BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/VV/AK/2021-22/14594]

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

In respect of:

Servesh Gupta

(PAN: AGZPG4175B)

In the matter of

USG Tech Solutions Ltd

Background

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a reference from Bombay Stock Exchange (hereinafter referred to as "**BSE"** regarding the disclosure violations of certain promoter entities in the scrip of USG Tech Solutions Ltd (hereinafter referred to as the **"USG**"**/**"**Company"**) under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations"**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations"**) for the transactions in the period – December 03, 2013 to November 14, 2014. On the basis of reference from BSE regarding Disclosure Violation, investigation has been initiated by SEBI. The period of investigation is December 01, 2013 - September 30, 2015. In order to arrive at the complete disclosure violations including delayed disclosures and no disclosures, the entities' on-market transactions were reconciled with off-market transactions. Upon such reconciliation, SEBI observed multiple violations of PIT Regulations by the promoter entities of the Company. However no disclosure violations were observed under SAST Regulations during examination report.

Appointment of Adjudicating Officer

2. The undersigned was appointed as the Adjudicating Officer ("**AO"**) by vide order dated December 12, 2020, under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter, "**SEBI Act**") and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, "**Adjudication Rules**") to enquire into and adjudge under Section 15A(b) of SEBI Act for the alleged violations of Regulations 13(4A) read with 13(5) of PIT Regulations. It has been communicated by the communique dated December 18, 2020.

Show Cause Notice, Reply and Hearing

3. A Show Cause Notice bearing reference no. EAD-9/VV/AA/14448/5/2021 dated July 06, 2021 (hereinafter referred to as, "**SCN**") was issued to the Noticee under Rule 4 of the Adjudication Rules, calling it to show cause as to why an inquiry should not be held and penalty be not imposed on it under Section 15A(b) of the SEBI Act for alleged violation of disclosures obligations under Regulation 13(4A) read with 13(5) of PIT Regulations specified in the said SCN.

4. In response to the SCN, vide letter dated July 20, 2021 the Noticee had requested for the extension of time to submit reply to the SCN. Thereafter, in the interest of principles of natural justice and in terms of Rule 4(3) of the Adjudicating Rules, on considering the cause as mentioned in the present matter before me, an opportunity of hearing on September 17, 2021, along with extension to file reply to the SCN was granted to the Noticee vide hearing notice dated August 13, 2021. Vide letter dated August 28, 2021, the Noticee again requested for extension of time for written submission and to adjourn the scheduled personal hearing. Accordingly, in the interest of principle of natural justice, I acceded to the request made by the Noticee and the next date of hearing was granted to the Noticee on October 13, 2021. Thereafter, vide letter dated September 22, 2021, the Noticee filed its written reply to the SCN.

5. The key submission of Noticee as per the reply dated September 22, 2021 are summarised below:-

a. The present SCN is issued after a gap of almost 7 years from the date of alleged trades in USG. However, no reasons have been mentioned in the SCN for belatedly initiating present proceedings after an unexplained delay of almost 7 years, It is also pertinent to mention that the persons handling the subject matter of the present proceedings are no more associated with the Company. Further, no complete records/information is available with me. Hence, the present reply is being filed based on only bare minimum material/information/record available with me. Thus, the inordinate delay and absence of records / information is causing great prejudice to me in defending ourselves in present proceedings. In this regard, Notice has placed reliance on the orders of Hon'ble Securities Appellate Tribunal (Hereinafter referred to as "**SAT**") in the matter of Garware Polyester Ltd & Ors vs. SEBI (Appeal no. 187 of 2021, dated August 09, 2021), Parag Sarda vs. SEBI (Appeal no. 279 of 2020, dated September 29, 2021), Ashok Shivlal Rupani & Anr. vs. SEBI (Appeal No. 417 of 2018, dated August 22, 2019), Mr. Rakesh Kathotia vs. SEBI (Appeal No. 07 of 2016, dated May 27, 2019), Aditi Dalal, H B Stockholdings (SAT Appeal no. 114 of 2012), State of Gujarat v/s Patel Raghav Natha (AIR 1969 SC 1297).

b. Noticee stated that I am one of the promoters of USG and USG has regularly been filing the shareholding pattern as required under the Listing Agreement and that my shareholding was disclosed under the heading 'shareholding belonging to Promoter and Promoter Group' for the quarter ending September 2014, December 2014 and March 2015, wherein changes in my shareholding is being properly reflected and the same was also in public domain. Further, Noticee stated that appropriate disclosure under clause 35 of the Listing Agreement was filed by USG as per the Listing Agreement, wherein shareholding pattern of the promoter of USG was disclosed, whereby the public shareholders were made aware of the change in my shareholding in the Company. Hence, it is denied that there was any non-disclosure on my part.

