BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/DP/2022-23/22671-22672]

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

In respect of:

1. Manoj Gupta **(PAN: ACHPG3380N)** **101, 1st Floor, "Capital Arch" 8/1,** **Sector C, Ratlam Kothi,** **Behind Airtel Office,** **Indore - 452001**	**2. Babulal Khimraj Jain** **(PAN- AAEPJ9928Q)** **301, Kamtia Niketan CHS Ltd.,** **Ram Mandir Road,** **Near Kombdi Galli,** **Bhayender (West), Thane 401101**

In the matter of
Vandana Knitwear Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**"), while examining the Draft Letter of Offer ("hereinafter referred to as "**DLoF**") filed by one Mr. Siddharth Gattani (hereinafter referred to as "**Acquirer 1**") and another Mr. Shorya Gattani (hereinafter referred to as "**Acquirer 2**") to acquire through an open offer, 52% shares of Vandana Knitwear Limited (hereinafter referred to as "**Target Company**"), observed certain non-compliances of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations**") by Manoj Gupta and Babulal Khimraj Jain, promoters of the target company (hereinafter referred to as "**Noticee No. 1 and 2"**, respectively and collectively as "**Noticees"**). Mark Corporate Advisors Private Limited (hereinafter referred to as "**Manager**") was appointed manager to the offer.

2. It was observed from the website of BSE Limited (hereinafter referred to as "BSE") that Noticees were the promoters of the target company in the Financial Year 2019-20 and were holding 1.78 % and 3.18% shareholding, respectively.

3. It was further observed that there was change of more than 2% shareholding of the promoter group during the Quarter ending June 2019 and therefore, the Noticees being the promoter group and persons acting in concert, were required to make the relevant disclosures mandated under Regulation 29 (2) read with Regulation 29(3) of **SAST Regulations** to the Company and to the stock exchange (i.e BSE) within two working days of the change in shareholding. It was observed during the examination that the Noticees have failed to make such disclosures and therefore, it was alleged that Noticees have violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

4. It was further alleged that the Noticees made delayed disclosure of the aggregate shareholding of the promoters as on March 31 for the financial years 2012-13, 2013-14, 2017-18 and 2018-19 in violation of Regulation 30(2) read with Regulation 30(3) of the SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

5. SEBI had appointed Ms. Geetha G as the Adjudicating Officer under Section 15I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties), 1995 (hereinafter referred to as "Rule") vide communique dated May 18, 2022 to enquire into and adjudge under Section 15A(b) of SEBI Act, the violation of Regulation 29(2) read with Regulation 29(3) of SAST Regulations and Regulation 30(2) read with Regulation 30(3) of SAST Regulations by the Noticees. Upon transfer of Ms. Geetha G, vide communique dated September 19, 2022, Shri Amit Kapoor was appointed as the Adjudicating Officer. Subsequently, the undersigned has been appointed as Adjudicating Officer vide communique dated October 06, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Based on the findings by SEBI, Show Cause Notice(s) dated October 14, 2022 (hereinafter referred to as '**SCN'**) was issued to the Noticees under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on them under section 15A(b) of SEBI Act for the alleged violation of the provisions of SAST Regulations. The SCN, *inter alia*, alleged the following:

    i. Vide letters dated December 14, 2020, December 16, 2020 and January 11, 2021, the Manager to the offer informed that Noticee No. 1 and 2 sold their entire shareholding on May 29, 2019 and June 04, 2019, respectively and did not make timely disclosure as mentioned below:

TABLE 1

Sl no	Regulation	Name of /Seller	Sale	No. of Shares /Voting Rights Transacted	%	Date of Transaction	Due date for compliance	Actual compliance date	Delay, if any (days)
1	29(2)	Manoj Gupta	Market	19,00,000	1.78%	29-05-2019	31-05-2019	19-12-2020	568
2	29(2)	Babulal Khimraj Jain	Market	34,00,000	3.18%	04-06-2019	06-06-2019	19-12-2020	562

    ii. The aforesaid change in shareholding of the Noticees resulted in the change of shareholding of the promoter group of the target company. Therefore, the Noticees, were required to make disclosures to the Stock Exchange and the Target Company within two working days as per Regulation 29(2) read with Regulation 29(3) of SAST Regulations for the change in shareholding of the promoter group. It was alleged that the Noticees have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations as depicted in Table 1.

iii. It was further alleged that Noticees made delayed disclosure of the aggregate shareholding of the promoters as of the 31st Day of March for the Financial Years 2012-13, 2013-14, 2017-18 and 2018-19 under Regulation 30 (2) read with Regulation 30(3) of the SAST Regulations as following:

TABLE 2

Sl no	Regulation	Financial Year	Due date for compliance	Actual compliance date	Delay, if any
1	30(1) & 30(2)	2012-13	09-04-2013	10-04-2013	1 day
2	30(1) & 30(2)	2013-14	10-04-2014	11-04-2013	1 day
3	30(1) & 30(2)	2017-18	10-04-2018	19-12-2020	984 days
4	30(1) & 30(2)	2018-19	09-04-2019	19-12-2020	620 days

iv. It was, therefore alleged that the Noticees have violated the provisions of Regulation 30(2) read with Regulation 30(3) of SAST Regulations.

