BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/PM/PA/2021-22/14572

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

In respect of:

Satish Kumar Agrawal
PAN: ABBPA9216E

In the matter of *Sanwariya Consumer Ltd.*

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of Sanwaria Consumer Ltd. *(earlier known as Sanwaria Agro Oils Ltd.)* (hereinafter referred to as "**SCL**"/ "**Company**"*)* to ascertain whether there was any disclosure violation by certain entities under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the **"PIT Regulations"**) and/or SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the "**SAST Regulations**") during the period from September 28, 2017 to December 31, 2017 (hereinafter referred to as the "**Investigation Period**"/"**IP**").

2. Pursuant to the investigation, it was alleged that Satish Kumar Agrawal (hereinafter referred to as the "**Noticee**") had violated regulation 7(2)(a) of the PIT Regulations by making delayed disclosures on 2 occasions in the range of 45 to 50 days wherein the value of the transactions undertaken by him exceeded Rs 10 lakhs. Further, it was alleged that the Noticee, being a designated person

under the provisions of the PIT Regulations for the financial year 2017-2018, had violated clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B (hereinafter referred to as "**Code of Conduct**") read with regulation 9(1) of the PIT Regulations by not obtaining pre-clearance from the Company before carrying out the aforesaid transactions which were above the threshold prescribed by the Company. In view of the above, adjudication proceedings were initiated against the Noticee.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as the adjudicating officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") read with section 19 of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") to inquire into and adjudge under sections 15A(b) and 15HB of the SEBI Act, against the Noticee, for the alleged violation of the aforesaid provisions of the PIT Regulations. The appointment of the adjudicating officer was communicated *vide* communiqué dated May 07, 2021.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A show cause notice dated July 19, 2021 (hereinafter referred to as "**SCN**") was served upon the Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against him under sections 15A(b) and 15HB of the SEBI Act for the alleged violation of the provisions of regulation 7(2)(a) and clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations.

5. The details regarding the allegations levelled against the Noticee in the SCN are provided below:

(i) It was observed that the Noticee was a promoter of the company from the shareholding pattern available on the website of BSE Limited and the information received from the Company *vide* email sent on January 04, 2021. Further, the Company *vide* email sent on February 11, 2021 *inter alia* stated that the Noticee amongst others was a designated person under the PIT Regulations for the financial year 2017-18.

(ii) From the shareholding pattern provided in the table below, it was observed that there was change in the shareholding of the Noticee from the quarter ended September 30, 2017 to the quarter ended December 30, 2017.

Name of the share holder	Jul 05, 2017		September 2017		December 2017	
	No of shares	% of shares	No of shares	% of shares	No of shares	% of shares
Satish Kumar Agrawal	6,24,36,300	8.48	6,24,36,300	8.48	4,92,36,300	6.69

(iii) Further, from the transaction statements received from the National Depository Services Limited (hereinafter referred to as "**NSDL**") and Central Depository Services (India) Ltd. (hereinafter referred to as "**CDSL**") *vide* emails sent on December 10, 2020 and December 04, 2020 respectively, the following off market transactions were observed in respect of the Noticee in the scrip of SCL during the IP:

Date	Debit (D) / Credit (C)	Transaction Qty	Value in Rs and in lakhs*	Due date of disclosure to Company under 7 (2) (a)	Date of receipt of disclosure by Company under 7 (2) (a)	Delay (in days) under 7 (2) (a)	Date on which the Company became aware about the transactions#	Disclosure submitted by Company to stock exchanges under 7 (2) (b)	Delay (in days) under 7 (2) (b)
11/12/2017	D	50,00,000	992.50	13/12/2017	01/02/2018	50	18/12/2017	03/02/2018	45
14/12/2017	D	82,00,000	1,553.90	18/12/2017	01/02/2018	45	18/12/2017	03/02/2018	45
Total		**1,32,00,000**							

** Value= No. of. shares x closing price of BSE Limited on the date of transfer.*

 # = Based on benpose reports received by the Company from the registrar and transfer agent for respective weeks.

(iv) It was observed that the Noticee had transferred 1,32,00,000 shares to a partnership firm named M/s. Shrinathji Dal Mills (hereinafter referred to as "**SDM**") in which the Noticee was a partner and the cumulative disposal of shares of SCL by the Noticee resulted into decrease in shareholding of the Noticee in the Company from 8.48% (6,24,36,300 shares) to 6.69% (4,92,36,300 shares). From the table above, it was observed that each of the transactions executed by the Noticee exceeded Rs. 10 lakhs. The Company in its reply *vide* email sent on June 02, 2018 forwarded the copy of the disclosure submitted by the Noticee to the Company under regulation 7(2)(a) of the PIT Regulations wherein it was observed that the Noticee had made combined disclosure for sale/ disposal of 1,32,00,000 shares of SCL and the date of receipt of the disclosure by the Company was February 01, 2018 *i.e.*, there was a delay in submitting the disclosure ranging from 45 days to 50 days for the respective transactions tabulated in the paragraph above. Taking the aforesaid paragraphs into consideration, it was alleged that the transactions undertaken by the Noticee had triggered disclosure requirements under the provisions of regulation 7(2)(a) of the PIT Regulations which was not complied with within the stipulated time.

(v) The Company in its reply *vide* email sent on February 15, 2021 *inter alia* stated that the threshold limit with respect to the value of proposed trades for seeking pre-clearance before trading was Rs 10 lakhs. Accordingly, it was observed that the Noticee being a designated person was required to take pre-clearance from the Company before carrying out each of the two transactions as the value of each of the aforesaid transactions exceeded Rs 10 lakhs *i.e.,* value of the transactions undertaken by the Noticee was more than the threshold prescribed by the Company for designated persons to seek pre-clearance. However, it was observed from the reply furnished by the Company *vide* the aforesaid email that the Company did not receive any pre-clearance request during the IP from the Noticee. In view of the above, it was alleged that the Noticee had violated the provisions of clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations.

6. The Noticee submitted his reply to the aforesaid SCN *vide* email sent on August 06, 2021 (hereinafter referred to as the "**August Reply**"). The relevant extract from the August Reply is reproduced below verbatim:

"We would like to submit that Mr Satish Kumar Agarwal is the partner of Shrinathji Dal Mill, a partnership firm. The shares which belonged to Shrinathji Dal Mill were held in the name of the partner as a partnership firm could not hold shares in its name. Hence as a part of the correction of the anomaly, 1,32,00,000 shares which actually belonged to the partnership firm Shrinathj Dal Mill, but wrongly shown as belonging to Mr Satish Kumar Agarwal was transferred by him to the Partnership Firm on 11/12/2017 and 14/12/2017 by way of an off-market transfer as specified in Paragraph 26 of the Notice.

It is alleged in Paragraphs 26, 27 and 28 that Mr Satish Kumar Agarwal made a delayed disclosure for the transfer of the 1,32,00,000 shares to Shrinathji Dal Mill only on 03.02.2018 with a delay of 45 days. We would like to submit that the disclosure was not made because this was not a sale and was only a correction where the shares held in the name of the partner were transferred to the name of the partnership firm, which was actually the owner of the shares. However, when it was pointed out that necessary disclosures had to be made, Mr Satish Kumar Agarwal made the same as a matter of abundant caution although with a delay on February 03, 2018.

We confirm that Mr Satish Kumar Agarwal, being a promoter of the Company is a designated person. It is alleged in Paragraphs 31 and 32, that Mr Satish Kumar Agarwal being a designated person has not sought pre-clearance for the above transaction. Since this was only the return of the shares rightfully belonging to the partnership firm which was wrongly held in the name of the Partner, and not a trade, pre-clearance was not taken by Mr Satish Kumar Agarwal. Hence, Mr

Satish Kumar Agarwal has not violated any of the provisions of Clause 6 of the Code of Conduct to monitor and report trading by Insiders."

7. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on August 13, 2021 *vide* notice of hearing sent *vide* email on August 09, 2021. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on cisco webex platform. On the scheduled date of the hearing, the authorized representative of the Noticee appeared before me through video conference and requested to take into account the submissions made by the Noticee *vide* his August Reply as her oral submissions.