c. Noticee submitted that the allegation of non-disclosure under Regulation 13(4A) of PIT Regulations for buying shares of USG wherein the triggering dates are 12.12.2014(3000 shares), 17.12.2014(6,000 shares), . In this regard, Noticee stated that whenever it had purchased 25,000 or more shares in USG, it had always made disclosure under Regulation 13(4A) of PIT Regulations. Below are the disclosures made by me under Regulation 13(4A) of PIT Regulations:

Date of Acquisition	**Qty of shares bought**
10.12.2013	25,000
11.12.2013	25,000
12.12.2013	29,956
03.02.2015	35,000
04.02.2015	30,000
11.02.2015	33,500
12.02.2015	38,700
18.02.2015	25,000

d. Hence, the information w.r.t. my shareholding was in public domain and no non-disclosure can be alleged on my part. The purchase of shares (for which non-disclosure is alleged) was also in public domain. Thus, whenever I have bought 25,000 shares or more in a single transaction, I have always made disclosure as required under PIT Regulations. However, as the alleged non-disclosure in the SCN pertains to shares less than 25,000 shares bought on various dates, no disclosure was made under PIT Regulations. It is pertinent to note that my buying of shares on various dates was any which ways in public domain and public at large were aware of my buy transactions. I humbly submit that I did not have any intention to conceal or hide my shareholding in USG from anyone.

e. With regard to allegation of 13(4A) of PIT Regulations, it is submitted that SEBI (Prohibition of Insider Trading) Regulation, 2015 which has replaced SEBI (Prohibition of Insider Trading) Regulations, 1992, has not stipulated the disclosure requirement for this type of transactions except disclosure of transactions more than Rs. 10 lakh in value in calendar quarter. Noticee also mentioned that SEBI vide circular dated 09.09.2020 bearing reference no. SEBI/HO/ISD/ISD/CIR/P/2020/168 has implemented system driven automation of continual disclosures under regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 whereby disclosures would be disseminated to stock exchanges on T+2 basis.

f. Noticee submitted that disclosure, if any, was technical in nature and due to inadvertence, devoid of any *malafide* intention. Further, no harm has been caused to any investor nor any loss has occurred. Moreover, mitigating circumstances in the form of subsequent mitigating circumstances in the form of subsequent amendments to the PIT Regulations and my regular compliance to PIT Regulations prior to and post the alleged transactions as mentioned in the SCN which further lessens the gravity of the violation. Noticee also placed reliance on

    i. Order dated 02.02.2017 passed by Hon'ble Whole Time Member (Hereinafter referred to as '**WTM'**), SEBI in the case of *Refex Industries Limited (formerly known as Refex Refrigerants Limited),* wherein WTM did not issue any directions against the promoter and director and inter-alia held that:
    "13. .. ...
        1. that the violation is un-intentional and not for consolidation;
        2. that the violation is technical and venial in nature; and
        3. that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation"

    ii. *Case of Reliance Industries Ltd. v SEBI (Appeal No. 39/2002)***:-** The company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, and then Hon'ble Securities Appellate Tribunal observed that "*The High Court in*

Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence, It ultimately depends on the facts of each case."

iii. *Akbar Badrudin Badrudin Jiwani vs. Collector of Customs, Bombay AIR 1990 SC 1579* It is noteworthy to mention wherein the Hon'ble Court had stated that :- Para 61: "*We refer in this connection the decision of Merck Spares v. Collector of Central Excise &; Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd.., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established."*

iv. Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 783; (AIR 1970 SC 2563) The Court held that: - "*The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where 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*".

6. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on WebEx platform on October 13, 2021. On the scheduled date of hearing, the authorized representative of the Noticee appeared before me and made submission on the lines of the reply dated September 22, 2021 of the Noticee in this matter. Further, authorized representative requested also take into account the post hearing submissions made by the Noticee along with aforesaid reply.

<u>Issues For Consideration and Findings</u>

7. I have carefully perused the documents available on record, and the issues that arise for consideration in the present case are:
    a. Whether the Noticee has violated the provisions of Regulations 13(4A) read with 13(5) of PIT Regulations?
    b. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act?
    c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act.

8. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations which reads as under:

<u>PIT Regulations</u>

Regulation 13.

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed, in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation and the change exceeds Rs. 5 lakhs in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.";

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

i. the receipts of intimation of allotment of shares, or
ii. The acquisition or sale of shares or voting rights, as the case may be.

Isuue 1: The first issue for consideration is whether the Noticee has violated Regulations 13(4A) read with 13(5) of PIT Regulations.

9. I note that the Noticee has raised technical objection w.r.t. delay of 7 years in initiation of the instant proceedings and he stated that the said delay has caused prejudice to him. In this regard, I note that SEBI received reference regarding the

disclosure violation of promoters entities in the scrip of USG by the vide letter dated May 06, 2015. Thereafter, on preliminary analysis of the data pertaining to the Company, a formal investigation for modified investigation period i.e. from December 01, 2013 to September 30, 2015 was initiated against the Company. In order to arrive at the complete disclosure violations including delayed disclosures and no disclosures, the entities' on-market transactions were reconciled with off-market transactions. Accordingly, as per approved action, Adjudication Proceedings has been initiated against the Noticees and a communique dated December 18, 2020 was issued to the undersigned regarding appointment as an Adjudicating Officer to initiate inquiry and adjudication in the matter. Thereafter, on receipt of records, the SCN to the Noticees have been issued on July 06, 2021 in this matter. I note that, initiating a proceeding under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of the fact finding exercise, which is the investigation done in this case, and just because the alleged violation was committed in a distant past cannot be a ground to vitiate initiation of these proceedings.

10. The Noticees have placed reliance upon various judgements of Hon'ble SAT and Hon'ble Supreme Court on the question of delay. In this regard, I note that there is no provision in the SEBI Act which lays down any limitation period for initiating any proceedings/ action under the SEBI Act. In the absence of any prescribed period of limitation period, it would not be appropriate to dismiss violation of law merely because of delay in proceedings. For establishing the delay, if any, in the matter, the date when the violation came to the notice of the SEBI would be the relevant point and not the date of violation. Whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. I further note that given the circumstances of the case, no prejudice is caused to the Noticee merely on account of delay in proceedings. In this regard, reliance has been placed on various Hon'ble SAT orders:

  a. **Bipin R Vora vs SEBI (order dated March 22, 2006)**

     "As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in

these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market".

b. **Ravi Mohan & Ors. vs SEBI (Appeal No. 97 of 2014 decided on December 16, 2015)**

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

c. **Vaman Madhav Apte & Ors. vs SEBI (Order dated March 04, 2016)**

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

d. **M/s. Adamina Traders Private Limited vs SEBI (Order dated December 15, 2021)**

"6. Having heard the learned counsel for the parties, we find that the trades in question are of the year 2013. The show cause notice was issued on September 28, 2017 by the WTM and January 18, 2018 by the AO. We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside."

11. I am of a view that, Hon'ble SAT has qualified the aforesaid ruling by saying 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. I am of the view that present proceedings do not suffer from any infirmity on the ground of delay. Further, the Noticees have failed to show that, how delay, if any, in the instant matter have caused prejudice to them. I, therefore, hold that there is no protracted delay as contended and hence, the contention of the Noticees in this regard is rejected.

12. After dealing with the technical objections of the Noticee, I come to the merit of the case and from the above quoted provisions of the PIT Regulations, I note that, Regulation 13(4A) specifically mandates a promoter(s) of a listed company to disclose any change in his holdings in a company, to the company and the stock exchanges from the last disclosure made by him, if such change results into – a) value of shares exceeding Rupees 5 Lacs; b) 25,000 shares; or c) 1% of total shareholding or voting rights where the shares of the company are listed, whichever is lower. Further, Regulation 13(5) mandates that the such disclosures

should be made within 2 working days of the receipts of intimation of allotment of shares, or the acquisition or sale of shares or voting rights.

13. From the fact of the case, I observe that the Noticee had acquired shares of the Company through various transactions and details of the Disclosure Triggering Transaction has been provided in following table:

S. No.	Disclosure Triggering Transaction			Holding As per last Disclosure	Post Transaction Holding	Net Shares Change	Cumulative Value of Acquisition	Regulation
	Date	Buy Volume	Buy Value					
1	12/12/2014	3,000	11,625	14,77,038 (3.75%)	15,02,638 (3.81%)	25,600 (0.06%)	1,09,690	13(4A)
2	17/12/2014	6,000	22,950	15,02,638 (3.81%)	15,32,838 (3.89%)	30,200 (0.08%)	1,17,254	13(4A)
3	22/12/2014	11,500	48,680	15,32,838 (3.89%)	15,64,638 (3.97%)	31,800 (0.08%)	1,29,496	13(4A)
4	31/12/2014	15,000	59,400	15,64,638 (3.97%)	15,89,638 (4.03%)	25,000 (0.06%)	1,00,400	13(4A)
5	20/02/2015	17,500	56,075	17,78,588 (4.51%)	18,09,088 (4.59%)	30,500 (0.08%)	96,370	13(4A)
6	25/02/2015	15,000	48,000	18,09,088 (4.59%)	18,40,088 (4.67%)	31,000 (0.08%)	1,00,020	13(4A)
7	27/02/2015	12,087	40,491	18,40,088 (4.67%)	18,67,105 (4.74%)	27,017 (0.07%)	89,076	13(4A)
8	03/03/2015	9,000	31,950	18,67,105 (4.74%)	18,96,105 (4.81%)	29,000 (0.07%)	1,00,450	13(4A)

14. From the above table, I note that, the aforesaid 8 transactions during the relevant period triggered the disclosure requirements under the Regulation 13(4A) of the PIT Regulations, as the threshold of acquisitions of 25,000 shares have been breached as per the requirements specified under the Regulation 13(4A) of the PIT Regulations. I further note from the Company email dated November 9, 2015 and BSE email dated March 10, 2016, that neither the Company nor BSE had received any disclosures from the Noticee under the aforesaid provision of the

PIT Regulations with respect to aforementioned transactions. In view of the above, I found that the Noticee has failed to make disclosure in terms of the provision of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations.

15. The Noticee has contended that, even though he failed to make the aforesaid disclosure, however, the information related to his acquisition or change in his shareholding in the Company was available in the public domain *via* quarterly disclosures made by the USG to BSE from time to time. In this regard, I have perused the quarterly disclosures available on BSE website and I note that the the quarterly disclosures made by the Company at the end of the quarter contain only the aggregate of the Noticee holding at end of that particular quarter, however, same does not reflect the changes as prescribed in under the Regulation 13(4A) of the PIT Regulations. I further note that, under Regulation 13(4A) the disclosure of the number of shares and change in shareholding is required to be made in "Form D". Form D, as specified under Regulation 13(4A) contains specific details about transactions of the concerned person such as: *Name, PAN No. & Address of Promoter, Shareholding/ Voting Right held by the Promoter, No. of shares/voting rights acquired/ sold, date of receipt of allotment advice/ acquisition of shares/ sale of shares specify, date of intimation to company, mode of acquisition (market purchase/ public/ rights/ preferential offer etc./ sale), No. & % of shares/ voting rights post acquisitions or sale, Trading Member through whom the trade was executed with SEBI registration no. of the TM, Exchange on which the trade was executed, Buy quantity, Buy Value, Sell quantity, sell value*.

16. It is noted that Regulation 13(5) of the PIT Regulations provide timeline of two days from the date of intimation/ acquisition/ disposal of shares. The quarterly disclosures as claimed by the Noticees do not adhere to such timelines as such disclosures, apart from being deficient with regard to the particulars as required under aforesaid Form D, was made after elapse of substantial time i.e. after the date of respective transactions. Here it is pertinent to note that Hon'ble SAT in the matter of **Premchand Shah and Others V. SEBI order dated February 21, 2011**, held that **-**"*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner...Non-disclosure of information in the*

prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments."

17. Further, I note that the information being in public domain through various disclosures made by the Company does not absolve the acquirer from making the relevant disclosure under the afore-mentioned regulations. In this context, I would like to rely on observation of Hon'ble Securities Appellate Tribunal ('SAT') in **Ambaji Papers Pvt. Ltd. vs the Adjudicating Officer, SEBI dated January 15, 2014,** wherein similar contention of information being in the public domain was raised by the appellant. Hon'ble SAT observed: *".... that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well*." Therefore, the quarterly disclosures as claimed by the Noticee cannot be taken as substitute for compliance of obligations of provisions of the PIT Regulations as charged in this case. Considering the same, I reject such contention of the Noticee in this regard.

