BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/HG/2022-23/21123-21127]

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 ACT, READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

Noticee No.	Name of Noticee	PAN
1	**Citizen Compset Private Limited**	**AACCC0608B**
2	**Dhanlaxmi Builders and Developers Private Limited**	**AAFCD6041G**
3	**Shri Balaji Comfin Traders**	**ALMPK2209G**
4	**SSD Real Estate Developers Private Limited**	**AARCS8612E**
5	**Meticulous IT Solutions Private Limited**	**AAICM9850H**

In the matter of Amsons Apparels Limited

FACTS OF THE CASE IN BRIEF:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') carried out an investigation in the scrip of Amsons Apparels Limited (hereinafter referred to as "**Amsons/Company/AAL'**") for the period December 27, 2017 to January 24, 2018 (hereinafter referred to as '**Investigation Period/ IP**'). The

focus of investigation was to ascertain inter-alia, any violation of the provisions of SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') and Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SC(R)A**) by Citizen Compset Private Limited (hereinafter referred to as "**Noticee 1**"), Dhanlaxmi Builders and Developers Private Limited (herein after referred to as "**Noticee 2**"), Shri Balaji Comfin Traders (hereinafter referred to as "**Noticee 3**"), SSD Real Estate Developers Private Limited (hereinafter referred to as "**Noticee 4**") and Meticulous IT Solutions Private Limited (hereinafter referred to as "**Noticee 5**") (Noticee 1 to Noticee 5 hereinafter are being collectively referred to as '**Noticees'**). The shares of the company were listed on Bombay Stock Exchange Limited (herein after referred to as "**BSE**")-SME Platform and subsequently migrated to Mainboard of BSE on April 27, 2017.

2. During the investigation, SEBI observed that Noticee 1 had transferred 10,00,000 shares of Amsons to Noticee 2 and 5,00,000 shares of Amsons to Noticee 3, in off market transfer (spot transaction) on January 04, 2018 for an amount of Rs. 10 lakhs and Rs. 5 lakhs respectively. However, it was observed from the Bank statements of Noticees 1 to 3 that no such fund transactions were reflecting in any of the bank statements during the period from September 01, 2017 to January 31, 2018. Similarly, it was observed that Noticee 4 had transferred 7,50,000 shares of Amsons to Noticee 5 in off market transfer (spot transaction) on January 08, 2018 for an amount of Rs. 45,52,500/. However, it was seen from the Bank statements of Noticee 4 and Noticee 5, that no such fund transactions were reflecting in any of the bank statements during the period from September 01, 2017 to January 31, 2018. Therefore, it was alleged that Noticee 2 and Noticee 3 had not paid the consideration amount to Noticee 1 for acquisition of shares by them and Noticee 5 had not paid the consideration amount to Noticee 4 for acquisition of shares by it in off market transfer (spot transaction). Therefore, it was alleged that Noticees had violated Section 16 of the SC(R)A read with SEBI Notification dated October 03, 2013 (hereinafter referred to as "**SEBI Notification**"), Section 13 and Section 18 of SC(R)A read with Section 2(i) of SC(R)A. Therefore, SEBI initiated adjudication proceedings

against Noticees under the provisions of Section 23H of SC(R)A for the aforesaid alleged violations by them.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated May 17, 2021, Shri K Saravanan was appointed as Adjudicating Officer (‘**AO**’) under Section 23 I of the SC(R)A and Rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and imposing Penalties) Rules, 2005 (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as ‘**SCRA Adjudication Rules’**) to inquire into and adjudge under the provisions of Section 23H of SC(R)A, the alleged violation of Section 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of SC(R)A by Noticees in the scrip of Amsons. Since, Shri K Saravanan was transferred to another department of SEBI, the undersigned was appointed as the AO in the said matter by SEBI vide its order dated May 28, 2021.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show-cause notice dated August 10, 2021 (hereinafter referred to as ‘**SCN**’) and a supplementary show-cause notice dated August 13, 2021 (hereinafter referred to as ‘**SSCN**’) was issued to Noticees under Rule 4 of the SCRA Adjudication 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 23H of SC(R)A, for the aforesaid violations alleged to have been committed by them.