D. CONSIDERATION OF ISSUES AND FINDINGS

8. I have considered the facts and circumstances of the case and the material available on record. I note that the allegations levelled against the Noticee in the SCN are for the violation of the following provisions of law:

   (a) Regulation 7(2)(a) of the PIT Regulations; and

   (b) Clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations.

9. In view of the above, the issues that arise for consideration before me are:

   (I) **Issue No. I: Whether the Noticee has violated regulation 7(2)(a) of the PIT Regulations?**

   (II) **Issue No. II: Whether the Noticee has violated clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations?**

   (III) **Issue No. III: If the answer to Issue No. (I) and (II) is in affirmative, whether the violation, on the part of the Noticee would attract**

monetary penalty under section 15A(b) and section 15HB of the SEBI Act?

(IV) **Issue No. IV: If the answer to Issue No. III is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5(2) of the SEBI Adjudication Rules?**

10. Before moving forward, the relevant extracts of the provisions of the PIT Regulations, allegedly violated by the Noticee, are provided as under:

<u>CHAPTER – III DISCLOSURES OF TRADING BY INSIDERS</u>

Disclosures by certain persons.

7. (1) Initial Disclosures….

(2) Continual Disclosures

(a). Every promoter [1][, member of the promoter group], [2][designated person] and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

[1] Inserted by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2019 (w.e.f. January 21, 2019).

*[2] Substituted for the word "employee" by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019) (hereinafter referred to as the "**PIT 2018 Amendment Regulations**").*

(b)….

(c)….

CHAPTER – IV CODES OF FAIR DISCLOSURE AND CONDUCT

Code of Conduct.

9. (1) The board of directors of every listed company and [3][the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct [4][with their approval] to regulate, monitor and report trading by its [5][designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B [6][(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.

[7][Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.]

NOTE: It is intended that every company whose securities are listed on stock exchanges and every [8][intermediary] registered with SEBI is mandatorily required to formulate a code of conduct governing trading by [9][designated persons and their immediate relatives]. The standards set out in the [10][schedules] are required to be addressed by such code of conduct.

[3] Substituted for the words "market intermediary" by the PIT 2018 Amendment Regulations.

[4] Inserted by the PIT 2018 Amendment Regulations.

[5] Substituted for the words "employees and other connected persons" by the PIT 2018 Amendment Regulations.

[6] Inserted by the PIT 2018 Amendment Regulations.

[7] Ibid.

[8] Substituted for the words "market intermediary" by the PIT 2018 Amendment Regulations.

[9] Substituted for the words "its employees" by the PIT 2018 Amendment Regulations

[10] Substituted for the word "schedule" by PIT 2018 Amendment Regulations.

SCHEDULE B

[See sub-regulation (1) [11][***] of regulation 9]

Minimum Standards for Code of Conduct [12][for Listed Companies] to Regulate, Monitor and Report Trading by [13][Designated Persons]

6. When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. [14][***]

[11] Omitted by the PIT 2018 Amendment Regulations which earlier read as "and sub-regulation (2)".

[12] Inserted by the PIT 2018 Amendment Regulations.

[13] Substituted for the word "Insiders" by the PIT 2018 Amendment Regulations.

[14] Omitted by the PIT 2018 Amendment Regulations which earlier read as below: "No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed."

11. I find it appropriate to deal with issues (I) and (II) together.

(I) Issue No. I: Whether the Noticee has violated regulation 7(2)(a) of the PIT Regulations?

(II) Issue No. II: Whether the Noticee has violated clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations?

12. In terms of the provisions of regulation 7(2)(a) of the PIT Regulations which was in force at the time the Noticee committed the alleged violation, any person, who is a promoter, employee or director of a company, was required to disclose to the company the number of securities acquired or disposed of within two trading days of the transaction, if the value of the securities traded in a calendar quarter exceeded Rs 10 lakhs. Thus, in order to attract the obligation under regulation 7(2)(a), both of the following conditions should be fulfilled:

(a) acquisition or disposal of securities by a promoter or an employee or a director of the company; and

(b) the value of securities traded aggregates to a traded value in excess of Rs 10 lakhs.

