BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/VB/AO/3418/2019-20]

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 BY ADJUDICATING OFFICER) RULES, 1995.

In respect of

New Delhi Television Limited (PAN: AAACN0865D)

In the matter of New Delhi Television Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') examined multiple disclosure related violations in the matter of New Delhi Television Ltd (hereinafter referred to as "**NDTV / Noticee**") and observed certain non-compliances of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as "**SAST, 1997**") by NDTV.

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri Prasad Jagdale was appointed as the Adjudicating Officer vide communique dated November 17, 2016 under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with Section 15-I(1) of the SEBI Act and Rule 3 of the SEBI (Procedure of Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**'). Pursuant to the transfer of Shri Prasad Jagdale, Shri Suresh Gupta was appointed as Adjudicating Officer and thereafter, vide appointment order dated May 18, 2017 the Adjudication proceedings have been transferred to the undersigned which was intimated vide communiqué dated August 11, 2017 to inquire

into and adjudge under Section 15A(b) of the SEBI Act, the violation of Regulation 7(3) and 8(3) of the SAST,1997 read with Regulation 35(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as "**SAST, 2011**") alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as '**SCN**') dated January 02, 2018was issued to the Noticee under Rule 4 of the Adjudication Rules communicating the alleged violations of the SAST, 1997. The Noticee was also called upon to show cause as to why an inquiry should not be initiated against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A(b) of the SEBI Act for the alleged contravention of SAST, 1997.

4. The details in respect of violation/non-compliance of Regulation 7(3) and 8(3) of SAST, 1997 by the Noticee are as given below:

   a) It is observed that on January 01, 2008, Indiabulls Financial Services Ltd acquired 40,00,000 (6.40% of share capital of NDTV) shares of NDTV. Pursuant to the said transaction the entity was required to make the disclosure to NDTV under Regulation 7(1) of SAST, 1997 and NDTV inturn was required to make the relevant disclosures under Regulation 7(3) of SAST,1997 to BSE and NSE. It is alleged that NDTV has failed to make the said disclosure to NSE.

   b) Thereafter, on **July** 03, 2008, promoters of NDTV acquired 1,26,90,257 (20.28% of share capital of NDTV) shares of NDTV pursuant to the shares tendered in the open offer made by the promoters. Pursuant to the said transaction, the entities were required to make the disclosure to NDTV under Regulation 7(1) of SAST, 1997 and NDTV inturn was required to make the relevant disclosures under

Regulation 7(3) of SAST to BSE and NSE. It is observed that NDTV has failed to make the said disclosure to NSE.

c) It is alleged that NDTV had failed to make the disclosure required as per Regulation 7(3) of SAST, 1997 with respect to the aforesaid transactions wherein disclosures have been made to NDTV by the entity.

d) It is on record that disclosures under Regulation 7(3) have been made to BSE by the company on June 01, 2017. It is also observed that said disclosures were made as a condition precedent for filing settlement application with SEBI.

e) It is also alleged that NDTV had failed to comply with Regulation 8(3) of SAST, 1997 for the F.Y 2008 and 2011. The details of delay / Non-compliance in this regard are as under:

Regulation / sub-regulation	Exchange	Relevant Year	Due date for compliance	Actual Date of compliance	Delay in days
8(3) of SAST,1997	NSE	2007-2008	30.04.2008	17.10.2008	170
	BSE	2010-2011	30.04.2011	16.05.2011	16
	NSE	2010-2011	30.04.2011	Not complied	-

From the above table, on one instance, it is observed that for the year 2007-2008 the due date for compliance with Regulation 8(3) of SAST, 1997 on NSE was April 30, 2008 and the actual date of compliance was on October 17,2008 thus causing a delay of 170 days.

5. Thereafter, Noticee vide its letter dated January 23, 2018 submitted that SEBI vide order dated 31.08.2017 dismissed its settlement application and the matter is presently under challenge in Writ Petition (L) No. 3062 of 2017 before Hon'ble Bombay High Court. The Noticee further sought to defer the present proceedings *sine die* to await the outcome of the said Writ Petition. Vide letter dated January 30, 2018, the Noticee was advised to provide its reply to the SCN before February 07, 2018 and appear for the personal hearing on February 15, 2018. The Noticee vide letter dated February 07, 2018 sought inspection of all the relevant documents/ records vide

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letter dated February 09, 2018 the request for inspection of documents was forwarded to the concerned department of SEBI and Noticee was advised to complete the inspection of documents before February 20, 2018.The Noticee was also advised to file it reply before February 27, 2018 and attend the personal hearing on March 07, 2018. Subsequently, the concerned department of SEBI vide Email dated February 20, 2018 has stated that an opportunity of inspection has been availed on February 15, 2018 and also submitted that all documents as sought by the Noticee has been provided.

6. Pursuant to this, Noticee vide its letter dated February 27, 2018 submitted a reply to the SCN. In the said letter dated February 27, 2018, the Noticee *inter-alia* made the following submissions:

At the outset, the Noticee denies in toto that it has violated any provision of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("Takeover Regulations") in a manner brought out in the Notice.

Reply on merits in respect of the alleged non-compliances under Regulation 7(3) of the Takeover Regulations:

The alleged non-compliances of Regulation 7(3) of the Takeover Regulations against NDTV are baseless and ill-founded as NDTV had made timely disclosures to BSE and NSE in respect of:

acquisition of 40,00,000 equity shares of NDTV by Indiabulls Financial Services Limited (Indiabulls") on 01.01.2008; and acquisition of 1,26,90,257 equity shares of NDTV by its promoters, viz, Mrs. Radhika Roy, Dr. Prannoy Roy and RRPR Holding Private Limited on 03.07.2008.

Mere inability of NDTV to provide documentary evidence in support of the above mentioned disclosures should not be treated as a non-compliance. In this connection, it is pertinent to mention the following:

that the above mentioned disclosures pertain to January 2008 and July 2008 which is almost a decade old and there is a high probability that NDTV would have misplaced the said disclosures along with the documentary evidence that such disclosures were made to both BSE and NSE within the specified time frame;

that since the date of the transactions, the Company Secretary and Compliance Officer of NDTV has changed several times;

that Indiabulls and the promoters of NDTV had made respective disclosures under Regulation 7(1) of the Takeover Regulations, in a timely manner, to both BSE and NSE. Hence, the said transactions were in any event disclosed to the public and there was no possibility of prejudice as the information related to the above said transactions were available in public domain.

the disclosures dated 01.06.2017 made by NDTV under Regulation 7(3) of the Takeover Regulations were made to BSE and NSE without prejudice to its stand that it had made timely disclosures at the relevant time but the disclosures dated 01.06.2017 were solely for the purposes of fulfilling the condition precedent for filing of a settlement application under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014.

