BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/KH/2023-24/25775-25778]

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

Ms. Shilpa Lakamraju (PAN: ACZPL9719L)
Ms. Jyotsna Lakhamraju (PAN: ACZPL9718M)
Mr. Lakkamraju Venkateswara Raju (PAN: AAQPL5625G)
Mr. Raju N Manthena (PAN: ALKPM7432M)

In the matter of Kernex Microsystems (India) Limited

FACTS OF THE CASE IN BRIEF:

1. Kernex Microsystems (India) Limited (hereinafter referred as "**Target Company**") is a company having its shares listed on the BSE Limited (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**")(hereinafter collectively referred to as "**Exchanges")**. An open offer for acquisition of up to 32,50,000 equity shares representing twenty-six (26) per cent of voting share capital of the Target Company, was made in terms of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') by Mr. Anji Raju Manthena (hereinafter referred to as the '**Acquirer**/ **Noticee 5'**), who is a promoter of the Target Company. In pursuance to the aforesaid Open Offer, a Draft Letter of Offer (hereinafter referred to as '**DLOO**') was submitted by Mark Corporate Advisors, the Manager to the Open Offer (hereinafter

referred to as '**Mark Corporate Advisors/MB**'), acting on behalf of the acquirer. On the basis of examination of the DLOO, violation of disclosure norms under Regulations 29(2) and (3) of SAST Regulations, by Ms. Shilpa Lakamraju (hereinafter referred to as the '**Noticee 1'**), Ms. Jyotsna Lakhamraju (hereinafter referred to as the '**Noticee 2'**), Mr. Lakkamraju Venkateswara Raju (hereinafter referred to as the '**Noticee 3'**), Mr. Raju N Manthena (hereinafter referred to as the '**Noticee 4'**) and Mr. Anji Raju Manthena (**Noticee 5**) (hereinafter, collectively referred to as "**Noticees/Promoters**"), who were promoters of the Target Company acting in concert for the purpose of prior transactions in the shares of the Target Company, were observed by SEBI.

2. Therefore, SEBI initiated adjudication proceedings against Noticees under the provisions of Section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) for alleged violations of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated March 04, 2022, SEBI appointed the undersigned as the Adjudicating Officer under Section 15-I of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**AO Rules**') to inquire into and adjudge, under Section 15A(b) of SEBI Act, the alleged violations of Regulation 29(2) read with Regulation 29(3) of SAST Regulations by Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated June 01, 2022 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of the AO Rules to show-cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them under the provisions of Section 15A(b) of SEBI Act for the aforesaid violations alleged to have been committed by them.

5. The allegations levelled against Noticees in the SCN are as under:

a. *On perusal of the DLOO, I noted that from MBs letter dated December 20, 2021, October 14, 2021 and November 03, 2021, Noticees 1 to 5, had not complied with the applicable disclosure requirements under the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations w.r.t. certain transactions in the shares of the Target Company which are given as under:*

Table No-1

Name of purchaser	Date/period of transactions	Size of transaction in % terms	Transaction Type	Due date for disclosure	Applicable SAST Regulation	Status of Compliance
Anji Raju Manthena	July 09, 2014	1.54#	Acquisition	July 09, 2014	29(2) and 29(3)	Not complied
Shilpa Lakamraju	March 14, 2017 to March 31, 2017	2.02	Sale	April 04, 2017		Not complied
Jyotsna Lakhamraju	March 14, 2017 to March 31, 2017	2.20	sale	April 04, 2017		Not complied
Shilpa Lakamraju	April 06, 2017	0.24$	Sale	April 10, 2017		Not complied
Anji Raju Manthena	May 05, 2017	1.10^	Acquisition	May 09, 2017		Not complied
Lakkamraju Venkateswara Raju	February 18, 2019	1.80*	Sale	February 20, 2019		Not complied
Raju N Manthena	March 30, 2019	2.31	Sale	April 02, 2019		Not complied on BSE and delayed compliance on NSE

 # Prior to his acquisition, the gross total acquisition/of Promoter/Promoter Group was 1.04% and hence after the acquisition of 1.54%, the gross acquisition/sale exceeds 2% (2.58%) of the Voting Capital of the Target Company.

