BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AN/HP/2023-24/28466-28476]

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

In respect of:

Noticee No.	Noticee Name	Noticee No.	Noticee Name
1.	**Race Eco Chain Ltd.** **(Erstwhile: Anisha Impex Ltd.)** (PAN: AADCA1572H)	2.	**Sunil Kumar Malik** (PAN: AANPM1288P)
3.	**Puja Malik** (PAN: AHQPM5425J)	4.	**Anshu Agarwal** (PAN: ADUPA1251G)
5.	**Anshu Agarwal HUF** (PAN: AAJHA0516J)	6.	**Ramesh Chandra Agarwal** (PAN: ACAPA1758K)
7.	**R. C. Agarwal HUF** (PAN: AALHR4752D)	8.	**Usha Agarwal** (PAN: ADEPA0240R)
9.	**Namita Agarwal** **(PAN: AFYPA9042F)**	10.	**Akhil Bansal** (PAN: AFFPB9325P)
11.	**Reena Agarwal** (PAN: AGPPA4991B)		

In the matter of Akashdeep Metal Industries Limited

BRIEF BACKGROUND

1. Securities and Exchange Board of India ("**SEBI**") initiated Adjudication Proceedings under Section 15A(b) of the SEBI Act, 1992 ('**SEBI Act**') against Race Eco Chain Ltd. (erstwhile Anisha Impex Ltd.) (**Noticee 1**), Sunil Kumar Malik (**Noticee 2**), Puja Malik (**Noticee 3**), Anshu Agarwal (**Noticee 4**), Anshu Agarwal HUF (**Noticee 5**), Ramesh Chandra Agarwal (**Noticee 6**), R. C. Agarwal HUF (**Noticee 7**), Usha Agarwal (**Noticee 8**), Namita Agarwal (**Noticee 9**), Akhil Bansal (**Noticee 10**) and Reena Agarwal (**Noticee 11**) for alleged violation of Regulation 18(6), 29(1) and 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**'SEBI SAST**

Regulations' / SAST Regulations, 2011' / 'SAST Regulations') in the matter of Akashdeep Metal Industries Limited ('**Company** / **AMIL**'). The Noticees 1 to 11 are collectively referred to as '**Noticees**' **/** '**You**'.

APPOINTMENT OF ADJUDICATING OFFICER

2. Upon being satisfied that there are grounds to inquire and adjudicate upon the alleged violations of provisions of SAST Regulations, as stated, by the Noticees, SEBI, in exercise of powers under Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure For Holding Inquiry And Imposing Penalties) Rules, 1995 ("Adjudication Rules") read with Section 19 of the SEBI Act, 1992, appointed the undersigned as the Adjudicating Officer ("**AO**") in the matter, vide communique dated October 07, 2022 to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the aforesaid alleged violations by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice No. EAD5/AN/HP/7183/1-11/2023 dated February 20, 2023 ("**SCN**") was issued to the Noticees in terms of Rule 4(1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be held against the Noticees and penalty not be imposed against Noticees under Section 15A(b) of the SEBI Act 1992 for the alleged violation of Regulation 18(6), 29(1) and 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 as applicable as specified in the SCN.

4. The following was inter alia observed and/or alleged per the SCN :

'.....

3. During the examination of Draft Letter of Offer (DLOF) of Open Offer made by Noticee 2 along with Persons Acting in Concert (PACs) to the public shareholders of AMIL, on checking the compliance with the provision of Chapter V of SAST Regulations, SEBI has observed that there were certain violations of Regulation 29 of SAST Regulations due to the delayed compliances by Noticee 2, who was responsible to make disclosures of the shares acquired/sold by Noticee 1 and PACs. The Acquirer and PACs are not the part of promoter group.

4. *SEBI issued Summary Settlement Notice dated December 13, 2021 to Noticee 2 and PACs in terms of SEBI (Settlement Proceedings) Regulations, 2018 ('Settlement Regulations'). In terms of Chapter VII of Settlement Regulations, applicant was required to file settlement application along with a settlement fee of Rs. 15,82,500 within 30 days of receipt of notice, which was stated in the notice. Pursuant to the issuance of aforesaid Summary Settlement Notice, SEBI received Settlement Application dated May 13, 2022 filed by Noticee 2 along with PACs. On perusal of the said application, SEBI observed that the application was not filed within 30 days of the receipt of the Summary Settlement notice and applicant did not remit the application fee and the settlement fee along with the application. In terms of Regulation 17 of Chapter VII of Settlement Regulations on 'Summary Settlement', specified proceedings need to be initiated in case the noticee does not file a settlement application under this Chapter or do not remit the settlement amount. Vide email dated July 22, 2022, applicant has been informed that Settlement Applicant filed by it cannot be considered due to the delayed filing, non-remittance of fee and accordingly, appropriate action as deems fit shall be initiated by SEBI.*

5. ***Observations of SEBI pursuant to the examination in the matter and alleged violations:***