Reply on merits in respect of the alleged non-compliances under Regulation 8(3) ofthe Takeover Regulations:

At the outset, it is submitted that NDTV had made timely annual disclosures under Regulation 8(3) of the Takeover Regulations for the financial years 2007-2008 and 2010- 2011.

In respect of the annual disclosure for the financial year 2007-2008, it is submitted that Annexure F of the Notice mentions that the said disclosure was made by NDTV to BSE within the prescribed time limit, i.e., on 29.04.2008. Therefore, there is no possibility that NDTV would have made the disclosure (which is identical to the disclosure made to BSE) to NSE after a delay of 170 days.

In respect of the annual disclosure for the financial year 2010-2011, it is submitted that:

it is highly unlikely that a disclosure is made to BSE (even if assuming that was made with a delay of 16 days) and not made at all to NSE that too when the disclosure is identical to the disclosure made to BSE.

the disclosure dated 01.06.2017 made by NDTV under Regulation 8(3) of the Takeover Regulations for the financial year 2010-2011 was made to BSE and NSE without prejudice to its stand that it had made timely disclosure at the relevant time but the disclosure dated 01.06.2017 was solely for the purposes of fulfilling the condition precedent for filing of a settlement application under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014.

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In respect of the disclosures for the financial years 2007-2008 and 2010-2011, it is submitted as under:

that the said disclosures were made in April 2008 and April 2011 which is almost 10 and 7 years old respectively, which gives rise to a high likelihood that NDTV would have misplaced the said disclosures along with the documentary evidence that such disclosures were made at the relevant time to both BSE and NSE within the specified time frame.

that since the date of making the said disclosures, the Company Secretary and Compliance Officer of NDTV has changed several times;

<u>Other submissions:</u>

Further, it would also be pertinent to mention that an adjudication officer of SEBI had commenced adjudication proceedings against the promoters non-disclosures which were required to be made by the said promoters under Regulation 30(2) read with 30(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. However, the said promoters provided documentary evidence(s), before the relevant adjudication officer of SEBI, in support of the fact that the said disclosures were made to the stock exchanges in a timely manner. The fact that the alleged non-disclosures were made by the said promoters within the time prescribed was also confirmed by the relevant stock exchanges. Based on the above, SEBI discharged the said promoters vide its order dated 23.10.2017. From the above, it is established that there may be errors on the part of stock exchanges in not displaying the applicable disclosures made by the relevant persons on their respective websites. A copy of the said order dated 23.10.2017 passed by the adjudication officer of SEBI is enclosed herewith and marked as Annexure- 1. Further, NDTV had filed a settlement application dated 25.07.2017 in respect of certain non-compliances alleged by SEBI in its show cause notice dated 08.06.2016 which covers all the alleged non-compliances mentioned in the Notice. A copy of the said show cause notice dated 08.06.2016 and NDTV's reply thereto are enclosed herewith and marked as Annexure - 2 and 3 respectively. As informed to you earlier vide our letter dated 23.01.2018, the said settlement application was dismissed by SEBI vide its order dated 31.08.2017 and that the said order dated 31.08.2017 is presently under challenge in a Writ Petition (L) No. 3062 of 2017. A copy of the order dated 31.08.2017 passed by SEBI is enclosed herewith and marked as Annexure - 4.

In view of above, we again request you to defer the present proceedings sine die to await the outcome of the said Writ Petition otherwise the said Writ Petition will become infructuous and in any event when the parties are desirous of settlement, the adjudication proceedings should not be continued.

7. In the interest of natural justice, an opportunity of hearing was provided to the Noticee on March 07, 2018. Mr Sumit Garg, Advocate, Mr. Lokesh Aidasani, Advocate, DMD Advocates, Hemant Kumar Gupta, AVP, NDTV appeared as the Authorized Representatives ("ARs") on behalf of the Noticee in the hearing on March 07,2018 and reiterated the submissions given by the Noticee in their reply to the SCN. Further, During the course of hearing, ARs sought cross examination of NSE officials who had supplied disclosure related data to SEBI vide Email dated August 02, 2017.The ARs were advised that a written request is necessary with justification as to the need for cross examination relating to the present proceedings inorder to consider their request. Oral request in this regard cannot be entertained. ARs agreed to give a written request with valid justification for the need for cross examination in the present proceedings before March 09, 2018. Vide Email dated March 09,2018, the Noticee *inter alia* made the following submissions

The non-compliances alleged in the show cause notice dated 02.01.2018 pertain to the following period(s)/ financial year(s):

*(a) January 2008 - acquisition of 40,00,000 equity shares of NDTV by Indiabulls Financial Services Limited [under Regulation 7(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (**"Takeover Regulations"**)];*

(b) July 2008 - acquisition of 1,26,90,257 equity shares of NDTV by its promoters [under Regulation 7(3) of the Takeover Regulations];
(c) FY 2007-2008 [under Regulation 8(3) of the Takeover Regulations]; and
(d) FY 2010-2011 [under Regulation 8(3) of the Takeover Regulations].
Further, as stated during the hearing held on 07.03.2018, the primary evidence, i.e. the receipts/ confirmations proving the filing of the above said disclosures with NSE and BSE, being old records, are not traceable with NDTV. Due to non traceability of primary evidence, we would like to lead secondary evidence in support of our reply dated 27.02.2018 by way of cross examination of the relevant officers of NSE and BSE. The only reason for initiating the adjudication proceedings is that the NSE and BSE officers have written to you that they have not received the relevant disclosures. Therefore, we want to rebut their allegations by cross examining them on the question of the records examined by them basis which they confirmed in writing to you that they have not received the disclosures. It is also pertinent to note that on earlier

occasion also they had in their email(s) addressed to you had written that no disclosures were made but later on confirmed that certain disclosures were made and that this was an inadvertent error on their part. For this purpose, the cross examination becomes more relevant to bring out the correct facts to facilitate correct adjudication in the matter.

8. The Noticee vide its Email dated March 10, 2018 further sought to grant an opportunity of a personal hearing in case request for cross examination of the relevant officers of NSE and BSE is not accede to. In the meanwhile, inorder to cross verify the facts of the case vide Email dated March 09,2018, NSE and BSE were advised once again to confirm the details submitted by them vide their email dated August 02, 2017 and June 22, 2015 respectively. BSE, vide its Email dated March 12, 2018 confirmed the details in its e-mail dated June 22, 2015. NSE vide Email dated April 06, 2018 submitted that for the F.Y 2007-2008 the Noticee had timely made the disclosure under 8(3) of SAST 1997, to the NSE on April 29, 2008 before the due date of April 30, 2008 while in its earlier email to the concerned department of SEBI dated August 02, 2017, NSE had submitted that the aforesaid disclosure was made on October 17, 2008 causing a delay of 170 days. Vide letter dated April 19, 2018, the copies of the aforesaid replies of BSE and NSE were shared with the Noticee and the Noticee was advised to provide its comments, if any, before April 26, 2018. Vide E-mail dated April 26, 2018, the noticee sought an extension of 7 days to make its submissions. The request was acceded to.