13. I note from the material available on record that the Noticee was the promoter of the Company. I further note that as on September 30, 2017, the Noticee was holding 6,24,36,300 shares amounting to 8.48% of the Company's shareholding which decreased to 4,92,36,300 shares amounting to 6.69% of the Company's shareholding as on December 2017. I also note that the Noticee executed two transactions in the scrip of the Company during the IP pursuant to which delayed disclosures were made as tabulated below:

Date	Debit (D) / Credit (C)	Transaction Qty	Value in Rs and in lakhs*	Due date of disclosure to Company under 7 (2)(a)	Date of receipt of disclosure by Company under 7 (2)(a)	Delay (in days) under 7(2) (a)	Date on which the Company became aware about the transactions#	Disclosure submitted by Company to stock exchanges under 7(2) (b)	Delay (in days) under 7 (2) (b)
11/12/2017	D	50,00,000	992.50	13/12/2017	01/02/2018	50	18/12/2017	03/02/2018	45
14/12/2017	D	82,00,000	1,553.90	18/12/2017	01/02/2018	45	18/12/2017	03/02/2018	45
Total		**1,32,00,000**							

** Value= No. of. shares x closing price of BSE on the date of transfer.*
 # = Based on benpose reports received by the Company from the registrar and transfer agent for respective weeks.

14. In context of the paragraph above, I note that the difference between the due date of submitting the disclosures under regulation 7(2)(a) and the date when the

disclosures were received by the Company (*i.e.,* period of delay in submitting disclosures) with respect to the concerned two transactions were in the range of 45 to 50 days. I find that the aforesaid delay is corroborated by a copy of Form C available on record (*i.e,* the form required to be submitted under regulation 7(2)(a) of the PIT Regulations) filed by the Noticee with the Company dated February 03, 2018.

15. I note that the Noticee has submitted two main contentions in the August Reply with respect to the violations alleged against him under the SCN:

(i) Contention 1: The Noticee had made delayed disclosures as the concerned two transactions pursuant to which the violation of regulation 7(2)(a) is alleged in the instant matter were carried out to transfer the 1,32,00,000 shares to the rightful owner of the shares *i.e.,* SDM. The 1,32,00,000 shares transferred by the Noticee belonged to SDM, since at the time the shares were allotted to SDM, the shares could not be held in the name of the partnership firm, therefore, the said shares were jointly held in the name of the partners of the SDM, wherein the first holder of the said shares was the Noticee. However, in the records, inadvertently the said shares were reflected as shares held by the Noticee in his individual capacity as opposed to shares held by the Noticee as a partner of SDM. Therefore, the said transactions undertaken by the Noticee were not in the nature of sale.

(ii) Contention 2: The pre-clearance of trades required under the PIT Regulations was not sought by the Noticee as the concerned two transactions executed by the Noticee did not amount to trade under clause 6 of the Code of Conduct. The shares transferred by the Noticee belonged to SDM which is the rightful owner of the said shares but were wrongly reflected as shares held by the Noticee in his individual capacity. Therefore, the Noticee has not violated the provisions of clause 6 of the Code of Conduct.

16. Before dealing with the contentions of the Noticee, I find it necessary to bring out certain facts regarding the Noticee and the counterparty to the concerned transactions executed by the Noticee *i.e,* SDM.

(i) With respect to the Noticee, I note that the Noticee has two active demat accounts, one bearing client ID no. 23205744 with NSDL and another bearing client ID no. 00971678 with CDSL. In the present matter, the concerned two transactions were executed by the Noticee from the demat account held with NSDL.

(ii) With respect to SDM, I note from the material available on record that a partnership deed dated April 01, 2010 was entered into between the Noticee, Gulab Chand Agrawal and Geeta Devi Agrawal for carrying out business in the name of M/s. Srinathji Dall Mills. I note that that the Company has confirmed that SDM having PAN No. ABHFM2440E was allotted 1,10,000 equity shares bearing folio no. 5009 in the year 1992, and that the said shares were jointly held in the name of the Noticee and other partners of SDM (*i.e,* Gulab Chand Agrawal and Geeta Devi Agrawal). I further note that the Company has confirmed that the aforesaid shares amounted to 1,32,00,000 in 2017 due to bonus/stock split carried out by the Company over the years. The Company has also stated that at the time of dematerialization of shares, the aforesaid shares of SDM were inadvertently merged with the shares of the Noticee held in his individual capacity by the registrar agent of the Company due to which the Noticee undertook the concerned transactions. I also note that there is a demat account held against the PAN of SDM bearing client ID no. 01947369 with CDSL in the name of the Noticee which was opened on December 08, 2017.

17. I find it appropriate to begin by dealing with the first contention. In this regard, it is necessary to dissect and analyze regulation 7(2)(a) of the PIT Regulations which is alleged to have been violated by the Noticee. Regulation 7(2) (a) reads as "*shall disclose to the company the number of such securities acquired or <u>disposed of</u> within two trading days of such transaction".* The term used in the

aforesaid regulation is “disposed of”, and therefore it is clear that the aforesaid regulation does not mandate disclosure only in the event of sale. I note that the term/expression “dispose/disposed of” is not defined under the PIT Regulations. I further note that the PIT Regulations states that the words and expressions not defined under the PIT Regulations shall have the meaning provided to them, if any, under the following acts: (i) SEBI Act; (ii) the Securities Contracts (Regulation) Act, 1956; (iii) the Depositories Act, 1996; or (iv) the Companies Act, 2013. I find that the aforesaid term is also not defined under any of the aforesaid acts. Therefore, I find it appropriate to rely on *Merriam-Webster Dictionary of Law (1st edition)* which defines “dispose of” as *“to transfer to the control or ownership of another”.* Further, the aforesaid dictionary defines the term “sale” as *“the transfer of title to property from one party to another for a price”.* In view of the above, I find that the term “disposed of” as used in regulation 7(2)(a) of the PIT Regulations is not synonymous with the term “sale” as the former requires only transferring control or ownership whereas the latter requires transfer of control or ownership for a price/consideration. I find that if the legislative intent behind the disclosure requirement under regulation 7(2)(a) was to disclose only transactions falling under the umbrella of “sale” then the words “disposed of” would not have been used. Adopting a restricted interpretation of the word “disposed of” to mean only sale would defeat the purpose of mandating disclosures in the events covered under the term “disposed of”. Thus, I find it difficult to accept the contention of the Noticee that the Noticee did not make timely disclosures of the concerned transactions on account of the fact that the transactions did not amount to sale, since in my view even though the concerned transactions undertaken by the Noticee did not involve transferring the shares for a price/consideration, it involved transfer of control or ownership of the shares from the Noticee to SDM (whose partners along with the Noticee are Gulab Chand Agrawal and Geeta Devi Agrawal) which amounts to disposal under regulation 7(2)(a) of the PIT Regulations pursuant to which the disclosure requirement is triggered.

18. I also find it relevant to refer to the decision of the Hon’ble SAT in the matter of ***Dr. V K Sukumaran and Ms. Saritha Sukumaran vs. SEBI*** (Appeal No. 473 of

2020) dated August 24, 2021. In the aforesaid matter, the appellants had transferred shares by way of security for financial assistance and upon not receiving consideration for the shares transferred, the shares were retransferred to the account of the appellants. In view of this, the appellants had challenged the order of the adjudicating officer holding them guilty of disclosure violations under the SAST Regulations and the PIT Regulations as according to the appellants the aforesaid transactions were not in the nature of sale or purchase. The Hon'ble SAT while rejecting the aforesaid argument of the appellants held that:

"It was also noted that as per Section 10 of the Depositories Act, 1996 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. Further, this Tribunal considered the provisions of Section 150 of the Companies Act which requires every company to keep a register of its members and enter therein their particulars of shares held by them, as referred to in the section. Further survey of various relevant provisions was taken. Ultimately, it was held that the submissions that retransfer of the shares by the Bank to the appellant therein would not amount to acquisition of the shares cannot be accepted. It was held that such arguments would mean circumventing Takeover Code and Regulation 58 of the Depository Regulations, which cannot be permitted. It was further found that when the law prescribes course for creation of a pledge of shares, the parties cannot agree to create a pledge contrary to the SAST Regulations. Considering all these facts the contention of the appellants was negativated and the appeal against the order of the respondent SEBI was dismissed. Taking into consideration all these factors and the law as crystallized, in our view, the submissions of the appellants cannot be accepted. It is an admitted fact that the shares were transferred to the concerned noticees. Thereafter the shares were again transferred in the demat accounts of the appellants in the similar fashion. Appellants have thus violated the provisions of the regulations detailed above. The order of the AO, therefore cannot be faulted." (emphasis supplied)

