BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/PM/PA/2021-22/14890

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:

Nitin Kumar Gupta
PAN: AHGPG2237A

In the matter of Mindtree Ltd.

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") received a letter dated October 26, 2018 from Mindtree Ltd. (hereinafter referred to as the "**Company**") informing SEBI regarding instances of violation of the code of conduct framed by the Company under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "**PIT Regulations**") by two of its employees and action taken by the Company pursuant to the same. Accordingly, SEBI initiated an examination in the matter against the said two employees.

2. SEBI also initiated a separate investigation for ascertaining any violation of regulation 7(2)(a) of the PIT Regulations with regard to the transactions of promoters, directors and employees of the Company, in the Company's scrip, during the period from January 01, 2019 to March 31, 2019 (hereinafter referred to as the **"Investigation Period"/"IP"**).

3. The investigation revealed that Nitin Kumar Gupta (hereinafter referred to as the "**Noticee**") was an employee of the Company and had transacted in the Company's scrip on multiple occasions, including during the Investigation Period. It was further observed that the Noticee had done transactions aggregating to a traded value in excess of Rs 10,00,000 over a calendar quarter.

4. Thereafter, the Company was asked to confirm whether the Company or its compliance officer had received any disclosures for trading done by the Noticee in terms of regulation 7(2)(a) of the PIT Regulations. *Vide* emails sent on December 07, 2020 and December 14, 2020 (hereinafter referred to as the "**December 2020 Replies**"), the Company confirmed that it had not received any disclosures from the said Noticee. In view of this communication, it was *prima facie* observed that the Noticee had failed to make the required disclosure under regulation 7(2)(a) of the PIT Regulations. Thereafter, SEBI initiated adjudication proceedings against the Noticee for the alleged violation of regulation 7(2)(a) of PIT Regulations in respect of the transactions in the Company's scrip under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**").

B. APPOINTMENT OF ADJUDICATING OFFICER

5. Pursuant to the investigation, SEBI initiated adjudication proceedings against the Noticee and appointed the undersigned as the adjudicating officer *vide* order dated March 04, 2021 under section 19 of the SEBI Act read with sub-section (1) of section 15-I 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 section 15A(b) of the SEBI Act for the alleged violation of regulation 7(2)(a) of the PIT Regulations by the Noticee.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

6. A show cause notice (hereinafter referred to as "**SCN**") bearing reference no. EAD-8/PM/NJMR/20484/1/2021 dated August 23, 2021 was served on the Noticee under rule 4 of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held against him in terms of rule 4 of the SEBI Adjudication Rules and penalty should not be imposed under section 15A(b) of the SEBI Act for the violation alleged to have been committed by him. In the SCN, the Noticee was asked to indicate whether he would prefer a personal hearing before the adjudicating officer in the matter. I note that the SCN was duly served on the Noticee.

7. The allegations levelled against the Noticee in the SCN are summarized below as follows:

   (i) SEBI *vide* email sent on August 03, 2020, called upon the Company, to provide the names and PAN of its employees, promoters, directors and persons falling under the purview of regulation 6(2) of the PIT Regulations for the period January 01, 2019 to March 31, 2019, duly certified as true and correct by their compliance officer.

   (ii) The Company *vide* emails sent on August 07, 2020, August 10, 2020, August 12, 2020, August 25, 2020 and August 26, 2020 submitted the list of their promoters, directors, designated persons, their relatives and employees in India for the period January 01, 2019 to March 31, 2019.

   (iii) On receipt of the aforesaid data from the Company, SEBI conducted an analysis of the trading data received from the BSE Limited (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") with respect to the employees of the Company, in the Company's scrip, and it was observed that the Noticee had executed transactions aggregating to a traded value in excess of Rs 10,00,000 in a calendar quarter *i.e.,* from January 01, 2019 till March 31, 2019.

(iv) In terms of regulation 7(2)(a) of the PIT Regulations, as it existed at the time the Noticee committed the alleged violation, promoters, employees and directors of every company were required to disclose to the company the number of 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, aggregated to a traded value in excess of Rs 10,00,000.

(v) However, it was observed that the Noticee did not disclose his transactions in Company's scrip which exceeded Rs 10,00,000 in value in the calendar quarter from January 01, 2019 to March 31, 2019 to the Company, as confirmed by the Company, *vide* the December 2020 Replies.

(vi) Given the above, it was alleged that the Noticee had violated regulation 7(2)(a) of the PIT Regulations. The alleged violation, if established, makes the Noticee liable for monetary penalty under section 15A(b) of the SEBI Act.