7. Vide email dated October 27, 2022, the Noticees sought 30 days' time to submit the replies.

8. Subsequently, vide Notice of personal hearing dated October 31, 2022, Noticee were granted an opportunity of personal hearing on November 21, 2022. Vide said notice, Noticees were advised to submit their replies before the hearing.

9. Noticees vide their letters dated October 21, 2022 (received by SEBI vide email dated November 01, 2022) sought inspection of documents. The physical copies of the aforesaid letters were received by SEBI on November 03, 2022.

10. Vide email dated November 02, 2022, Noticees were advised to avail the opportunity of inspection of documents on November 03, 2022. The Authorised Representative (hereinafter referred to as "**AR**") of the Noticees inspected the documents on November 03, 2022.

11. In response to the SCN, the Noticees vide letters dated November 15 and November 17, 2022, inter alia, submitted the following:

- *Noticee Nos. 1 and 2 have made disclosure for the transactions executed on 29/05/2019 for 19,00, 000 shares and 34,00,000 on June 04, 2019, respectively, to the Stock Exchange and the same is available on its website.*
- *With respect to the violation of Regulation 30(2) read with regulation 30(3), the AR submitted that administrative warning has been proposed to the other entities of the promoter group. Therefore, it is requested same treatment is provided.*

12. The AR of the Noticees, appeared for the hearing on November 22, 2022 and reiterated the submissions made by them vide letters dated November 15 and November 17, 2022. The AR of Noticees further submitted that a lenient view may be taken with respect to the violation of Regulation 30(2) and Regulation 30(3). The AR submitted a copy of the disclosures made under PIT Regulations downloaded from the website of the stock exchange.

CONSIDERATION OF ISSUES AND EVIDENCE

13. I have carefully perused the charges levelled against the Noticees in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

    I. Whether Noticees have violated Regulation 29(2) read with Regulation 29(3) and Regulation 30(2) read with Regulation 30(3) of SAST Regulations of SAST Regulations?

    II. Do the violations, if any, on the part of the Noticees attract monetary penalty under sections 15A(b) of SEBI Act?

    III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

14. Before proceeding further, I would like to refer to the relevant provisions of the 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.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to, —

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office."

30. Continual Disclosures

…

30(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

30(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to, —

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

I. Whether Noticees have violated Regulation 29(2) read with Regulation 29(3) and Regulation 30(2) read with Regulation 30(3) of SAST Regulations of SAST Regulations?

15. From the reply of the Noticees, I note that admittedly, Noticee Nos. 1 and 2 disposed 19,00,000 and 34,00,000 shares of the company on May 29, 2019 and June 04, 2019, respectively. It is further submitted by the AR of the Noticees that the disclosures with respect to the said disposal of shares is available on BSE website. In this regard, BSE website has been perused and it is observed that the disclosures with respect to the aforementioned disposal of shares was made under SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**") by the noticees . The details are as under:

Sr. No.	Security Name	Name of Person	Category of person	No.of Securities Disposed	Date of sale of shares	Date of Intimation to Company	Sale	Reported to Exchange
1	Vandana Knitwear Limited	Babulal Khimraj Jain	Promoter & Director	3400000	04-Jun-2019	06-Jun-2019	Market Sale	06-Jun-2019
2	Vandana Knitwear Limited	Manoj Gupta	Promoter	1900000	29-May-2019	03-Jun-2019	Market Sale	04-Jun-2019

***Source BSE Website**

16. I observe from the disclosures available on BSE website that the necessary disclosures were made by the Noticees to the company and BSE in terms of the PIT Regulations. It is also observed that Noticee No. 1 made the disclosure under PIT Regulations with a delay of one working day In my opinion delay of one day can be condoned.

17. It is pertinent to mention the Order dated September 04, 2013 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Private Limited vs. SEBI wherein the Hon'ble SAT had observed that:

"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since

violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.”

18. In the light of the above observations of Hon’ble SAT, I am of the view that the disclosures under Regulation 29 of SAST 2011 and Regulation 13 of PIT Regulations are not substantially different. It is important to note that the details of the shareholding of the promoters and changes thereto is an important element for the proper functioning of the securities market and timely disclosure thereof to the stock exchanges etc. are of significant importance from the standpoint of investors. The purpose of these disclosures is to bring about transparency in the transactions of Promoters and assist the Regulator to effectively monitor the transactions in the market. In this regard, Hon’ble SAT in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014) held that “*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*."