18. Noticee has also contended that no unfair gain was made by the Noticee and no monetary loss was caused to the investors on account of non-compliance by the Noticee. I note that as per the impugned provisions of the PIT Regulations, the aforesaid factors as mentioned by Noticee are not relevant for establishing the violations. I also note that the Hon'ble SAT in the matter of *Komal Nahata vs. SEBI* dated January 27, 2014 held that: "*Argument that no investor has suffered on account of non-disclosure ....is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure.*" In view of the same, I do not find any merit in submissions of the Noticee.

19. In view of the above, I note that the Noticee has violated the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations.

Issue II. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act?

20. Noticee contended that failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant. In this regard, I note that the Noticee has not made disclosure to the BSE regarding the impugned transactions. Further, he has considered the quarterly disclosure made by the Company as a compliance under the PIT Regulations w.r.t. his impugned transactions. Being a Promoter of the Company it can be fairly assumed that he is well versed and aware of the statutory requirements under the SEBI Act, Rules, Regulations and circulars and in this case regarding disclosure requirements under the PIT Regulations. Further, the requirement of disclosure in change in shareholding of a promoter under the aforesaid provisions of regulations of the PIT Regulations has been clearly spelt out and discussed in detail in above paras and there is no ambiguity exist in this regard. I further note that, the Hon'ble SAT through various judgment has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT regulation. Hon’ble SAT in the matter of

    a. **Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014)**, had held that “………. *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.”*

    b. **E-Ally Consulting (India) Pvt. Ltd.& Ors. vs SEBI (Appeal No 203 of 2014 decided on August 06, 2014)**, wherein similar contentions were raised by the appellant in the case relating to violation of Regulation 30 (1) and 30 (2) of the SAST Regulations, 2011, Hon'ble SAT had held that: "*We see no merit in the above contentions. Obligations to make disclosures under Regulation 30 (1) and 30 (2) read with Regulation 30 (3) of SAST Regulations, 2011 is mandatory and is independent of the obligation to make the disclosures under the listing agreement. Similarly, fact that proper advise was not there or that the delay was unintentional/ without any fraudulent intention or there is no complaint from investors does not absolve appellants from their obligation to make the disclosures under SAST Regulations, 2011.*"

21. In the view of the above, I am of the view that disclosure requirement under Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations, as found in this case is neither technical nor venial in nature. Therefore, I am of the view that Noticee's reliance upon the judgments of *Refex Industries Limited (WTM order dated* 02.02.2017*), Hon'ble SAT judgment on Reliance Industries Ltd. v SEBI (Appeal No. 39/2002)* and Hon'ble Supreme Court judgments in the matter of *Akbar Badrudin Badrudin Jiwani V. Collector of Customs*, Bombay AIR 1990 SC 1579, *Hindustan Steel Ltd. v State of Orissa*, (1970) 1 SCR 753; (AIR 1970 SC 2563) is not applicable in terms of the peculiar facts of this case.

22. I further note that Hon'ble Supreme Court of India, in the matter of Chairman, *SEBI vs. Shriram Mutual Fund [2006] 5 SCC 361* held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

23. In view of the foregoing findings, I am convinced that the Noticee is liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulations 13(4A) read with 13(5) of PIT Regulations.

SEBI Act 15A - "Penalty for failure to furnish information, return, etc. –

If any person, who is required under this Act or any rules or Regulations made there under-

(a) *……………………………………………………….……………………….*

(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 III. what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act.

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

    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.

25. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. The facts of the case clearly bring out the default by Noticee in making timely disclosures

of change in his shareholding in the Company to the Noticee. Further, the default of the Noticee is found to be repetitive in nature. I note that, in the matter of - **Milan Mahendra Securities Pvt. Ltd. vs. SEBI [2006] SAT 268** –the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."* I further note that, the law does not permit any allowance to be made for such act of non-disclosure as found in this case. While noting so, I am aware of the fact that the default in question in this case relates to a period of 2013 - 2015 and which can be a mitigating factor in this case. I have also taken note that the details of shareholding of Noticee was available through quarterly shareholding disclosure to stock exchanges by the Company and same can also be a mitigating factor in this case.

ORDER

26. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Rules, I hereby impose a penalty of **Rs 1,00,000/-** (Rupees One lakh only) on the Noticee i.e. Servesh Gupta, in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

27. 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 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.

28. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department -DRA-1), the Securities and Exchange Board of India,

SEBI Bhavan, Plot No. C4 –A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount	

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, 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.

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

Date: December 28, 2021 **Vijayant Kumar Verma**

Place: Mumbai **Adjudicating Officer**