held by Noticee were 16,21,000 i.e. 0.72 % of the total shareholding of the Company. It is pertinent to note that for even for the period for the quarter ended June, 2010 there was no change in the shares held by

Noticee annexed and marked hereto is the copy Shareholding of securities report June, 2010. Hereto annexed and marked as “Annexure – C1 to C5” are the copy of said reports respectively. The said reports are available on the BSE website i.e. https://www.bseindia.com/ and were already available in the public domain at the relevant time.

j) Since the investigation period is 9 years old i.e. March 2013 and Noticee does not remembered the reason for delay of 33 days in submitting the annual disclosures by Noticee to Exchange under Regulation 30 (2) r/w Regulation 30 (3) of SAST Regulations, 2011 for the year ended March 31, 2013.

k) Noticee states that entire investigation period, only in a single instance, the disclosure requirement under Regulation 29 (2) and (3) of the SAST Regulations, was merely a meagre default of a technical nature and it was not a deliberate attempt to achieve any other ulterior motive and further the company had already disclosed Noticee’s shareholding for the for the quarter year ended March 31, 2013. Hereto annexed and marked as “Annexure – D” is the copy of report of Shareholdings for the year ended March 31, 2013 the same is available on the https://www.bseindia.com/

l) Noticee states that initiating proceedings against Noticee at such a belated stage (after 13 years) for what appears to be only a meagre default of a technical nature causes grave prejudice to Noticee. Imposing any penalty at this belated stage serves no regulatory purpose but instead causes undue hardships to Noticee.

m) Noticee has not taken the present regulatory proceedings in a nonchalant manner. Noticee is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. Noticee has not acted in defiance of law. The actions of Noticee are not in any manner detrimental to the securities market and Noticee has conducted all his operations with integrity and in the best interest of its shareholders.

n) 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.

o) Noticee craves leave to refer to and rely upon the ratio laid down in the judgement of the Hon’ble Securities Appellate Tribunal in P. G. Electroplast Ltd. & Ors. V. SEBI in Appeal no. 281 of 2017(SAT Order dated February 2, 2019), wherein it is held that - *“Penalty can be imposed for failure to carry out a statutory obligation under the SEBI’s Act. Factors contemplated* *under Section 15J are required to be taken into consideration before imposing a penalty. If it is found that a party has not acted deliberately, then the authority has a discretion, to be exercised judicially, whether in a given case, after taking into consideration of all the relevant circumstances, as to whether a penalty should be imposed or not. Even if a minimum penalty is prescribed, the authority, after considering the circumstances of the case and other factors enumerated in Section 15J would be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act. The above was precisely held by the Supreme Court in M/s. Hindustan Steel Ltd. vs. State of Orissa, 1969(2) SCC 627*."

p) It is submitted that the alleged violation has not resulted in any harm or loss caused to the securities market. No such allegation sits in the SCN as well. Noticee has relied on the judgement of Hon'ble Supreme Court in the matter of M/s Hindustan Steel Ltd. v. State of Orissa reported in 1969 (2) SCC 627 and Hon'ble SAT order in the matter of Brijdham Dealcom Pvt. Ltd. vs Securities and Exchange Board of India (Appeal no. 358 of 2022) and Adjudication order Order/SM/S./2022-23/18173-18191 in the matter of Anukaran Commercial Enterprises Limited for imposition of penalty.

q) In light of the above, it is evident that the SCN and the allegations made out therein, is without equitable considerations. It is submitted that the allegations against Noticee are not sustainable and thus, no order/ direction ought to be passed/ issued against Noticee.

r) The submissions made and the case laws cited reaffirm that Noticee have always acted within the letter and spirit of the applicable laws and regulations.

s) In any event, applying the principles of penalty under Section 15J of the SEBI Act and Section 23J of the SCRA, it is clear that (i) Noticee have not made any gains or avoided loss, (ii) the SCN does not allege any loss suffered by anyone, and (iii) there is no question of any repetitive nature of any default, whether as alleged or otherwise. Thus, the charges levied vide the SCN be disposed of entirely.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

11. I have carefully perused the charges levelled against Noticee, replies/submissions filed by him and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

Issue No.-1:- Whether Noticee has violated Regulation 8(2) of SAST Regulations, 1997 and Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011?

Issue No. 2:- Do the violations, if any, attract monetary penalty under Section 15A (b) of SEBI Act?

Issue No. 3:- If so, what should be the quantum of monetary penalty?

