BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2022-23/16080]

UNDER SECTION 15-I (2) 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 -

Sabah Taiyab Noorani (AVTPN8646H) having address at Lonkheda Char Rasta, Apna Petrol Pump Shahada, Nandurbar Maharashtra - 425409

In the matter of Ashari Agencies Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against Sabah Taiyab Noorani (hereinafter referred to as "**the Noticee**") under Section 15A (b) of the SEBI Act, 1992 ("**SEBI Act**") for alleged violation of Regulation 29 (2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("**the SAST Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**"), vide order dated March 18, 2021, to inquire into, and adjudge under Section 15A (b) of the SEBI Act, the aforesaid alleged violations by the Noticee.

3. The appointment of the undersigned as AO was communicated vide order dated March 22, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD5/MC/VS/2021/10025 dated 06.05.2021 (hereinafter referred to as "**SCN**") was issued to the Noticee, in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 15A (b) of the SEBI Act for the aforesaid alleged violations.

5. The allegations levelled against the Noticee in the SCN are summarized as follows:-

6. BSE Limited (BSE) vide email dated October 30, 2020, inter alia, informed that during period July 01, 2020 to July 31, 2020, Sabah Taiyab Noorani /Noticee, one of the shareholders of Ashari Agencies Limited ("Company") had sold 3,29,906 shares @ Rs. 8.98, for which disclosure was required to be filed under regulation 29(2) of Takeover Regulations. However, the Noticee had not made required disclosure till October 30, 2020 for the said transaction.

7. Details of transactions of Noticee in the scrip of the captioned company are as follows:

Date of transaction	Number of shares sold	%	Holding after sale	%	Disclosure required
07.07.2020	50,000	0.58	4,72,300	5.51	NA
08.07.2020	44,444	0.52	4,27,856	4.99	NA
16.07.2020	50,000	0.58	3,77,856	4.40	NA
17.07.2020	**50,000**	**0.58**	**3,27,856**	**3.82**	**u/r 29(2)***
20.07.2020	50,000	0.58	2,77,856	3.24	NA
21.07.2020	41,018	0.48	2,36,838	2.76	NA
28.07.2020	44,444	0.52	1,92,394	2.24	NA

*disclosure due on July 21, 2020 i.e., two working days from the date of change in shareholding.

8. As per the shareholding pattern of the Company for the quarter ending on June 30, 2020 and as per the details provided by BSE, shareholding of Noticee was 6.09%. Pursuant to the four consecutive sale transactions from July 07, 2020 to July 17, 2020 as mentioned in Table above, her shareholding reduced from 6.09% to 3.82% on July 17, 2020. Thus there was a change of 2.27% in his shareholding from the last disclosure. Since, the change exceeds 2%, Noticee was required to make disclosures to stock exchange and the Company by July 21, 2020, i.e. two working days from the date of change in shareholding July 17, 2020 (Friday).

9. The Noticee vide email dated November 24, 2020 forwarded copies of three disclosures dated November 20, 2020 w.r.t first three sale transactions viz. dated July 07, 2020, July 08, 2020 and July 16, 2020 (mentioned in the table above), made to BSE with a copy to the Company, under regulation 29(2) of Takeover Regulations. On perusal of these disclosures, it was observed that these disclosures were not relevant as the change in shareholding was within the limit of change of 2% in her shareholding from the last disclosure, till the sale transaction dated July 17, 2020.

10. It was observed from the reply and disclosures of Noticee that no disclosure was made by her with regards to the sale transaction dated July 17, 2020, which was actually required to be disclosed within two working days from the date of transaction, as the change in shareholding exceeded 2%. Despite seeking clarifications from Noticee vide emails dated November 13, 2020, November 24, 2020, requisite disclosure was not made by her till February 02, 2021. In this regard, BSE vide email dated February 02, 2021 confirmed that it had not received the disclosure from Noticee related to change in shareholding pursuant to the sale transaction dated July 17, 2020 under regulation 29(2) of Takeover Regulations (Annexure 5 to SCN).

11. In view of the above, it was alleged that Noticee has not made requisite disclosure to stock exchange and the Company w.r.t the change in his

shareholding pursuant to the sale transaction dated July 17, 2020, in violation of regulation 29(2) read with regulation 29(3) of Takeover Regulations.

12. The SCN was served upon the Noticees through SPAD on 29.05.2021, and vide e-mail on 06.05.2021.

13. Vide letter dated 31.03.2021 the Noticee sought 30 days' extension for filing reply to the SCN, which request was acceded to in the interest of natural justice.

14. Vide reply dated 15.05.2021, Noticee made the following submissions:-
    (a) Noticee had filed disclosures till 16.07.2020.
    (b) Due to the Covid19 pandemic Noticee was not in a position to do important work. Noticee, her family and staff were suffering the irrecoverable loss of human life and illness. Their office was not functional and they were not in a position to take their things back. This was the only reason for delay in filing disclosures.
    (c) Disclosures made in respect of the sale of equity shares of the Company on 17.07.2020, 20.07.2020, 21.07.2020 and 28.07.2020 were submitted vide covering letter dated 13.05.2021.

15. Vide Hearing Notice dated 17.11.2021 the Noticee was granted an opportunity of hearing through videoconferencing by WebEx on 17.12.2021.

16. During the hearing conducted through videoconferencing on 17.12.2021, the Noticee-in-person reiterated the submissions made vide her reply dated 15.05.2021.

17. In the light of the allegations contained in the SCN and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

18. The issues arising for consideration in the instant proceedings before me are:-
    - **I.** Whether the provisions of Regulation 29 (2) read with 29 (3) of the SAST Regulations have been violated by the Noticee?
    - **II.** If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act?
    - **III.** If yes, 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 read with Rule 5 (2) of the Adjudication Rules?

I. Whether the provisions of Regulation 29 (2) read with 29 (3) of the SAST Regulations have been violated by the Noticee?

19. The Noticee held 6.09% of the shares of the Company as of quarter ended 30.06.2020, which was more than 5% shares of the Company in terms of Regulation 29 (2) of the SAST Regulations. On account of successive sale transactions on 07.07.2020, 08.07.2020, 16.07.2020 and 17.07.2020, the shareholding of the Noticee progressively fell to 5.51% on 07.07.2020, 4.99% on 08.07.2020, 4.40% on 16.07.2020 and 3.82% of the shareholding of the Company on 17.07.2020. Thus, the Noticee's shareholding breached the 2% mark from its last disclosed shareholding of 6.09% on 17.07.2020.

20. Noticee was required to disclose the change in shareholding in terms of following legal provisions: -

SAST Regulations

*"**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 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."

21. A perusal of the quarterly public shareholding pattern for the Company available on the website of the BSE, shows that as of quarter ended June 2020, the Noticee's shareholding was 6.09% of the shareholding of the Company.

22. The shareholding of the Noticee changed by more than 2% on 17.07.2020 with sale of 50,000 shares by the Noticee on the said date resulting in cumulative sale of 1,94,444 shares between 07.07.2020 and 17.07.2020 which added up to 2.27% of the shareholding of the Company and brought down her shareholding to 3.82%. Accordingly, in terms of Regulation 29 (2) read with 20(3) of the SAST Regulations, the Noticee was required to disclose number of shares held and change in shareholding as on 17.07.2020 to the stock exchange and the Company within 2 working days i.e. by 21.07.2020 (Tuesday).

23. Noticee has submitted that she made disclosures for the transactions on 07.07.2020, 08.07.2020, 16.07.2020 on 20.11.2020. I note that disclosure requirement was not triggered on these dates. Even if these disclosures are taken into consideration, I note that they were made with a delay of 4 months. Disclosures regarding the sale on 17.07.2020 was made by the Noticee on 13.05.2021.

24. Noticee has submitted that due to the Covid19 pandemic Noticee was not in a position to do important work, and her family and staff were suffering the irrecoverable loss of human life and illness. Their office was not functional and they were not in a position to take their things back. Hence, the disclosures were delayed. In this regard, I note that even though Noticee made delayed disclosures in November 2020, she missed making the relevant disclosure for the sale on 17.07.2020, which was only made by her much later on 13.05.2021. Hence, even if inability to disclose due to Covid is taken into consideration, Noticee overlooked disclosing the triggering transaction.

25. In view of the above, I find that the Noticee failed to make applicable disclosure of shares held and change in shareholding as stipulated in Regulation 29 (2) read with (3) of the SAST Regulations. Accordingly, I find that the allegation regarding violation of Regulation 29 (2) read with regulation 29 (3) of the SAST Regulations stands established in respect of the Noticee.

II. If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15A (b) of the SEBI Act?

and

III. If yes, 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 read with Rule 5 (2) of the Adjudication Rules?

26. As it is established that the Noticee has violated Regulation 29 (2) read with 29 (3) of the SAST Regulations, the Noticee is liable for imposition of monetary penalty in terms of Section 15A (b) of the SEBI Act.

27. The text of the relevant provision is reproduced as follows:-

<u>SEBI Act</u>

<u>Penalty for failure to furnish information, return, etc..</u>

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'.

28. While determining the quantum of penalty under Section 15A (b) of the SCRA, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:-

"*SEBI Act*

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

While adjudging quantum of penalty under Section 23-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."

29. I note that there is no material on record to indicate any specific disproportionate gains or unfair advantage which accrued to the Noticee, or loss suffered by the investors on account of delayed disclosure to the Company and

the BSE regarding the sale of shares by the Noticee. Further, I note that the decreased shareholding of the Noticee was effectively reflected in the shareholding pattern for quarter ended September 2020. I also take into account the Noticee's submission that the pandemic had affected the Noticee's ability to file disclosures on time.

30. Therefore, taking into account the facts and circumstances in the matter and mitigating factors, I am of the view that a penalty of Rs. 1,00,000/- will be commensurate with the violations committed by the Noticee.

ORDER

31. After taking into consideration the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs.1,00,000 (Rupees One Lakh only) on Sabah Taiyab Noorani under Section 15A (b) of the SEBI Act, for violation of Regulation 29 (2) read with 29 (3) of the SAST Regulations.

32. 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 SEBI website www.sebi.gov.in on the following path, by clicking on the payment link –

ENFORCEMENT → Orders → Orders of AO → PAY NOW

33. Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 4 of SEBI.

34. Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

35. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

MANINDER CHEEMA Digitally signed by MANINDER CHEEMA Date: 2022.04.22 14:55:45 +05'30'

DATE: April 22, 2022 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**