Delayed disclosures of shares acquired in the year 2018 and 2021 which is the violation of Regulation 29(1) and Regulation 29(2) read with Regulation 29(3) of SAST Regulations:

5.1 *Capital built-up of the Acquirer and PACs in the Target Company was submitted by MB along with the DLOF of Open Offer. On perusal of the DLOF and capital built-up, it was observed by SEBI that Acquirer and PACs made delayed disclosure of the acquisition/sale of shares in Target Company under Regulation 29 of SAST Regulations.*

5.2 *Date wise details on acquisitions/sale of shares by Acquirers and PACs and compliances with the provisions of SAST Regulations is enclosed as **Annexure 2**.*

5.3 *Details of Acquirers and PACs given in the abovementioned disclosure made to BSE is as under:*

Date of disclosure	***Acquirer/PAC making disclosure***	***Name of acquirers and PACs referred in the disclosures***
25/11/2020	*Anisha Impex Limited*	*Puja Malik, Anisha Impex Ltd.*
03/03/2021		*Puja Malik, Anisha Impex Ltd., Sunil Kumar Malik, Anshu Agarwal HUF, RC Agarwal HUF, Namita Agarwal, Anshu Agarwal, Ramesh Chandra Agarwal, Reena Agarwal, Akhil Bansal, Usha Agarwal*
10/03/2021		

5.4 *Copies of disclosures made by the Noticees are enclosed as **Annexure 3**.*

5.5 *As per BSE's website, the disclosures of the above acquisitions/sale of shares of Target Company were made with delay on November 25, 2020, March 03, 2021 and March 10, 2021.*

5.6 *Details of delayed compliance under Regulation 29 of SAST Regulations by the Acquirer and PACs is as under:*

Name of acquirers	***Reg.***	***Date of transaction***	***Shareholding (in %)***			***Date of reporting of disclosure to BSE***		***Delay in no. of days***
			Pre	***Post***	***change***	***Due date***	***Actual date***	
Anisha Impex Ltd., Sunil Kumar Malik, Puja Malik and PACs	*29(1)*	*04/12/2018*	*3.53*	*8.41*	*4.88*	*06/12/2018*	*25/11/2020*	*720*
	29(2)	*04/02/2021*	*19.61*	*16.62*	*-2.99*	*08/02/2021*	*03/03/2021*	*23*
	29(2)	*12/02/2021*	*16.62*	*13.10*	*-3.52*	*16/02/2021*		*15*
	29(2)	*03/03/2021*	*13.10*	*8.88*	*-4.22*	*05/03/2021*	*10/03/2021*	*5*

5.7 *Since, the disclosures required as given in the above table were not made within prescribed timeline, Noticees 1, 2, 3 and PACs viz. Noticees 4 to 11 are alleged to have violated Regulation 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations.*

Delayed Disclosure of acquisition of shares on 24.01.2022 which is the violation of Regulation 18(6) of SAST Regulations:

5.8 *Further, Noticee 11 had acquired 100 (0.001%) shares of AMIL on January 24, 2022 and disclosure of said acquisition on BSE was made on June 08, 2022 instead of due date on January 25, 2022 as required under Regulation 18(6) of SAST Regulations. Hence, it is alleged that Noticees are in violation of Regulation 18(6) of SAST Regulations. Copy of disclosure obtained from BSE website is enclosed as **Annexure 4**.*

6. *The text of the aforesaid provisions is reproduced as under:*

SAST Regulations

"….
29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

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.

18.(6) The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public.
…."

7. *The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under section 15A(b) of SEBI Act which is reproduced as under:*
SEBI Act
"….
Penalty for failure to furnish information, return, etc.
***15A.** If any person, who is required under this Act or any rules or regulations made thereunder,—*
(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;
…."

8. *You are, therefore, called upon to show cause as to why an inquiry should not be held against you in terms of Rule 4 of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 read with Section 15I of the SEBI Act (hereinafter referred to as **'Adjudication Rules'**); and why penalty should not be imposed under section 15A(b) of SEBI Act.*

…..'

5. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(b) of the SEBI Act.

6. The SCN was served to all the Noticees both through Speed Post Acknoweledgement Due (SPAD) at respective postal addresses as per records and through Email at their respective email id's available.

7. As regards reply to the SCN, the Noticees made common submissions through common authorized representative (hereinafter also 'AR' / 'Common AR' for brevity) vide letter dated April 05, 2023. The submissions of the Noticees have been dealt with in subsequent paragraphs.

8. In the interest of natural justice opportunity of hearing was provided and Hearing Notices were issued to the Noticees. The Hearing Notices were issued to Noticees vide email dated May 02, 2023. Noticees availed the opportunity of hearing scheduled on May 10, 2023 and appeared through Common Authorized Representative (AR). During the hearing the AR relied upon and reiterated the common submission made by the Noticees vide letter dated April 05, 2023. The AR submitted that there were no further/additional submissions besides the aforesaid common submissions made vide reply dated April 05, 2023 and that the same be treated as final and complete reply to the SCN.

