BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AK/VV/2022-23/ 21791)

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

KOTHARI TRADE INVESTMENT PRIVATE LIMITED
(PAN – AAECK1666K)
45, INDUSTRIAL AREA, PHASE I, CHANDIGARH – 160 002.

IN THE MATTER OF CHD CHEMICALS LIMITED

BACKGROUND OF THE CASE

1. Bombay Stock Exchange Limited (BSE), vide letter dated September 15, 2021, *interalia*, intimated that during the course of its investigation, it observed that from July 01, 2020 to March 31, 2021, Kothari Trade Investment Private Limited (hereinafter referred to as **"the Noticee"**), who is one of the shareholders of CHD Chemicals Ltd (hereinafter referred to as ***"*CHD or the Company*"***) had bought 6,09,645 shares @ Rs. 35.09 and sold 18,34,700 shares @ Rs 37.72 accounting for 6.03% & 18.15% respectively of total shares of CHD.

2. SEBI, on examination of the purchase and sale transactions of the Noticee in the scrip of CHD, found that with regard to four transactions there was a change exceeding 2% in shareholding of the Noticee in CHD for which the Noticee was required to make disclosures to stock exchange and to the company within two working days of the respective transactions in terms of provisions of regulation 29(2) r/w regulation 29(3) of SEBI (Substantial Acquisition of Shares and

Takeover) Regulations, 2011 (hereinafter referred to as ***"*Takeover Regulations*"***).

3. In order to ascertain whether the requisite disclosures with respect to the said transactions, were made by the Noticee, comments were sought from the Noticee, vide email dated October 14, 2020. The Noticee was subsequently reminded, vide email dated October 23, 2021. However, there was no response received from the Noticee.

4. In this regard, comments were also sought by SEBI from CHD. CHD, vide email dated October 22, 2021, forwarded the format of disclosure made by the Noticee to the company under 29(2) of SAST Regulation, 2011, dated October 3, 2020. SEBI, on perusal of the format of disclosure made by the Noticee, found that the disclosure made to the company were incomplete as the same did not provide the details pertaining to transactions which resulted in a change, exceeding 2% in shareholding of the Noticee in CHD.

5. Based on the above, it was alleged that the Noticee, by not making requisite disclosure w.r.t. the change in its shareholding in CHD to the stock exchange and CHD, violated the provisions of regulations 29(2) r/w 29(3) of the Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

6. Upon being satisfied that there are sufficient grounds to inquire and adjudicate upon the violation of provisions of Takeover Regulations r/w the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as ***"*SEBI Act*"***) by the Noticee, SEBI, in exercise of powers u/s 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**"), r/w section 19 of the SEBI Act appointed Ms. Geetha G., as the Adjudicating Officer **(**hereinafter referred to as the "**AO"),** vide order dated May 19, 2022, to inquire into and adjudge u/s

15-I r/w section 15 A(a) of SEBI Act, the alleged violation of regulation 29(2) r/w regulation 29(3) of Takeover Regulations by the Noticee. Pursuant to transfer of Ms. Geetha G., SEBI appointed undersigned as AO, vide order dated August 29, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. Show Cause Notice ref. no. EAD6/ADJ/AK/VV/OW/52560/1-2/2022 dated September 30, 2022 (hereafter referred to as "**SCN"**) was issued to the Noticee in terms of the provisions of rule 4(1) of the SEBI Adjudication Rules, 1995 r/w Section 15-I of SEBI Act, requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provision of Section 15A(b) of SEBI Act for the alleged violations. I note that SCN was issued to the Noticee, vide Speed Post Acknowledgement Due and a digitally signed copy by e-mail, which constitutes valid service as per Rule 7(1)(b) of the Adjudication Rules. I note that the SCN issued, vide Speed Post Acknowledgement Due returned undelivered.

8. Upon non receipt of any reply from the Noticee, vide Hearing Notice dated October 14, 2022, Noticee was granted an opportunity of hearing on October 21, 2022. I note that the hearing notice issued to the Noticee was duly served with digital signature by e-mail, which constitutes valid service as per Rule 7(1)(b) of the Adjudication Rules. However, the Noticee neither requested for adjournment nor availed the opportunity of hearing.

9. Subsequent to the above, the Noticee, vide email dated October 28, 2022 sought certain documents, which were provided to it, vide email dated November 01, 2022 and the Noticee was asked to reply to the SCN latest by November 07, 2022. In the meanwhile, vide email dated October 31, 2022, Noticee provided its latest contact details. The Noticee, vide email dated November 11, 2022, informed that it is in the process of submitting its reply on SCN dated September 30, 2022, in the matter of CHD and wish to avail an

opportunity of hearing in the said matter. An opportunity of hearing was also granted to the Noticee on November 11, 2022. The Noticee requested to provide extension of time for submitting its reply and the personal hearing. The Noticee also authorized Mr. Amit Shah, Mr. Nithish Bangera – PCS and Ms. Palak Jain – PCS and/or any person authorized by them to appear before SEBI for personal hearing and make all necessary submissions in above mentioned matter. The request of the Noticee was considered and vide email dated November 11, 2022 the Noticee was advised to appear for hearing before the undersigned at 1100 hrs on November 29, 2022. The Noticee was also advised to submit its response to the SCN any time before November 29, 2022.

10. While no reply to the SCN was received from the Noticee, the authorized representatives of the Noticee appeared before me on November 29, 2022 and submitted as under;

10.1 that they accept the allegations made in the SCN that the requisite filing to be made in the matter, had not been done by the Noticee on time.

10.2 that the default was technical in nature, there was no unlawful gain or loss to anyone.

10.3 that a consolidated disclosure was made by the Noticee subsequently, however it was not in compliance with disclosure requirement.

10.4 that a lenient view may be taken in this regard.

11. Subsequent to the hearing, vide email dated December 01, 2022, the Noticee submitted, inter alia, the following and the proof of disclosures filed by it to the Company and the stock exchange as mentioned in its reply;

> *"As per SEBI, Noticee has transacted in the shares of CHD for which it should have filed requisite disclosure under regulation 29(2) in four different occasions.*

However, Noticee has filed incomplete disclosure. We are reiterating end portion of para 6 of SCN where SEBI is acknowledging that we have filed incomplete disclosures:

"…………………………………………………………………… SEBI, on perusal of the format of disclosure made by Noticee, found that the ***disclosure made by the company were incomplete*** *as the same did not provide the details pertaining to transactions which resulted in change, exceeding 2% in shareholding of Noticee."*

Annexure – F of SCN, contains e-mail dated 22nd October, 2021 from CHD to SEBI along with the disclosure filed by noticee to CHD. On perusal of same, we noted that SEBI have provided us only one page (incomplete disclosures) of disclosures filed by us to CHD, however we have actually filed two pages (complete disclosure) of disclosures to CHD. It seems that may be inadvertently SEBI may have taken only one page of our disclosure on record and understood that our disclosure is incomplete. However actual disclosure is of two pages. On our request Company CHD has forwarded the same e-mail dated 22nd October, 2021, which it had sent to SEBI along with disclosure. We are forwarding the same email to SEBI by separate email and same is also available with SEBI. This will establish that the disclosure in the e-mail consists of two pages.

May be due to the incomplete disclosure (only one page) on a record of SEBI, it has tagged our disclosure as incomplete. On the contrary, we humbly acknowledge that disclosure filed by us was erroneous as same was a consolidated disclosure of all transactions but not incomplete as alleged by SEBI.

Pursuant to the receipt of SCN, we understood that we should have filed 4 different disclosures after each transaction, whenever there was a change of shareholding by 2%, instead of that we have filed consolidated disclosures of all transactions. Immediately we have taken corrective actions and filed the revised disclosures with stock exchange and Company CHD same can be seen on BSE website and thus we became compliant now and non-compliance no longer exists. Copy of disclosure dated 14th November, 2022 and print of disclosure available on BSE website is *enclosed as **Annexure -3** and **Annexure – 4** respectively.*

It is alleged that the disclosure made to CHD was incomplete as the same did not provide requisite details pertaining to transactions. No regulatory action is taken in past against noticee, hence non-compliance was non repetitive in nature. The alleged lapse was inadvertent, non-repetitive in nature and immediate corrective action was taken.

These trades have not caused any losses to any investors. In the case of Aanchal Jindal, Mamta Jindal, Archit Jindal, Pradeep Kumar Jindal vs. Securities and Exchange Board of India (2021 SAT Mumbai), the Securities Appellate Tribunal (SAT) observed in above case that non-disclosure by the appellants did not result in any loss to investors. Noticee does not come under promoter group of the CHD Chemicals Limited. No open offer was triggered by our transactions/action / inaction.

Our non-compliance was during the period of September, 2020 to January, 2021, which was at the time of Covid – 19 pandemic and the said non-compliance occur due to the non-availability of staff / professionals normally handle such filling. No advisor was available to us during that time who can guide us about the correct way to handle / file necessary disclosures. The disclosure was a procedural lapse and we made inadvertent error by filing consolidated disclosure. Hence, our non-compliance was unintentional and situational due to pandemic. We humbly pray to honorable AO that this relaxation may be applied to us for late filing of requisite disclosure.

It was a venial technical lapse and that there was no intent to suppress the information. The lapse may not be viewed seriously as it has not impaired the interest of any investor. The same may therefore, not be considered as violation of provision of Regulations. It was minor irregularity and hence a lenient view may be taken and the lapse be condoned. We crave leave to rely upon the judgment of Hon'ble Bombay High Court in SEBI Vs. Cabot International Capital Corporation, *2004, wherein it was held as under:*

Para 25 (G): "Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute, minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to the bonafide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc."

The allegation is technical and procedural lapse. We therefore humbly pray that lenient view be taken and our non-compliance be pardon and relieve us from all allegations with an assurance from our side that such irregularity will not occur in future and we will comply with all provision of law."

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

12.1 With regard to the four transactions mentioned in the table below, there was a change exceeding 2% in shareholding of the Noticee in the scrip of CHD;

Date of Transaction	Sell	Sold %	Post transaction shareholding
04/09/2020	40,000	0.40%	10.23
29/09/2020	50,000	0.49%	8.19
06/01/2021	50,000	0.49%	5.99
19/01/2021	50,000	0.49%	3.96

12.2 Since the change exceeded 2%, the Noticee was required to make disclosures to stock exchange and to the company within two working days of the respective transactions in terms of provisions of Regulation 29(2) r/w Regulation 29(3) of Takeover Regulations.

12.3 BSE intimated that during the course of their investigation, it observed that from July 01, 2020 to March 31, 2021, the Noticee, who is one of the shareholders of CHD had bought 6,09,645 shares @ Rs. 35.09 & sold 18,34,700 shares @ Rs 37.72 accounting for 6.03% & 18.15% respectively of total shares of CHD. From the records available with BSE, the Noticee did not file requisite disclosures.

12.4 On perusal of the disclosure made by the Noticee to the company, it was found that the disclosure made by the Noticee to the company were incomplete as the same did not provide the details pertaining to transactions which resulted in a change, exceeding 2% in shareholding of the Noticee.

12.5 Based on the above, it was alleged that the Noticee has not made requisite disclosure w.r.t. the change in its shareholding to the stock exchange and to the company and that the Noticee is not in compliance with Regulation 29(2) r/w Regulation 29(3) of the Takeover Regulations.

CONSIDERATION OF ISSUES AND FINDINGS

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

I. Whether the Noticee has violated Regulation 29(2) r/w Regulation 29(3) of the Takeover Regulations?

II. Does the violations, if any, attract monetary penalty u/s 15A(b) of the SEBI Act?

III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

Issue I. Whether the Noticee has violated Regulation 29(2) r/w Regulation 29(3) of the Takeover Regulations?

14. Before moving forward, it is pertinent to refer to the relevant provision which is alleged to have been violated. The said provision is provided hereunder:

Regulation 29(2) of Takeover Regulations

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.

Regulation 29(3) of Takeover Regulations

The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days 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 target company are listed; and

(b) the target company at its registered office.

15. I have perused the available records and reply of the Noticee in respect of the allegations made in the SCN. From the perusal of the SCN, it is observed that as per the shareholding pattern of the Company for the quarter ended June 30, 2020 which was enclosed with the SCN, the shareholding of the Noticee was 12,66,055 shares accounting for 12.52% of the total shares of CHD. The Noticee sold its shareholding in the scrip of CHD on September 04, 2020 (-0.40% change from its previous shareholding), September 29, 2020 (-0.49%

change from its previous shareholding), January 06, 2021 (-0.49% change from its previous shareholding) and January 19, 2021 (-0.49% change from its previous shareholding), resulting in change in its shareholding, which triggered disclosure requirements.

16. On September 04, 2020, when it sold 40,000 shares of CHD, his post transaction shareholding fell from 12.52% as on June 30, 2020 to 10.23%. Similarly, the sale of shares of CHD by Noticee on September 29, 2020 resulted in the Noticee's shareholding in CHD falling to 8.19%, the sale of shares of CHD by Noticee on January 06, 2021 resulted in the Noticee's shareholding in CHD falling to 5.99% and the sale of shares of CHD by Noticee on September 29, 2020 resulted in the Noticee's shareholding in CHD to fall to 3.96% The disclosure requirement u/r 29(2) r/w 29 (3) of Takeover Regulations arose since such changes exceeded 2% of total shareholding or voting rights in CHD the company and the disclosures requirement under regulation 29(2) r/w 29(3) of Takeover Regulations arises on every acquisition or disposal of shares of such target company representing 2% or more of the shares or voting rights in such target company.

17. It is apparent from the SCN that the sale of shares by the Noticee exceeded 2% of total shareholding or voting rights as stipulated in the aforesaid Takeover Regulations. It is also alleged in the SCN that the Noticee had not disclosed about the change in its shareholding to the BSE as well as gave incomplete disclosures to CHD. I note that in para 6 of the SCN, the following, inter alia, was mentioned, as against what the Noticee has noted, in its reply dated December 01, 2022;

"……SEBI, on perusal of the format of disclosure made by Noticee, found that the disclosure made ***to*** *the company were incomplete as the same did not provide the details pertaining to transactions which resulted in change, exceeding 2% in shareholding of Noticee."*

18. Further, CHD, vide its email dated October 22, 2021, forwarded the format of disclosure made by the Noticee to the company u/r 29(2) of Takeover Regulation, 2011, dated October 3, 2020. I note that the allegation against the Noticee in so far as its reporting to CHD was concerned was based on the format of disclosure made by the Noticee, in which it was found that the disclosure made to the company were incomplete, as the same did not provide the details pertaining to transactions which resulted in a change, exceeding 2% in shareholding of the Noticee and not based on one page or two pages as submitted by the Noticee, in its reply dated December 01, 2022.

19. BSE, vide its letter dated September 15, 2021, also confirmed that no disclosures have been received u/r 29(2) r/w 29(3) of Takeover Regulations.

20. The Noticee has also accepted the allegations made in the SCN. Even though the Noticee has made the disclosures recently, the same cannot be treated as compliance with the Regulation 29(2) r/w/ 29(3) of the Takeover Regulations, as the time of compliance is the essence under the Takeover Regulations.

21. I also note that throughout the Covid period, the stock exchanges operations were not affected and they functioned normally and all the work related to the capital market operations was carried out, either physically or online, by all the stakeholders. Hence, the plea of the Noticee in this regard is not sustainable.

22. From the foregoing paragraphs, it is conclusively established that Noticee has not submitted the requisite information as required under the Takeover Regulations. Therefore, I hold that the Noticee has violated the provisions of Regulation 29(2) r/w Regulation 29(3) of the Takeover Regulations.

Issue II. Does the violations, if any, attract monetary penalty u/s 15A(b) of the SEBI Act?

23. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is established that the Noticee had violated the provisions of Regulation 29(2) r/w Regulation 29(3) of the Takeover Regulations. The above violations make the Noticee liable for monetary penalty under the provisions of Section 15A(b) of the SEBI Act, the contents of the said provisions of law is reproduced herein below:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A If any person, who is required under this Act or any rules or regulations made thereunder,—

(b)To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty 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.

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

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

15J – Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under [15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely :—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

25. The available records neither specifies disproportionate gains/ unfair advantage made by the Noticee, the loss suffered by the investors due to such violations, nor the violations as repetitive in nature. Thus before arriving at the quantum of penalty in the matter, it is necessary to understand the importance of such disclosures. The main objective of the Takeover Regulations is to afford fair treatment to shareholders as regards their holdings in the company. The Regulation seeks to achieve fair treatment by, inter alia, mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market, in the shares of companies, affected by such selling / acquisition in the company. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. Therefore, taking into consideration the facts/ circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

26. Considering all the facts and circumstances of the case and exercising the powers conferred upon me u/s 15-I of the SEBI Act r/w rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalty on the Noticee u/s 15A(b) of the SEBI Act, for not complying with the provisions of Regulation 29(2) r/w Regulation 29(3) of the Takeover Regulations:

Name of the Noticee	Provisions Violated	Penalty
Kothari Trade Investment Private Limited (PAN - AAECK1666K)	Regulation 29(2) r/w Regulation 29(3) of the Takeover Regulations	Rs. 2,00,000/- (Rupees Two Lakhs only)

I find that the said penalty is commensurate with the violations committed by the Noticee in this case.

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 Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department-1 DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee shall also provide the following details while forwarding DD / payment information:

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.)	Penalty

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings u/s 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 Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **AMIT KAPOOR**

Date: December 02, 2022 **ADJUDICATING OFFICER**