9. Since the data submitted by NSE has been solely relied upon for the current Proceedings, Noticee was, vide Email dated May 02, 2018, advised to inform the persons whom they would like to cross examine and also mention the justification for the request, enabling to examine their request. Vide Email dated May 07,2018 NDTV sought cross examination of the following Officials of NSE namely

a. Ms. Divya Poojari, Manager, Listing Compliance, NSE;
b. Ms. Charmi Dharod, Assistant Manager, Listing Compliance, NSE; and

c. Mr. Abhijit Pai, Deputy General Manager, Listing Compliance, BSE

10. In light of the changes in the data submitted by NSE and no retraction of data submitted by BSE, it was considered appropriate to grant the opportunity of cross examination of NSE officials. Thus, vide letter dated May 23, 2018, the Noticee's request for cross examination of NSE official namely Divya Poojari, Manager, Listing Compliance, NSE; Ms. Charmi Dharod, Assistant Manager, Listing Compliance, NSE was acceded to and the noticee was advised to attend the opportunity of Cross Examination on May 23, 2018.The aforesaid officials of NSE were also advised to attend the Cross Examination proceedings.

11. The cross examination was duly granted and minutes of the proceedings are on record. During the cross examination conducted on May 23, 2018, the Noticee was advised to file its additional reply, if any, by June 04, 2018. However, vide E-mail dated June 06, 2018, the AR sought a further time of one week to file reply along with the new evidences of despatch. Vide Email dated June 06, 2018, the AR was informed that the said request was acceded to and was advised to provide reply before June 11, 2018.

12. Vide Email dated June 11, 2018, the AR submitted that Noticee had been able to trace the details of the couriers sent to Exchanges during the relevant period and through the said couriers the disclosures pertaining to alleged violations had been made. The AR also submitted copies of the despatch register/ invoice and PoDs. Thereafter, vide Email dated June 13, 2018, the said additional evidence as submitted by the Noticee was forwarded to BSE and NSE with an advice to confirm the details. BSE vide its E-mail dated June 13,2018 and NSE vide its E-mail dated June 26,2018, re-confirmed replies contained in their earlier emails dated March 12, 2018, March 27, 2018 and Email dated March 23, 2018 respectively. Thereafter, NSE vide its Email dated July 06, 2018 submitted the following :

"In furtherance to our earlier mails and lastly our e-mail dated June 26, 2018, in the matter of disclosure made by NDTV, we state that the disclosure of the information with respect to annual disclosure of promoter holdings of NDTV as per regulation 8(3) annual disclosure for the year 2011 by the company and disclosure for India Bulls Financial Services Limited (date of transaction January 1, 2008) and promoters of NDTV (date of transaction dated July 3, 2008) as per regulation 7(3) as per SEBI Takeover Regulation, was received by the Exchange on June 5, 2017 (vide NDTV letter dated June 1, 2017). Kindly note that the same was received through hard copy on June 5, 2017. It is pertinent to mention that the said letter dated June 1, 2017 was submitted to the Exchange by NDTV pursuant to a condition precedent required for filing of settlement application with SEBI."

13. Vide letter dated July 06, 2018, copies of the BSE Email dated June 13, 2018 and NSE Email dated July 06, 2018, NSE Email dated April 06, 2018 were shared with the Noticee and the Noticee was advised to provide its submissions, if any, before July 12, 2018. Vide E-mail dated July 12, 2018, the noticee again sought cross examination of the officers of NSE. Vide E-mail dated July 12, 2018 Noticee was advised to clearly inform the persons whom it would like to cross examine and also mention the justification for the request so as to examine the same. Vide E-mail dated July 16, 2018, the Noticee submitted the following.

As mentioned in our below e-mail dated 12.07.2018, the need of cross examination will arise only if :

(i) NSE denies receipt of the said couriers; or

(ii) admits the receipt of the said couriers but denies receipt of the required disclosures in the said couriers.

In that scenario NSE ought to be directed to produce all the relevant records of the relevant period before you i.e. receipt/despatch register, file in which disclosures received from NDTV were kept. After granting inspection of the said records to NDTV, NDTV would like to cross examine the persons who are incharge of the department responsible for receiving and maintaining receipt register and the file in which such disclosures are kept. Their cross examination is necessary to test the veracity of the

मुंबई MUMBAI Securities and Exchange Board of India *statement of NSE in their e-mail dated 26.06.2018 that the required disclosures were not received by them which is being relied by you against NDTV despite NDTV producing before you the proof of despatch/delivery of the said couriers (which in turn were sent to NSE by you) and BSE confirming that they have received the same.*

Cross examination of Ms Divya Poojari, if she is not the person incharge of the said departments whose cross examination is, in any event required, may be necessary to the extent of asking her what records did she check before reiterating in her e-mail dated 26.06.2018 that the said 3 disclosures were not received.

14. In the meanwhile, BSE vide its E-mail dated July 27, 2018 has inter alia submitted the following

Vide our response dated March 27, 2018, we had inadvertently provided the confirmation for the disclosures received from the promoters/acquirers under Regulation 7(1) of SEBI (SAST) Regulations, 1997 instead of the details about disclosures received from the company under Regulation 7(3) of SEBI (SAST) Regulations, 1997, as was sought in the trailing mail.

15. Considering the changes in the data submitted by BSE as mentioned above, a Supplementary Show Cause Notice (hereinafter referred to as '**Supplementary SCN**') dated August 10, 2018 was issued to the Noticee. This supplementary SCN was issued in continuation of, and was supplementary to the original SCN. The said supplementary Show Cause Notice had to be read in conjunction with the original SCN. The details in respect of violation/ non-compliance by the Noticee as mentioned in supplementary Show Cause Notice are as given below:

it is alleged that on January 01, 2008, Indiabulls Financial Services Ltd acquired 40,00,000 (6.40% of share capital of NDTV) shares of NDTV. Pursuant to the said transaction the entities were required to make the disclosure to NDTV under Regulation 7(1) of SAST, 1997 and NDTV inturn was required to make the relevant disclosures under Regulation 7(3) of SAST to BSE and NSE. The due date for making the disclosure under Regulation 7(3) for aforesaid acquisition by Indiabulls Financial

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Services Ltd was January 09, 2008. It is alleged that NDTV has failed to make the timely disclosure to BSE.