9. The key submissions related to the SCN inter alia made by the Noticees vide their common reply dated April 05, 2023, in respect of the allegations levelled are summarized as below:

"

…..

a) *An open offer was made by Mr. Sunil Kumar Malik (Noticee 2) along with the persons Acting in concert ("PACs" - Noticee 1 and Noticees 3 to 11) to the shareholders of AMIL through a public announcement dated September 25, 2021 for acquisition of 27,30,682 equity shares of Rs. 10/- each representing 26% of the emerging equity and voting share capital of the Target Company in compliance of the SAST Regulations. The Offer was open for the period from June 22, 2022 upto July 05, 2022. In the Letter of Offer filed with SEBI, the status report of compliance of the SAST Regulations was provided.*

b) *After the publication of the public announcement on September 25, 2021, Noticee 11, had Acquired 100 shares of AMIL on January 24, 2022. However, this was prior to the receipt of necessary regulatory approvals for the proposed open offer.*

c) *It was in the contents of said Letter of Offer, wherein SEBI had observed there was delay in compliance of provisions of Regulation 18(6), 29(1) and 29 (2) read with Regulation 29 (3) of SAST Regulations in the stipulated time.*

d) *Due to the said delay in compliance, the captioned Notice was issued, requiring the Noticees to show cause as to why inquiry be not held and penalty be not imposed under AO Rules for the alleged delay in disclosure under SAST Regulations.*

e) *Further, it is submitted that the Noticees have not intentionally violated provision of law to warrant any penalty. No allegation in the captioned Notice, that there was any wilful default on the part of the Noticees.*

f) *The Noticees have never intended to evade the procedural aspects of the SAST Regulations. It was simply a bonafide error on the part of the Noticees that led to the alleged delay in making the relevant disclosure under the SAST Regulations.*

g) *It is also requested to consider the rationale behind making disclosures under the SAST Regulations. One of the prime objectives of the SAST Regulations is to ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decision. Taking cue from the same, compare the same in the present circumstance and analyse hypothetically whether there would have been any change in the situation if the Noticees would have not delayed in making the disclosure. In the present scenario also, the Noticees did not accrue any illegal or undue profits nor was a single case of loss to any investor reported due to the alleged delay.*

h) *It can therefore be construed that had the Noticees even if would have deliberately delayed in making the disclosures, there would not have been any effect on the shareholders of the company. It is further submitted that, levying penalty on such inadvertent act would be unjust, wherein the Noticees has admitted the alleged default.*

i) *The Noticees reiterated that there was no dishonest intention behind the delay in disclosure under SAST Regulations and it was never with the view to deny any information to any person entitled to receive the same nor did it cause any harm, damage, injustice or prejudice to the other shareholders of the Company.*

j) *It is not the first instance, wherein such instance has taken place. There are several case laws on the similar line of facts as that of this case, wherein it can be observed that the corresponding authorities took a liberal approach although the parties committed unintentional errors.*

k) *In the case of Reliance Industries Ltd. v SEBI Appeal No. 39/2002, wherein the company failed to make relevant disclosure in time under Regulation 7(1) of SAST Regulations, then Hon'ble Securities Appellate Tribunal observed the following :-*
Para 11: "We also do not think that the appellant had deliberately suppressed the information with ulterior motive. The appellant can, at best, be held to have made a technical lapse. In such circumstances, the role of a regulator is to rehabilitate and bring to an end litigation, which may not cast a stigma on the appellant, who otherwise, admittedly, has maintained a good track record. The High Court in Cabot's rase has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case. In this case, the breach was bona fide and the appellant was under the impression since it had already made a disclosure earlier it was not necessary to make a fresh disclosure once again. This, in our view, is an error of judgment and, at best, an error of understanding the law. Ignorance of law is no excuse but an erroneous interpretation is a mitigating factor especially if such interpretation is honest and bona fide to the knowledge of the appellant. Following the judgment in Cabot International and for the reasons stated herein, we hold that the breach cannot be called as deliberate and the non-disclosure was due to lack of understanding of the law. In that view of the matter, the impugned order is set aside."

l) *In relation to levying penalty in venial acts the observation of the Hon'ble Supreme Court in Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579 is noteworthy to mention wherein the Hon'ble Court had stated that :-*
Para 61:"We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd.., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established. It has also been observed in Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563) by this Court that:-
"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".