$ Prior to her sale, the gross total acquisition/sale by/of Promoter/Promoter Group was 2% and hence after the sale of 0.24%, the gross acquisition/sale exceeds 2% (2.24%) of the Voting Capital of the Target Company.

^ Prior to his acquisition, the gross total acquisition/sale by/of Promoter/Promoter Group was 1.10% and hence after the acquisition of 1.10%, the gross acquisition/sale exceeds 2% (2.20%) of the Voting Capital of the Target Company.

**** Prior to his sale, the gross total acquisition/sale by/of Promoter/Promoter Group was 1.72% and hence after the sale of 1.80%, the gross acquisition/sale exceeds 2% (3.52%) of the Voting Capital of the Target Company.***

b. *Noticees 1 to 5, who were promoters of the Target Company acting in concert for the purpose of prior transactions in the shares of the Target Company falls under the definition of 'Persons Acting in Concert' (hereinafter referred to as '**PAC**') under Regulation 2(q)(ii)(iii) of the Takeover Regulations.*

c. *Since these PACs, i.e., Noticees 1 to 5, failed to disclose the said disposal/acquisition of shares to the BSE, NSE as well as to the Target Company, it is alleged that Noticees 1 to 5 have violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations 2011.*

6. The SCN was sent to Noticees through Speed Post Acknowledgement Due (herein after referred to as '**SPAD**') and digitally signed email dated June 03, 2022, and was duly served upon them. Thereafter, in the interest of natural justice, vide hearing notice dated January 02, 2023, an opportunity of personal hearing was granted to Noticees on January 12, 2023. Noticees, vide their separate letters/emails, submitted replies to the SCN. In view of the difficulties posed due to Covid -19 pandemic, hearing proceedings were conducted online through videoconferencing. The Authorized Representative of Noticees (hereinafter referred to as '**AR**') attended the online hearing and reiterated contents of their letters/emails.

7. Noticee 1, vide her letter dated June 13, 2022, made following submission which is summarized below:

   a. *I am US citizen and NRI Investor living in United States of America for last 40 years. Out of patriotism and my father's suggestion only, I invested the money (in US$) in this target company Kernex Microsystems (India) Ltd.*
   b. *I sold these shares for an emergency need as my family size is grown up and I stopped working. I needed money to take care of my newly born and young children.*
   c. *I bought/subscribed these shares quite early, nearly more than 5 years before the company went for public issue and sold these shares at about 10 years after it went to public issue at an average price of Rs. 40/ share. Currently, it is trading at about Rs. 180/share. There is no impact on the market by selling these shares.*

d. *I am unable to confirm exact dates of sale of shares sold thru my stock broker Karvy as it took long time nearly 2 to 3 Months to remit sales proceedings (Payments) to my NRI account. That I was not sure of some mess-up with Karvy, the brokering company. Karvy might have used my sales proceedings for some other purposes and delayed my remittance. This caused me to sell my balance shares in confusion to meet my requirements.*

e. *While calculating, I truncated the numbers to nearest full digit. So, I felt it is at 2% and avoided decimals. Somewhere else in disclosure reports I observed the same. I am not sure how far I can go after decimal.*

f. *I made an honest attempt to disclose my sales proceedings to NSE, BSE and to the company with whatever information I have. But I could not find proper "Form" in the websites to fill and send. I was able to find only for acquisitions and takeovers and not for sale proceedings. I spent enough time to search on it. Meanwhile the cut-off time was over.*

8. On perusal of the reply submitted by Noticee 2, I note that Noticee 2 have made similar submissions as Noticee 1, which has been summarized above. Further, Noticee 3, have made the following submissions:

a. I confirm that I am one of the promoters of Kernex Micro Systems (India) Ltd., since the listing of its shares on the Stock Exchanges.

b. As a promoter, I have neither sold nor bought shares in the company between 2006 and 2018.