12. Before moving forward, it is pertinent to refer to the relevant provisions of the Regulation 8(2) of SAST Regulations, 1997 and Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011 which are reproduced as under:

Regulations 8(2) of SAST Regulations, 1997: *A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.*

Regulations 30(2) of SAST Regulations, 2011: *The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

***Regulation 30(3) of SAST Regulations, 2011*:-** *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to-*
(a)every stock exchange where the shares of the target company are listed; and
(b)the target company at its registered office.

13. Before going into the merits, I would like to first deal with the preliminary objection raised by Noticee w.r.t. delay in initiating proceedings. Noticee, in his replies, has contended that the allegations framed in the SCN relate to the period March 31, 2009 to March 31, 2011 and SCN was issued on September 22, 2021 i.e. after a delay of about 14 years for the alleged allegation of Regulation 8(2) of SAST Regulations, 1997 and about 9 years for the alleged violation of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011. Noticee has further contended that the SCN does not provide any explanation to justify the inordinate and unconscionable delay in initiation of proceedings against Noticee at such a belated stage and he is not associated with the

company since 2013. Noticee has further contended that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of Noticee to adequately respond to the SCN since the documents/ facts pertaining to the alleged non-disclosure and delayed disclosure by Noticee are not available with him. Noticee has further contended that the mandatory period to maintain the records under various authorities are maximum 6 years and the present SCN is issued after about 14 years which is a gross abuse of power. Noticee has further contended that given the inordinate delay in issuance of the SCN, Noticee's ability to adequately respond to the SCN has been gravely jeopardized and Noticee cannot be called upon at this stage to respond to the SCN. Noticee has stated that the gross delay was entirely attributable to SEBI and Noticee had no role to play in the same. Noticee has stated that that much water has flown since the transaction i.e., in 2009. Imposing a monetary penalty so belatedly serves no purpose for what appears to be a mere technical violation. In fact, Noticee will be prejudiced, especially since Noticee is not in a position to defend himself appropriately. Noticee in his replies relied on the judgement of Hon'ble SAT in the matter of Rajeev Bhanot & Anr. versus SEBI (Order dated 09th July, 2021 in Appeal No. 396 of 2018 and Hon'ble Supreme Court judgment in the matter of Mohamad Kavi Mohamad Amin v. Fatmabai Ibrahim ((1997) 6 SCC 71.

14. I have considered the contentions raised by Noticee with regard to delay in issuance of SCN and perused judgement cited by Noticee in support of his contentions. In this regard, I note that even though SEBI Act nor Regulations had prescribed any period of limitation for issuance of SCN, it has now become well settled that SCN has to be issued within reasonable time period. I note that Hon'ble SAT in many of its cases has held that the reasonable period would depend on the facts and circumstances of each case and that no hard and fast rule can be laid down in this regard. In this context, I find it pertinent to rely on the decision of Hon'ble Supreme Court in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294, wherein the Court held as under:
"*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.*"

15. In the instant matter, I observe that SEBI had received a letter dated February 10, 2015 from The Principal Director of Income Tax, wherein statement recordings of various

accommodation entry providers, their associates, dummy directors etc. were provided. The statements alleged that these entities generated bogus long term capital gains (LTCG) in many scrips through Stock Exchange mechanism and AVIL was one of such scrips mentioned in the aforesaid letter. Based on the above, investigation was carried out for alleged price manipulation in the scrip of AVIL. The investigation revealed price manipulation in the scrip by the certain entities and appropriate enforcement actions were initiated against entities. While approving the Enforcement action, it was also recommended that the matter relating to disclosures regarding change in promoters' shareholding pattern and funding, if any, by the company to the preferential allottees to be taken up separately. Accordingly, SEBI carried out another investigation to ascertain the possible violation of provisions of PIT Regulations, 1992 or SAST Regulations 1997 or SAST Regulations 2011. I note that investigation in the present case started from October 2017. During the course of investigation, SEBI had gathered information from BSE, company, promoters of the company including Noticee etc. I note that promoters as well as AVIL failed to provide necessary replies to SEBI during the course of investigation. After the fact finding exercise, the investigation was completed on February 24, 2021 and the undersigned was appointed as AO in the matter on April 08, 2021. Subsequently on August 04, 2021 a clarification was sought from SEBI, for which necessary reply was received on September 09, 2021, post which SCN was issued on September 22, 2021. Therefore, I find that there has been there has been no undue delay in issuance of SCN, after the investigation was initiated by SEBI. However, I find that there is a delay of around 14 years from the impugned transactions relating to the allegation of violation of Regulation 8(2) of SAST Regulations, 1997 and around 9 years from the impugned transactions relating to the allegation of violation of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011.