m) *These above mentioned decisions have recognised the distinction between the ingredients for commission of the offence under SEBI Act (which in certain cases is not required to include any mens rea) and the imposition of penalty which, with or without the requirement of mens rea, requires a "wilful default" or "deliberate defiance". In the present case, therefore, the imposition of penalty, if any event would be unjustified and ought to be set aside for there is an absence of wilful default or deliberate defiance.*

n) *Even the decision of the Hon'ble Supreme Court in Director of Enforcement v. MCTM Corporation Pvt. Ltd. AIR 1996 SC 1100 recognizes this distinction though under the Foreign Exchange Regulation Act 1973 ("FERA") mens rea was not an essential ingredient, it was nevertheless accepted (in Para 7 and 8) that "blameworthy conduct" on the part of the delinquent had to be established before penalty could be imposed. "Blameworthy Conduct" would be established if there was "wilful contravention" of the provisions of FERA, in other words "Wilful default"- the same test prescribed by the Hon'ble Supreme Court in Hindustan Steel v State of Orissa.*

o) *It is submitted by the Noticees that the delay in disclosure under the SAST Regulations was entirely non-intentional and non-deliberate and thus imposition of penalty on such act would be wrong. Moreover, there was no blameworthy conduct on the part of the Noticees which is why the above mentioned case laws most aptly suit the case of the Noticees.*

p) *Noticees also relied upon the observations of the Hon'ble Supreme Court in the matter of Hindustan Steel Ltd. v State of Orissa AIR 1970, SC 253 (at para 7) which are stated as follows:-*
Para 7: "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

q) *The above mentioned judgement is reiterated in the case of Bajrang Oil Mills vs. Income Tax Officer [2007]295ITR314(Raj) wherein it was held as follows:-*
Para 55 and 57: "In terms of law laid down by the Supreme Court, the penalty could not be levied for every venial and technical breach of procedural laws. In this connection, it may be apposite to draw attention to decision of Supreme Court in Hindustan Steels Ltd.'s case (supra) where it was laid down that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. In our opinion, the aforesaid ratio in Hindustan Steel Ltd. 's case (supra) fully governs the facts of the present case and, therefore, the assessee was entitled to absolution from the liability to penalty under Section 271B for non-compliance of Section 44AB. Failure to comply with the provisions of Section 44AB can be directly related to a bona fide belief by the assessee that he was not liable to get his accounts audited under Section 44AB looking to the different nature of receipts by him from the different activities... In such event the breach remains a technical breach of the procedural requirement. The conduct of the assessee cannot be said to be lacking in bona fide or of gross negligence when he raised issue about the interpretation of a provision which had used multiple expressions, construction of which cannot be said to be self-evident but needed interpretorial (sic-interpretational) exercise. Because ultimately on construction of statute the stand taken by the assessee is found to be wrong; it does not become a case of 'self-evident' interpretation, impinging on conduct of assessee. Even in the absence of provisions like Section 273B, which aptly governs the present case, the ratio of Supreme Court decision in Hindustan Steels Ltd. (supra), keeping in view the object of provisions of mischief it was intended to suppress."

r) *Noticees submitted that the above extract of the Hon'ble Supreme Court's observation gives the clear indication that in cases where an individual breaches any law, and such breach results from a bonafide error as is the Noticees present case, the relevant authority need not impose penalty even if it is prescribed to do so.*

s) *It is submitted that there has been no instance provided or shown wherein any individual had faced any loss or had suffered any detrimental consequences owing to the Noticees delay in disclosure under Regulations 18(6), 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations. Moreover, the Noticees have not accrued any profits on account of such delay in disclosure.*

t) *It is submitted that had the Noticees been interested in intentionally suppressing any information and procrastinating a disclosure, they would have actually gone on to accrue certain profits or would have made certain benefits or gains as a result of suppression of such information which they did not in reality. Not illustrated any such instances in the Notice. The Noticees did not accrue any sort of benefit or gain by delaying the relevant disclosure under Regulations 18(6), 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations. Hence, the Noticees case lacks the pertinent motive to deliberately avoid disclosure and dispose shares of the Company.*

u) *The above instances bring the Noticees to the conclusion that the delay in disclosure is only a technical breach and no undue gain or undue advantage was taken either by the Noticees or any of the persons whose shareholdings were supposed to be disclosed under the provisions of 29(1), 29(2) read with Regulation 29(3) and Regulation 18(6) of SAST Regulations and it has not caused any undue loss to the investors as well. Therefore, imposition of any such penalty on account of such delay in disclosure is not called for. It is further stated that, with reference to acquision of shares in the open offer, number of shares purchased by Noticee 11 is 100 shares which is negligible. Had the Noticees been really interested in suppressing any valuable information they would not have made the disclosures eventually. Even, it was not alleged that the Noticees have "acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation." On the contrary, as the disposal was reported to the stock exchanges and thereby the transparency requirement was fully met with as per the disclosures made at later stage, it is difficult to reasonably conclude that the Noticees had deliberately held back reporting under 18(6), 29(1) and 29 (2) read with Regulation 29(3) of SAST Regulations. There is no reason to disbelieve, in the absence of clinching evidence to show otherwise, the Noticees version that failure was a genuine lapse, as is evident from its conduct of filing the disclosure suo moto. Belated reporting has neither resulted in any gain to the Noticees nor caused any loss to anybody.*

v) *It has to justify that the imposition of penalty on the Noticees delay in disclosure contemplating the stipulations provided under the Sections 15I, 15A(b) and 15J of the SEBI Act, respectively. For the purpose of a better understanding of all the above mentioned provisions of SEBI Act, the Noticees relied upon the order of Hon'ble securities Appellate Tribunal in the case of Kensigton Investment Ltd. Vs. SEBI AND Brentfield Holdings Ltd. Vs. The Chairman, Adjudicating Officer, SEBI Appeal Nos. 27, 28, 30 and 31/2002 wherein it was held that :-*
Para 57: "On a perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" are of considerable 'significance, especially in view of the guidelines provided by the legislature in section 15J. "The Adjudicating Officer shall have due regard to the factors" stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub section (1) of section 15I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case."
Para 62 and 63: 62. "In this context it is also relevant to know the significance of the expression "shall be liable to a penalty" appearing in the section 15A. The Supreme Court in Superintendent & Remembrancer of Legal Affairs to Govt. of West Bengal (supra) held that the expression "shall be liable to a penalty"

occurring in many statutes has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of such obligation or penalty".
63. "As already stated above, in terms of section 15I whether penalty should be imposed for failure to petform the statutory obligation is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section 15J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment."
Para 66: "There is nothing on record to show that the Appellants acted deliberately in defiance of law, or guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations. Taking into consideration, the relevant facts, the legal provision and the principles laid down by the Hon'ble Supreme Court in Hindustan Steel, MCTM Corporation and Jiwani's case I am of the view that imposition of penalty on the Appellants in appeal Nos.27/2002, 28/2002 and 30/2002 is not justified and accordingly I set aside the orders passed by the Respondent against the Appellants in the said appeals."

The above mentioned case law clearly stipulates that the relevant authority has to justify the imposition of penalty covering the realm of the factors provided under Section 15J of the SEBI Act and therefore no authority can just unilaterally impose penalty on the delinquent. Moreover, a case of levying penalty can only arise in a situation wherein the delinquent has deliberately acted in defiance of law which the Noticees did not, in the present case.

w) *Noticees submitted that the factors mentioned under Section 15J needs to be considered, while taking a decision in imposing penalty against the*
Noticees. The wordings of Section 15J are as follows:
15J: Factors to be taken into account by the Adjudicating Officer:
While adjudging the 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, whether 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."

With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default" : it is submitted that the findings do not lead to any conclusion that there has been disproportionate gain or unfair advantage to the Noticees by the said disposal of shares without making the relevant disclosure. It is also not pointed out any averment specifying such gain or unfair advantage allegedly gained by the Noticees. Hence, it is submitted that there is no amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default by the Noticees.

With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default" : it is submitted that there are no investor complaints filed at any Stock Exchange or with SEBI in respect of the Noticees disposal of shares and delayed disclosure. It is also submitted that it has not shown any loss caused to other investors as a result of the Noticees default. In absence of such direct information the allegation of causing loss to other investors is also not applicable. Therefore, it is submitted that there is no amount of loss caused to an investor or group of investors as result of the Noticees delay in disclosure of the said transaction.

With regard to Clause (c):- "the repetitive nature of the default." it is submitted that this is for the first time any proceedings have been initiated against the Noticees in the entire securities market. As a matter of fact the Noticees has an impressive track record except the matter under consideration.

In addition to the above factors, it is also requested to consider the following case laws while levying penalty, if any, against the Noticees. The case of Bhagat Ram v. State of Himachal Pradesh (1983) IILLJ1SC inter alia stating:
Para 5: "the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution"

In the case of Ranjit Thakur vs. Union of India (AIR 1987 SC 2386) wherein the Hon'ble Supreme Court had held that :-
Para 9: "But the Sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review.

Further, the Hon'ble Apex Court in the case of Ex-Naik Sardar Singh vs. Union of India (1991 3 SCC 212) inter alia held that:

"the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

In the case of Hindustan Steel vs. State of Orissa (AIR 1970 SC 253) where Hon'ble Supreme Court held as follows:

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not be ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."

The Hon'ble Supreme Court of India in the matter of Adjudicating Officer vs. Bhavesh Pabari (Civil Appeal No. (s).11311 of 2013, dated February 28, 2019) has held that Section 15J of SEBI Act, 1992 is illustrative in nature and the relevant factors depends from case to case basis. The relevant part of the same is reproduced below:

"This dictum, however, does not mean that factum of continuing default is not a relevant factor, as we have held that clauses (a) to (c) in Section 15-J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty."

The principle propounded hereinabove is equally applicable in the present case. As a result, it is humbly requested to take into account the fact that whatever penalty, if any is imposed upon the Noticees, should be commensurate with degree of default.
…..
".

10. I now proceed to decide the matter on the basis of facts and circumstances in the matter, SCN, reply of the Noticees to the SCN, and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the instant matter are:

Issue No. I Whether, the Noticees have violated Regulation 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations and Regulation 18(6) of SAST Regulations?

Issue No. II Do the violations, if any, on part of the Noticees attract monetary penalty under Section 15A(b) of the SEBI Act?

Issue No. III If yes, what should be the quantum of monetary penalty that can be imposed on the Noticees?

Issue No. I **Whether, the Noticees have violated Regulation 29(1) and 29(2) read with Regulation 29(3) and Regulation 18(6) of SAST Regulations?**

12. The relevant provisions of SAST Regulations are reproduced as under:

<u>SAST Regulations</u>

"….

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

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.

18.(6) The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public.

…."

13. From the reply dated April 05, 2023, it is noted that the submissions of the Noticees are in nature of admittance in so far as it has not been disputed that the Noticees had delayed in making the relevant disclosures under Regulation 18(6), 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, however it has inter alia broadly been contented that the delay was unintentional and inadvertent act and a bonafide and the Noticees should not be subjected to any harsh /unwarranted penalty. I therefore proceed to deal with the matter accordingly.

14. It was inter alia alleged in the SCN that the Noticees being PACs made delayed disclosures under SAST Regulations. Details of delayed disclosures under Regulation 29 of SAST Regulations by the Noticees, as alleged in the SCN, are as under:

SAST Regulations	**Date of transaction**	**Shareholding (in %)**			**Date of reporting of disclosure to BSE**		**Delay in no. of days**
		Pre	**Post**	**change**	**Due date**	**Actual date**	
29(1)	04/12/2018	3.53	8.41	4.88	06/12/2018	25/11/2020	720
29(2)	04/02/2021	19.61	16.62	-2.99	08/02/2021	03/03/2021	23
29(2)	12/02/2021	16.62	13.10	-3.52	16/02/2021		15
29(2)	03/03/2021	13.10	8.88	-4.22	05/03/2021	10/03/2021	5

15. It was inter alia alleged that Noticees had made delayed disclosure to the Stock Exchange viz., BSE for the acquisition of the shares of the company made on

December 04, 2018 and sale of shares on February 04 & 12, 2021 and March 03, 2021 and the same are dealt with hereunder.

16. As regards December 04, 2018, it was inter alia alleged that the Noticees had made delayed disclosure to the Stock Exchange viz., BSE for the acquisition of the shares of the company made on December 04, 2018 (buy transaction). Noticees aggregate holding in the company prior to the said buy transaction on December 04, 2018 was 3.53% of shares of the Company and consequent to the said buy transaction their aggregate holding in the company increased from 3.53% to 8.41%. In this regard, as per Regulation 29(1) of SAST Regulations: "*29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*"

17. Since, aggregate holding of Noticees crossed five percent on December 04, 2018, as per the Regulation 29(1) read with Regulation 29(3) of SAST Regulations, they were required to disclose the same to the Stock Exchange within two working days, i.e., by December 06, 2018. However, as per material available on record, the actual date of disclsoure of aforesaid transaction to the BSE was November 25, 2020, as against the due date of December 06, 2018 i.e., with delay of 720 days. In this regard, it is noted from the submissions of the Noticees that the delay in this regard has not been disputed by the Noticees. In view thereof, it is established that the disclosure in this regard was made with a delay of 720 days.

18. In view thereof, I hold that the Noticees had violated provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations.

19. As regards the sale of shares on February 04, 2021 (sell transaction), it was inter alia alleged that Noticees had made delayed disclosure to the Stock Exchange for the sale of shares of the company on February 04, 2021 whereby conseuquent to said sell transaction the aggregate holding of the Noticees in the company decreased by 2.99% i.e., from 19.61% to 16.62%. In this regard, as per Regulation 29(2) of 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.*" Since, aggregate holding of Noticees changed by more than two percent on February 04, 2021, as per the Regulation 29(2) read with Regulation 29(3) of SAST Regulations they were required to disclose the same to the stock exchange within two working days. In this regad, I note that as per material available on record, the actual date of disclsoure for aforesaid change in shareholding to the BSE was March 03, 2021, as against the due date of making the said disclosure being February 08, 2021 i.e., with delay of 23 days. In this regard, it is noted from the submissions of the Noticees that the delay in this regard has not been disputed by the Noticees. In view thereof, it is established that the disclosure in this regard was made with a delay of 23 days.

20. In view thereof, I hold that the Noticees had violated provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

21. As regards the sale of shares on February 12, 2021 (sale transaction), it was inter alia alleged that Noticees had made delayed disclosure to the Stock Exchange for the sale of shares of the company on February 12, 2021 whereby conseuquent to said sale transaction the aggregate shareholding of the Noticees

in the company decreased by 3.52% i.e., from 16.62% to 13.10%. In this regard, as per Regulation 29(2) of 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.*" Since, aggregate holding of Noticees changed by more than two percent on February 12, 2021, as per the Regulation 29(2) read with Regulation 29(3) of SAST Regulations, they were required to disclose the same to the stock exchange within two working days i.e., by February 16, 2021. In this regard, as per material available on record, the actual date of disclsoure to the BSE for the said change in shareholding was March 03, 2021 as against the due date of February 16, 2021 i.e., with delay of 15 days. In this regard, it is noted from the submissions of the Noticees that the delay in this regard has not been disputed by the Noticees. In view thereof, it is established that the disclosure in this regard was made with a delay of 15 days.