It is alleged that on July 03, 2008, promoters of NDTV acquired 1,26,90,257 (20.28% of share capital of NDTV) shares of NDTV pursuant to the shares tendered in the open offer made by the promoters. Pursuant to the said transaction, the entities were required to make the disclosure to NDTV under Regulation 7(1) of SAST, 1997 and NDTV inturn was required to make the relevant disclosures under Regulation 7(3) of SAST to BSE and NSE. The due date for making the aforesaid disclosure under Regulation 7(3) of for Acquisition of 1,26,90,257 (20.28%) shares by promoters of NDTV pursuant to open offer was July 11,2008 It is observed that NDTV has failed to make timely disclosure to BSE.

The allegation with respect to non disclosure to NSE regarding the aforesaid transactions has already been dealt in the Original SCN.

It is on record that aforesaid disclosures under Regulation 7(3) have been made to NSE and BSE by the NDTV on June 01, 2017. It is also observed that said disclosures were made as a condition precedent required for filing settlement application with SEBI.

16. Vide letter dated August 31, 2018, the Noticee *inter alia* made the following submissions;

At the outset we submit that under Rule 3 of SEBI (Procedure for Holding Enquiry and Imposing Penalties) Rules, 1995, an adjudicating officer gets the jurisdiction to act as such only if SEBI is of the opinion that there are grounds for adjudging. Since the default in making disclosures was not before SEBI when you were appointed as the adjudicating officer, SEBI could not have formed an opinion that the grounds for adjudging the same exist. In view of above, we submit that if such fresh opinion has been formed then inspection of the file where such formation of opinion has been recorded may be provided to us. If no fresh opinion has been formed, then you do not have the jurisdiction to adjudicate upon the said default.
Without prejudice to above, we reiterate that the required disclosure were made, proof of which have already been submitted to you
The retraction first by NSE and then now by BSE after more than 3 years casts a doubt over the bona-fide and reliability of BSE/NSE officials/their records.
Since we have already submitted proof of the disclosures sent through courier to both the exchanges, we have discharged our onus of proof and NSE/BSE's bald denial without any particulars or basing the denial with documentary proof by placing their relevant records before you only is liable to be rejected. Hence, we request you to drop the present proceedings at this stage itself.

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Without prejudice to the above, however, in case you are still not inclined to drop the present proceedings at this stage, we request you to call for the records maintained by NSE and BSE including the despatch/receipt register, files maintained by listing department and all other relevant records of NSE and BSE relating to the relevant period and allow inspection of the same to NDTV. After the said inspection, we request for an opportunity to again cross-examine the relevant NSE and BSE officials to confront them with the aforesaid evidences (if after inspection, NDTV concludes that cross examination is necessary), and thereafter to file reply on merit and opportunity of hearing

17. Vide letter dated September 07, 2018 the request for inspection of documents pursuant to Supplementary SCN was forwarded to the concerned department of SEBI and Noticee was advised to complete the inspection of documents before September 20, 2018. Subsequently, the concerned department of SEBI has stated that an opportunity of inspection has been availed by the noticee on October 11, 2018 and also submitted that all Annexures to the Supplementary SCN dated August 10, 2018 have been provided to it.

18. Since the data submitted by BSE has been relied upon for the current Proceedings, It was appropriate to grant the opportunity of cross examination owing to the retraction in the data submitted by BSE. Thus vide letter dated October 15, 2018, Noticee was advised to inform the persons whom they would like to cross examine and also mention the justification for the request, enabling to examine their request. Vide Email dated October 24,2018, NDTV sought cross examination of the following Exchange Officials namely

    a) Ms. Divya Poojari, Manager, Listing Compliance, NSE;
    b) Ms. Charmi Dharod, Assistant Manager, Listing Compliance, NSE; and
    c) Mr. Abhijit Pai, Deputy General Manager, Listing Compliance, BSE

19. Considering the fact that Cross Examination of Ms. Divya Poojari, Manager, Listing Compliance, NSE; Ms. Charmi Dharod, Assistant Manager, Listing Compliance, NSE

had already been granted on May 23, 2018the Noticee's request for cross examination of Mr. Abhijit Pai, Deputy General Manager, Listing Compliance was acceded to vide letter dated October 24,2018 and the Noticee was advised to attend the opportunity of Cross Examination on November 01,2018.The aforesaid official were also advised to attend the Cross Examination proceedings.

20. During the cross examination conducted on November 1, 2018, the AR submitted that it would submit details by e-mail. Vide letter dated December 19, 2018 AR submitted its objections to the cross Examination held on November 15, 2018 as given below.

Despite our prior written request, like cross examination of NSE officials, no arrangements were made for having the services of a specialist steno for taking dictation of the questions and answers as the same took place in real time and the same were noted down by an officer of SEBI who is not a specialist steno. Due to above, the true questions and answers were not recorded and merely a rough summary of the same were brought out and that too were not in actual sequence and incomplete answers have been recorded. Further, the Ld. Adjudicating Officer at times prompted the witness to object to the question although the witness was ready to answer. Therefore, purpose of the cross examination has been completely defeated and the Notice did not get the opportunity to properly cross examine. Hence the statement of BSE about non-disclosure cannot be relied against Noticee for not giving proper opportunity to cross examine.

During the cross examination the witness could not give any answer as to what were internal checks/controls in place to ensure that the disclosures received by BSE are not missed to be put in proper files of BSE. Hence the bald and vague statement of BSE that it did not receive the disclosures cannot be accepted particularly in light of evidence produced by Noticee and given that the disclosures related to period about a decade ago.

Without prejudice to above, the Noticee submits that such an old alleged violation cannot be adjudicated now because over such a long period the evidence tends to be not available/not traceable, which in fact has happened in the present case.

It is settled law that the duty of Adjudicating Officer is to bring out the truth in the enquiry by exercising his powers provided under SEBI Act/Regulations/Rules. Since the alleged violation period is very old, the Noticee requests that NSE/BSE ought to be directed to produce the disclosures received by them under the envelops/packets sent by Noticee to NSE/BSE, the proof of which have already been furnished by Noticee to ensure that truth about disclosures comes out.

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The proofs furnished by Noticee are sufficient to prove (burden/ standard of proof being preponderance of probability) that all the impugned disclosures were made. NSE/BSE did not produce any material to disprove that the disclosures were not made by producing their records.

It has come out in cross examination that records of NSE/BSE are not reliable as there were no internal checks/control/records to ensure that all disclosures were put in proper files. Conversely, it was possible that the said disclosures were received by BSE/NSE but were not put in proper files on the basis of which NSE/BSE has stated that disclosures were not made.

In any event, at the relevant time the disclosures were not put by BSE/NSE in public domain and the same were merely put in files of NSE/BSE and hence there is no justification for imposing any penalty in the present case.