8. The Noticee *vide* emails sent on September 07, 2021 and November 14, 2021 submitted his reply to the SCN. The submissions of the Noticee are summarized hereunder:

(i) The Noticee denies all allegations and charges made against him in the SCN unless specifically admitted by him.

(ii) The Noticee was an employee of the Company from June, 2016 to August, 2021.

(iii) The transactions executed by the Noticee during the IP on NSE are provided below:

S.No	Date	Buy Quantity	Buy Rate	Buy Amount
1.	01.01.2019	600	860.60	5,16,360
2.	04.01.2019	600	836.20	5,01,720
3.	04.01.2019	600	834.70	5,00,820
4.	04.01.2019	600	833.20	4,99,920
TOTAL BUY VALUE				**20,18,820**
5.	01.01.2019	600	865.35	5,19,210
6.	04.01.2019	600	796.20	4,77,720
7.	04.01.2019	600	796.20	4,77,720
8.	04.01.2019	600	795.95	4,77,570
TOTAL SALE VALUE				**19,52,220**

(iv) During his employment, the Noticee was not involved in the day to day affairs or management of the Company. The transactions executed by him were not based on any unpublished price sensitive information of the Company.

(v) The value of the transactions is high as the transactions undertaken by the Noticee were in derivatives. The Noticee was under the *bona fide* belief that for transactions where he had suffered a loss of Rs 66,600, he was not required to make any disclosures.

(vi) Without prejudice to the contention that the Noticee did not commit any violation, the lapse in making disclosures was technical and inconsequential in nature.

(vii) The Noticee has made the disclosure to the stock exchange in Form C on February 12, 2021 pursuant to regulation 7(2) read with 6(2) of the PIT Regulations.

(viii) The Noticee was directed to pay a penalty of Rs. 30,000 to SEBI Investor Education and Protection Fund (IEPF) by the Company and he has remitted the same.

(ix) In absence of deliberate and contumacious defiance of law, where there is a technical or venial breach, coupled with *bona fide* belief and absence of *mens rea*, the adjudicating officer is empowered to exercise statutory discretion to not impose penal sanctions pursuant to section 15J of the SEBI Act.

(x) The ordinary rule that penalty is attracted as soon as contravention of statutory obligation is established, rendering the intention of the party committing the violation irrelevant, has no application where a statutory discretion is conferred upon the adjudicating authority. The principles of *mens rea* has full application. Further, the principles of fairness demands that reasonable benefit of doubt should be afforded to the Noticee, where no *mala fide* intention exists.

(xi) The penalty imposed should not be disproportionate to the gravity of the offence. In the present matter, there was neither disproportionate gain made by the Noticee nor any loss caused to the investor. The adjudicating officer must have due regard to the factors stipulated under section 15J of the SEBI Act while deciding the quantum of penalty. With respect to section 15J of the SEBI Act, the Noticee has submitted that:

(a) The Noticee has not made any disproportionate gain or unfair advantage due to the transactions. The SCN does not establish the same.

(b) The Noticee has not been penalized previously for any violation of regulations or rules by SEBI.

(c) The Noticee has not caused loss to any investors. The SCN fails to establish how the transactions have caused loss to investors or impacted the securities market.

(d) The Noticee has suffered a loss of Rs 66,600.

(e) The Noticee has paid Rs 30,000 to the SEBI Investor Education and Protection Fund (IEPF).

(f) The alleged default is not repetitive in nature.

(g) Absence of *mens rea* should be factored in.

(xii) The Noticee reserves his right to seek inspection of all documents collected by SEBI preceding, during and following the investigation including *inter alia* the investigation report, internal notings and orders.

9. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on November 16, 2021 *vide* notice of hearing sent *vide* email on November 08, 2021. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on cisco webex platform. *Vide* the aforesaid notice of hearing, the Noticee was informed that the documents that have been relied upon for issuing the SCN have already been attached as annexures to the said SCN, therefore his request for inspection of *inter alia* investigation report, internal notings and orders cannot be acceded to. For the above, reliance was placed by me on the decisions of Hon'ble Securities Appellate Tribunal (SAT) in ***Mayrose Capfin Private Limited vs. SEBI*** (Appeal No. 20 of 2012) decided on March 30, 2012 and ***Shruti Vora vs. SEBI*** (Appeal (L) No. 28 of 2020) dated February 12, 2020. *Vide* email sent on November 14, 2021, the Noticee informed me that he does not desire a personal hearing in the present matter. Proviso of sub-rule (5) of rule 4 of the SEBI Adjudication Rules provides that at the request of the

concerned person, the adjudicating officer is authorised to waive the opportunity of personal hearing. Given the Noticee's request in the aforesaid email, by virtue of the powers conferred on me *vide* proviso of sub-rule (5) of rule 4 of the SEBI Adjudication Rules, the hearing was waived off in respect of the Noticee. In view of the above, I find it appropriate to proceed against the Noticee based on the material available on record.