22. In view thereof, I hold that the Noticees had violated provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

23. As regards the sale of shares on March 03, 2021 (sale-transaction), it was inter alia alleged that Noticees had made delayed disclosure to the Stock Exchange for the sale of shares of the company on March 03, 2021 whereby conseuquent to said sale-transaction the aggregate shareholding of the Noticees in the company decreased by 4.22% i.e., from 13.10% to 8.88%. In this regard, as per Regulation 29(2) of 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." Since, aggregate holding of Noticees changed by more than two percent on March 03, 2021, as per the Regulation 29(2) read with Regulation 29(3) of SAST Regulations, they were required to disclose the same to the stock exchange within two working days i.e., by March 05, 2021. In this regard, as per material available on record, the actual date of disclsoure to the BSE was March 10, 2021 as against the due date of March 05, 2021, while due date of making the said disclosure was March 05, 2021 i.e., with delay of 5 days. In this regard, it is noted from the submissions of the Noticees that the delay in this regard has not been disputed by the Noticees. In view thereof, it is established that the disclosure in this regard was made with a delay of 5 days.

24. In view thereof, I hold that the Noticees had violated provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

25. As regards the allegation relating to acquisition of shares of the company during the offer period, I note from the material available on record that SEBI had inter alia observed and alleged violation of Regulation 18(6) of SAST Regulations with regard to acquisition of 100 shares on January 24, 2022 by Noticee 11 as disclosure in this regard was made to BSE on June 08, 2022 instead of by the due date viz., January 25, 2022. In this regard, as per the common reply vide letter dated April 05, 2023 it has inter alia been submitted that an open offer was made by Noticee 2 along with the persons Acting in concert to the shareholders of AMIL through a public announcement dated September 25, 2021 and that the Offer was open for the period from June 22, 2022 upto July 05, 2022 and after the publication of the public announcement on September 25, 2021, Noticee 11, had acquired 100 shares of AMIL on January 24, 2022. However, this was prior to the receipt of necessary regulatory approvals for the proposed open offer.

26. In this regard, it would be relevant to draw reference to Regulation 18(6) of SAST Regulations which reads as follows, *" 18.(6) The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public: Provided that the acquirer and persons acting in concert with him shall not acquire or sell any shares of the target company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period."*. Further in this regard, I note that as per Regulation 2(1)(p) of SAST Regulation, *"offer period" means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be;".* In the instant case the acquisition of 100 shares on January 24, 2022 by Noticee 11 being during the offer period required disclosure within twenty-four hours of such acquisition i.e., by January 25, 2022, which was made to BSE on June 08, 2022 as per material available on record.

27. Since, Noticees have acquired the shares of the company during the offer period, they were required to disclose the same to the stock exchange within twenty-four hours of such acquisition, as per the Regulation 18(6) of SAST Regulations. As per material available on record, the disclsoure with regard to aforesaid transaction were made to the BSE on June 08, 2022 while the due date of making the said disclosure was January 25, 2022, I note that the Noticees have made the said disclosure with the delay of 134 days.

28. In view thereof, I hold that the Noticees had violated provisions of Regulation 18(6) of SAST Regulation.

29. Noticees contended that they have not intentionally or delibarately violated provision of law and there are several case laws on the similar line of facts as that of this case, wherein it can be observed that the corresponding authorities took a liberal approach although the parties committed unintentional errors. In this regard they relied upon the judgment of Hon'ble SAT in the case of Reliance Industries Ltd. v SEBI Appeal No. 39/2002. In the said judgment Hon'ble SAT has found that the appellant had not suppressed the information deliberately, the appellant was under the impression that it was not necessary to make a fresh disclosure once again, since it had already made a disclosure earlier. I note that Noticees neither made any such argument as quoted above nor they demonstrated that they were under impression that it was not necessary for them to make the disclosures, in fact, in the instant case, the Noticees have made delayed disclosures under SAST Regulations and reported the same in the Letter of Offer. Therefore, the contention of the Noticees in this regard cannot be accepted.

30. Noticees relied upon certain judgments wherein it was held that the penalty could not be levied for every venial and technical breach of procedural laws. Noticees also contended that the said delay in disclosure did not cause any harm, damage, injustice or prejudice to the other shareholders of the Company. I note that the said judgments were made in different cases considering varied evidences/circumstances in each case. I note that provisions of SAST Regulations alleged to have been violated evidently required the disclosures to be made within specified timeline as mandated under the SAST Regulations, as also brought out in the foregoing. It is indisputable that compliance with extant applicable provisions of securities laws, provisions of SAST Regulations, as cited, in the instant matter, is obligatory and SEBI is duty-bound to enforce

compliance of these regulations. In my opinion in a disclosure based regime the essence is about timely disclosures which, if compromised with, may pose threat to ordely functioning of the securities markets and /or loss of investor confidence in the integrity of the securities market.

31. In the instant case, I note that the Noticees have not disputed the delay in disclosures but made submission in the nature of admission inter alia also submitting that one of the prime objectives of the SAST Regulations is to ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decision. Besides in this regard, I rely on the Order of Hon'ble SAT in the matter of Shri Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014) dated October 14, 2014, wherein it had inter alia been held as under:

"...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."

32. I also note that as part of their submissions, Noticees have relied upon the judgments of the Hon'ble Supreme Court in the matter of Hindustan Steel Ltd. v State of Orissa AIR 1970, SC 253 and Bajrang Oil Mills vs. Income Tax Officer [2007]295ITR314(Raj). It has been contended by the Noticees that these judgments gives clear indication that in cases where an individual breaches any law, and such breach results from a bonafide error as is the Noticees present case, the relevant authority need not impose penalty even if it is prescribed to do so. However, in my opinion the matter of Hindustan Steel Ltd. v State of Orissa may not have strict application in the present matter which relates to imposition of civil liabilities under the SEBI Act and Regulations and is not a criminal /quasi-criminal proceeding.

33. In this regard, I rely upon the judgment of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs. Shriram Mutual Fund & Anr dated May 23, 2006, wherein the Hon'ble Supreme Court of India had inter alia held:

"…

In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not..............."

34. In this regard, I would like to refer to Hon'ble SAT Order dated August 04, 2015 in the matter Mr. Ankur Chaturvedi vs. SEBI, wherein it was inter alia held:

"…

Similarly fact that there is no investor losses on account of the violations committed by the appellant and that the violations are not repetitive in nature cannot be a ground to escape penalty imposable section 15A(b)/15HB of the SEBI Act.

12. As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market.

…"

35. I note that the Noticees had made delayed disclosures on one instance under Regulation 29(1) read with Regulation 29(3) of SAST Regulations involving delay of 720 days, on three instances under Regulation 29(2) read with Regulation 29(3) of SAST Regulations involving delay of 23, 15 and 5 days and on one instance under Regulation 18(6) of SAST Regulations involving delay of 134 days.

36. In view of the foregoing, it is established that by making delayed disclosures to the BSE, the Noticees had violated provisions of Regulation 29(1) and 29(2) read with Regulation 29(3) and Regulation 18(6) of SAST Regulations.

Issue No. II Do the violations, if any, on part of the Noticees attract monetary penalty under Section 15A(b) of the SEBI Act?

Issue No. III If yes, what should be the quantum of monetary penalty that can be imposed on the Noticees?

37. It has been established in the foregoing paragraphs that Noticees have violated Regulation 29(1) and 29(2) read with Regulation 29(3) and Regulation 18(6) of SAST Regulations.

38. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund (cited above) had inter alia held:

"…..

once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.

…"

39. In view of the foregoing, I conclude that the Noticees are liable for monetary penalty under the provisions of Section 15A(b) of the SEBI Act which reads as under:

SEBI Act:

"…

Penalty for failure to furnish information, return, etc.

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

…

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

…"

40. While determining the quantum of penalty under Section 15A(b) of SEBI Act, it is important to consider the factors relevantly as 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.

…."

41. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to investors or profit made by the Noticees as a result of the violations committed by the Noticees. There is nothing on record to show that the violations committed

by the Noticees are repetitive in nature. However, I cannot ignore the fact that in a disclosure based regime the essence is about timely disclosures which, if compromised with, may pose threat to ordely functioning of the securities markets and /or loss of investor confidence in the integrity of the securities market and that in the instant case, the Noticees had failed to make timely disclosures.

ORDER

42. After taking into consideration the facts and circumstances of the instant case, material available on record, submissions of the Noticees and the factors mentioned in preceding paragraphs, in exercise of powers conferred upon me under Section 15-I of the SEBI Act 1992 read with Rule 5 of the Adjudication Rules I hereby impose the following penalty, as per table below, on the Noticees for the aforementioned violations, as discussed in this order. In my view, the said penalty will be commensurate with the violations committed by the Noticees in this case:

S. No.	Name of the Noticees	Penalty under Section	Penalty Amount
1.	Race Eco Chain Ltd. (erstwhile Anisha Impex Ltd.) (Noticee 1)	Section 15A(b) of the SEBI Act	Rs. 5,00,000/- (Rupees Five Lakhs Only) (joint and several)
2.	Sunil Kumar Malik (Noticee 2)		
3.	Puja Malik (Noticee 3)		
4.	Anshu Agarwal (Noticee 4)		
5.	Anshu Agarwal HUF (Noticee 5)		
6.	Ramesh Chandra Agarwal (Noticee 6)		
7.	R. C. Agarwal HUF (Noticee 7)		
8.	Usha Agarwal (Noticee 8)		
9.	Namita Agarwal (Noticee 9)		
10.	Akhil Bansal (Noticee 10)		
11.	Reena Agarwal (Noticee 11)		

43. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

44. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

45. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

DATE: July 31, 2023 **AMAR NAVLANI**
PLACE: MUMBAI **ADJUDICATING OFFICER**