21. Thereafter, acceding to the request of Noticee, an opportunity of hearing was provided to the Noticee on January 09, 2019 vide hearing notice dated December 26, 2018. Mr Pawan Sharma, Advocate, DMD Advocates appeared as the Authorized Representative ("AR") on behalf of the Noticee in the hearing on January 09, 2019. During the course of personal hearing, AR made various oral submissions and submitted that it would make post hearing submissions before January 16, 2019. Vide letter dated January 16,2019 the Noticee made the following submissions :

1 The impugned disclosures in the present case relate to very old period. While most of the disclosures relate to the year 2007-08, few disclosures relate to the year 2010-11. Therefore, the disclosures relate to the period of about a decade ago. Although, no limitation period is prescribed under the SEBI Act but it is a settled law that the adjudication proceedings should be initiated and completed within a reasonable period of time. 8-10 years delay can be held to be unreasonable by any standard. Hence, on this ground alone the present proceedings ought to be dropped for the reason of being vitiated by unreasonable delay.

In this regard, Noticee relies on Paras 20 and 33 of the judgment - HB Stockholdings Limited Vs. Securities mid Exchange Board of India - [2013] SAT 44:2013 SCC online SAT 56. (Annexure 1)

2. The object of prescribing the limitation period is that the delay prejudices the person who is charged because of the following reasons:-

Due to delay, evidences in the favour of that person tend to be lost in the normal course of filings;

Due to delay, the human memory fades;

3.In the present case also, this has exactly happened due to delay. The Noticee is unable to trace all the relevant records to directly prove that the said disclosures were sent. However, the Noticee could collate proof of various disclosures/envelopes sent to NSE/BSE relevant for the period of the impugned disclosures (already mentioned and proof/evidence produced in our submissions dated 11.06.2018) but due to delay the Noticee is not able to exactly pinpoint as to what disclosures were made in those envelopes.

4.It is submitted that during the relevant period the Noticee had employed professional Company Secretary and compliance officer and in fact certain disclosures are even admitted by NSE/ BSE to have been made by the Noticee.

5.When specifically the compliance officer and the company secretary were employed for making relevant disclosures and they have made other disclosures also, there is no reason as to why they will not make disclosures which are impugned in the present case.

6.Hence, in the facts and circumstances of the present case, the only conclusion which can be drawn is that the impugned disclosures were also made by the Noticee but due to inordinate delay of more than a decade, the direct evidence of the disclosures have been lost.

7.Therefore, either the present proceedings ought to be dropped forthwith being vitiated by the delay or the Ld. Adjudicating Officer ought to direct NSE/BSE to produce the documents they received under the above envelopes so that the truth comes out as to whether the impugned disclosures were actually made by the Noticee or not.

8.It is submitted that the Ld. Adjudicating Officer is a quasi-judicial authority conducting an 'inquiry' under Rule 4 of Inquiry Rules. It is a settled law that the duty of the Ld. Adjudicating Officer as a quasi-judicial authority conducting an inquiry is to bring out the truth. Rule 5 statutorily mandates the Ld. Adjudicating Officer by using the word 'shall' to give an opportunity to the Noticee to produce such documents or evidence as the Ld. Adjudicating Officer may consider relevant to the inquiry. To facilitate Rule 5,

Rule 6 empowers the Ld. Adjudicating Officer to summon to give evidence and produce documents to any person which in the opinion of the Ld. Adjudicating Officer may be useful and relevant to the subject matter of the inquiry.

9.The only issue in the present 'inquiry' is whether the NSE/BSE received the impugned disclosures or not. In the present facts and circumstances of the case, particularly the inordinate delay, what documents did NSE/BSE receive under the said envelopes are directly relevant to find out the truth in the present inquiry as to whether NSE/BSE received the impugned disclosures or not.

10.Therefore, the Noticee requests the Ld. Adjudicating Officer to exercise his power under Rule 5 to direct NSE/BSE to produce their entire records relating to the disclosures made by Noticee under the said envelopes including the documents they received under the said envelopes and related records. If the said request of the Noticee is not accepted and without the same being called for, will have following serious repercussions:

(i)The Ld. Adjudicating Officer will fail in his duty to bring out the truth resulting in abdication of his power and duties by the Ld. Adjudicating Officer;

(ii)Any adverse order by the Ld. Adjudicating Officer holding that the impugned disclosures were not made will be in gross violation of the principles of natural justice;

(iii)The Noticee will be rendered gravely prejudiced of having to answer the charge relating to a period which is as old as a decade and not also having the assistance of the Ld. Adjudicating Officer to bring out the truth for which specific provisions have been made under the rules.

No prejudice will be caused to NSE/BSE if they are directed to produce the said documents/records and there is no reason as to why they should not be so directed, particularly when the BSE officials specifically stated during the cross examination that if the Ld. Adjudicating Officer so directs, the said records can be produced.

11. Further, the aforesaid request should also be acceded to considering the evasive answers given by NSE/BSE officials during the so called cross examinations which clearly brought out the fact that NSE/BSE have no internal control/checks to ensure that all the disclosures made by Noticee have been duly put in the file of the Noticee on the basis of which NSE/BSE is alleging that the impugned disclosures were not made.

12.Further, the retraction of both the NSE/BSE officials initially admitting the receipt of the impugned disclosures and subsequently denying the receipt read with the cross examination of the said officials is itself sufficient to show that the records of NSE/BSE are not reliable and hence when they say that they have not received any particular disclosure it may be that the said disclosures were received by them but not put by them in the proper file or they did not check their file properly before intimating the receipt or non- receipt of the disclosures to the Ld. Adjudicating Officer. On this ground also, NSE/BSE ought to be directed to produce their entire relevant records.

13.Even besides the present case, this is a very serious matter that NSE/BSE retracts their statements to Ld. Adjudicating Officer and they could not give any satisfactory reply as to what are the internal checks and internal control in place at the relevant time to ensure that all the disclosures made by various corporates and the Noticee were put in the relevant files. SEBI being supervisory body of NSE/BSE, there is no reason as to why NSE/BSE ought not be directed to produce the records to satisfy the

Ld. Adjudicating Officer as to whether or not there is a lapse on their part and no corporate should be penalized for the lapses of NSE/BSE.

14.As regards the cross examination, the Noticee reiterates that the cross examination was in fact no cross examination in the eyes of law for the reasons already mentioned by the Noticee in various submissions made to the Ld. Adjudicating Officer. Without prejudice to above and in any event merely orally saying that the NSE/BSE did not receive the impugned disclosures or that there is an internal check/internal control in place to ensure that all the disclosures received by NBSE/BSE are put in relevant file of the persons making disclosures without any details or particulars thereof cannot be accepted as gospel truth by the Ld. Adjudicating Officer.

15.As has come in the cross examination of the NSE officials at the relevant time, NSE/BSE were not putting the disclosures in the public domain for the information of their members or public. Hence, there is no point in penalizing the corporate/Noticee for not making disclosures if the same were not used in any manner and were merely kept in the files without processing or disseminating.