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

   Off market transfer of securities between Noticee 1 to Noticee 3

   a. *It was observed from the Delivery Instruction Slip (hereinafter referred to as “**DIS**”), details regarding off- market transfer of shares sought during* *the Investigation Period from Central Depository Services(India) Ltd. (hereinafter referred to as "**CDSL**")/ National Securities Depository Ltd.(hereinafter referred to as "**NSDL**") that Noticee 1 (Diwakar Joshi) has transferred 10,00,000 shares and 5,00,000 shares of Amsons to Noticee 2 and Noticee 3 (Sunil Kapoor) respectively, in off market transfer (spot transaction) on January 04, 2018. It was also observed that the said transfer of shares was made for an amount of Rs. 10 lakhs and Rs. 5 lakhs respectively. Therefore, in order to verify the actual fund transfer, bank statements reflecting the aforesaid fund transactions was sought from Noticee 1 to Noticee 3 vide email dated December 04, 2020 and thereafter vide summons dated December 16, 2020 and a reminder letter dated December 29, 2020. The summons was also sent to email ids obtained from Exchange and Depositories. The emails sent to Noticee 1 to Noticee 3 was duly served to the them, however, only letter sent to Noticee 1 was served and the letter sent to Noticee 2 and Noticee 3 (Sunil Kapoor) were returned undelivered. However, no response has been received from Noticee 1 to Noticee 3.*

b. *Therefore, the bank statements of the bank account linked to the trading accounts / demat accounts were sought from concerned banks. The details of the bank accounts are given below:*

Noticee number	**Bank Name**	**Bank Account No**
Noticee 1	AxisBank	914020024237916
Noticee 2	Kotak	9512282546
	ICICI	629705016349
Noticee 3	Dena Bank	131310032057
	Capital Small Finance Bank	030105000043

c. *On analyzing the bank statements of Noticee 1 to Noticee 3, it was observed that no such fund transactions were reflecting in any of the bank statements as indicated in DIS during the period from September 01, 2017 to January 31, 2018.*

d. *As per the Spot Delivery Contract provisions mentioned at Section 2(i) of the SC(R)A, 1956, the transferee was required to make actual payment for the shares on the same day as the date of the contract or on the next day. It was observed from the available bank statements that, Noticee 2 and Noticee 3 had not paid the consideration amount to Noticee 1 for acquisition of shares by them. Therefore, it is alleged that Noticee 1, Noticee 2 and Noticee 3 have violated Section 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of the SC(R)A.*

Off market transfer of securities between Noticee 4 to Noticee 5

e. *It was observed from the DIS that Noticee 4 had transferred 7,50,000 shares of Amsons to Noticee 5 through off market transfer on January 08, 2018. It was also observed that the said transfer of shares was made for an amount of Rs. 45,52,500/- at the rate of Rs. 6.07 per share. Therefore, in order to verify the actual fund transfer, bank statements reflecting the aforesaid fund transaction was sought from Noticee 4 and Noticee 5 vide email dated December 04, 2020 and thereafter vide summons dated December 16, 2020 and a reminder letter dated December 29, 2020. The summons was also sent to email ids obtained from Exchange and Depositories. The emails sent to Noticee 4 and Noticee 5 was duly served to the them, however, the letter sent to Noticee 4 and Noticee 5 were returned undelivered. However, no response has been received from Noticee 4 and Noticee 5.*

f. *Therefore, the bank statements of the bank account linked to the trading accounts / demat accounts were sought from concerned banks. The details of the bank accounts are given below:*

Noticee number	Bank Name	Bank Account No
Noticee 5	AxisBank	915020028272354
		914020009790843
Noticee 4	Kotak	631011026929

g. *On analyzing the bank statements of Noticee 4 and Noticee 5, it was observed that no such fund transactions were reflecting in any of the bank statements as indicated in DIS during the period from September 01, 2017 to January 31, 2018.*

h. *As per the Spot Delivery Contract provisions mentioned at Section 2(i) of the SC(R) A, 1956, the transferee was required to make actual payment for the shares on the same day as the date of the contract or on the next day. It was observed from the available bank statements that, Noticee 5 had not paid the consideration amount to Noticee 4 for acquisition of shares by them. Therefore, it is alleged that Noticee 4 and Noticee 5 have violated Section 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of the SC(R)A.*

6. The SCN was sent to Noticees through Speed Post Acknowledgement Due (herein after referred to as '**SPAD**') on August 10, 2021 and digitally signed email dated August 11, 2021. However, the SCN sent through SPAD was duly served only to Noticee 1 and the SCN sent to Noticees 2 to 5 through SPAD was returned undelivered. Further, the SCN sent through digitally signed email was duly served to Noticee 1, Noticee 2, Noticee 3 and Noticee 5, however, the SCN sent through digitally signed email to Noticee 4 had bounced back.