19. I am of the opinion that the purpose of dissemination of information regarding the disposal of shares was indeed met by making the requisite disclosures under PIT Regulations. By virtue of order of Hon’ble SAT in Vitro Commodities Ltd., the disclosures made under PIT Regulations are as good as made under SAST Regulations. Therefore, the allegation against the Noticees with regard to violation of Regulation 29(2) read with Regulation 29(3) of SAST Regulations is not established.

20. With respect to the violation of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, I observe that the disclosure under Regulation 30(2) read with Regulation 30(3) of SAST Regulations are admittedly made with a delay for the Financial Years 2012-13, 2013-

14, 2017-18 and 2018-19 as mentioned in para 6(iii) of the present order. It is contended by the Noticees that SEBI has given only the Administrative Warning for the same violation to the 5 other members of the promoter group and therefore same treatment may be extended to them as well. In this regard, I note that the Noticees together were holding 7.01 % of the shareholding of the company which is approx. half of the shareholding of the promoter group which is 14.65%, therefore, it is reasonably expected from the Noticees that requirements of the disclosures under Regulation 30(2) of the SAST shall be met by the Noticees. Moreover Noticee 2 was the director of the company . I also note that disclosures were made with a delay of upto 984 days and cannot be ignored . The objective of disclosure under Regulation 30(2) read with 30(3) of SAST is to make investors at large be aware of the shareholding of the promoters of the company in which they have invested. I note that Regulation 30(2) read with Regulation 30(3) clearly stipulate that disclosure with respect to the aggregate shareholding has to be made as of 31st Day of March within 7 working days of the Financial Year. Admittedly, the said disclosures were made with the substantial delay. Further, as observed from the preceding paragraphs, the Noticees have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations also . The said non- compliance is condoned owing to the fact the disclosure of the relevant transactions were made under PIT Regulations (that too with a delay of one day) however disclosures as prescribed under SAST were not made. But with respect to the violation of Regulation 30(2) read with Regulation 30(3) of SAST Regulations, I cannot ignore the fact that there is a delay of 984 days which is substantive. The same treatment cannot be given on repeated violations. Therefore, the Noticees cannot take refuge by claiming that SEBI has given administrative warning to remaining other 5 members of the promoter group hence current proceedings against the Noticees shall also be dropped. In view of the above, I conclude that Noticees have violated provisions of Regulation 30(2) read with 30(3) of the SAST regulations by not making timely disclosure about promoters annual shareholding.

21. In this regard, I find it pertinent to refer to the judgment of Hon’ble SAT in the matter of Akriti Global Traders Ltd. v. Securities and Exchange Board of India (Appeal No. 78 of 2014 dated September 30, 2014) wherein it was held that –

"*.... firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon the intention of parties....".*

22. In view of the aforesaid, I find Noticees have violated Regulation 30(2) read with Regulation (3) of SAST Regulations.

Do the violations, if any, on the part of the Noticees attract monetary penalty under sections 15A(b) of SEBI Act?

23. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.......... Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*."

24. I also note that in Appeal No. 66 of 2003–Milan Mahendra Securities Pvt. Ltd. Vs. SEBI–the Hon'ble Securities Appellate Tribunal (SAT) has observed that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market*".

25. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation.

26. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15A(b) of SEBI Act for violation of the above mentioned SAST Regulations. The provisions of Section 15A(b) of the SEBI Act, 1992 read as under:

15A. Penalty for failure to furnish information, return, etc.

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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

27. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 which read 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.

28. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of their failure. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are

depriving the investing public the statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticees. Hence, I note that the Noticees made delayed disclosure as brought out in the preceding paragraphs and thereby have violated the relevant provisions of SAST Regulations, as mentioned above.

ORDER

29. Having considered all these facts and circumstances of the case, the material available on record, 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 SEBI Adjudication Rules, 1995, I hereby impose a penalty of Rs. 1,00,000 (Rupees One Lakh) under Section 15A(b) of SEBI Act, 1992 on each of the Noticees for the violations as specified in this order.

30. 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 (EFD1 –DRA 4), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C –7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name	
Name of the Payee	
Date of payment	
Amount Paid	
Transaction No.	
Bank Details	
In which payment is made for	Penalty

31. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

32. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticees, viz., Shri Manoj Gupta and Shri Babulal Khimraj Jain and also to the Securities and Exchange Board of India.

Date : January 03, 2023
Place : Mumbai

SAHIL MALIK
GENERAL MANAGER &
ADJUDICATING OFFICER