16. Now I proceed to deal with the case on merits. The first issue for consideration is whether Noticee has violated Regulation 8(2) of SAST Regulation, 1997 and Regulation 30 (2) read with Regulation 30(3) of SAST Regulations, 2011.

17. I note from the investigation report that Noticee was the Managing director of the company from February 01, 1995 till September 01, 2013. Noticee in his reply submitted that he was the promoter and director of the company till September 2013. I also note from the shareholding pattern of the company that Noticee was holding 16,21,000 shares of the company from December 2008 to March 2015.

18. I note that during the course of investigation, vide email dated December 17,2020, SEBI had sought information from BSE w.r.t. disclosures submitted by the promoters to the Exchange in respect of their shareholding in the scrip of AVIL during the period January 01, 2009 to April 24, 2015. In response, BSE vide email dated January 09, 2021, submitted a statement containing annual disclosures received on April 12, 2012, May 13, 2013, April 03, 2014 and April 08, 2015 from the promoter entities. In the said email to SEBI, BSE further informed that no disclosures were received by BSE under applicable SEBI (SAST) regulations during the period January 01, 2009 to April 24, 2015.

19. I note that as per Regulation 8(2) of SEBI (SAST) Regulations, 1997 within 21 days from the end of financial year ending March 31, as well as the record date of the company for the purpose of declaration of dividend, promoter or every person having control of the company has to disclose to the company the number and percentage of shares or voting rights held by him and by person acting in concert with him. As noted earlier, Noticee was the promoter of the company till September 2013. Accordingly, Noticee was required to make necessary disclosures to the company under Regulation 8(2) of SAST Regulations, 1997 within 21 days from the end of respective financial year. However, I note that in the instant matter, investigation has observed that disclosures under Regulation 8(2) of SAST Regulations, 1997, which was required had to be made to the company within the stipulated period was not made by Noticee for the financial years ended on March 31, 2009, March 31, 2010 and March 31, 2011.I also note from the BSE website that company has declared dividend for the Financial Year 2009-10 and ex- date for the purpose of declaration of dividend was September 24, 2010. I note that investigation has observed that disclosure under Regulation 8(2) of SAST Regulations, 1997 which was required to be made to the company within 21 days from the record date of the company for the purpose of declaration of dividend was not made by Noticee.

20. I observe from the Investigation report that SEBI, vide emails dated January 14, 2019, January 17, 2019, January 31, 2019, February 07, 2019 and February 20, 2019, letters dated June 07, 2019, June 24, 2019, July 12, 2019 and summonses dated October 24, 2019, November 11, 2019 and November 25, 2019 had sought information from AVIL about the disclosures submitted by the promoters to the company. However, I note that no reply was received from AVIL despite issuance of the aforesaid emails, letters and summonses by SEBI. I also observe that vide letter

dated August 02, 2019, summons dated September 27, 2019 and November 21, 2019, SEBI had sought information regarding compliance with Regulation 8(2) of SAST Regulations, 1997 from promoters of the company. However, it is noted from the records that no reply was received from the promoters of the company.

21. Noticee in his reply has submitted that he does not have records of disclosures for the financial years ended March 31, 2009, March 31, 2010, September 2010 and March 31, 2011. As noted earlier in the order, company did not provide any response to SEBI w.r.t. disclosures made by promoters of the company. Therefore, I find that there is no conclusive evidence placed on record to determine whether Noticee, as promoter of the Company at the relevant time, had made necessary disclosures to the company in terms of Regulation 8(2) of SAST Regulations, 1997 for the financial years ended March 31, 2009, March 31, 2010, March 31, 2011 and for the record date September 24, 2010. Thus, in absence of any documentary evidence, I am unable to conclude as regards the allegation that Noticee has violated the provisions of Regulation 8(2) of SAST Regulations, 1997 for the financial years ended March 31, 2009, March 31, 2010, March 31, 2011 and for the record date September 24, 2010.

22. As noted earlier in the order, Noticee was promoter of the company till September 2013. Accordingly, in terms of Regulation 30(2) of SAST Regulations, 2011, Noticee had to disclose his aggregate shareholding and voting rights as of thirty first day of March in such target company. Further, as per Regulation 30(3) of SAST Regulations, 2011, Noticee was required to make necessary disclosures within seven working days from the end of each financial year to every stock exchange where the shares of the target company are listed and to the target company at its registered office. I note that for the financial year ended on March 31, 2013, the due date for submitting the disclosures to Exchange was April 09, 2013. I also note from the BSE email dated January 09, 2021 that disclosure under Regulation 30(2) and Regulation 30(3) of SAST Regulations, 2011 was submitted to Exchange by Noticee only on May 13, 2013. Thus, I note that Noticee submitted the disclosures to the exchange under Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011 for the financial year ended March 31, 2013 with a delay of 33 days.

23. Noticee in his reply has admitted that there was a delay of 33 days in submitting the annual disclosures to Exchange for the year ended March 31, 2013. Noticee has further stated that in the entire investigation period, there was a single instance where

disclosures was made with a delayed disclosures and the said delay was merely a meagre default of a technical nature and it was not a deliberate attempt to achieve any other ulterior motive and further the company had already disclosed Noticee's shareholding for the quarter ended March 31, 2013. Noticee has further submitted that he does not remember the reasons for the delayed disclosures as the impugned transaction is 9 years old. In view of the same, I note that Noticee has admitted to the default on his part for making delayed disclosures for the year ended March 31, 2013 in terms of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011.

24. Noticee in his reply further contended that given the inordinate delay in issuance of the SCN, Noticee's ability to adequately respond to the SCN has been gravely jeopardized and Noticee cannot be called upon at this stage to respond to the SCN. Noticee has stated that the gross delay was entirely attributable to SEBI and Noticee had no role to play in the same. I note that Noticee is taking a plea that his ability to adequately respond to the SCN has been jeopardized on account of delay. However, since he has admitted that there was a delay of 33 days on his part for making disclosures for the year ended March 31, 2013 in terms of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011, I hold that the allegation that Noticee violated Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011 stands established.

Issue No. 2: Do the violations attract monetary penalty under Section 15A (b) of SEBI Act.?

25. Noticee in his reply has relied on the judgments of Hon'ble SAT in the matter of P. G. Electroplast Ltd. & Ors. V. SEBI in Appeal no. 281 of 2017, Brijdham Dealcom Pvt. Ltd. vs. SEBI (Appeal No. 358 of 2022 dated July 08, 2022), Hon'ble Supreme Court in the matter of M/s Hindustan Steel Ltd. v. State of Orissa reported in 1969 (2) SCC 627 and SEBI Adjudication order (ORDER/SM/S.2022-23/18173-18191 dated July 29, 2022) for non-imposition of penalty or to impose one penalty instead of penalty for every instances.

26. In this regard, I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s 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......".* Therefore, placing reliance on the aforesaid judgement, I find that the above violation of Regulation 30(2)

read with Regulation 30(3) of SAST Regulations, 2011 by Noticee, as established in the foregoing paragraph, makes Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act. The text of Section 15A(b) of the SEBI Act, as applicable at that relevant time, is reproduced below:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

Issue No. 3: What should be the quantum of monetary penalty to be imposed?

27. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 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.

Explanation-*For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and* *(c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

28. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In this regard, from the material available on record, I note that, there are no evidence placed on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee in making disclosures or the consequent loss caused to investors as a result of the default. It is not possible from the material on record to establish repetitive nature of the default by Noticee. However, I note that Noticee has stated this was a mere technical violations and no loss had been caused to any investor or group of investors as a result of the alleged default. I note that there is only one instance of default captured in the instant matter and the delay in disclosure was only for 33 days. Considering the aforesaid factors, I am of the view that such infraction of single instance of delayed disclosure by Noticee can be viewed as a technical default. Further, as noted earlier in the order, there has been a delay of around 9 years from the impugned transactions relating to the allegation of violation of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011. I consider the aforementioned factors to be mitigating in nature and therefore, I am of the view that a penalty, which is not harsh in nature, is warranted in the facts and circumstances of the matter.

ORDER

29. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act, judgment of Hon'ble SAT, Hon'ble Supreme Court and Adjudication Order of SEBI quoted by Noticee, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs.25,000/-(Rupees Twenty Five thousand only) on Noticee under Section 15A(b) of SEBI Act. I am of the view that the aforesaid penalties are commensurate with the lapses/ omissions on the part of Noticee.

30. Noticee shall remit / pay the said amount of penalty within 45 days 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 website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

31. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

32. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee.

33. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee Mr. Om Prakash Khandelwal and also to the Securities and Exchange Board of India.

Place: Mumbai **SOMA MAJUMDER**

Date: October 28, 2022 **ADJUDICATING OFFICER**