7. Similarly, the SSCN was sent to Noticees through SPAD and digitally signed email on August 13, 2021. However, the SSCN sent through SPAD was duly served only to Noticee 1 and the SSCN sent to Noticees 2 to 5 through SPAD was returned undelivered. Further, the SSCN sent through digitally signed email was duly served to Noticee 1, Noticee 2 and Noticee 3, however, the SSCN

sent through digitally signed email to Noticee 4 and Noticee 5 bounced back.

8. Therefore, the SCN and the SSCN were served to Noticees 2 to 5 through newspaper publication in the newspapers given in the table below and the Noticees were given fifteen (15) days' time to submit their reply, if any:

Noticee No.	Newspaper	Date
2	The Times of India (English) Dainik Jagran (Hindi) Dainik Bhaskar (Hindi)	October 08, 2022
3	Kalam Di Jubani (Punjabi) Hindustan Times (English) Dainik Jagran (Hindi)	October 08, 2022
4	The Impressive Times (English) Dainik Bhaskar (Hindi)	October 07, 2022
5	The Times of India (English) Dainik Jagran (Hindi) Dainik Bhaskar (Hindi)	October 08, 2022

9. Further, vide the aforesaid newspaper publication, an opportunity of personal hearing before the undersigned was granted to Noticees 2 to 5 on October 20, 2022. However, Noticees 2 to 5 did not appear for the hearing nor did they submit any reply to the SCN. Vide hearing notice dated October 31, 2022, Noticee 1 was also granted an opportunity of personal hearing before the undersigned on November 09, 2022. The aforesaid hearing notice was sent to Noticee 1 through SPAD and also through digitally signed email and was duly served upon him. However, Noticee 1 did not appear for the hearing nor did it submit any reply to the SCN.

10. Considering the fact that the Noticees have neither filed any reply nor have availed the opportunity of personal hearing despite being granted opportunities for the same, I am of the view that principles of natural justice have been complied with but the Noticees have nothing to submit, and therefore, in terms

of rule 4(7) of the Rules, the matter can be proceeded ex-parte on the basis of material available on record.

11. In absence of any response from the Noticees to the SCN, I presume that the Noticees have admitted to the charges levelled against them. In this regard, I place reliance on the order of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in the matter of Classic Credit Ltd. v. SEBI [2007] 76 SCL 51 (SAT - MUM), *inter alia*, held that – *"the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them*". Similarly, the Hon'ble SAT also, in the case of Sanjay Kumar Tayal & Ors. v. SEBI (in appeal No. 68/2013) decided on February 11, 2014, held that *"…appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices*".

12. In view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, I deem it appropriate to proceed against the Noticees ex-parte, based on the material available on record and in absence of any reply from Noticees, it can be presumed that they have admitted to the charges levelled in the SCN.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

13. I have carefully perused the charges levelled against Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

I. Whether Noticees have violated provisions of Section 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of the SC(R)A?

II. Do the violations, if any, attract monetary penalty under Section 23H of SC(R)A?

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

14. Before proceeding further, it is pertinent to refer to the relevant provisions of SC(R)A which are reproduced as under:

Section 2(i) of SC(R)A: *In this Act, unless the context otherwise requires, — "Spot delivery contract" means a contract which provides for, -*

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository

Section 13 of SC(R)A :*If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal.*

[Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall— (i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India; (ii) require prior permission from the respective stock exchanges if so stipulated

by the stock exchanges with prior approval of Securities and Exchange Board of India.]