19. Similarly, in ***Aanchal Jindal & Ors. vs. SEBI*** (Appeal No. 05 of 2021, Appeal No. 06 of 2021, Appeal No. 07 of 2021 and Appeal No. 08 of 2021) dated August 31, 2021, the Hon'ble SAT held that:

"Before us the appellants admitted that the transactions were made and disclosures were not filed under the PIT and the SAST Regulations and consequently admitted the violations. <u>It was however contended that some of the transactions were made to the broker to transfer the scrip as security towards margin money and therefore there was no change in the beneficial ownership of the scrip. It was also contended that inter-se transaction between the promoters were made and therefore the question of any loss to the investors does not arise as the shareholding of the promoter and promoter group remained the same. It was thus urged that the non-disclosure was only technical in nature.</u> The learned counsel further contended that the quantum of penalty imposed on a technical violation was harsh, arbitrary and disproportionate.

Having heard the learned counsel for the parties, <u>we find that admittedly disclosures were not made by the appellants under the PIT and SAST Regulations, Therefore the appellants have violated the provisions of 13(4A) and 13(5) of the PIT Regulations</u> and 29(2) and 29(3) of the SAST Regulations. <u>The contention that some of the transactions were only inter-se transfers between the promoters and therefore such transactions could not be taken into consideration is erroneous in as much as all the transactions whether from one promoter to another promoter was still required to be disclosed under the aforesaid Regulations</u>." (emphasis supplied)

20. Further, in ***Mrs. Komal Nahata vs. SEBI*** (Misc. Application No. 3 of 2014 and Appeal No. 5 of 2014) dated January 27, 2014, the Hon'ble SAT has held that:

"Counsel appearing on behalf of appellant submitted that in anticipation of receiving loan from appellant, ACL instead of creating a lien on the shares of Arvind International, erroneously and without the knowledge of appellant, transferred 3,75,000 shares of Arvind International Ltd. to the demat account of

appellant. However, since appellant did not get back her money which was advanced to another borrower, appellant could not advance loan to ACL. Accordingly 3,75,000 shares were transferred back by appellant to the demat account of ACL. Since erroneous transfer of shares was without consideration title in those shares did not pass to the appellant as per the provisions of Sale and Goods Act, 1930 and, therefore, the transfer being incomplete, appellant held those shares as trustee of beneficial owner, namely ACL, till it was transferred back. In such a case erroneous transfer of shares without consideration would not amount to trading in shares and consequently compliance of regulation 7(1) and regulation 7(2) of SAST Regulations, 1997 and regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992 did not arise. Learned counsel for appellant submitted that entire transaction was erroneous and that appellant did not acquire any shares which were inadvertently credited to her demat account by mistake and the same has been retransferred back to the beneficial owner. There being no commercial transaction on account of no money being paid or received by either of the parties to the transaction, AO was not justified in imposing penalty upon appellant. (emphasis supplied)

We find it difficult to accept the aforesaid arguments advanced by counsel for appellant. (emphasis supplied)

Similarly, regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992 required any person who holds more than 5% shares or voting rights shall disclose to the company, the number of shares held by such persons within 2 days of acquisition of shares and make continual disclosure even when the shareholding falls below 5% within two working days. In the present case, admittedly 3,75,000 shares of Arvind International Limited were transferred to the demat account of the appellant on September 13, 2010. Admittedly, transfer of 3,75,000 shares of Arvind International Limited constituted holding more than 5.35% shares of Arvind International Limited. Since no disclosure was made within 2 days of such acquisition, it was apparent that the appellant has violated regulation 7(1) and regulation 7(2) of SAST Regulations, 1997. Similarly, on *effecting retransfer, since disclosures were not made, appellant violated regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992. (emphasis supplied)*

21. In ***Bharat J. Patel and Ors. vs. SEBI*** (Appeal No.185 of 2018) dated November 26, 2019, it was contended by the appellants before the Hon'ble SAT that since the shares involved in the concerned matter were transferred and retransferred between the demat accounts of the members of the same family *inter alia* for margin purposes, the aforesaid transfers were beyond the scope of SAST Regulations and PIT Regulations. In this regard, while rejecting the aforesaid contention, the Hon'ble SAT held that:

"It is an admitted fact that the beneficial ownership in the shares was transferred at the various points of time which required to be disclosed by the appellant either to the Company or to the stock exchanges as per the regulations. Having failed in this, they would be liable for penalty."