D. CONSIDERATION OF ISSUES AND FINDINGS

10. I have taken into consideration the facts and material available on record. The issues that arise for consideration in the present case are as follows:

    I. Whether the Noticee has violated regulation 7(2)(a) of the PIT Regulations?

    II. Does the violation, if any, attract monetary penalty under section 15A(b) of the SEBI Act?

    III. If the answer to Issue No. 2 is in affirmative, then what should be the quantum of monetary penalty?

I. Issue No. 1: Whether the Noticee has violated regulation 7(2)(a) of the PIT Regulations?

11. Before moving forward, it is pertinent to refer to the relevant provision of the PIT Regulations which is alleged to have been violated by the Noticee. The said provision is reproduced hereunder:

Disclosures by certain persons.

7. (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**").*

12. I note from the material available on record that the Noticee was an employee of the Company during the Investigation Period. On perusal of the transaction details of the Noticee, I note that the Noticee had traded in excess of Rs 10,00,000 in the Company's scrip during the Investigation Period (*i.e.,* calendar quarter beginning from January 01, 2019 to March 31, 2019). The details of the said trades of the Noticee are tabulated below:

Traded value at NSE cash segment (in Rs)	Traded value at NSE derivatives segment (in Rs)	Traded value at BSE cash segment (in Rs)	Total traded value (BSE and NSE) (in Rs)	No. of occasions transactions executed
0	3,971,040	0	3,971,040	2

13. I note from the table given in the paragraph above that the Noticee had executed two transactions through which the total traded value of the Noticee in the said calendar quarter amounted to Rs. 3,971,040 which is in excess of Rs 10,00,000. I find that the Noticee has admitted that the total traded value of the transactions executed by him during the IP was Rs 3,971,040, since the Noticee has arrived at the same figure in his reply as provided in paragraph 8(iii) above.

14. Regulation 7(2)(a) of the PIT Regulations, as it existed at the time the Noticee committed the alleged violation (*i.e.,* before the PIT 2018 Amendment Regulations came into force), provides that certain specified entities (such as employees) are required to submit disclosures to the company within two trading days of transactions, if the value of the securities traded, in one transaction or a series of transactions, aggregates to a traded value in excess of Rs 10,00,000 over any calendar quarter.

15. I note from the reply of the Noticee that the Noticee has admitted the following: (i) he was an employee of the Company during the Investigation Period; (ii) he had executed trades in excess of Rs 10,00,000; and (iii) he had not filed the requisite disclosures within the time stipulated under regulation 7(2)(a) pursuant to the trades executed by him. I note from the material available on record that the Company *vide* the December 2020 Replies has confirmed that the Noticee did not submit the disclosure within the time specified under the aforesaid regulation for the trades undertaken by him during the Investigation Period.

16. Coming to the submissions of the Noticee, beginning with paragraph 8(iv), the Noticee has submitted that he was not involved in the management of the Company and the trades executed by him were not pursuant to any unpublished price sensitive information of the Company. In this regard, I find that the alleged violation committed by the Noticee pertains to the period extending from January 01, 2019 to March 31, 2019. The PIT 2018 Amendment Regulations which substituted the word “employee” with “designated person” under regulation 7(2) (a) came into effect from April 01, 2019, therefore the provisions of the PIT 2018 Amendment Regulations do not apply to the Noticee. In light of this, I find that the aforesaid submission of the Noticee irrelevant to the facts of the present matter since the words of regulation 7(2)(a) as it existed at the time the Noticee committed the alleged violation were crystal clear that the regulation demands continual disclosures from all employees irrespective of the position/designation the employee occupies in the company and the level

of access the employee possesses with respect to the information of the company. Therefore, I do not find any merit in this submission of the Noticee.

