BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/GR/RK/2021-22/14390-14395]

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:

Noticee No.	Name of the Noticee	PAN
1	Rajni Sharadchandra Tagde	AMOPT3346E
2	Ratish Sharadchandra Tagde.	AAZPT7580P
3	Kalyany Ratish Tagde	ARDPT6899G
4	Atharva Ratish Tagde	ARDPT6911H
5	Perfect Company Advice P Ltd.	AADCP8209L
6	Raga Café LLP	AAPFR2391N

In the matter of**:**

M/s Perfect Octave Media Projects Ltd.

(The aforesaid Noticees are hereinafter referred to by their respective names/ Numbers or collectively as "**the Noticees**")

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination in the matter of Perfect Octave Media Projects Ltd.,

(hereinafter referred to as **'Company/Target Company'**). The examination was to ascertain whether there was any violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**') by certain entities during the period of January 01, 2016 to December 31, 2016 (hereinafter referred to as '**examination period**').

2. During the examination, it was observed that the Noticees had made delayed disclosures under SAST Regulations 2011, w.r.t. change in their shareholding in during the period June 2016 to September 2016. Hence, it was alleged that the Noticees had violated Regulations 29 (2) read with 29 (3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer ('**AO**') vide order dated February 12, 2021, under Section 19 read with Section 15-I of 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) the alleged violation of Regulations 29 (2) read with 29 (3) of SAST Regulations 2011 by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice dated August 05, 2021 (hereinafter, "**SCN**") was issued to the Noticees 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 them under Section 15A(b) of the SEBI Act for alleged violation specified in the said SCN. In response to this, the Noticees vide their email dated August 18, 2021 submitted their reply to the SCN which is summarized as below:

"We confirm that we made disclosures and revised disclosures regarding the sale made by us (all family members and LLPs belonging to the family) during the months of August/September 2016. We had to make the revised disclosures as there were

certain errors in the original disclosure regarding the number of shares sold. We have no comments to offer on the communication with BSE.

we would like to confirm that there was no error with regard to the details given of the number of shares sold and the number of shares held / percentage of voting held by the entities after the sale. The disclosure was made in the wrong format and hence we rectified the same by filing the details in the correct format on February 06, 2017.

we request you to kindly consider our original date of filing the disclosures, as compliance as we had every intent to comply and there were no mistakes regarding the number of shares sold. In order to ensure that the errors in making the disclosures in the wrong format be corrected we made the revised disclosures and hence we request you to kindly excuse this anomaly and consider the disclosures as due compliance.
we request you to kindly consider our intent to comply and further make the revised disclosures to ensure that there were no errors in the format in which the filings were made to the stock exchange and drop the charges that we have violated the provisions of Regulation 29(2) of the SEBI (SAST) Regulations, 2011."

5. Subsequently, vide email dated August 23, 2021, an opportunity of personal hearing was granted to the Noticees on September 01, 2021. The said hearing was attended by Authorised Representative ('**AR**') of the Noticees, in which it reiterated the submissions made by the Noticees vide their aforesaid email dated August 18, 2021.

6. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticees ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticees.

ISSUES FOR CONSIDERATION AND FINDINGS

7. I have carefully perused the submissions made by the Noticees and documents available on record, and the issues that arise for consideration in the present case are:

   a. Whether the Noticees have violated the provisions of Regulations 29 (2) read with 29 (3) of SAST Regulations, 2011?
   b. Does the violation, if any, on the part of the Noticees 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 SAST Regulations 2011, which reads as under:

SAST Regulations 2011

Regulation 29

(2)) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to, — (a)every stock exchange where the shares of the target company are listed; and(b)the target company at its registered office.

FINDINGS

9. During the examination, upon perusal of the BSE website, it was observed that the Noticees had made several disclosures w.r.t. change in their shareholding during the period June 2016 to September 2016. In this regard, BSE vide email dated Sep 26, 2019 was requested to provide the date & copy of disclosures made by the Noticees for the said period.

10. In reply to this, BSE vide its email dated Sep 27, 2019 provided the details of the disclosures along with the copies thereof. Upon perusal of the same, it was observed that for their change in shareholding during the said period, the Noticees had initially made disclosures in incorrect format ('**original disclosers**'), so after sometime they had filed the revised disclosures in the correct format as per their letter dated Feb 02, 2017 to BSE on Feb 06, 2017.

11. Changes in the promoter group shareholding and the delay in making the disclosure in terms of the requirements of Regulations 29(2) read with Regulation 29(3) of Takeovers Regulations, 2011 is as under:

Table - B

Transaction Date	Promoter Holding prior to txn	Holding prior to txn in %	Change in shareholding	% of change in shareholding	Promoter holding after Txn	Holding After Transaction %	Due date of compliance Under Reg. 29(2)	Details of disclosures to BSE	Delay
09-Aug-16	13787369	39.73	-960000	2.77	12827369	36.96	Aug 11, 2016	Revised disclosure in correct format made to BSE on Feb 06, 2017, however initial disclosures date to BSE is Aug 19, 2016.	179 days

26-Aug-16	11427369	32.93	-3379920	9.74	8047449	23.19	Aug 30, 2016	Revised disclosure in correct format made to BSE on Feb 06, 2017, however initial disclosures date to BSE is Aug 31, 2016, disclosing the change in shareholding of only 8.62% instead of 9.74%	160 days
12-Sep-16	12827369	36.96	-1400000	4.03	11427369	32.93	Sep 14, 2016	Revised disclosure in correct format made to BSE on Feb 06, 2017, however initial disclosures date to BSE is Jan 30, 2017.	145 days

12. Hence, from the above table, I note that, there has been a considerable delay of more than 100 days in filing the requisite disclosures in correct format under Regulation 29(2) read with 29(3) by the Noticees on three instances during the investigation period.

13. The Noticees in their reply have submitted that the required disclosures were initially made by them in the wrong format and hence they have rectified the same by filing the details in the correct format on February 06, 2017. In this regard, I note that, for the purpose of disclosure requirement, a particular format has been specified under the said Regulation, which contains specific details about transactions of promoters of the company such as: *Name(s) of Acquirer along with the persons acting in concert ('PACs'), no. of shares acquired/sold, Pre and Post holding of the Acquirer/seller along with PACs after the acquisition/sale of shares, correct date of transaction, equity share capital of target company before and after the acquisition/sale of shares* etc. Hence, disclosure in any format without containing all the aforementioned details correctly as specified in the format under

the aforesaid Regulation can't be considered as a compliance with Regulation 29(2) read with 29(3) of SAST Regulations 2011.

14. Further, in this regard, I would like to rely upon observations of Hon'ble SAT in the matter of *Premchand Shah and Others V. SEBI,* in which Hon'ble SAT vide its 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."*

15. Further, from the aforementioned submission of the Noticees, I note that the Noticees have admitted the fact that they have failed to make disclosures in the correct format within the stipulated timeline under Regulations 29(2) read with 29(3) of SAST Regulations 2011.

16. In this regard I would further like to place reliance on Hon'ble Securities Appellate Tribunal ("**SAT**") judgement dated October 14, 2014 in the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014), in which Hon'ble SAT held that "………. *<u>obligation to make disclosures within the stipulated time is a mandatory obligation</u> 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." (Emphasis supplied).*

17. Further, I am of the view that the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Timely disclosures of the details of the

shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Further, Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of ***Coimbatore Flavors & Fragrances Ltd. vs SEBI*** (Appeal No. 209 of 2014 order dated August 11, 2014), has also held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

18. Based on the aforesaid findings, I conclude that the Noticees have violated the provisions of Regulations 29(2) read with 29(3) of SAST Regulations 2011.

19. 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".*

20. In view of the foregoing, I am convinced that the Noticees are thus liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulations 29(2) read with 29(3) of SAST Regulations 2011. The provisions of Section 15A(b) of the SEBI Act, 1992 read 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, 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]];

21. 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.

22. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the Noticees' failure. I also note that no prior default of the Noticees is available on record. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI.

Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticees. Hence, I note that the Noticees failed to make requisite disclosures in the correct format within the stipulated timeline and thereby have violated Regulations 29(2) read with 29(3) of SAST Regulations 2011.

ORDER

23. 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 2,00,000/-** (Rupees Two lacs only) on the Noticees, (payable jointly and severally by the Noticees), 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 Noticees.

24. The Noticees 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

25. 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-4), 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 etc.)	

26. 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.

27. 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 : November 29, 2021 **G Ramar**

Place : Mumbai **Adjudicating Officer**