BEFORE THE ADJUDICATING OFFICER OF
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER (Ref No.: Order/AP/VS/2020-21/10109) UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of:

Garware Polyester Ltd.
(PAN No.: AAACG0571D)
Garware House, 50-A,
Swami Nityanand Marg,
Vile Parle (E), Mumbai - 400057

1. Securities and Exchange Board of India ('SEBI') had conducted an investigation in the matter of Garware Polyester Limited (hereinafter referred to as 'GPL/the Noticee'), a listed company having its shares listed on Bombay Stock Exchange Limited (BSE) and National Stock Exchange India Limited (NSE). The investigation was to ascertain whether there was any violation of the provisions of Prohibition of Insider Trading, Regulation, 1992 (hereinafter referred to as 'the PIT Regulations') during the period December 15, 2011 to October 09, 2014 (hereinafter referred to as 'investigation period').

2. During the investigation it was observed that some of the promoter-directors had made disclosures with respect to changes in their shareholding in the scrip of GPL to the stock exchanges with significant delay ranging from 27 days to 193 days. Summary of the instances of non-disclosure are given below:

Sr. No.	Transaction Date	Buy/Sale	Value of shares (₹ Lakh)	No. of Shares	Date of receipts of disclosures by the Company	Disclosure under regulation 13(6) of the PIT Regulations; disclosures by the Company to stock Exchange
Ms. Sarita Garware						
1	07/09/2012 - 26/09/2012	B	5.58	5059	**28.09.2012**	**23-Oct-12**
2	03/09/2012 - 06/09/2012	B	6.02	5471	**08.09.2012**	
3	25/07/2012 - 27/07/2012	B	5.51	4433	**28.07.2012**	
4	06/07/2012 - 24/07/2012	B	5.77	4683	**26.07.2012**	
5	18/06/2012 - 04/07/2012	B	5.14	4444	**06.07.2012**	
6	01/06/2012 - 14/06/2012	B	5.85	5125	**16.06.2012**	
7	28/05/2012 - 31/05/2012	B	8.59	7615	**01.06.2012**	
8	25/04/2012 - 30/04/2012	B	5.79	4348	**02.05.2012**	
9	18/04/2012 - 24/04/2012	B	5.14	4008	**26.04.2012**	
Ms. Monika Rajiv Garware Modi						
10	20/09/2012 - 25/09/2012	B	6.22	5552	**27.09.2012**	**18-Oct-12**
11	30/08/2012 - 18/09/2012	B	7.50	6756	**20.09.2012**	
12	29/08/2012	B	6.19	5574	**30.08.2012**	

13	17/07/2012 - 23/07/2012	B	5.26	4224	**25.07.2012**	
14	14/06/2012 - 16/07/2012	B	5.84	4755	**18.07.2012**	
15	08/06/2012 - 13/06/2012	B	7.58	6558	**14.06.2012**	
16	24/05/2012 - 07/06/2012	B	5.25	4584	**09.06.2012**	
17	18/05/2012 - 23/05/2012	B	5.50	5002	**24.05.2012**	
18	16/04/2012 - 17/04/2012	B	5.87	4641	**19.04.2012**	
19	10/04/2012 - 13/04/2012	B	5.73	4498	**14.04.2012**	
Ms. Sonia Garware						
20	14/09/2012 - 26/09/2012	B	5.32	4700	**28.09.2012**	
21	04/09/2012 - 13/09/2012	B	5.04	4539	**15.09.2012**	
22	03/09/2012	B	6.60	6000	**05.09.2012**	
23	17/08/2012 - 21/08/2012	B	5.30	4900	**23.08.2012**	
24	27/07/2012 - 16/08/2012	B	6.83	6000	**18.08.2012**	
25	20/07/2012 - 26/07/2012	B	7.04	5610	**28.07.2012**	**22-Oct-12**
26	18/07/2012 - 19/07/2012	B	5.03	4000	**21.07.2012**	
27	10/07/2012 - 17/07/2012	B	5.66	4500	**19.07.2012**	
28	06/07/2012 - 09/07/2012	B	5.98	4896	**11.07.2012**	
29	18/06/2012 - 05/07/2012	B	5.99	5104	**07.07.2012**	
30	13/06/2012 - 15/06/2012	B	7.08	6000	**16.06.2012**	
Ms. Sheela S Garware						
31	11/09/2012 - 14/09/2012	B	5.28	4761	**15.09.2012**	
32	28/08/2012 - 03/09/2012	B	21.48	19500	**04.09.2012**	
33	16/07/2012 - 27/08/2012	B	8.13	7225	**29.08.2012**	**19-Oct-12**
34	09/07/2012 - 11/07/2012	B	8.94	7213	**12.07.2012**	
35	05/06/2012 - 06/06/2012	B	5.39	4885	**08.06.2012**	
36	17/05/2012 - 04/06/2012	B	8.25	7500	**06.06.2012**	
37	02/05/2012 - 04/05/2012	B	6.08	4621	**05.05.2012**	
Mr. Shashikant B Garware						
38	30/08/2012	B	69.61	63000	**31.08.2012**	**18-Oct-12**

3. From the above table, it was observed that the promoter-directors made acquisitions of shares of GPL, which warranted disclosures to GPL and Stock Exchanges, since the value of the shares exceeded ₹5Lakh. It is noted that the promoter-directors had made disclosures to the Noticee in terms of regulation 13(4) read with 13(5) of the PIT Regulations, however, the Noticee further on receipt of such disclosures from the promoter-directors, had filed the disclosures with the stock exchange with significant delay. In view of the above, it has been alleged that the Noticee has violated the provisions of regulation 13(6) of the PIT Regulations. The relevant provisions of the PIT Regulations are reproduced as under:

<u>Disclosure by company to stock exchanges.</u>

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) in the respective formats specified in Schedule III.

4. Upon completion of the investigation, SEBI felt satisfied that there are sufficient grounds to inquire and adjudicate upon the alleged violations of the provisions of the PIT Regulations, by the Noticee. By a *communication-order* dated July 31, 2019, Shri Santosh Shukla was appointed as Adjudicating Officer to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations by the Noticee. Shri Santosh Shukla sought certain clarifications from the

concerned department and in the meantime, pursuant to transfer of Shri Santosh Shukla, vide *communication-order* dated January 07, 2020, this case was transferred to the undersigned with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the *"Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders"*.

5. After the receipt of the records and clarification from the concerned department, the notice to show cause no. EAD-2/SS/VS/11769/1-6/2020 dated July 16, 2020 (hereinafter referred to as 'SCN') was issued to the Noticee in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') read with section 15I of the SEBI Act. The SCN was sent at the last known address of the Noticee through Speed Post Acknowledgment Due, which was, duly served upon the Noticee. In the said SCN, the Noticee was asked to reply within a period of 14 days. The Noticee vide letters dated July 21, 2020, August 03, 2020 and August 21, 2020 repetitively requested additional time to file reply. Due to ongoing pandemic situation the request of the Noticee was acceded to. However, no reply to the SCN was filed by the Noticee.

6. The Noticee vide email dated August 31, 2020 informed that the Noticee is going to file settlement application. However, no information was provided to the undersigned in this regard. Accordingly, vide letter dated October 07, 2020, another opportunity of personal hearing was granted to the Noticee on October 21, 2020. In response to the SEBI's letter dated October 07, 2020, the Noticee vide letter dated October 08, 2020 submitted that the Noticee had already filed settlement application on October 06, 2020 and provided the copy of the settlement application. Thereafter, concerned department for settlement vide email dated November 05, 2020, informed that the Noticee have withdrawn its application. Accordingly, another opportunity of personal hearing was granted to the Noticee on December 10, 2020, which was communicated to Noticee vide email dated November 06, 2020. Further, due to ongoing pandemic situation the Noticee was also given option to avail the hearing opportunity through video-conferencing on the Webex platform.

7. Thereafter, the Notice vide letter dated November 21, 2020 requested to provide the copies of relevant information, documents and records pertaining to SCN. SEBI vide its email dated December 04, 2020 provided the following details to the Noticee:
   a) GPL's e-mail dated May 10, 2018, regarding the date of receipt of disclosure filed by Promoters / Directors of GPL

b) Disclosures received by BSE under regulation 13(6) of the PIT Regulations from GPL (Information sought in terms of section 15I(2) of the SEBI Act)

8. In response to above email, the Noticee's Authorised Representative (AR) vide letter dated December 07, 2020 requested physical inspection of the above documents. In view of the above, SEBI vide email dated December 08, 2020, informed to Noticee and AR that due to the prevailing situation of COVID-19, in the interest of public health and safety, physical inspection of documents may not be the appropriate. Hence, scanned original relevant relied upon documents were provided to the Noticee by email dated December 04, 2020. Vide email dated December 08, 2020 the Noticee was also advised to file reply to the SCN and also informed to appear for personal hearing on December 17, 2020. However, no reply was received from the Noticee.

9. On schedule date of hearing i.e., December 17, 2020, the ARs of the Noticee namely Mr. Somasekhar Sundaresan, Mr. Abishek Venkataraman, Advocate, Mr. Sanjay Buch, Mr. Abhay Jadeja, Ms. Shruti Katakey and Ms. Yashvi Shah, appeared on behalf of the Noticee and made oral submissions and requested further time to file written submission. The request of the ARs was considered and time to file written submissions by December 30, 2020 was granted. The Noticee vide letter dated December 30, 2020 filed post hearing submissions.

10. I have carefully considered the allegations and charges levelled against the Noticee, the Noticee's representation and materials relied upon by SEBI and proceed to examine the same in succeeding paras.

11. The Noticee has contended that the instant proceedings suffer from delay as the same has been initiated after 8 years of the violation. In this regard I note from the record that the period of the investigation is December 15, 2011 to October 09, 2014. Further, the investigating officer was appointed on July 15, 2016. Pursuant to completion of investigation, action of adjudication proceeding was approved by competent authority on April 26, 2019 and thereafter, the erstwhile AO was appointed on July 31, 2019. The erstwhile sought certain clarification from SEBI and in the meantime pursuant to the transfer of the erstwhile AO the matter was assigned to the undersigned on January 07, 2020. After receiving the clarification in the month of April 2020 the SCN dated July 16, 2020 was issued to the Noticee. From the above details it is observed that there is apparently no delay in initiating the proceedings. In support of my findings on the issue of delay raised by the Noticee, I observe that in the case of Ravi Mohan & Ors. Vs. SEBI (SAT Appeal No. 97 of 2014 decided on 16.12.2015), Hon'ble SAT while referring to its own decision in HB StockHoldings case (Appeal no. 112 of 2013 decided on August 08, 2013) and decision of

Hon'ble Supreme Court in Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C.), held as under:

> *"…Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice…"*

12. The Noticee further contended that the percentage of acquisition by the promoter-directors were very miniscule and therefore, it could have been missed out by the Noticee and upon discovering the same the Noticee made voluntarily disclosure to Stock Exchange(s). The contention of the Noticee is not accepted because there are 38 instances of acquisitions of shares by no other than the promoter-directors of the company, and by no imagination these many numbers of acquisitions can be regarded as miniscule. Further, as regards to the contention that the Noticee on its own made disclosures to the stock exchanges, I observe that the regulation 13(6) of the PIT Regulations cast an obligation on the Noticee to make disclosures on compulsory basis to the Exchanges within two working days of receipt of the disclosures received under sub regulation of 13(1), (2), (3) and (4) of the PIT Regulation. Thus, I reject the contention of the Noticee.

13. The Noticee has contended that the violation relates to the year of 2012, when the relevant regulations were the PIT Regulations, 1992. These regulations were repealed in 2015, and the SCN has been issued five year after the repeal of PIT Regulation 1992, i.e. in July 2020. The Noticee contended that it is only 'anything done' or 'any action taken' under the PIT Regulation 1992 that would be saved by the repeal and saving provisions under the PIT Regulations 2015. In this regard I note from the regulation 12 of the PIT Regulation 2015 that the Noticee is reading the repeal regulation in part only i.e., only the regulation 12(2)(b) of the PIT Regulation 2015. In this regard, it is important to refer to the regulation 12(2)(a) of the PIT Regulation 2015, as under:

Repeal and Savings.

12(2) Notwithstanding such repeal-

(a) 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 had never been repealed;

From the above it is clear that any obligation or liability acquired under the repealed regulations shall remain unaffected as if the repealed regulations i.e., PIT Regulation 1992 had not been repealed. In this matter the obligation to disclose had already arisen in 2012 and therefore the same shall remain unaffected as if the repealed regulations had never been repealed. Therefore, I reject the contention of the Noticee.

14. The Noticee has contended that considering the lapse of time in issuing the SCN coupled with the voluntary disclosure made by the Noticee, the present case is a fit case where a warning or a disposal without penalty would meet the ends of justice, while imposition of penalty on an SCN issued after a period of 8 years, and that too when in fact there has been no problem/ allegation of whatsoever nature between 2012 and 2020, would be unfair and unjust. In view thereof, the alleged violations by the Noticee does not warrant any penalty. In this regard I note that as per regulation 13(6) of the PIT Regulation it is obligatory on the part of the listed company to make disclosure to the Stock Exchange/s where the shares of the company are listed. In the instant proceedings, on perusal from the record as submitted by GPL/BSE/NSE, it is evident and also admitted position that the Noticee had made delayed disclosures to the stock exchanges. Therefore, the Noticee have violated the provision of regulation 13(6) of the PIT Regulations.

15. The Noticee has also relied upon the principles of law laid down by the Hon'ble Supreme Court of India in the case of *Adjudicating Officer, Securities and Exchange Board of India Vs. Bhavesh Pabari [(2019) 5 SCC 90]* and by the Hon'ble Securities Appellate Tribunal in the case of *Piramal Enterprises Limited Vs. Securities Exchange Board of India*, decided on 15th May 2019 and submitted that it would be unnecessary to impose monetary penalty in the facts of the case. In this regard I note that the findings of Hon'ble Supreme Court in the matter of Bhavesh Pabri (supra) confirms the discretion vested on AO by section 15J of the SEBI Act to decide the quantum of penalty. In the said ruling the Hon'ble Supreme Court also held that the factors enumerated under section 15-J are not exhaustive but rather illustrative factors to be taken into account by the AO while adjudging the quantum of penalty to be imposed under Section 15-I and that the AO may take

note of other factors as well, in the same analysis. There is no doubt that the AO while adjudging the matter is bound by the guidance under section 15J of the SEBI Act. Further, recently the Hon'ble Supreme Court in the matter of *Securities and Exchange Board of India Vs. Bharti Goyal Etc.* (Appeal No. 3596-35297/2020) in its order dated January 05, 2021 held that *"…Prime facie, the direction for substituting the penalty which has been imposed under section 15HA with a warning is contrary to the statutory provisions…"*. Further, it is also important to quote the observations of the Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC), wherein, the* Hon'ble Supreme Court*, inter alia,* held that: *"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."*

16. It is pertinent to mention that the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Timely disclosures of the details of the shareholding of the persons acquiring/transferring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014),* has 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."* Further in the matter of Appeal No. 66 of 2003 -*Milan Mahendra Securities Pvt. Ltd. vs. SEBI*–the Hon'ble SAT, vide its order dated April 15, 2005 also held 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."* In the facts and circumstances of this case, the failure to make disclosure as found in this case would defeat the purpose of the provisions of regulation 13(6) of the PIT Regulations. The statutory timelines stipulated in regulation 13(6) of the PIT Regulations is mandatory. Considering these facts and circumstances, I hold that this case deserves imposition of monetary penalty upon the Noticee under Section 15A (b) of the SEBI Act which reads as under:-

> ***<u>Penalties and Adjudication</u>***
>
> ***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,—*

(a)…

(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.

17. Further, in these facts and circumstances of the case, the quantum of penalty has to be adjudged taking into account the conduct of the Noticee as found in this case and the principle of proportionality. For the purpose of adjudging the quantum of penalty it is relevant to mention that under section 15I of the SEBI Act 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 of the SEBI Act. Further, while adjudging the quantum of penalty the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J. The factors stipulated in Section 15J, which reads as follows:-

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

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 investor/+s as a result of the default;

(c) the repetitive nature of the default.

Explanation-

For the 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."

18. Having regard to the factors listed in section 15J, it is noted that it is not possible to determine the consequent loss caused to investors as a result of the default as found in this case. However, in the facts and circumstances of this case, I deem it worth relying the observations of Hon'ble

SAT, vide its order dated June 09, 2014 in the matter of Ashok Jain v/s SEBI (Appeal No. 79 of 2014) wherein it was held that - *"…disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non-disclosure within the time stipulated under those regulations"*. Further, in the present case, the default has occurred several times, and as such the default is repetitive in nature. I also note that the Noticee has made delayed disclosures to exchange ranging from 27 days to 193 days which is substantial in nature. By making such a delayed disclosures no purpose of disclosure is served.

19. I note that the disclosures mandated in regulation 13(6) of the PIT Regulations, 1992, are significant in nature as they apply to a listed company. I also note that the timelines of this disclosures were amended in the PIT Regulations on November 19, 2008, wherein the timelines for making disclosures by the company to exchanges were reduced from 'within five days' to 'within two working days'. By reducing the timelines from 5 days to 2 working days, it is evident that such a disclosure was a material and important one, which needed to be disclosed expeditiously. Hence, the disclosures requirement under regulation 13(6) of the PIT Regulations has to be seen from different perspective than the general disclosures to be made by another category of person. It is also important to note that the acquisitions were made by the promoter-directors of the Noticee, wherein most of them were repetitively making acquisitions of shares, with every time the shares value triggering the disclosure requirement. Such acquisition certainly were material information which needed to be timely disclosed by the company. It is also observed that there are 38 instances of such failures on the part of the Noticee. The repetitive failure to disclose as found in this case have created information asymmetry, at relevant time and defeated the purpose of the disclosure provisions. In my view timely disclosures of the details of the shareholding of the promoter-directors of the Company acquiring substantial stake in the Company is 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 in taking an informed investment decision and the requirements also enable the regulators to monitor such acquisitions.

20. Considering the facts and circumstances of the case and the mitigating factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a consolidated monetary penalty of ₹38,00,000/ (Rupees Thirty Eight Lakh only) upon Noticee viz. Garware Polyester Limited under section 15A(b) of the SEBI Act, 1992, for the violation of regulation 13(6) of the PIT Regulations, 1992. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

21. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

22. The Demand Draft or details and confirmation of e-payment made in the format as given in table below shall be sent to "The Division Chief, EFD-DRA-4, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- tad@sebi.gov.in

1	Case Name	
2	Name of the 'Payer/Noticee'	
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)	

23. 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.

24. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: January 15, 2021
Place: Mumbai

Amit Pradhan
Adjudicating Officer