Section 16 of SC(R)A :*If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.*

Section 18 of SC(R)A: *Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.*

SEBI Notification dated October 03, 2013: *In exercise of the powers conferred by subsection (2) of section 28 and sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India notification number S.O. 573(E), dated the 30th July, 1992 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') hereby rescinds the notification number S.O.184(E), dated the 1st March, 2000, except as respects things done or omitted to be done before such rescission, and declares that no person in the territory to which the said Act extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities other than a contract falling under any one or more of the following, namely:-*

a) *spot delivery contract*
b) *contracts for sale or purchase of securities or contracts in derivatives, as are permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognised stock exchange*

c) *contracts for pre-emption including right of first refusal, or tag-along or dragalong rights contained in shareholders agreements or articles of association of companies or other body corporate*

d) *contracts in shareholders agreements or articles of association of companies or other body corporate, for purchase or sale of securities pursuant to exercise of an option contained therein to buy or sell the securities, where:*

   a. *the title and ownership of the underlying securities is held continuously by the selling party to such contract for a minimum period of one year from the date of entering into the contract.*
   b. *the price or consideration payable for the sale or purchase of the underlying securities pursuant to exercise of any option contained therein, is in compliance with all the laws for the time being in force as applicable; and*
   c. *the contract is settled by way of actual delivery of the underlying securities*

Provided that the contracts specified in clauses (a) to (d) above, shall be in accordance with the provisions of the Foreign Exchange Management Act, 1999 and rules or regulations made thereunder:

Provided further that nothing contained in this notification shall affect or validate any contract which has been entered into prior to the date of this notification

Explanation.- It is hereby clarified that the contracts mentioned in clauses (c) and (d) above shall be valid notwithstanding anything contained in section 18 A read with clause (d) of sub-section (1) of section 23 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956):

Provided also that any contract for sale or purchase of government securities, *gold related securities, money market securities, contracts in currency derivatives, interest rate derivatives and ready forward contracts in debt securities entered into on the recognised stock exchange shall be entered into in accordance with-*

a) *the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992(15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts.*

b) *the rules made or guidelines or directions issued, under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Management Act, 1999 (42 of 1999), by the Reserve Bank of India*

c) *the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956).*

Issue No. I: Whether Noticees have violated provisions of 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of the SC(R)A?

15. I note from the available records i.e., Delivery Instruction Slip (hereinafter referred to as "**DIS**") and details regarding off- market transfer of shares provided by Central Depository Services(India) Ltd. (hereinafter referred to as "**CDSL**") vide email dated February 05, 2021 and National Securities Depository Ltd. (hereinafter referred to as "**NSDL**") vide email dated July 19, 2019, that the following transactions had taken place in the shares of Amsons in the instant matter:

Sr.No.	Date of transfer of shares	No. of shares	Shares transferred by	Shares transferred to	Amount against transfer of shares (in Rs.)
1	January 04, 2018	10,00,000	Noticee 1	Noticee 2	10,00,000
2	January 04, 2018	5,00,000	Noticee 1	Noticee 3	5,00,000
3	January 08, 2018	7,50,000	Noticee 4	Noticee 5	45,52,500

16. I note from the above table and available records that Noticee 1 had transferred 10,00,000 shares of Amsons to Noticee 2 in off market transfer (spot transaction) on January 04, 2018 for an amount of Rs. 10 lakhs. On perusal of the bank statements of the bank accounts linked with the demat account of Noticee 1 (A/c no. 914020024237916 of Axis Bank) during the period from September 01, 2017 to January 31, 2018 and Noticee 2 (A/c no. 9512282546 of Kotak Mahindra Bank and A/c no. 629705016349 of ICICI Bank) during the period from September 01, 2017 to January 31, 2018, I note that no such fund transaction was reflecting in the aforesaid bank statements. Therefore, I find that Noticee 2 had not paid the consideration amount of Rs. 10 lakhs to Noticee 1 for acquisition of 10,00,000 shares of Amsons in off market transfer (spot transaction) from Noticee 1 within the stipulated time period as per Section 2(i) of the SC(R)A.

17. I also note from the above table and available records that Noticee 1 had transferred 5,00,000 shares of Amsons to Noticee 3 in off market transfer (spot transaction) on January 04, 2018 for an amount of Rs. 5 lakhs. On perusal of the bank statements of the bank accounts linked with the demat account of Noticee 1 (A/c no. 914020024237916 of Axis Bank) during the period from September 01, 2017 to January 31, 2018 and Noticee 3 (A/c no. 131310032057 of Dena Bank) during the period from September 01, 2017 to January 31, 2018, I note that no such fund transaction was reflecting in the aforesaid bank statements. I also note that the bank account no. 030105000043 with Capital Small Finance of

Noticee 3 was already closed on April 26, 2017. Therefore, I find that Noticee 3 had not paid the consideration amount of Rs. 5 lakhs to Noticee 1 for acquisition of 5,00,000 shares of Amsons in off market transfer (spot transaction) from Noticee 1 within the stipulated time period as per Section 2(i) of the SC(R)A.

18. I further note from the above table and available records that Noticee 4 had transferred 7,50,000 shares of Amsons to Noticee 5 in off market transfer (spot transaction) on January 08, 2018 for an amount of Rs. 45,52,500/-. I also note from the available records that the bank accounts linked with the demat account of Noticee 4 is A/c no. 631011026929 with Kotak Mahindra Bank and Noticee 5 is A/c no. 915020028272354 and 914020009790843 with Axis Bank. I note from the email dated January 11, 2021 from Kotak Mahindra Bank to SEBI that no fund transaction had happened in the aforesaid bank account of Noticee 4 during the period August 01, 2017 to March 31, 2018. I also note from the email dated December 12, 2020 from Axis Bank to SEBI that the bank account no. 914020009790843 of Noticee 5 with Axis Bank was closed before September 01, 2017. Similarly, from the email dated January 07, 2021 from Axis Bank to SEBI, I observe that the bank account no. 915020028272354 of Noticee 5 with Axis Bank was already closed on April 15, 2017. Therefore, I find that Noticee 5 had not paid the consideration amount of Rs. 45,52,500/- to Noticee 4 for acquisition of 7,50,000 shares of Amsons in off market transfer (spot transaction) from Noticee 4 within the stipulated time period as per Section 2(i) of the SC(R)A.

19. Therefore, considering the aforesaid off market transactions, I find that Noticee 2 and Noticee 3 did not pay the consideration amount to Noticee 1 and Notice 5 did not pay the consideration amount to Noticee 4 against the shares transferred to them, within the stipulated time period as per Section 2(i) of the SC(R)A.

20. Another significant factor to be noted is that the shares were being transferred to the demat account of Noticee 2, Noticee 3 and Noticee 5 which implies transfer of beneficial ownership of the shares. The transfer of beneficial ownership

comes along with the rights and liabilities attached to the ownership of shares. The conduct of the parties, which is important in any transaction, establishes that there was a transfer of the shares. The conduct of the parties and nature of the transactions establishes that Noticee 2, Noticee 3 and Noticee 5 had entered into a transaction in off-market, without paying the consideration amount for acquisition of shares.

21. As per the Spot Delivery Contract provisions mentioned at Section 2(i) of the SC(R) A, 1956, the transferee has to make actual payment for the shares on the same day as the date of the contract or on the next day. In this regard, It would be pertinent to refer to the observations and decision of the Hon'ble Securities Appellate Tribunal in its decision in the case of Mrs. Bhanuben Jaisukhlal Shah v. SEBI (Appeal No. 271 decided on March 5, 2010) in which the Hon'ble SAT has stated as follows: *"A spot delivery contract has been defined in section 2(i) of the Act the provisions of which, before and after the amendment, have been reproduced hereinabove. Since all the securities prior to the coming into force of the Depositories Act were held in the physical form, spot delivery contract was defined to mean a contract which provided for the actual delivery of the securities and the payment of price therefor either on the same day as the date of the contract or on the next day. In other words, a spot delivery contract is a contract between two persons buying and selling securities off-market where the delivery and payment is effected either on the same day or on the next day. As already observed, such contracts are permissible being exempt from the provisions of section 13 of the Act. When the securities are held in the physical form, it is possible for the seller to physically deliver the same to the purchaser at the time of effecting the sale but this was not possible with effect from September 20, 1995 in respect of the securities that are held with the depositories in dematerialised form. The Parliament then inserted clause (b) in Section 2(i) of the Act. This clause did not bring about any change in the definition of spot delivery contract. Clause (a) of the amended definition remains the same as the definition prior to the amendment. Clause (b) was inserted only to explain what "actual delivery" would mean in respect of the securities held in*

dematerialised form. According to clause (b), when securities are transferred from one beneficial account to another, it would be treated as "actual delivery" of securities within the meaning of clause (a). It is, thus, clear that clause (b) is not an independent clause but only an explanation to the words "actual delivery" as used in clause (a). We cannot, therefore, accept the argument of the appellant that clause (b) is an independent clause and that the spot delivery contract is complete with the mere transfer of securities from the account of one beneficial owner to that of another without reference to the payment of consideration. This could never be. If that were so, the contract itself would become void being without consideration. Clause (b) cannot be picked up and interpreted in a manner which defeats the very purpose for which it was enacted. While interpreting the provisions of Section 2(i) of the Act, we have to keep in mind the consequences which are likely to flow from the intended interpretation. We cannot but hold that clause (b) in Section 2(i) was not meant to stand on its own and it has to be read in conjunction with clause (a)."

22. Further, in this regard, I also place reliance on the judgment of Hon'ble Supreme Court in the case of Bhagwati Developers Pvt. Ltd. v/s. Peerless General Finance & Investment Company Ltd. And ANR.(Civil Appeal No. 7445 of 2004), order dated July 15, 2013, where it was held as under:-

"The second question, therefore, which falls for our determination is as to whether the contract in question is a spot delivery contract. This expression is defined under Section 2(i) of the Regulation Act. It reads as follows:

2. Definitions In this Act, unless the context otherwise requires, -

x x x

(i) spot delivery contract means a contract which provides for

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual periods taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or

locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

x x x According to the definition, a contract providing for actual delivery of securities and the payment of price thereof either on the same day as the date of contract or on the next day means a spot delivery contract. When we consider the facts of the present case bearing in mind the definition aforesaid, we find that the contract in question is not a spot delivery contract.

True it is that by letter dated 30th of October, 1987 written by Tuhin to Bhagwati, he had stated that the formal agreement had been executed between them on 10th November, 1986 and as per the agreement he is transferring the entire 3530 shares of Peerless purchased from the loan amount and the transfer is in its repayment. However, the agreement dated 21st November, 1994 between Bhagwati and Tuhin which formed part of the compromise decree provides that the sale of shares took place on 30th October, 1987 and in consideration thereof Bhagwati paid a sum of Rs. 10 lakhs on 21st November, 1994 and further the dividend on the entire shares up to the accounting year 1989-90 amounting to Rs.8,64,850 to be retained by Tuhin. In the face of it, the plea of Bhagwati that the payment of Rs. 10 lakh was made to buy peace, is not fit to be accepted and, in fact, that forms part of the consideration for the sale of shares. Once we take this view, the plea of the appellant that it is a spot delivery contract is fit to be rejected."

23. In the present matter, I note that for the aforesaid 3 off-market transactions entered into by Noticees, the consideration amount for transfer of shares to Noticees 2 and Noticees 3 by Noticee 1 and the consideration amount for transfer of shares to Noticees 5 by Noticee 4 was not received within the stipulated time period as per Section 2(i) of the SC(R)A.

24. Therefore, I find that the aforesaid transfer of shares are not in in conformity with the provisions relating to spot delivery contract as defined under section 2(i)(a) of SC(R)A. In view of the aforesaid facts and placing reliance on the aforesaid judgments of Hon'ble SAT and Hon'ble Supreme Court, I find that the aforesaid 3 off-market transfer of shares of Amsons cannot be considered as a 'spot delivery contract' in terms of the provisions of Section 2(i)(a) of the SC(R)A.

25. In this regard, I would like to draw reference to Section 16 of SC(R)A, which provides that (1) if the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified therein. (2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

26. Further, I would also like to draw reference to SEBI Notification which provides that no person in the territory to which the SC(R)A extends, shall, save with the permission of the Board, enter into any contract for sale or purchase of securities, *inter alia*, other than a spot delivery contract. Since the aforesaid transactions were not found to be 'spot delivery contracts' in terms of 2(i)(a) of the SC(R)A, these would require permission of either the Central Government and SEBI, as mandated under Section 16 of SC(R)A read with SEBI Notification respectively. However, there is no evidence of any such permission having been obtained in respect of the aforesaid transactions.

27. In this regard, Hon'ble Securities Appellate Tribunal ('SAT') in its order dated July 17, 2007 in the matter of Alok Kehtan Vs. SEBI, Appeal No. 55 of 2007, held that:

“.............it is clear that the appellant sold his unlisted shares on 25.08.1999 in an off market transaction and received the sale consideration of Rs. 22,50,000/- only in January, 2000 which is much beyond the time permitted by section 2(i) of the SCRA. Since the transaction was off market the contract for the sale of shares could only be by way of spot delivery in view of the restriction imposed by the Board under section 16 of SCRA which mandates that the sale consideration ought to have been received either on the same day of the transaction or on the following day. It is, thus, clear that the sale of shares by the appellant on 25.08.1999 in the off market transaction is violative of the restriction imposed under section 16 read with section 2(i) of SCRA.”

28. Further, In terms of Sections 13 and 18 of SC(R)A, as applicable to States or areas notified by the Central Government, any transactions in securities in that State or area otherwise than between the members of a recognized stock exchange or through or with such member will be illegal, except for spot delivery contracts. Since these aforesaid transactions were not found to be ‘spot delivery contracts’, these would be illegal in terms of Sections 13 and 18 of SC(R)A.

29. In view of the foregoing observations and placing reliance on the above quoted judgments, I hold that Noticees, by entering into a transaction of shares which were not spot delivery contracts, have contravened the provisions of Section 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of the SC(R)A. I also note that since Noticees have not furnished any reply in respect of the charges levelled against them in the SCN, it is presumed that they have admitted to the same.

30. In view of the above, I find that the allegation that Noticees have violated provisions of Section 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of the SC(R)A stands established.

<u>Issue No. 2</u> -Do the violations attract monetary penalty under Section 23H of SC(R)A?

31. It has been established in the foregoing paragraphs that Noticees have violated provisions of Section 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of the SC(R)A.

32. In context of the above, I refer to the observations of Hon'ble Supreme Court in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} wherein the Hon'ble Court had held "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…."*

33. As the violation of the provisions of Section 16 of the SC(R)A read with SEBI Notification, Section 13 and Section 18 of SC(R)A read with Section 2(i) of the SC(R)A by Noticees have been established, placing reliance on the aforesaid judgement, I am of the view that it is a fit case to impose monetary penalty on Noticees in terms of Section 23H of SC(R)A, which reads as under:

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.*

<u>Issue No. 3</u>- What should be the quantum of monetary penalty?

34. While determining the quantum of penalty under Section 23H of the SC(R)A, factors stipulated in Section 23J of SC(R)A have to be given due regard, which are reproduced as under:-

Section 23J:- *While adjudging the quantum of penalty under Section 23-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 23A to 23C shall be and shall always be deemed to have exercised under the provisions of this section.

35. In the present matter, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee. Further, from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by Noticees. As regards the repetitive nature of the default, I do not find the Investigation having brought on record any regulatory action taken by SEBI in past against Noticees, for same violations as those observed in the instant investigation. I also observe that there are no investor complaints on record, arising out of failure on the part of Noticee.

ORDER

36. Having considered all the facts and circumstances of the case, the material/evidence available on record and also the factors mentioned in Section 23J of the SC(R)A, as enumerated above, I, in exercise of the powers conferred upon me under Section 23-I of SC(R)A read with Rule 5 of SCRA Adjudication Rules, hereby impose the following penalties on Noticees viz. Citizen Compset Private Limited, Dhanlaxmi Builders and Developers Private Limited , Shri Balaji Comfin Traders, SSD Real Estate Developers Private Limited and Meticulous IT Solutions Private Limited under Section 23H

of SC(R)A:

Noticee No.	Name of Noticee	Penalty
1	**Citizen Compset Private Limited**	Rs. 2,00,000/- (Rupees Two Lakhs only)
2	**Dhanlaxmi Builders and Developers Private Limited**	Rs. 2,00,000/- (Rupees Two Lakhs only)
3	**Shri Balaji Comfin Traders**	Rs. 2,00,000/- (Rupees Two Lakhs only)
4	**SSD Real Estate Developers Private Limited**	Rs. 2,00,000/- (Rupees Two Lakhs only)
5	**Meticulous IT Solutions Private Limited**	Rs. 2,00,000/- (Rupees Two Lakhs only)

I am of the view that the said penalty is commensurate with the violation(s) committed by Noticees.

37. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to Government of India", payable at Mumbai OR 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, Noticees may contact the support at portalhelp@sebi.gov.in.

38. Noticees shall forward the said Demand Draft or the details of confirmation of e-payment made in the format as given in table below to "The Division Chief, Enforcement Department – DRA - I, 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 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)	

39. 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 Noticees.

40. In terms of the provisions of Rule 6 of the SCRA Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: November 11, 2022 **ADJUDICATING OFFICER**