17. As summarized in paragraph 8(v), the Noticee has contended that he was under the *bona fide* belief that since he had suffered a loss of Rs 66,600, he was not required to submit any disclosures. In this regard, I find that it is an established legal principle that "*ignorantia juris non excusat*" which translates into ignorance of law is no excuse. In ***Madanchand Prasan Chand Chordia vs. SEBI*** (Appeal No. 134 of 2014), dated June 16, 2014, the Hon'ble SAT has held that: *"The main contention of the appellant, who has appeared in person before us, <u>is that he was not aware about the requirement of law in making disclosure as a part of SAST Regulations, 2011 and PIT Regulations, 1992. We note that ignorance of law is not an excuse</u>." (emphasis added)*

18. Moving on, as provided in paragraph 8(vi), the Noticee has contended that the lapses in making disclosures with respect to the concerned transactions were technical and inconsequential in nature. However, I find that any transaction which requires compliance under the PIT Regulations, if not complied within the timeline stipulated, is always a serious matter, and cannot be considered a mere "technical" or "inconsequential" violation, since due to the conduct of the Noticee, other shareholders/investors were deprived of the information. In this regard, in ***Shri Virendrakumar Jayantilal Patel vs. SEBI*** (Misc. application No.140 of 2014 and appeal No.299 of 2014) dated October 14, 2014, the appellant had contended that the failure to make disclosures *inter alia* under the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations 1992**") was "*technical, unintentional and inadvertent*" as the shares sold by the appellant were reported on BSE in the bulk deal data and shareholding pattern related disclosures were filed by the company which meant that the information regarding the transactions undertaken by

the appellant was publically available. The Hon'ble SAT rejected the aforesaid argument and held that:

"Argument that requisite particulars of sale in question were available on the website of the Stock Exchange and therefore for failure to make disclosures within the stipulated time penalty ought not to have been imposed, <u>is without any merit, because, obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligatio</u>n. Similarly argument that the failure to make disclosures within the stipulated time<u>, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit,</u> because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.". (emphasis added)

I note from the material available on record that the Company had not notified the stock exchanges regarding the transactions undertaken by the Noticee within the time stipulated under regulation 7(2)(b) of the PIT Regulations, thus, the defence that that the alleged violation of regulation 7(2)(a) is "technical" or "inconsequential" cannot be sustained as the investors, shareholders and the public in general were completely oblivious to the transactions of the Noticee.

In ***Ambaji Papers Pvt. Ltd. and Ors. vs. The Adjudicating Officer, SEBI*** (Appeal no. 201 of 2013) decided on January 15, 2014, an appeal was preferred before the Hon'ble SAT challenging penalty of Rs 5 lakhs each imposed on the appellants by the adjudicating officer *inter alia* for the violation of PIT Regulations 1992. It was contended by the appellants that the information relating to the acquisition by the appellants was already present in the public domain. The Hon'ble SAT reduced the penalty from Rs 5 lakhs each to Rs 1 lakhs each and held that:

"….<u>Indeed the underlying objective of regulation 7 of the SAST Regulations read with Regulation 13 of the PIT Regulation had already been achieved in as much as the company kept the stock exchanges as well as shareholders and the public at large duly informed</u> about the developments of allotment of preferential warrants and their conversion into shares to the appellants.

....To this extent, the appellants, though inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. <u>The infraction, although venial in nature, is an infraction nonetheless</u>....." (emphasis added)

In ***Shri Virendrakumar Jayantilal Patel (supra)*** order, as discussed above, the contention that the violation was "technical" as the information regarding the transactions of the appellant existed in public domain was rejected by the Hon'ble SAT. However, in the aforesaid case, the key consideration to arrive at the finding that the violation was "venial" was due to the disclosures made by the company which led the Hon'ble SAT to hold that the underlying objective of the PIT Regulations 1992 was fulfilled. In contrast to the aforesaid case, with respect to the Noticee, as brought out earlier, even for the sake of argument, it cannot be said that the objective of the PIT Regulations was satisfied as information regarding the transactions of the Noticee was not in public domain within the time required as the Company did not made the requisite disclosure. Thus, I find that by no stretch of imagination, the obligation of the Noticee to comply with regulation 7(2)(a) of the PIT Regulations can be considered as "technical" or "inconsequential".

19. Lastly, I note that the Noticee in his reply has submitted that he has made the disclosure under regulation 7(2)(a) of the PIT Regulations to the stock exchanges on February 12, 2021. In order to verify the receipt of the aforesaid disclosure, I have perused the website of BSE and NSE. I note

from the BSE website that with respect to the concerned trades the date of intimation to the Company is reflected as February 13, 2021 whereas on the NSE website no date of intimation to the Company is being reflected, however, the date of broadcast by NSE is shown as February 15, 2021. I find that submission of requisite disclosure to the stock exchanges after nearly two years does not help the case of the Noticee as the violation of regulation 7(2)(a) was triggered as soon as the transactions exceeding traded value of Rs 10,00 000 were not disclosed to the Company within two trading days.