c. I functioned as Managing Director, of Kernex Micro Systems (India) Pvt. Ltd. from 2005 to November 30, 2016. I resigned from the company on November 30, 2016, owing to falling health, at the age of 73.

d. I needed money to take care of my health and therefore on February 18, 2019, I sold 2,25,000 equity shares aggregating to 1.80% of paid up capital/ voting capital of the company. I these shares at the rate of Rs. 23 /- per share (face value of Rs. 10/-) after 14 years of holding them in my name owing to medical and health necessity even at a great loss. The current market price of each share is around Rs. 200/-.

e. I was not involved in buying and selling of shares, especially of Kernex or any other company.

f. *Owing to old age and falling health I sold the share in one go in Feb 2019 at a great loss.*

g. *I thought as the quantity sold was less than 2% of the paid-up capital of the company, which did not attract the provisions of SEBI guidelines Reg 29(2) and Reg 29(3). Further, I was not aware about any sale/ buy by any other Promoter/ Promoter Group entities.*

h. *To the best of my analysis and knowledge, this has not affected the confidence of the investors in the company or caused loss to them.*

9. Further, Noticee 4, vide email dated July 02, 2022 have made the following submissions:

"*I am promoter shareholder and was holding 8,54,633 equity shares of Rs. 10/- each aggregating to 6.84% of the paid-up capital of Kernex Microsystems (India) Limited as on March 30, 2019. On March 30, 2019, I have sold shares to the tune of 2,89,190 shares of Rs. 10/- each aggregating to 2.31% of the paid-up capital of Kernex Microsystems (India) Limited. Post disposal of the stake of mine in the company decreased to 4.53%.*

I have submitted a disclosure under Regulation 29 of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 to the stock exchanges (i.e. BSE Limited and NSE) and marked a copy to Company on 02.04.2019 through courier as I am residing in a remote village due to old age where there is no facility to forward a mail. Hence, I have couriered all the documents as required under the said Regulations. This is due to inadvertence as I was not aware that forwarding of 'E-mail' is mandatory.

In this regard Company Secretary of Kernex Microsystems (India) Limited has informed me that the Company has received a notice from National Stock Exchange of India Limited on 25th April 2019 stating that Disclosure was not given for sale of shares. Then I have communicated to them that I don't have facility to scan and forward mails as I am staying in a remote village. Hence, the disclosure documents were couriered and further said that this is due to inadvertence as I don't know that forwarding of 'E-mail' is mandatory. Then Company Secretary had forwarded the same to NSE.

Further, it was informed that the company didn't received any communication from BSE Limited on the non-submission of disclosure as that was received from NSE. Hence thought that BSE Limited has received the same. After receiving mail from your office, I came to know that BSE Limited also hadn't received the disclosure.

On June 27, 2022, I have made the requisite disclosures through mail under SEBI (SAST) Regulations, 2011 to Stock Exchange and Company respectively."

10. I note from the records that Noticee 5 had proposed to settle the proceedings initiated against him without admitting or denying the findings of fact and conclusions of law, through a settlement order and in this regard, a Settlement order [***SETTLEMENT ORDER NO. SO/SM/HG/2022-23/6931] dated March 13, 2023***] was passed and the adjudication proceedings initiated against Noticee 5 vide SCN vide no. EAD-10/SM/S./23175/1/2022 dated June 01, 2022 was disposed of in terms of Section 15JB of the SEBI Act read with Regulation 23(1) of the Settlement Regulations, on the basis of settlement terms. Therefore, the present Order is only with relation to Noticees 1 to 4.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

11. I have carefully perused the charges levelled against Noticees 1 to 4, replies/submissions filed by them and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

    Issue I: Whether Noticees 1 to 4 have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations?

    Issue II: Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act?

    Issue III: If so, what should be the quantum of monetary penalty?

12. The first issue for consideration is whether Noticees 1 to 4 have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations. It is alleged in the SCN that Noticees 1 to 4 had exceeded the threshold level prescribed under Regulation 29(2) of SAST Regulations in respect of their transactions in the scrip of target company but had failed to comply with the disclosure requirements as required under the provisions of SAST Regulations.

13. Before proceeding further, I find it pertinent to refer to Regulation 29(2) and 29(3) of SAST Regulations, alleged to have been violated by Noticees 1 to 4. The aforesaid provisions are reproduced hereunder:

Disclosure of acquisition and disposal

29.(1) …………

***Regulation 29(2) of SAST Regulations says that**: "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."*

***Regulation 29(3) of SAST Regulations says that**: "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 98 [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

98 Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018, w.e.f.11-09-2018.

14. In the present matter, I note that SCN has alleged Noticees 1 to 5 had transacted in the shares of the target company and had triggered the disclosure requirements under Regulation 29(2) read with Regulation 29(3) of SAST Regulations. In light of SEBI's settlement order NO. SO/SM/HG/2022-23/6931 dated March 13, 2023 passed in respect of Noticee 5, I find it no longer appropriate to examine the transactions done by Noticee 5. The remaining transactions of Noticees 1 to 4, as noted from the letter dated December 20, 2021from Mark Corporate Advisors to SEBI, are as under:

Name of purchaser	Date/period of transactions	Size of transaction in % terms	Transaction Type
Shilpa Lakamraju	March 14, 2017 to March 31, 2017	2.02	Sale
Jyotsna Lakhamraju	March 14, 2017 to March 31, 2017	2.20	sale
Shilpa Lakamraju	April 06, 2017	0.24$	Sale
Lakkamraju Venkateswara Raju	February 18, 2019	1.80*	Sale
Raju N Manthena	March 30, 2019	2.31	Sale

15. I note from the replies of Noticees 1 to 4 that they have admitted to the above mentioned transactions of shares in the target company by them. Thus, I find that Noticees 1 to 4 had done transaction of shares in the target company as detailed above.

16. The SCN has alleged that sale of shares by Noticee 1 on April 06, 2017 and during March 14, 2017 to March 31, 2017 and sale of shares by Noticee 2 during March 14, 2017 to March 31, 2017 have triggered the disclosure requirements under Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

17. I note that Regulation 29 (2) of SAST Regulations specifically mentions about disclosure of acquisition as well as disposal of shares. However, I observe that Regulation 29 (3) of SAST Regulations, as applicable at the time of the aforementioned impugned transactions, mentions the timelines for disclosures in case of acquisition of shares only and not for disposal of shares. In this regard, I would like to rely on the decision of Hon'ble SAT in **Vizwise Commerce Pvt. Ltd Vs. SEBI (Appeal No. 383 of 2014, decided on January, 28, 2015)**, wherein, the Learned Member of Hon'ble SAT had held as follows:

" It may be pointed out that Regulation 29(3) of SAST Regulations is not in consonance with Regulation 29(2), since Regulation 29(2) requires intimation for every acquisition or disposal, but Regulation 29(3) requires such disclosure "to be made within two days of receipt of intimation of allotment of shares or the acquisition of shares or voting rights in the target company" and there is no time limit for disclosure of disposal of shares or voting rights, although there is a requirement under Regulation 29(2)"

18. I also note that the words “or the disposal” were inserted in Regulation 29 (3) of SAST Regulations by an amendment with effect from September 11, 2018. In this context, I would further like to rely upon judgment of Hon’ble SAT in the matter of the **Ravi Mohan vs. SEBI (Appeal No. 97 of 2014, decided on December 16, 2015**) involving the interpretation of provisions of Regulation 7 (1A) of the erstwhile Takeover Regulations 1997, which is similar to Regulation 29 (2) and 29 (3) of SAST Regulations. The Hon’ble SAT in the aforesaid decision had held as follows:

“.........

27. It is relevant to note that while inserting regulation 7(1A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1A) has to be made within two days of the events specified in regulation 7(2). On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting rights in excess of the limits prescribed under regulation 7(1A). As a result, even though regulation 7(1A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Since regulation 7(2) as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1A), the question of discharging that obligation arising under regulation 7(1A) read with regulation 7(2) does not arise at all.

28............ *Thus, by 2002 amendment it is made clear that although disclosure of purchase or sale referred to under regulation 7(1A) has to discharged within two days of purchase or sale, of shares referred to therein, by amending regulation 7(2) it is provided that two days time to make disclosure under regulation 7(1A) shall commence on the happening of events specified under regulation 7(2). Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1A), the question of complying with regulation 7(1A) within two days of sale of shares does not arise at all*.

29.......... *Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure* *in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants*. ....

33. For all the aforesaid reasons, the issues raised in these appeals are answered as follows: -
a) ...
b) Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently, penalty imposed on the appellants cannot be sustained ...."

19. I note that the ratio of the above judgments applies with equal force to the facts of the present case. In view of the aforesaid judgments, I find that Regulation 29 (2) read with Regulation 29(3) of SAST Regulations is not applicable to the aforesaid disposal of shares by Noticees 1 and 2. Thus, I find that for the sale of shares by Noticee 1 on April 06, 2017 and during March 14, 2017 to March 31, 2017 and sale of shares by Noticee 2 during March 14, 2017 to March 31, 2017 have not triggered the disclosure requirement under Regulation 29(2) read with Regulation 29(3) of SAST Regulations as applicable at the relevant time. In light of the above, I find that the allegation in the SCN that Noticees 1 and 2 have violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations does not stand established.

20. The SCN has alleged that sale of shares on February 18, 2019 amounting to 1.80% of shares in the target company by Noticee 3 i.e. Mr. Lakkamraju Venkateswara Raju had triggered disclosure requirements under Regulation 29(2) read with Regulation 29(3) of SAST Regulations. I note that the aforementioned sale of shares occurred after September 11, 2018, i.e. after SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018 came into force. As mentioned earlier in the Order, SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018, inserted the words "or the disposal" in the Regulation 29(3) of SAST Regulations. By virtue of the aforesaid amendments, disclosures under Regulation 29(1) and 29(2) of SAST Regulations relating to acquisition, allotment of shares or disposal of shares has to

be made in accordance with Regulation 29(3) of SAST Regulation within two working days from the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights.

21. I note that the first ingredient in determining applicability of Regulation 29(2) read with Regulation 29(3) of SAST Regulations is that a person along with persons acting in concert, if any, at the time of impugned transactions should hold shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company.

22. Therefore, I first proceed to examine the aspect of who the persons acting in concert were, if any along, with Noticee 3 at the relevant time and whether their combined shares or voting rights in the target company was above the threshold limit as specified under Regulation 29(2) of SAST Regulations.

23. I note that Noticee 3 was a promoter of the target company at the time of his impugned transactions in the target company and as per Regulation 2(q)(2)(iv) of SAST Regulations, promoters are deemed to be persons acting in concert with each other unless contrary is established. The aforementioned provision is reproduced hereunder:

"Persons acting in concert means, —

1)….

2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, —

(i) ……..

(iv) promoters and members of the promoter group

…….

24. The above provision is a deeming provision which means that a rebuttable presumption is created by the provision that promoters are persons acting in concert. In this regard, I find it pertinent to refer to decision of Hon'ble SAT in SBEC System(India) Ltd. & Ors V. SEBI (Appeal No. 443 of 2018 & connected Appeals, Date of Decision: 29.1.2020) wherein it has been held that:

"*Thus, though a presumption that the promoters would be persons acting in concert can be raised the same can be rebutted either by positive evidence or by negative facts discernable through the conduct of the parties."*

25. I note from the material available on record that during the Financial Year (FY) 2018-2019, the target company had seventeen (17) promoters who together held 31.78% of the total shareholding of the target company. However, I find that Examination Report of SEBI in the matter has not clearly stated or examined the role of the aforementioned promoters as persons acting in concert, with Noticee 3 for the aforesaid transaction on February 18, 2019. I also note that Noticee 3 in his reply has submitted his health was deteriorating from 2016 to 2019 with chronic liver disease, extreme weakness and he had needed money for treatment and therefore, on February 18, 2019 he had sold 2,25,000 equity shares aggregating to 1.80% of the paid up capital/voting capital of the target company. Thus, I find from the aforesaid reply of Noticee 3 that sale of shares on February 18, 2019 has been done for the sole purpose of funding Noticee 3's medical treatment expenses. In light of the above observations, I find that persons acting in concert with Noticee 3 for his transaction on February 18, 2019 has not been clearly established.

26. In absence of any persons acting in concert with Noticee 3, it is to be determined if his individual shareholding in target company, prior to his transaction, was 5% or more of the total shareholding or voting rights in the target company for the purpose of application of Regulation 29(2) of SAST Regulations. I note from the material available on record that in the FY 2018-19, total equity capital/number of shares of target company was 1,24,99,655 shares. I note that during the aforesaid financial year and just prior to the sale of shares on February 18, 2019, Noticee 3 was holding 225863 shares i.e. 1.81% of the total share capital of the company. Thus, I note that Noticee 3's individual shareholding at the time of transaction was below the threshold shareholding i.e., 5% of the total shareholding or voting rights in the target company, required for applicability of Regulation 29(2) of SAST Regulations.

27. I find that since Noticee 3 was holding only 225863 shares i.e. 1.81% of the total share capital of the company at the time of transaction and his sale of shares amounted only to 1.80% of the target company, he has not breached the level specified in Regulation 29(2) and therefore Regulation 29(2) read with Regulation 29(3) of SAST Regulations is not applicable to his transaction in the target company on February 18, 2019. In light of the above, I find that allegation in the SCN that Noticee 3 has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations does not stand established.

28. With regard to allegation against Noticee 4 in the SCN, I note from the material available on the record that Noticee 4 was a promoter of the target company and at the time of his sale of 289190 shares of target company on March 30, 2019, he was holding 6.84% of the shareholding of the target company i.e. exceeding 5% of the shareholding of the target company. The Examination Report has not specifically examined or determined persons-acting in concert with Noticee 4 for his sale of shares of target company on March 30, 2019. However, as noted earlier, individual shareholding of Noticee 4 at the time of his sale of shares was more than the threshold shareholding prescribed under Regulation 29(2) of SAST Regulations. It is also admitted by Noticee 4 that pursuant to the aforementioned sale, there was reduction in his shareholding amounting to 2.31% of the share capital of the target company. Noticee 4 has also admitted in his reply that for the aforementioned sale, he was under an obligation to make disclosure as per Regulation 29(2) read with Regulation 29(3) of SAST Regulations. In light of the above observations, I find that Noticee 4 was under an obligation to disclose his sale of shares of target company on March 30, 2019 in accordance with Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

29. I note that as per Regulation 29(3) of SAST Regulations, disclosures under Regulation 29(2) of SAST Regulations have to 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 every stock exchange where the shares of the target company are listed and the target company at its registered office. As noted earlier, the shares of the target company are listed on both BSE and NSE. Therefore, in accordance with Regulation 29(2) read with Regulation 29(3) of SAST Regulations, Noticee 4 was under an obligation to make disclosure regarding his sale of shares on March 30, 2019 on April 02, 2019 to BSE, NSE and the target company. In this regard, I note that Mark Corporate Advisors in its letter to SEBI dated December 20, 2021 stated that Noticee 4 had not made any disclosure under Regulation 29(2) read with Regulation 29(3) of SAST Regulations regarding the aforementioned sale of shares to BSE and had made delayed disclosure to NSE.

30. With regard to the allegations against him in the SCN, Noticee 4 in his reply to SCN has stated that he had couriered all the documents relating to disclosure under Regulation 29 of SAST Regulations to NSE and BSE and marked a copy to the Target Company on April 02, 2019. I find that along with his reply, Noticee 4 has enclosed courier bills/receipts

dated April 02, 2019 of a courier sent to BSE and target company. Noticee 4 has further stated that he was residing in a remote village due to old age where there was no facility to forward a mail.

31. Noticee 4 has further submitted that company secretary of the target company had informed him that the company had received a notice from NSE, that no disclosure had been made with regard to his sale of shares and therefore, he had again sent the requisite disclosure through mail to BSE on June 27, 2022.

32. With regard to the above submission of Noticee 4, I note that although Noticee 4 has stated that he had made disclosures to BSE, NSE and the target company, he has not produced any evidence to show that he had sent the requisite disclosure to NSE. Further, I note from the website of the NSE that on June 20, 2019, NSE had received a communication dated May 20, 2019 from the target company, wherein by target company has forwarded disclosure under Regulation 29(2) of SAST Regulations for the aforementioned sale of shares by Noticee 4. Further, I also note that in the aforementioned communication, target company had stated that they had received aforementioned disclosure under Regulation 29(2) of SAST Regulations from Noticee 4 on April 02, 2019. In light of the aforesaid, I find that disclosure of Noticee 4's sale of shares in target company March 30, 2019 was ultimately disclosed to NSE only on June 20, 2019.

33. As regards his claims of making the requisite disclosures to BSE, I find that apart from a mere courier receipt, Noticee 4 has not produced any proof of delivery of the disclosure sent to BSE. Even the copy of the purported disclosure to BSE has not been provided by Noticee 4. I also note from the website of BSE that as on date of passing of this Order, no disclosure has been made to BSE under Regulation 29(2) read with Regulation 29(3) of SAST Regulations by Noticee 4 with regard to his sale of shares on March 30, 2019.Thus, in absence of any proof of delivery of his disclosure to BSE and in absence of any disclosure of impugned transaction in the website of BSE, I find that Noticee 4 had not made any disclosure to BSE with regard to his aforementioned sale.

34. Thus, I find that Noticee 4 has not shown that he had made disclosure to NSE and BSE regarding his aforesaid sale on April 02, 2019. In light of the above, I find that allegation in the SCN that Noticee 4 has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations stands established.

<u>Issue II: Does the violation, if any, attract monetary penalty under Section 15A (b) of SEBI Act?</u>

35. In this regard, I place reliance on the order of the Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 order dated October 14, 2014), wherein Hon'ble SAT held that "………. *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation.*"

36. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established...…".*

37. Therefore, in view of the above judgments and considering that Noticee 4 has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations, as established in the foregoing paragraphs, I find that Noticee 4 would be liable for monetary penalty under Section 15A (b) of the SEBI Act. The text of Section 15A(b) of the SEBI Act is reproduced below:

<u>SEBI Act</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 there under,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations 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;

<u>Issue III: What should be the quantum of monetary penalty</u>?

38. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under: -

<u>SEBI Act</u>

Factors to be taken into account by the adjudicating officer.

Section 15J *- While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

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

(c) the repetitive nature of the default.

Explanation- For 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.

39. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee 4 in making disclosures or the consequent loss caused to investors as a result of the default. I also note that material available on record do not show that violation of Noticee 4 is repetitive. Further, the fact that Noticee 4 had made disclosure under Regulation 29(2) read with Regulation 29(3) of SAST Regulations to the target company on April 02, 2019 i.e. on the due date of disclosure regarding his sale of shares on March

30, 2019 and there was a disclosure of his aforementioned shares by the target company to NSE on June 20, 2019 can be considered as mitigating factor while determining penalty in the instant matter.

ORDER

40. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee 4 and also the factors mentioned in Section 15J of the SEBI Act as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the AO Rules hereby impose a penalty of Rs.1,00,000/- (Rupees One Lakh only) on Noticee 4 i.e. Raju N Manthena, under the provisions of Section 15A (b) of SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee 4.

41. Noticee 4 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. In case of any difficulties in payment of penalties, Noticee 4 may contact the support at portalhelp@sebi.gov.in.

42. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "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 payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

43. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticee 4.

44. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticee 4 i.e. Raju N Manthena and also to the Securities and Exchange Board of India.

Place: Mumbai **SOMA MAJUMDER**

Date: April 17, 2023 **ADJUDICATING OFFICER**