22. Further, in ***Akriti Global Traders Ltd. vs. SEBI*** (Appeal No. 78 of 2014) decided on September 30, 2014, the Hon'ble SAT has 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". (emphasis supplied)

23. I note from the material available on record that the demat accounts involved in the two transactions executed by the Noticee in the present matter wherein the threshold of Rs 10 lakhs was exceeded were as follows:

#	Date	Client name and PAN	Client ID no.	Counterparty name and PAN	Counterparty Client ID no.	Quantity	Value in Rs and in lakhs*
1.	11/12/2017	Satish Kumar Agrawal PAN: ABBPA9216E	23205744	Satish Kumar Agrawal (SDM) PAN: ABHFM2440E	01947369	50,00,000	992.50
2.	14/12/2017	Satish Kumar Agrawal PAN: ABBPA9216E	23205744	Satish Kumar Agrawal (SDM) PAN: ABHFM2440E	01947369	82,00,000	1,553.90
						1,32,00,000	

**_ value = No. of shares x closing price of BSE Limited on the date of transfer.*

24. From the table given above, I find that with respect to the two transactions executed by the Noticee, the shares were transferred from the demat account of the Noticee against PAN ABBPA9216E to the demat account held against the PAN of SDM *i.e,* ABHFM2440E. Thus, I do not find any merit in the contention of the Noticee that the transactions undertaken by him were merely in the nature of correction of name in the records from the name of the Noticee to the name of SDM, as the transfer from one demat account to another demat account which does not solely belong to the Noticee indicates change in the ownership of the shares. To further elaborate the aforesaid reasoning, in the aforesaid two transactions, the ownership of shares was transferred from the Noticee to the Noticee, Gulab Chand Agrawal and Geeta Devi Agrawal (being the other partners of SDM). I find that my aforesaid view is strengthened by the orders of Hon'ble SAT discussed in detail above, therefore, I find that the first contention of the Noticee that the disclosure obligation under regulation 7(2)(a) is not attracted in the present matter devoid of merit as the aforesaid regulation demands disclosure not only in cases where there is sale involved in excess of Rs. 10 lakhs but in all cases where there is disposal of shares in excess of Rs. 10 lakhs.

25. With respect to the second contention, I note from the material available on record that the code of conduct framed by the Company under the provisions of PIT Regulations provides that the threshold limit with reference to the value of proposed trades for seeking pre-clearances before trading is Rs. 10 lakhs. I also note that the Noticee has contended that the Noticee being a designated person had not taken pre-clearance for the two transactions executed by him in excess of Rs 10 lakhs as the transactions undertaken were for the purpose of returning the shares belonging to SDM which were inadvertently being reflected as shares of the Noticee and the same did not amount to trade. In this regard, it is pertinent to note that regulation 7(2)(a) of the PIT Regulations contains the words "*value of the securities <u>traded</u>*" and "*aggregates to a <u>traded</u> value in excess of ten lakh rupees*". Accordingly, it becomes imperative to understand the meaning of the word "trade" under the PIT Regulations. The definition of the word "trading" under regulation 2(1)(l) of the PIT Regulations, reads as follows:

"Definitions.

2. (1)

(l)

"trading" means and <u>includes</u> subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, <u>deal in any securities</u>, and "trade" shall be construed accordingly ;

NOTE: Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the SEBI Act employs the term 'dealing in securities', it is intended to widely define the term "trading" to include dealing. <u>Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc when in possession of unpublished price sensitive information." (emphasis supplied).</u>

The allegation that the Noticee did not obtain pre-clearance with respect to the concerned two transactions has not been disputed by the Noticee. From the above, it is clear that the definition of the word "trade" is of wide amplitude and is not restricted to merely buying and selling of securities but also includes dealing in securities. In view of the inclusive definition of the word "trading" and the note appended to the definition explaining the legislative intent for including the term "dealing in securities", I find that the definition of the word "trading" covers under its ambit even transfers executed without consideration and therefore I do not find it difficult to dismiss the second contention of the Noticee that pre-clearance of trade was not required to be taken by the Noticee with respect to the two concerned transactions as there was no "trade/trading" under the PIT Regulations.