CONSIDERATION OF ISSUES AND FINDINGS

22. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

    a) ***Whether the Noticee had violated the provisions of Regulation 7(3) of the SAST, 1997?***

    b) ***Whether the Noticee had violated the provisions of Regulation 8(3) of the SAST, 1997?***

    c) ***Does the violation(s), if any, attract monetary penalty under Section 15A(b) of the SEBI Act?***

    d) ***If yes, what should be the quantum of penalty?***

23. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST, 1997 which read as under:-

SAST, 1997

7(3) Every company, whose shares are acquired in a manner referred to in sub regulations (1) and (1A), shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations (1) and (1A).

8(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1)[1] and also holdings of promoters or person(s) having control over the company as on 31st March.

SAST, 2011

Repeal & Savings

35. (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,-

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b)the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation,legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3)..................

---

[1]*8(1) Every person, including a person mentioned in regulation 6 who holds more than 15 percent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March*

24. I note from the above that Regulation 7(3) of SAST, 1997 deals with disclosure by the company whose shares are acquired in a manner referred in Regulations 7(1) and 7(1A) of SAST,1997 to the stock exchanges where the shares of the company are listed the aggregate number of shares held by each of such persons referred in sub-regulations 7(1) and 7(1A) within seven days of receipt of information under sub-regulations 7(1) and 7(1A)of the SAST,1997.

25. I also note that Regulation 8(3) read with Regulation 8(1) of the SAST,1997 requires the listed companies to make yearly disclosures regarding the change in respect of the holdings of any person holding 15% and above of the share capital / voting rights and also holdings as on 31st March of a promoter or every person having control over the company to all the stock exchanges on which the shares of the company are listed within 30 days from the financial year ending 31st March as well as the record date of the company for the purposes of declaration of dividend.

26. The facts pertaining to the acquisitions and the applicable disclosure obligations are not under dispute. The replies of the Noticee has been dealt in the subsequent paragraphs.

27. The Noticee in its reply dated February 27, 2018 has submitted that Noticee had filed a settlement application dated July 25,2017 and the same was dismissed by SEBI vide its order dated 31.08.2017 and that the said order dated 31.08.2017 is presently under challenge in a Writ Petition (L) No. 3062 of 2017 before the Hon'ble Bombay High Court. The Noticee requested to defer the present proceedings *sine die* to await the outcome of the said Writ Petition otherwise the said Writ Petition will become infructuous. However, I note that no stay order has been imposed in the matter by Hon'ble High Court. Further, I find that the said Writ Petition pertains to the Settlement Proceedings under the Securities and Exchange Board of India (Settlement of Administrative and Civil Proceedings) Regulations, 2014. However,

the present proceedings are under Section 15-I(1) of the SEBI Act and the Adjudication Rules. Thus, I find the present proceedings to be independent.

28. From the records, I note that the Noticee during the course of personal hearing held on March 07, 2018 has made a request for cross-examination of Exchange officials who had supplied disclosure related data to SEBI as the same was relied upon in the SCN. Further, vide Email dated March 09,2018 the Noticee submitted that due to non-traceability of primary evidence they would like to lead secondary evidence in support of their reply dated February 27,2018 by way of cross examination of the relevant officers of NSE and BSE. In this context, I find that Indian Evidence Act, 1872 is not applicable and principles of natural justice are followed in the present quasi-judicial proceedings. Also, an email dated March 09, 2018 was sent to BSE and NSE to re-confirm the details submitted by them to the concerned department of SEBI. In this regard, NSE in its Email dated April 06, 2018 had submitted that Annual disclosure for year 2008 has been received by NSE on April 29, 2008 while in its earlier email to the concerned department of SEBI dated August 02, 2017, NSE had submitted that the aforesaid disclosure was made on October 17, 2008 causing a delay of 170 days.

29. In light of the changes in the data submitted by NSE and also the fact that the Exchange confirmation is the sole evidence depended on in the present matter, considering the principles of natural justice, it was decided to grant the Noticee an opportunity of cross-examination of only NSE officials. During the proceedings of cross examination held on May 23,2018, the AR of Noticee cross examined Ms. Divya Poojari, Manager, Listing Compliance, NSE and Ms. Charmi Dharod, Assistant Manager, Listing Compliance, NSE in my presence. The minutes are on record. On perusal of the record of cross examination proceedings, I do not find any additional evidence/ facts has been brought out by the Noticee consequent to such cross examination.

30. Further, during the proceedings, vide Email dated March 27, 2018, BSE was advised to confirm the details submitted by them vide Email dated June 22, 2015 to the concerned department of SEBI. BSE vide Email dated March 27, 2018 confirmed the receipt of disclosures submitted by them vide Email dated June 22, 2015. However, vide Email dated July 27,2018 , BSE retracted its earlier confirmation as mentioned below;

we had inadvertently provided the confirmation for the disclosures received from the promoters/acquirers under Regulation 7(1) of SEBI (SAST) Regulations, 1997 instead of the details about disclosures received from the company under Regulation 7(3) of SEBI (SAST) Regulations, 1997, as was sought in the trailing mail.

Owing to the retraction by BSE, a Supplementary SCN dated August 10, 2018 was issued to the Noticee. In its reply dated August 31, 2018 to the SCN, the Noticee has sought the cross examination of the relevant officers of NSE and BSE. In light of the changes in the data submitted by BSE, considering the principles of natural justice, It was decided to grant the Noticee an opportunity of cross-examination of only BSE officials as the cross Examination of NSE officials has already been granted on May 23,2018. During the proceedings of cross examination held on November 15, 2018, the AR of Noticee cross examined Mr. Abhijeet Pai, Deputy General Manager, Listing Compliance, BSE in my presence. The minutes are available on record. On perusal of the record of cross examination proceedings, I do not find any additional evidence/ facts has been brought out by the Noticee consequent to such cross examination.

31. Now, the first issue for consideration is whether the Noticee has failed to make the relevant disclosures to BSE and NSE under Regulation 7(3) of the SAST, 1997.I find from the material made available before me that the relevant disclosures were required to be made to the Stock Exchanges with respect to the following transaction by Noticee as under:

Particulars (1)	Actual Date of Disclosure by acquirer to Noticee under 7(1) (2)	Due date for disclosure by NDTV (3)	Actual date of disclosure by NDTV (4)	
			BSE	NSE
Acquisition of 40,00,000 (6.40%) shares of NDTV by Indiabulls Financial Services Ltd on January 01, 2008	Not available*	09.01.2008*	01.06.2017#	01.06.2017
Acquisition of 1,26,90,257 (20.28%) shares by promoters of NDTV pursuant to open offer on July 03, 2008	04.07.2008	11.07.2008	01.06.2017^	01.06.2017

*The Noticee vide Email dated November 07, 2017 has confirmed that the disclosure pertains to old period and is not available with it. However, the Noticee in its disclosure dated June 01,2017 has admittedly reckoned its due date of disclosure as January 09,2008

#As against 02.01.2008 submitted by BSE earlier

^As against 04.07.2008 submitted by BSE earlier

I note from the above table that with respect to Acquisition of 40,00,000 (6.40%) shares of NDTV by Indiabulls Financial Services Ltd, the relevant disclosures required to be made under Regulation 7(3) of SAST to BSE and NSE on January 09,2008 was made on June 01,2017(received on June 05,2017)and with respect to the Acquisition of 1,26,90,257 (20.28%) shares by promoters of NDTV pursuant to open offer on July 03, 2008,the relevant disclosures required to be made under Regulation 7(3) of SAST to BSE and NSE on July 11,2008 was made on June 01,2017(received on June 05,2017). Thus, I note that the aforesaid disclosures were made to BSE & NSE by the Noticee as a condition precedent for filing settlement application with SEBI thereby causing a delay of 3432 days and 3248 days respectively.

32. The Noticee in its reply dated February 27, 2018 has submitted with respect to Non-compliance with Regulation 7(3) of SAST, 1997 that Noticee had made timely disclosures and mere inability of Noticee to provide documentary evidence of making disclosures should not be treated as a non-compliance. The Noticee also submitted that the said disclosures pertain to period January 2008 and July 2008 which is almost a decade old and there is a high probability that Noticee has misplaced the said disclosures along with the documentary evidence. The Noticee

further submitted that Indiabulls and the promoters of Noticee had made respective disclosures under Regulation 7(1) of the SAST, 1997, in a timely manner, to both BSE and NSE and was hence disclosed to the public. I note that the Noticee's obligation to make the disclosure under Regulation 7(3) of the SAST, 1997 is independent of disclosure under Regulation 7(1) of the SAST, 1997 and cannot be treated as disclosed to public. I also note that the Noticee has clearly accepted its inability to provide necessary documentary evidence

33. I note that the Noticee in its letter dated June 11, 2018 has further submitted details of the mails/couriers sent to Stock Exchanges during the relevant period to confirm the fact that they had made the relevant disclosure to BSE and NSE in terms of Regulation 7(3) of SAST, 1997.The same were sent to BSE /NSE for confirmation. NSE vide its Email dated June 26, 2018 re-confirmed the details provided vide its Email dated April 06, 2018 and BSE vide Email dated July 27,2018 confirmed non receipt of disclosures of aforesaid transactions and thus clearly indicating that no disclosures have been received by BSE and NSE from Noticee in terms of Regulation 7(3) of SAST, 1997 for the alleged transactions. Further, since the Stock Exchanges have confirmed non-receipt of disclosures even after sharing the courier details, it serves nobody's purpose by merely submitting courier slips of communication with Stock exchanges. It is also on record that said disclosures made to BSE & NSE on June 05, 2017 were made as a condition precedent for filing settlement application with SEBI. Thus, the submission that Noticee has timely made the disclosure to Stock Exchanges cannot be accepted. It is pertinent to mention that Hon'ble SAT, in the matter of Mega Resources Ltd. v. SEBI (Appeal No. 49/2001) has observed that, *"...regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement. But Regulation 7(1) requires the acquirer to disclose the aggregate of his holding in the Target Company to the*

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company. Sub regulation (2) prescribes the time limit within which the disclosure is required to be made..................According to Black's Law Dictionary "Disclosure" means –act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."

Further, Hon'ble SAT, in its order dated July 19,2010 in the matter of Kalindee Rail Nirman (Engineers) Limited vs SEBI had made the following observations :

As observed by the Calcutta High Court, the agency through which the document is sent acts as the agent of the sender and <u>if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the appellant has not placed on record any acknowledgment received from BSE in regard to the mails that were allegedly sent containing the compliance reports. On the other hand, we have on record a letter from BSE specifically stating that it had not received the compliance reports for the aforesaid quarters from the appellant</u>.(emphasis supplied)

34. Thus, I find that mere dispatch of the disclosures is not sufficient to show compliance of the disclosure obligation. What is important is that the disclosures should actually reach the exchange. In the instant case, BSE & NSE have submitted that they did not receive any disclosures from Noticee and the Noticee is unable to establish that its disclosures in terms of Regulation 7(3) of SAST, 1997 has actually reached BSE & NSE and were received by it. Further, the submission of the Noticee that it had made timely disclosures to Exchanges and the same pertains to old period and the same may have been misplaced are baseless and hypothetical argument and are not acceptable. Such arguments only lead to admission of violation by the Noticee. Also, the obligation on the Noticee to make disclosure under Regulation 7(3) of SAST, 1997 is a statutory obligation. Thus submission of the Noticee that appropriate

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disclosures have been made by the acquirer under Regulation 7(1) of SAST, 1997 and the information with respect to the said transactions has been disclosed to public is devoid of any merit.

35. From the above, it can be concluded that the Noticee had not made timely disclosures under Regulation 7(3) of SAST, 1997 to BSE &NSE. In view of the foregoing, I am of the opinion that the allegation of delayed disclosures under Regulation 7(3) of SAST, 1997 to BSE & NSE against the Noticee stands established.

36. Now, the next issue for consideration is whether the Noticee have delayed in making the relevant disclosures to BSE and NSE under Regulation 8(3) of the SAST, 1997 for the financial years 2007-2008 and 2010-2011. With respect to the financial year 2007-2008, I find from the material made available before me that the relevant disclosures were required to be made in the prescribed format before April 30, 2008. However, I note from an email received from NSE dated August 02, 2017, that the Noticee made the relevant disclosure on October 17, 2008 in NSE thereby causing a delay of 170 days.

37. The Noticee in its reply dated February 27, 2018 has submitted that said disclosure was made by Noticee to BSE within the prescribed time limit, i.e., on April 29, 2008 and there is no possibility that Noticee would have made the disclosure to NSE after a delay of 170 days. In order to verify the claim of disclosures made by the Noticee, an email dated March 09, 2018 was sent to BSE and NSE to re-confirm the details submitted by them to the concerned department of SEBI. In this regard, BSE vide email dated March 12, 2018 confirmed the details submitted in its earlier Email dated June 22, 2015 i.e Annual disclosure for year 2008 has been received by BSE on April 29, 2018. However, NSE in its Email dated April 06, 2018 had submitted that Annual disclosure for year 2008 has been timely received by NSE on April 29, 2008 while in its earlier email dated August 02,2017 to the concerned department of SEBI, NSE submitted that the aforesaid disclosure was made on October 17,2008. In view of the

above, I am of the opinion that Noticee has complied with Regulation 8(3) of the SAST, 1997 for the financial year 2007-2008.

38. With respect to the financial year 2010-2011, I find from material made available before me that the relevant disclosures were required to be made in the prescribed format before April 30, 2011. However, I note from the email received from BSE and NSE dated June 22, 2015 and August 02, 2017 respectively that the Noticee has made the relevant disclosure only on May 16, 2011 in BSE thereby causing a delay of 16 days in BSE and did not make the requisite disclosure in NSE.

39. The Noticee in its reply dated February 27, 2018 has submitted that it is highly unlikely that a disclosure is made to BSE and not made at all to NSE that too when the disclosure is identical to the disclosure made to BSE. As brought out above, in reply to the Email dated March 09,2018, BSE vide its Email dated March 12,2018 and NSE vide its Email dated April 06,2018 confirmed that the Noticee has made the relevant disclosure on May 16, 2011 to BSE and did not make the requisite disclosure to NSE. From the above, it can be concluded that the Noticee had made the disclosures to BSE under Regulation 8(3) of SAST, 1997 with a delay of 16 days and did not make any disclosure under Regulation 8(3) of SAST, 1997 to NSE for the financial year 2010-2011. I find from the records, the said disclosure was made to NSE on June 01, 2017 as a condition precedent for filing settlement application with SEBI thereby causing a delay of 3252 days.

40. Further, as brought out above, the Noticee in its letter dated June 11, 2018 has further submitted details of the couriers sent to Exchanges during the relevant period to confirm the fact that they had made the relevant disclosure to BSE and NSE in terms of Regulation 8(3) of SAST, 1997. However, BSE vide its E-mail dated June 13, 2018 and NSE vide its E-mail dated June 26, 2018 re-confirmed the emails dated March 12, 2018, March 27, 2018 and Email dated April 06, 2018 respectively thus clearly indicating that disclosure with a 16 days delay has been received by BSE

and disclosures with a 3252 days delay have been received by NSE from Noticee and in terms of Regulation 8(3) of SAST, 1997 for the alleged transactions. Since the Noticee has filed the required disclosures with a delay of 16 days to BSE, I am inclined to take a lenient view with respect to much delayed disclosure to NSE. Thus, delayed disclosure to BSE stands established.

41. Vide letter dated December 19, 2018, the AR while submitting its objections to the cross Examination held on November 15,2018 has submitted the true questions and answers were not recorded during cross examination and merely a rough summary of the same were brought out and were not in actual sequence and incomplete. In this respect, I find that sufficient time was granted to AR for conducting the cross examination on November 15, 2018. Further, the record of the cross examination proceeding was duly shared with AR before finalizing it. AR has also submitted that the witness was prompted to object to the question during cross examination. I find no basis for such allegation. In this regard, it may be noted that objection was raised by BSE and by me in respect of hypothetical questions and the same has been brought out in the record of cross examination proceedings. Also, the AR was advised to raise pertinent questions relating to the present matter which may unearth the facts. In this regard, I note that Hon'ble SAT in its order dated June 21,2017 in the matter of Price Waterhouse Bangalore vs SEBI had made the following observations :

"However, it may not be out of place to note that a blanket right of cross-examination cannot be claimed by party irrespective of the peculiarity of the facts and issues of a case. <u>"Indiscriminate cross-examination of a witness by posing him patently irrelevant and inadmissible questions cannot be allowed by the WTM in a given case if it found that the cross-examination is going in a rambling way."</u> (emphasis supplied)

42. Further, the Noticee in its reply dated January 16, 2019 had submitted that the disclosures were made by the Noticee but due to inordinate delay of more than a decade, the direct evidence of the disclosures have been lost. Earlier, in its reply

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dated December 19, 2018 the Noticee had submitted that the proofs furnished by Noticee are sufficient to prove that all the disclosures were made. I find that on one side, the Noticee submits that evidence of disclosure made has been lost and on the other side the noticee submits that the evidence furnished by Noticee are sufficient to prove that all the disclosures were made. Thus, the aforesaid submissions of the Noticee are self-contradictory in nature.

43. I also note that Noticee vide various replies has requested to further call for the records maintained by BSE and NSE including the despatch/receipt register, files maintained by listing department and all other relevant records of BSE & NSE relating to the relevant period and allow inspection of the same to the Noticee. The Noticee has also sought another opportunity to again cross-examine the relevant BSE &NSE officials and an opportunity of hearing. I am of the view that Noticee is adopting delaying tactics as reasonable opportunity of cross examination has already been granted to Noticee to contradict the findings in the matter consequent to the changes in the data submitted by BSE & NSE. Also at every stage during the proceedings the relevant submissions of the Noticee were forwarded to the Stock Exchanges for their confirmations. Pursuant to the submission of additional evidence by the Noticee, the Stock Exchanges were advised to re-confirm the facts in light of the additional evidence.

44. In view of the foregoing, I am convinced that the Noticee has violated the provisions of Regulation 7(3) and Regulation 8(3) of the SAST 1997 read with Regulation 35(2) of the SAST, 2011. Therefore, I am of the view that it is a fit case to impose monetary penalty under the provisions of Section 15 A(b) of the SEBI Act, which reads as under:

Penalty for failure to furnish information, return, etc

15 A. *If any person, who is required under this Act or any rules or regulations made there under-*

……

(b)to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

45. In this context, I would like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014), wherein it was held that "*..obligation to make disclosures within the stipulated time is a mandatory obligation 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.*"

46. In this regard, 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 :

Factors to be taken into account by the adjudicating officer.

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 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.*

47. From the material available on record, the amount of disproportionate gain or unfair advantage to the noticee or the loss caused to the investors as a result of the noticee's default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default committed by the noticee, the details of the change in the shareholding of the key shareholders and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. Further, another purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the securities market. However, in view of the violations committed by the noticee i.e making delayed disclosures under Regulation 7(3) on two separate counts and Regulation 8(3) of the SAST 1997 on one instance, as mentioned above, the investors were deprived of the important information at the relevant point of time.

ORDER

48. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the 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. 12,00,000/- (Rupees Twelve lac only) on the Noticee viz. New Delhi Television Limited under the provisions of Section 15A(b) of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

49. The amount of the penalty in the above table shall be payable jointly and severally by the Noticee. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The amount of penalty shall be paid

भारतीय प्रतिभूति और विनिमय बोर्ड Securities and Exchange Board of India मुंबई MUMBAI either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties

50. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

51. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to New Delhi Television Limited and also to the Securities and Exchange Board of India.

Date: June 17, 2019

Place: Mumbai

K SARAVANAN

CHIEF GENERAL MANAGER &

ADJUDICATING OFFICER