20. The requirement to submit disclosures under the PIT Regulations in the manner prescribed and within the stipulated time is sacrosanct as they enable the public to make an informed investment decision in a timely manner. By not submitting the requisite disclosures in the time specified, the concerned persons deprive the investing public of their statutory rights. Further, the disclosure also enables the regulator to properly monitor the transactions in the capital market to regulate the same effectively. Thus, I find that the aforesaid violation by the Noticee affects multiple stakeholders and impacts the entire securities market. In view of the above, I conclude that the allegation that the Noticee has violated regulation 7(2)(a) of the PIT Regulations stands established due to his failure to make the requisite disclosures within the time stipulated pursuant to executing transactions in excess of Rs 10,00,000 during the Investigation Period.

II. Issue No 2: Does the violation, if any, attract monetary penalty under section 15A(b) of the SEBI Act?

21. I note that the Noticee has contended in his reply as reproduced in paragraph 8(ix) that the adjudicating officer is empowered to exercise his statutory discretion to not impose penalty, when there is a technical or venial breach coupled with (i) *bona fide* belief that the offender is not liable to act in the manner prescribed by the statute; (ii) absence of *mens rea*; and (iii) absence of deliberate and contumacious defiance of law. In this

regard, as discussed in paragraph 18 above, I find that violation of regulation 7(2)(a) of the PIT Regulations by the Noticee cannot be considered as "technical" or "venial" in nature. Therefore, I find no difficulty in dismissing this submission of the Noticee.

22. As provided in paragraph 8(x), the Noticee has contended that the intention of the party committing the violation becomes relevant when statutory discretion is conferred upon the adjudicating authority and in such a case penalty would not be attracted as soon as contravention of statutory obligation is established. The Noticee has also contended that benefit of the doubt should be afforded to the Noticee as no *mala fide* intention exists on his part. In this regard, I find it appropriate to place reliance on the landmark decision of ***The Chairman, SEBI vs. Shriram Mutual Fund and Ors.*** (Civil Appeal Nos. 9523-9524 of 2003), decided on May 23, 2006, wherein the Hon'ble Supreme Court has held that:

"The Scheme of the SEBI Act of imposing penalty is very clear. <u>Chapter VI nowhere deals with criminal offences</u>. These defaults for failures are nothing, but failure or default of statutory civil obligations provided under the Act and the Regulations made thereunder. It is pertinent to note that Section 24 of the SEBI Act deals with the criminal offences under the Act and its punishment. Therefore, the proceedings under Chapter VI A are neither criminal nor quasi-criminal. The penalty leviable under this Chapter or under these Sections, is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation. <u>In the provisions and scheme of penalty under Chapter VI A of the SEBI Act, there is no element of any criminal offence or punishment as contemplated under criminal proceedings. Therefore, there is no question of proof of intention or any mens rea by the appellants and it is not essential element for imposing penalty under SEBI Act and the Regulations.</u>

<u>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</u>. A breach of civil obligation which attracts penalty in the

nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. <u>We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not</u>……

In our view, the impugned judgment of the Securities appellate Tribunal has set a serious wrong precedent and <u>the powers of the SEBI to impose penalty under Chapter VIA are severely curtailed against the plain language of the statute which mandatorily imposes penalties on the contravention of the Act/Regulations without any requirement of the contravention having been deliberated or contumacious</u>. The impugned order sets the stage for various market players to violate statutory regulations with impunity and subsequently plead ignorance of law or lack of mens rea to escape the imposition of penalty. <u>The imputing mens rea into the provisions of Chapter VI A is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations.</u>" (emphasis added)

I find that the aforesaid submission of the Noticee is contrary to the fundamental understanding of the SEBI Act. The Supreme Court in the aforesaid case has unambiguously stated that importing *mens rea* or question of intention into Chapter VIA of the SEBI Act would defeat the purpose of the said chapter in the SEBI Act. In view of the above, I am not inclined to accept the aforesaid contention of the Noticee.

23. At this juncture, I also find it relevant to refer to the following decisions of the Hon'ble SAT:

(i) In ***Mr. Ankur Chaturvedi vs. SEBI*** (Appeal no. 434 of 2014) decided on August 04, 2015, the appellant had argued that the penalty imposed by the adjudicating officer should be set aside or reduced *inter alia* on the ground that the failure of the appellant to submit the disclosure under PIT Regulations 1992 was not due to any *mala fide* intention. The Hon'ble SAT did not see any merit in the aforesaid contention and 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….".*

(ii) In ***Akriti Global Traders Ltd. vs. SEBI*** (Appeal no.78 of 2014), decided on September 30, 2014, the Hon'ble SAT has held that "*Argument of appellant that the <u>delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit</u>, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay..". (emphasis added)*

(iii) In ***Mrs. Urvashi Ashok Kadakia vs. SEBI*** (Appeal No. 125 of 2014) dated June 12, 2014, the Hon'ble SAT held that: *"<u>Obligation to make disclosures under PIT Regulations, 1992 is</u> <u>irrespective of any loss caused to the investors and</u> <u>irrespective of appellant gaining any unfair advantage on account of such non disclosure</u>. <u>Hence failure to make disclosure would incur penal liability.</u> Penalty under section 15A(b) of Securities and Exchange Board of India Act, 1992 for violating PIT Regulations, 1992 calculated at the rate of ` 1 lac per day would in the facts of present case be more than 1 crore of rupees. However, AO after taking all mitigating factors has imposed penalty of ` 4 lacs only which cannot be said to be perverse or arbitrary.*

For all the aforesaid reason, we see no reason to entertain the present appeal…." (emphasis added)

(iv) In ***Komal Nahata vs. SEBI*** (Appeal No. 5 of 2014), decided on January 27, 2014, the Hon'ble SAT has held that, "*Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure. In view of the same, the submissions of the Noticee that disclosure violations have not caused any loss to any investor and have not affected the shareholders of the Company in any manner cannot be accepted…" (emphasis added)*

(v) In ***Gaylord Commercial Company Limited vs. Securities and Exchange Board of India*** (Appeal No. 62 of 2014), decided on dated April 10, 2014, the appellant was penalised for disclosure violation under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. However, the ratio of the Hon'ble SAT holds relevance in the present case as well, it held that *"…..Argument that the appellant is a small company and has not violated any provisions in the past, that the delay in making disclosures has neither caused any loss to investors nor the appellant has gained any benefits on account of delay in making disclosures do not merit consideration, because, liability to pay penalty under Section 15A(b) of SEBI Act, 1992 has to be computed on the basis of each day during which the failure to comply with the regulation has continued and liability to pay such penalty is not dependent upon the fact as to whether such failure has occurred for the first time or not. Similarly, fact that no loss has occurred to the investors or that the appellant has not gained on account of delay in* *making disclosures would not be a ground for the appellant to escape penalty for failure to make disclosure within the stipulated time However, those factors being mitigating factors, AO after considering all those mitigating factors has imposed penalty of Rs 2 lac as against penalty of Rs 1 crore imposable upon the appellant, which is fair and reasonable." (emphasis added)*

24. Taking into account the judgments/orders referred above and the fact that the Noticee has violated regulation 7(2)(a) of the PIT Regulations as established in the preceding paragraphs, I am of the view that a monetary penalty needs to be imposed upon the Noticee under section 15A(b) 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, [3][or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to a penalty [4][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].*

[3] Inserted by the Finance Act, 2018 w.e.f. 08-03-2019.
[4] 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.

III. Issue No 3: If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

25. While determining the quantum of monetary penalty under section 15A(b) of the SEBI Act, I have considered the factors stipulated in section 15-J 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 [5][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.

[6] [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.]

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

[6] 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.

26. I have carefully considered the factors submitted by the Noticee in his reply as provided in paragraph 8(xi) above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of the Noticee in submitting timely disclosures or 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 regulation 7(2)(a) of the PIT Regulations on two occasions during the Investigation Period. Hence, the violation committed by the Noticee is repetitive in nature. Further, I note that the Noticee has claimed that he has remitted Rs 30,000 to the Investor Education and Protection Fund (IEPF) with respect to the disclosure violation in the present case.

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

E. ORDER

28. After taking into consideration the nature and gravity of the violation 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 1,00,000 (Rupees One Lakh Only) on the Noticee *i.e.,* Nitin Kumar Gupta under section 15A(b) of the SEBI Act. I am of the view that the penalty imposed on the Noticee is commensurate with the violation committed by the Noticee.

29. 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

30. 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

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

Date: February 01, 2022
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER