BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/PM/PA/2021-22/14570

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

In respect of:

M/s. Srinathji Dall Mills

PAN: ABHFM2440E

In the matter of *Sanwariya Consumer Ltd.*

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI")** conducted an investigation in the scrip of Sanwaria Consumer Ltd. *(earlier known as Sanwaria Agro Oils Ltd.)* (hereinafter referred to as "**SCL**"/ "**Company**"*)* to ascertain whether there was any disclosure violation by certain entities under the provisions of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the **"PIT Regulations"**) and/or SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the "**SAST Regulations**") during the period from September 28, 2017 to December 31, 2017 (hereinafter referred to as the "**Investigation Period**"/"**IP**").

2. Pursuant to the investigation, it was alleged that M/s. Srinathji Dall Mills (hereinafter referred to as "**SDM**"/"**Noticee**"), being a designated person of the Company during the IP had committed violation of clause 6 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by

Insiders specified in Schedule B (hereinafter referred to as “**Code of Conduct**”) read with regulation 9(1) of the PIT Regulations by not obtaining pre-clearance from the Company before carrying out 13 transactions which triggered the requirement of obtaining pre-clearance as per the threshold prescribed by the board of directors of the Company. Given the above, adjudication proceedings were initiated against the Noticee.

B. APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed the undersigned as the adjudicating officer under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”) read with section 19 of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the “**SEBI Adjudication Rules**”) to inquire into and adjudge under section 15HB of the SEBI Act, against the Noticee for the alleged violation of the aforesaid provision of the PIT Regulations. The appointment of the adjudicating officer was communicated *vide* communiqué dated May 07, 2021.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

4. A show cause notice dated July 19, 2021 (hereinafter referred to as “**SCN**”) was served upon the Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against it under section 15HB of the SEBI Act for the alleged violation of clause 6 of the Code of Conduct read with Regulation 9(1) of the PIT Regulations.

5. The details regarding the allegations levelled against the Noticee in the SCN are provided below as follows:

   (i) It was observed that the Noticee is being governed by the terms of the partnership deed dated April 01, 2010 submitted by the Company *vide* email sent on October 24, 2018 wherein Satish Kumar Agrawal is one of its partners who was also a whole-time director of the Company during the IP.

(ii) It was observed that the Noticee is categorized as a promoter group entity of SCL as per the disclosure details available on the website of National Stock Exchange of India Limited. Further, the Company *vide* email sent on February 11, 2021 *inter alia* stated that the Noticee is a designated person under the PIT Regulations for the FY 2017-2018.

(iii) During investigation, it was observed that the Noticee had received 1,32,00,000 shares through off-market transfers from one of its partners Satish Kumar Agrawal and had sold 1,09,95,774 shares on-market as tabulated below:

Sl. No.	Date	Number of shares received/ bought	No. of shares sold (both stock exchanges)	Buy Value (Rs) in lakhs*	Sell Value (Rs) in lakhs*
1	11/12/2017	50,00,000	0	992.50	0
2	12/12/2017	0	6,19,795	0	117.48
3	13/12/2017	0	9,73,000	0	185.38
4	14/12/2017	82,00,000	6,81,851	1,553.90	130.25
5	15/12/2017	0	11,00,000	0	218.04
6	18/12/2017	0	15,00,000	0	311.20
7	19/12/2017	0	6,00,000	0	130.80
8	20/12/2017	0	14,00,000	0	318.19
9	21/12/2017	0	5,60,000	0	129.45
10	22/12/2017	0	4.20,000	0	97.16
11	26/12/2017	0	5,00,000	0	120.00
12	27/12/2017	0	13,29,926	0	335.00
13	28/12/2017	0	13,11,202	0	330.08
	Total	**1,32,00,000**	**1,09,95,774**		

**Value = No. of shares x closing price of BSE Limited on the date of transfer.*

(iv) The Company in its reply *vide* email sent on February 15, 2021 *inter alia* stated that the threshold limit with respect to the value of proposed trades for seeking pre-clearance before trading was Rs 10 lakhs. From the table above, it was observed that the value of each of the 13 transactions undertaken by the Noticee was more than Rs 10 lakhs in value *i.e.,* the value of transactions was above the threshold limit prescribed by the Company for seeking pre-clearance by designated persons.

(v) In view of the above, it was observed that the Noticee being a designated person was required to take pre-clearance from the Company before carrying out each of the 13 transactions as the value of the aforesaid transactions exceeded Rs 10 lakhs. <u>However, it was observed from the reply furnished by the Company *vide* the email sent on February 15, 2021 that the Company did not receive any pre-clearance request during the IP from the Noticee.</u> In view of the above, it was alleged that the Noticee had violated clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations.

6. The Noticee submitted its reply to the aforesaid SCN *vide* email sent on August 06, 2021 (hereinafter referred to as the "**August Reply**"). The relevant extract from the August Reply is reproduced below verbatim:

"We confirm that Shrinathji Dal Mill is a part of the promoter group of the Company. It is alleged in Paragraph 37 that Shrinathji Dal Mills, of which Mr Satish Kumar Agarwal is one of the Partners did not take any pre-clearance for the sale transactions given in the table in Paragraph 26 of the Notice. We would like to submit that the shares received were the shares that belonged to Shrinathji Dal Mill and hence we believed that this only a correction and not buy transaction and hence did not require any pre-clearance. Further Shrinathji Dal is a partnership firm and not an employee of Sanwaria Consumer Limited and until April 01, 2019 promoters / entities belonging to the promoter group were not designated persons. Hence although an email has been sent by the Company that Shrinathji Dal Mills was a designated person on February 11,2021, it must have been given in line with the insertion made in the PIT Regulations on April 01, 2019 Shrinathji Dal Mills was not a Designated Person as per the PIT Regulations in the months of November / December 2017 and hence did not require any Pre-clearance as alleged by you in Paragraph 375. Therefore, Shrinathji Dal Mills has not violated the provisions of Clause 6 of the Code of Conduct to monitor and report trading by Insiders."

7. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on August 13, 2021 *vide* notice of hearing sent *vide* email on August 09, 2021. In view of the prevailing circumstances owing to COVID-19, the hearing was scheduled through video conferencing on cisco webex platform. Accordingly, on the scheduled date of the hearing, the authorized representative of the Noticee appeared before me through video conference and requested to take into account the submissions made by the Noticee *vide* its August Reply as her oral submissions.

D. CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the material available on record. I note that the allegation levelled against the Noticee in the SCN is for the violation of clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations. In view of the above, the issues that arise for consideration before me are:

Issue No. I: Whether the Noticee has violated clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations?

Issue No. II: If the answer to Issue No. (I) is in affirmative, whether the violation on the part of the Noticee would attract monetary penalty under section 15HB of the SEBI Act?

Issue No. III: If the answer to Issue No. (II) is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the SEBI Adjudication Rules?

9. Before moving forward, the relevant extracts of the provisions of the PIT Regulations, allegedly violated by the Noticee, are provided as under:

CHAPTER – IV CODES OF FAIR DISCLOSURE AND CONDUCT

Code of Conduct.

9. (1) The board of directors of every listed company and [1][the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct [2][with their approval] to regulate, monitor and report trading by its [3][designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B [4][(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.

[5][Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.]

NOTE: It is intended that every company whose securities are listed on stock exchanges and every [6][intermediary] registered with SEBI is mandatorily required to formulate a code of conduct governing trading by [7][designated persons and their immediate relatives]. The standards set out in the [8][schedules] are required to be addressed by such code of conduct.

*[1] Substituted for the words "market intermediary" by the Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019) (hereinafter referred to as "**PIT 2018 Amendment Regulations**").*
[2] Inserted by the PIT 2018 Amendment Regulations.
[3] Substituted for the words "employees and other connected persons" by the PIT 2018 Amendment Regulations.
[4] Inserted by the PIT 2018 Amendment Regulations.

[5] Ibid.

[6] Substituted for the words "market intermediary" by the PIT 2018 Amendment Regulations.

[7] Substituted for the words "its employees" by the PIT 2018 Amendment Regulations

[8] Substituted for the word "schedule" by PIT 2018 Amendment Regulations.

SCHEDULE B

[See sub-regulation (1) [9][***] of regulation 9]

Minimum Standards for Code of Conduct [10][for Listed Companies] to Regulate, Monitor and Report Trading by [11][Designated Persons]

6. When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. [12][***]

[9] Omitted by the PIT 2018 Amendment Regulations which earlier read as "and sub-regulation (2)".

[10] Inserted by the PIT 2018 Amendment Regulations.

[11] Substituted for the word "Insiders" by the PIT 2018 Amendment Regulations.

[12] Omitted by the PIT 2018 Amendment Regulations which earlier read as below: "No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed."

(I) Issue No. I: Whether the Noticee has violated clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations?

10. Regulation 9(1) of the PIT Regulations read with clause 3 of the Code of Conduct, as it existed at the time the Noticee committed the alleged violation, provided that the board of directors of every listed company is required to frame a code of conduct to regulate, monitor and report trading by its employees and other connected persons (who have been so designated) and in this regard adopt the

minimum standards which are set out in the Code of Conduct of the PIT Regulations. Further, as per clause 6 of the Code of Conduct, as it existed at the time the Noticee committed the alleged violation, such designated persons are required to obtain pre-clearance from the compliance officer, if the value of the proposed trades crosses the threshold prescribed by the board of directors of the company. Thus, I find that to establish a violation of clause 6 of the Code of Conduct, the following conditions should be fulfilled:

(i) The entity which has violated the aforesaid provision should be a designated person; and

(ii) Such designated person should have failed to obtain pre-clearance for the transactions executed by it which exceeded the value set by company's board of directors.

11. I note from the August Reply that the Noticee has not disputed execution of the transactions which are alleged to have triggered the requirement to obtain pre-clearance from the Company under clause 6 of the Code of Conduct under PIT Regulations. The aforesaid transactions are provided below:

Sl. No.	Date	Number of shares received/ bought	No. of shares sold (both stock exchanges)	Buy Value (Rs) in lakhs*	Sell Value (Rs) in lakhs*
1	11/12/2017	50,00,000	0	992.50	0
2	12/12/2017	0	6,19,795	0	117.48
3	13/12/2017	0	9,73,000	0	185.38
4	14/12/2017	82,00,000	6,81,851	1,553.90	130.25
5	15/12/2017	0	11,00,000	0	218.04
6	18/12/2017	0	15,00,000	0	311.20
7	19/12/2017	0	6,00,000	0	130.80
8	20/12/2017	0	14,00,000	0	318.19
9	21/12/2017	0	5,60,000	0	129.45
10	22/12/2017	0	4.20,000	0	97.16
11	26/12/2017	0	5,00,000	0	120.00
12	27/12/2017	0	13,29,926	0	335.00
13	28/12/2017	0	13,11,202	0	330.08
	Total	**1,32,00,000**	**1,09,95,774**		

**Value = No. of. Shares x closing price of BSE Limited on the date of transfer.*

I note that the Company in its email sent on February 15, 2021 has *inter alia* stated that the threshold limit with respect to the value of proposed trades for seeking pre-clearance before trading was Rs 10 lakhs, which means that each of transactions executed by the Noticee were in excess of the prescribed threshold.

12. I note that the Noticee has submitted two main contentions in the August Reply with respect to the violation alleged against it under the SCN:

   (i) Contention 1: The Noticee was not an employee of the Company, but was part of the promoter group of the Company. The Noticee undertook the concerned transactions in 2017 and until April 01, 2019, the term "designated person" under the PIT Regulations did not include promoters/promoter group entity. The email sent by the Company on February 11, 2021 confirming that the Noticee was a designated person under the PIT Regulations for the FY 2017-2018 was due to the insertion made under the PIT Regulations with effect from April 01, 2019. In view of the above, the Noticee was not required to obtain pre-clearance for the concerned transactions under the PIT Regulations as it was not a designated person at the time the alleged violation was committed.

   (ii) Contention 2: The Noticee was not required to obtain pre-clearance from the compliance officer of the Company before executing the concerned transactions as the shares bought by the Noticee which triggered the pre-clearance requirement were shares that belonged to the Noticee and therefore the transactions were in the nature of correction of name as opposed to a buy transaction. Therefore, the Noticee is not in violation of clause 6 of the Code of Conduct under the PIT Regulations.