26. In the present case, as evident from the shareholding pattern available at the website of the stock exchanges for the quarter ending September 2017 and December 2017, for the public in general there was actually a transfer of shares from the demat account of the Noticee. The fact that the shares were transferred by the Noticee for the purpose of returning the shares to its rightful owner, does not absolve the Noticee from disclosing the transactions which brought his shareholding down to 6.69% from 8.48% in the Company within a span of three months. The disclosure requirements mandated under the PIT Regulations serves a significant purpose of informing the public at large regarding the shareholding of a company to enable them to make well-informed investment decisions as the company receiving the disclosures from the concerned persons will be in a position to submit external disclosures under regulation 7(2)(b) of the PIT Regulations to the stock exchange only after the concerned person submits the internal disclosure as required under regulation 7(2)(a) of the PIT Regulations. In view of the above, I conclude that that the allegation that the Noticee has violated regulation 7(2)(a) and clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations stands established due to the failure of the Noticee to make the disclosures within the time stipulated under the aforesaid regulation and for not obtaining pre-clearance for the concerned trades in accordance with the PIT Regulations.

(III) Issue No. III: If the answer to Issue No. I and II is in affirmative, whether the violation, on the part of the Noticee would attract monetary penalty under section 15A (b) and section 15HB of the SEBI Act?

27. I note that the Apex Court in the case of ***SEBI vs. Shri Ram Mutual Fund*** (Appeal Civil 9523-9524 of 2003) dated May 23, 2006 has 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."*

28. Further, Hon'ble SAT in the case of ***Mr. Ankur Chaturvedi vs SEBI*** (Appeal no. 434 of 2014), decided on August 04, 2015, has held that *"As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty".*

29. In view of the judgments/orders referred above and the fact that the Noticee has violated regulation 7(2)(a) of the PIT Regulations and clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations, I am of the view that a monetary penalty needs to be imposed upon the Noticee under sections 15A(b) and 15HB of the SEBI Act, which reads as under:

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, *[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], 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].*

** Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.*
*** Substituted for the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

Penalty for contravention where no separate penalty has been provided.

***15HB**. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder 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.]*

**** Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

(IV) Issue No. IV: If the answer to Issue No. III is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the SEBI Adjudication Rules?

30. While determining the quantum of monetary penalty under sections 15A(b) and 15HB of the SEBI Act, I have considered the factors stipulated in section 15J of the SEBI Act, which reads as under:

Factors to be taken into account while adjudging quantum of penalty

*While adjudging quantum of penalty under ****[15-I or section 11 or section 11B, the Board or 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 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.]*

***** Substituted for the words "section 15-I, the adjudicating officer" by the Finance Act, 2018 w.e.f. 08-03-2019.*

******Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.*

31. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage ensuing to the Noticee by not submitting the disclosures in time and by not obtaining pre-clearance for the transactions executed by him. It is also not possible to assess the consequent loss caused to investors as a result of the aforesaid default. With respect to repetitive nature of the default, it is important to note that the Noticee has violated the provisions of regulation 7(2)(a) and clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations on two occasions during the Investigation Period. Hence, the violations committed by the Noticee are repetitive in nature.

32. In the present matter, the facts of the case clearly establish the violation committed by the Noticee and I consider it necessary to impose monetary penalty which would act as deterrent to the Noticee in future.

E. ORDER

33. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakhs only) under section 15A(b) of the SEBI Act and Rs. 2,00,000/- (Rupees Two Lakhs only) under section 15HB of the SEBI Act *i.e,* total penalty Rs. 4,00,000 (Rupees Four Lakhs only) on the Noticee *i.e.,* Satish Kumar Agrawal. I am of the view that the penalty is commensurate with the violation committed by the Noticee.

34. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor 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

35. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format 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

36. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: December 24, 2021
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER