BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2023-24/28999]

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

In respect of

TCNS Clothing Co. Ltd.

[PAN: AAACT4432E]

In the matter of TCNS Clothing Co. Ltd.

BACKGROUND

1. Based on the reference dated September 18, 2022 received from SES Governance (hereinafter referred to as '**SES'**), Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) had carried out an examination to ascertain whether TCNS Clothing Ltd. (hereinafter referred to as '**TCNS/ Company/Noticee'**) had violated any securities laws. Pursuant to the aforesaid examination, SEBI observed alleged violation of Regulation 26(6) of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as "**LODR Regulations**") by Noticee. Therefore, SEBI initiated adjudication proceedings against Noticee for the aforesaid violation alleged to have been committed by it.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated July 05, 2023, SEBI appointed the undersigned as the Adjudicating Officer under Section 19 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) read with Section 15I(1) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to

inquire into and adjudge under Section 15HB of SEBI Act for the alleged violation of Regulation 26(6) of LODR Regulations by Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated July 20, 2023 (hereinafter referred to as '**SCN**') was issued to Noticee under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticee and penalty, if any, not be imposed upon it under the provisions of Section 15HB of SEBI Act for the violation alleged to have been committed by it.

5. The allegations levelled against Noticee in the SCN are summarised hereunder:
   a) *An upside sharing agreement was executed between Mr. Onkar Singh Pasricha, Mr. Arvinder Singh Pasricha; who were the promoters of Noticee and Wagner Limited on June 15, 2018. At the time of entering into Upside Sharing Agreement, Noticee was a public unlisted company. Subsequently, the equity shares of the Company were listed on National Stock Exchange of India Limited (hereinafter referred to as "**NSE**") and BSE Limited (hereinafter referred to as "**BSE**") on July 30, 2018.*
   b) *The Upside Sharing Agreement dated June 15, 2018 was subsisting between Mr. Onkar Singh Pasricha, Mr. Arvinder Singh Pasricha and Wagner Limited post listing. Accordingly, Noticee was required to obtain approval from Board of Directors and the public shareholders in terms of Regulation 26(6) of the LODR Regulations, post listing. However, the Noticee failed to do so.*
   c) *Therefore, it was alleged in the SCN that Noticee by failing to obtain the approval from its Board of Directors and the public shareholders in terms of Regulation 26(6) of the LODR Regulations with regard to the Upside Sharing Agreement dated June 15, 2018 (also referred to as "**Upside Sharing Agreement**"), post listing has violated Regulation 26(6) of the LODR Regulations.*

6. The SCN was sent to Noticee through Speed Post Acknowledgement due (hereinafter referred to as '**SPAD**') and through digitally signed email on July 20, 2023. The SCN was duly served on Noticee. Noticee was granted 15 days' time from the date of receipt of SCN for filing its reply, if any, to the SCN.

7. Thereafter, Noticee filed its reply to the SCN on August 03, 2023. The submissions made by Noticee in its aforementioned reply is summarised herein below:

   a) *Upside Agreement was entered at the time when Noticee was unlisted and hence the provisions of Regulation 26(6) of LODR Regulations was not applicable to the Noticee with respect to Upside Agreement.*
   b) *There has never been any transaction undertaken pursuant to the Upside Agreement among the shareholders either by way of transfer of shares or in any other manner.*
   c) *Also, pursuant to the Share Purchase Agreement dated May 5, 2023 with ABFRL Upside Agreement has been terminated vide Termination Agreement dated July 31, 2023. A disclosure regarding the same has been provided to the Stock Exchanges in accordance with Clause 30 and 30A of LODR Regulations.*
   d) *The Company, in terms of the requirements under Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, duly disclosed the information regarding the Upside Agreement in the Red Herring Prospectus dated July 8, 2018 and Prospectus dated July 24, 2018 under the head 'Material Agreements' on page 123 in both documents.*
   e) *Regulation 26(6) of the SEBI LODR requires prior approval of the Board, as well as public shareholders of a listed company by way of an ordinary resolution, for 'entering' into any Agreement specified under Regulation 26(6). Therefore, first para of Regulation 26(6) of the SEBI LODR is applicable solely to listed entities where it proposes to 'enter' into any such agreement*
   f) *The first, second and third proviso of Regulation 26(6) of the LODR Regulations contain specific provisions only in relation to Shareholder Agreements, which were subsisting as on the date of coming into force of Regulation 26(6), i.e. January 4, 2017. In case of such subsisting Shareholder Agreements, the listed entities are required to do the following:*

      a. Any Shareholder Agreement which was subsisting or expired during the preceding 3 years from the date of coming into force of Regulation 26(6) of the LODR Regulations (i.e. January 4, 2017), were to be disclosed to the stock exchanges; and

      b. Any Shareholder Agreements which were subsisting as on the date of coming into force of Regulation 26(6) of the SEBI LODR, i.e. January 4, 2017, were to be placed before the Board in the forthcoming Board meeting. Thereafter, any such Shareholder Agreements approved by the Board were required to be placed before *the public shareholders for approval by way of an ordinary resolution in the forthcoming general meeting.*

g) *There is no specific provision in Regulation 26(6) of LODR Regulations which provides that a Shareholder Agreement which was entered into prior to listing of a company would, post listing, require any approval from the Board or public shareholders of such company and hence the Company did not take any approval from the Board or public shareholders of the company post the listing of its shares on July 30, 2018.*

   A reference may also be taken of Regulation 12(1)(ii) of the Securities and Exchange Board of India (Share Based Employee Benefits and Sweat Equity) Regulations, 2021, which deals with Pre-IPO employee schemes and in this relation it clearly specifies that prior to issue of any shares under the Pre-IPO scheme, such Pre-IPO scheme need to be ratified by its shareholders subsequent to the IPO. From this, we understand that SEBI has, wherever required, included specific provisions which a company needs to follow post IPO. However, evidently no such provision has been incorporated in relation to obligations under Regulation 26(6) of LODR Regulations.

8. Thereafter, in the interest of natural justice, vide email dated August 04, 2023, Noticee was granted an opportunity of personal hearing before the undersigned on August 09, 2023. The aforementioned email was duly served on Noticee. On the scheduled date of hearing i.e. on August 09, 2023, authorised representatives of Noticee, Mr. Amit Chand, Chief Financial Officer of Noticee and Mr. Piyush Asija, Company Secretary of Noticee, appeared for hearing and reiterated the submissions made by Noticee in its reply dated August 03, 2023.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have carefully perused the charges levelled against Noticee, replies/submissions filed by Noticee and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

Issue I: Whether Noticee has violated Regulation 26(6) of LODR Regulations?

Issue II: Does the violation, if any, attract monetary penalty under Section 15HB of SEBI Act?

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

Issue I: Whether Noticee has violated Regulation 26(6) of LODR Regulations?

10. It is an admitted fact in the present case that an Upside Sharing Agreement was executed between Mr. Onkar Singh Pasricha and Mr. Arvinder Singh Pasricha, who were the promoters of Noticee and Wagner Limited (now known as '**TA FDI Investors Ltd'**) on June 15, 2018. I observe from Noticee's reply to the SCN that Noticee had disclosed the following information regarding the aforesaid agreement in its Prospectus dated July 24, 2018:

    "Our Promoters have entered into an upside sharing agreement dated June 15, 2018 with Wagner pursuant to which, our Promoters/members of Promoter Group are entitled to receive from Wagner such number of Equity Shares as are determined under the agreement, aggregating to a maximum of 1,621,740 Equity Shares (amounting to 2.36% of our equity share capital on a fully diluted basis) at a price of ₹ 373.26 per Equity Share, upon occurrence of sale of all or any of the Equity Shares held by Wagner, pursuant to an initial public offering or otherwise, subject to the applicable regulatory lock-in. Any acquisition of Equity Shares by the Promoters/members of Promoter Group pursuant to the upside sharing agreement will be subject to compliance with applicable laws, including the SEBI Takeover Regulations and the FEMA regulations. The upside sharing agreement shall survive the completion of the Offer."

11. In its submission, Noticee has stated that the Upside Sharing Agreement was entered into when Noticee was an unlisted company and that it did not obtain approval from its Board of Directors and the public shareholders with respect to the aforesaid agreement, post listing of its shares on the BSE Ltd and NSE India Ltd (Collectively referred as '**stock exchanges'**) on July 30, 2018. It is also an admitted fact that the Upside Sharing Agreement was in existence post listing of Noticee.

12. The major contention raised by Noticee in its reply to the SCN is that the Upside Agreement was entered into at a time when the company was unlisted and therefore, the provisions of Regulation 26(6) of LODR Regulations did not apply to the company with respect to the said agreement and it was not under an obligation to obtain approval from its board of directors and shareholders with respect to Upside Sharing Agreement. Noticee has further contended that no transaction has been undertaken among the shareholders either by way of transfer of shares or any other manner, pursuant to the Upside Agreement. I note that

Noticee has also contended that there is no specific provision in Regulation 26(6) of LODR Regulations which provides that a Shareholder Agreement, which was entered into prior to listing of a company, would require any approval from the Board or public shareholders of such company, post listing of its shares and that first para of Regulation 26(6) of the SEBI LODR is applicable solely to listed entities when it proposes to 'enter' into any such agreement.

13. At this juncture, for the sake of understanding, I find it pertinent to reproduce Regulation 26(6) of LODR Regulations hereunder:

Regulation 26(6) of LODR Regulations

No employee including key managerial personnel or director or promoter of a listed entity shall enter into any agreement for himself or on behalf of any other person, with any shareholder or any other third party with regard to compensation or profit sharing in connection with dealings in the securities of such listed entity, unless prior approval for the same has been obtained from the Board of Directors as well as public shareholders by way of an ordinary resolution:

Provided that such agreement, if any, whether subsisting or expired, entered during the preceding three years from the date of coming into force of this sub-regulation, shall be disclosed to the stock exchanges for public dissemination:

Provided further that subsisting agreement, if any, as on the date of coming into force of this sub-regulation shall be placed for approval before the Board of Directors in the forthcoming Board meeting:

Provided further that if the Board of Directors approve such agreement, the same shall be placed before the public shareholders for approval by way of an ordinary resolution in the forthcoming general meeting:

Provided further that all interested persons involved in the transaction covered under the agreement shall abstain from voting in the general meeting.

Explanation -For the purposes of this sub-regulation, 'interested person' shall mean any person holding voting rights in the listed entity and who is in any manner, whether directly or indirectly, interested in an agreement or proposed agreement, entered into or to be entered into by such a person or by any employee or key managerial personnel or director or promoter of such listed entity with any shareholder or any other third party with respect to compensation or profit sharing in connection with the securities of such listed entity.

14. As per the first paragraph of Regulation 26(6) of LODR Regulations, a listed entity is under an obligation to obtain approval of its board of directors and its shareholders prior to entering into an agreement as specified therein. In the instant matter, I find that at the time of entering into agreement i.e. on June 15, 2018, Noticee was an unlisted company and therefore the provisions of Regulation 26(6) of LODR Regulations were not applicable to it. I also do not find it explicitly mentioned in Regulation 26(6) of LODR Regulations that a company has to obtain approval of its board of directors and shareholders with regard to agreement within the meaning of Regulation 26(6) of LODR Regulations, which was entered into prior to its listing, after listing of its shares on the stock exchanges. Therefore, I find merit in this contention of Noticee.

15. However, I also note that additional obligations have placed on listed entity by way of provisos to Regulation 26(6) of LODR Regulations. The second and third provisos to Regulation 26(6) of LODR Regulations, *inter alia,* place an obligation on the listed entity to place subsisting agreements as on the date of enforcement of Regulation 26(6) of LODR Regulation for approval before its Board of directors (also referred to as "**BOD**") and after the BOD's approval, place the said agreement before its public shareholders for approval by way of ordinary resolution in its forthcoming general meeting. It is noted that Regulation 26(6) of LODR Regulations was inserted in LODR Regulations by way of amendment to SEBI (Listing Obligations and Disclosure Requirements) (Third Amendment) Regulations, 2016 and came into force from January 04, 2017. Therefore, the question that merits examination at this juncture is whether the impugned agreement was subsisting as on January 04, 2017.

16. The provisos to Regulation 26(6) of LODR Regulations deal with a specific scenario, i.e. subsisting agreements, if any, of the listed entity as on January 04, 2017. From the factual matrix presented above, it is clear that the Upside Sharing Agreement was not in existence as on January 04, 2017 and therefore, the aforementioned provisos to Regulation 26(6) of LODR Regulations would also not be applicable to Noticee in the present instance

17. In light of the aforesaid, I find that Noticee was not under an obligation to obtain approval from its board of directors and shareholders under Regulation 26(6) of LODR Regulations with respect to Upside Sharing Agreement. Therefore, I find that allegation in the SCN that Noticee has violated Regulation 26(6) of LODR Regulations does not stand established.

18. Since the alleged violation against Noticee is not established, I find that the Issues No. II and III require no further consideration.

ORDER

19. Accordingly, taking into account the aforesaid findings and in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, the Adjudication proceedings against Noticee i.e. TCNS Clothing Co. Ltd., initiated vide SCN dated July 20, 2023, stands disposed of without imposition of any penalty.

20. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee and also to SEBI.

Place: Mumbai
Date: August 28, 2023

SOMA MAJUMDER
ADJUDICATING OFFICER