13. I find it appropriate to begin with by dealing with the first contention. I note that the term "designated person" is not defined under the PIT Regulations. I note

that at the time the alleged violation was committed by the Noticee, clause 3 of the Code of Conduct under PIT Regulations read as follows: *"Employees and connected persons <u>designated on the basis of their functional role ("designated persons") in the organisation shall be governed by an internal code of conduct</u> governing dealing in securities. <u>The board of directors shall in consultation with the compliance officer specify the designated persons to be covered by such code on the basis of their role and function in the organisation</u>. Due regard shall be had to the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation". (emphasis supplied).* I note from the above that (i) "designated persons" are to be governed by an internal code of conduct which would govern their dealing in securities; and (ii) the board of directors in consultation with the compliance officer shall specify the designated persons to be covered under the said code of conduct. Therefore, I note that for an entity to be considered as "designated person", it is necessary that the board of directors of a company and its compliance officer categorize the person as a "designated person". Applying the aforesaid to the facts before me and taking into consideration clause 6 of the Code of Conduct, I find that the Noticee, being a promoter, would be required to obtain pre-clearance as alleged in the SCN, if it has been designated as a "designated person" in the manner specified above for the FY 2017-2018.

14. From the material available on record, I note that the Company *vide* email sent on February 11, 2021 has clearly and unambiguously stated that the Noticee was a "designated person" under PIT Regulations for the FY 2017-2018. Pursuant to the aforesaid email, since the Company had classified the Noticee as a "designated person", *vide* email sent on February 11, 2021, the Company was asked to confirm if it has received any pre-clearance request from the Noticee with respect to the transactions undertaken by it during the IP. It is pertinent to note that in the aforesaid email, the Company was explicitly asked whether the Noticee being a designated person for the FY 2017-2018 had submitted a request for obtaining pre-clearance of trades. I note that the Company sent its reply to the aforesaid email *vide* email sent on February 15, 2021, wherein it

stated that the Noticee has not complied with the aforementioned requirement. I find that the Noticee has placed nothing on record to substantiate its claim that it was not a designated person for the FY 2017-2018. On the other hand, I find that there is sufficient evidence on record in the form of Company emails wherein the Company has clearly identified that the Noticee was a designated person for the FY 2017-2018.

15. Further, I note that during the investigation, *vide* email sent on February 15, 2021, the Noticee was categorically asked to provide comments on the following: (i) the Company has identified the Noticee as a designated person under PIT Regulations for the FY 2017-2018; and (ii) the Noticee and the Company have both admitted that the Noticee has not obtained pre-clearance for the transactions executed by it during IP. I note that *vide* letter dated February 17, 2021 the Noticee responded to the aforesaid email wherein it did not raise any objection to the classification of the Noticee as a “designated person”. In the aforesaid reply, the Noticee’s objection was the same as the second contention raised during the current adjudication proceedings as provided in paragraph 12 (ii) above. In light of the Company emails sent on February 11, 2021 and February 15, 2021 discussed above coupled with the fact that the Noticee did not raise any objection during the investigation on being classified as a “designated person”, I find that the first contention put forth by the Noticee is an afterthought lacking any substance especially considering that even during the current adjudication proceedings no supporting documents have been provided by the Noticee to prove that it was not a designated person for the FY 2017-2018. Thus, I find no difficulty in dismissing the first contention of the Noticee as provided in paragraph 12(i) above and holding that the Noticee was a designated person during IP under the PIT Regulations.

16. With respect to the second contention of the Noticee that the Noticee was not required to obtain pre-clearance from the Company as the concerned transactions did not amount to buy transactions but were rather in the nature of correction of name as the Noticee was the rightful owner of the concerned shares

in the transaction, I find that it is essential to examine the concerned 13 transactions executed by the Noticee. From the table given in paragraph 11 above, it is evident that out of the 13 transactions executed by the Noticee in the present matter, there were 2 buy/receive transactions and 11 sell transactions. With respect to the 2 buy/receive transactions, I note that on December 11, 2021 and December 14, 2021, the Noticee received cumulatively 1,32,00,000 shares from one of its partners Satish Kumar Agrawal. It is pertinent to note that there were two separate demat accounts involved for the aforesaid transactions, which were linked to two different PANs. The Noticee bearing client ID no. 01947369 having PAN ABHFM2440E was credited with the aforesaid shares from Satish Kumar Agarwal who bears client ID no. 23205744 linked to PAN ABBPA9216E which indicates there was a change in the ownership of shares that falls under the purview of “trade”.

17. In the context of the aforesaid paragraph, I find it is necessary to delve into the words of clause 6 of the Code of Conduct which provides that *“…<u>trading</u> by designated persons shall be subject to pre-clearance by compliance officer, if the value of the proposed <u>trades</u> is above such thresholds as the board of director may stipulate.* Thus, it becomes necessary to understand what constitutes “trading/trade” under the PIT Regulations. The definition of “trading” under regulation 2(1)(l) of the PIT Regulations, reads as follows:

“Definitions.

2. (1)

(l)

"trading" means and <u>includes</u> subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, <u>deal in any securities</u>, and "trade" shall be construed accordingly ;

NOTE: Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the SEBI Act employs the term 'dealing in securities', it is intended to widely define the term "trading" to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc when in possession of unpublished price sensitive information." (emphasis supplied).

18. As noted earlier, the allegation that the Noticee did not obtain pre-clearance with respect to the concerned 13 transactions has not been disputed by the Noticee. In view of the inclusive definition of the word "trading" and the note appended to the definition explaining the legislative intent for including the term "dealing in securities", I find that the definition of the word "trading" is of wide amplitude and is not restricted to merely buying and selling of securities but also covers under its ambit transfers executed without consideration. Thus, I find that for the aforesaid 2 transactions wherein the Noticee received 1,32,00,000 shares discussed in paragraph 16 above, the Noticee being a designated person was required to obtain pre-clearance from the compliance officer of the Company.

19. I find that the following orders passed by the Hon'ble SAT, although in relation to disclosure requirement under regulation 7(2)(a) of the PIT Regulations, lends support to my aforesaid view that the 2 transactions concerning 1,32,00,000 shares were covered under the term "trade" and therefore the Noticee was required to obtain pre-clearance from the compliance officer of the Company:

   (i) In ***Dr. V K Sukumaran and Ms. Saritha Sukumaran vs. SEBI*** (Appeal No. 473 of 2020) dated August 24, 2021, the appellants had transferred shares by way of security for financial assistance and upon not receiving consideration for the shares transferred, the shares were retransferred to the account of the appellants. In view of this, the appellants had challenged the order of the adjudicating officer holding them guilty of disclosure violations under the SAST Regulations and the PIT Regulations as according to the appellants the aforesaid transactions were not in the nature of sale or purchase. The Hon'ble SAT while rejecting the aforesaid argument of the appellants held that:

*"It was also noted that as per Section 10 of the Depositories Act, 1996 a person in whose name the shares are recorded with the depository is deemed to be the registered owner for the purposes of effecting transfer of ownership of security on behalf of a beneficial owner. Further, this Tribunal considered the provisions of Section 150 of the Companies Act which requires every company to keep a register of its members and enter therein their particulars of shares held by them, as referred to in the section. Further survey of various relevant provisions was taken. <u>Ultimately, it was held that the submissions that retransfer of the shares by the Bank to the appellant therein would not amount to acquisition of the shares cannot be accepted.</u> It was held that such arguments would mean circumventing Takeover Code and Regulation 58 of the Depository Regulations, which cannot be permitted. It was further found that when the law prescribes course for creation of a pledge of shares, the parties cannot agree to create a pledge contrary to the SAST Regulations. Considering all these facts the contention of the appellants was negativated and the appeal against the order of the respondent SEBI was dismissed. <u>Taking into consideration all these factors and the law as crystallized, in our view, the submissions of the appellants cannot be accepted.</u> <u>It is an admitted fact that the shares were transferred to the concerned noticees. Thereafter the shares were again transferred in the demat accounts of the appellants in the similar fashion</u>. <u>Appellants have thus violated the provisions of the regulations detailed above. The order of the AO, therefore cannot be faulted."</u>
(emphasis supplied)*

(ii) Similarly, in ***Aanchal Jindal & Ors. vs SEBI*** (Appeal No. 05 of 2021, Appeal No. 06 of 2021, Appeal No. 07 of 2021 and Appeal No. 08 of 2021) dated August 31, 2021, the Hon'ble SAT held that:

"Before us the appellants admitted that the transactions were made and disclosures were not filed under the PIT and the SAST Regulations and consequently admitted the violations. <u>It was however contended that some of the transactions were made to the broker to transfer the scrip as security towards margin money and therefore there was no change in the beneficial ownership of the scrip. It was also contended that inter-se transaction between the promoters were made and therefore the question of any loss to the investors does not arise as the shareholding of the promoter and promoter group remained the same. It was thus urged that the non-disclosure was only technical in nature.</u> The learned counsel further contended that the quantum of penalty imposed on a technical violation was harsh, arbitrary and disproportionate.

Having heard the learned counsel for the parties, <u>we find that admittedly disclosures were not made by the appellants under the PIT and SAST Regulations, Therefore the appellants have violated the provisions of 13(4A) and 13(5) of the PIT Regulations</u> and 29(2) and 29(3) of the SAST Regulations. <u>The contention that some of the transactions were only inter-se transfers between the promoters and therefore such transactions could not be taken into consideration is erroneous in as much as all the transactions whether from one promoter to another promoter was still required to be disclosed under the aforesaid Regulations</u>." (emphasis supplied)

(iii) In ***Mrs. Komal Nahata vs. SEBI*** (Misc. Application No. 3 of 2014 and Appeal No. 5 of 2014) dated January 27, 2014, the Hon'ble SAT has held that:

"Counsel appearing on behalf of appellant submitted that in anticipation of receiving loan from appellant, ACL instead of creating a lien on the shares of Arvind International, erroneously and without the knowledge of appellant, transferred 3,75,000 shares of Arvind International Ltd. to the demat account of appellant. However, since appellant did not get back her money which was advanced to another borrower, appellant could not advance loan to ACL.

Accordingly 3,75,000 shares were transferred back by appellant to the demat account of ACL. Since erroneous transfer of shares was without consideration title in those shares did not pass to the appellant as per the provisions of Sale and Goods Act, 1930 and, therefore, the transfer being incomplete, appellant held those shares as trustee of beneficial owner, namely ACL, till it was transferred back. In such a case erroneous transfer of shares without consideration would not amount to trading in shares and consequently compliance of regulation 7(1) and regulation 7(2) of SAST Regulations, 1997 and regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992 did not arise. Learned counsel for appellant submitted that entire transaction was erroneous and that appellant did not acquire any shares which were inadvertently credited to her demat account by mistake and the same has been retransferred back to the beneficial owner. There being no commercial transaction on account of no money being paid or received by either of the parties to the transaction, AO was not justified in imposing penalty upon appellant. (emphasis supplied)

We find it difficult to accept the aforesaid arguments advanced by counsel for appellant. (emphasis supplied)

Similarly, regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992 required any person who holds more than 5% shares or voting rights shall disclose to the company, the number of shares held by such persons within 2 days of acquisition of shares and make continual disclosure even when the shareholding falls below 5% within two working days. In the present case, admittedly 3,75,000 shares of Arvind International Limited were transferred to the demat account of the appellant on September 13, 2010. Admittedly, transfer of 3,75,000 shares of Arvind International Limited constituted holding more than 5.35% shares of Arvind International Limited. Since no disclosure was made within 2 days of such acquisition, it was apparent that the appellant has violated regulation 7(1) and regulation 7(2) of SAST Regulations, 1997. Similarly, on effecting retransfer, since *disclosures were not made, appellant violated regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations, 1992.* *(emphasis supplied)*

(iv) In ***Bharat J. Patel and Ors. vs. SEBI*** (Appeal No.185 of 2018) dated November 26, 2019, it was contended by the appellants before the Hon'ble SAT that since the shares involved in the concerned matter were transferred and retransferred between the demat accounts of the members of the same family *inter alia* for margin purposes, the aforesaid transfers were beyond the scope of SAST Regulations and PIT Regulations. In this regard, while rejecting the aforesaid contention, the Hon'ble SAT held that:

"It is an admitted fact that the beneficial ownership in the shares was transferred at the various points of time which required to be disclosed by the appellant either to the Company or to the stock exchanges as per the regulations. Having failed in this, they would be liable for penalty."

(v) Further, in ***Akriti Global Traders Ltd. vs. SEBI*** (Appeal No. 78 of 2014) decided on September 30, 2014, the Hon'ble SAT has held that:

"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations". (emphasis supplied)

20. Coming to the 11 sell transactions, it is evident that each sell transaction executed by the Noticee in the present matter exceeded Rs. 10 lakhs. At this juncture, it is important to bring out that in its August Reply, the Noticee has not provided any rationale for not seeking pre-clearance with respect to the sell transactions executed by it concerning 1,09,95,774 shares. It is crucial to highlight here that contention 2 of the Noticee as discussed in paragraph 12 (ii) above, only refers to the 1,32,00,000 shares received by the Noticee from Satish Kumar Agrawal and not the 1,09,95,774 shares sold by it on market. The aforesaid contention has already been dismissed due to the reasons stated in the preceding paragraphs. Further, I note that *vide* reply sent by the Noticee dated February 08, 2021, the Noticee has stated that it has also received consideration pursuant to the aforesaid 11 sell transactions. In view of the above, I find no difficulty in holding that with respect to the aforesaid 11 sell transactions as well, the Noticee was required to take pre-clearance from the compliance officer of the Company.

21. Taking into account the aforesaid paragraphs, I find both the contentions of the Noticee as provided in paragraph 12 above are bereft of merit. I find that the Noticee is a designated person under the PIT Regulations, and as a designated person, it was required to obtain pre-clearance for the trades executed by it during the IP which exceeded the threshold prescribed by the Company, which was not obtained. Thus, I find that the violation of clause 6 of the Code of Conduct read with Regulation 9(1) of the PIT Regulations stands established due to the failure of the Noticee to obtain pre-clearance for the concerned trades in accordance with the provisions of PIT Regulations.

(II) Issue No. II: If the answer to Issue No. (I) is in affirmative, whether the violation, on the part of the Noticee would attract monetary penalty under section 15HB of the SEBI Act?

22. I note that the Apex Court in the case of ***SEBI vs. Shri Ram Mutual Fund*** (Appeal Civil 9523-9524 of 2003) dated May 23, 2006 has 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."

23. In view of the aforesaid judgment and the fact that the Noticee has violated clause 6 of the Code of Conduct read with regulation 9(1) of the PIT Regulations, I am of the view that a monetary penalty needs to be imposed upon the Noticee under section 15HB of the SEBI Act, which reads as under:

Penalty for contravention where no separate penalty has been provided.

***15HB**. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be ***[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*
**** Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

(III) Issue No. III: If the answer to Issue No. (II) is in affirmative, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the SEBI Adjudication Rules?

24. While determining the quantum of monetary penalty under section 15HB of the SEBI Act, I have considered the factors stipulated in section 15J of the SEBI Act, which reads as under:

Factors to be taken into account while adjudging quantum of penalty
*While adjudging quantum of penalty under ****[15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely :—*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

***** *[Explanation: For the removal of doubts, it is clarified that the power 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.]*

**** *Substituted for the words "section 15-I, the adjudicating officer" by the Finance Act, 2018 w.e.f. 08-03-2019*

******Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.*

25. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage ensuing to the Noticee by not obtaining pre-clearance for the transactions executed by it. It is also not possible to assess the consequent loss caused to investors as a result of the aforesaid default. With respect to the repetitive nature of the default, it is important to note that the Noticee has violated clause 6 of Code of Conduct read with regulation 9 (1) of the PIT Regulations on 13 occasions during the Investigation Period. Hence, the violations committed by the Noticee are repetitive in nature.

26. In the present matter, the facts of the case clearly establish the violation committed by the Noticee and I consider it necessary to impose monetary penalty which would act as a deterrent to the Noticee in the future.

E. ORDER

27. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs 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, I hereby impose a penalty of Rs. 7,00,000/- (Rupees Seven Lakhs only) under section 15HB of the SEBI Act on the Noticee *i.e.,* M/s. Srinathji Dall Mills. I am of the view that the penalty is commensurate with the violation committed by the Noticee.

28. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

29. The Noticee shall forward the said demand draft or the details/confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

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

Date: December 24, 2021
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER