BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: ORDER/BM/RK/2024-25/30418)

UNDER SECTION 23-I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005, IN RESPECT OF:

Name of the Entity	PAN
M/s ASCOM LEASING & INVESTMENTS LTD	AACCA0515B

in the matter of trading activities by certain entities in the scrip of Ascom Leasing and Investments Ltd

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FACTS OF THE CASE

1. Securities and Exchange Board of India **("SEBI")** conducted an investigation in the matter of M/s Ascom Leasing and Investments Ltd (hereinafter referred to as the **"Ascom/Company/Noticee"**), a company listed on SME platform of National Stock Exchange of India Ltd **("NSE")**. The investigation was to ascertain whether there was any violation of the provisions of the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "**SCRA**") and SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015, (hereinafter referred to as **"LODR Regulations")** by the Noticee for the period from May 12, 2021 to February 09, 2022 (hereinafter referred to as the "**Investigation period/IP**"). However, wherever deemed necessary reference has been made outside this period. During the course of Investigation, it was observed that the Noticee had allegedly not classified M/s Saffron Hitech Equipment Pvt Ltd (hereinafter referred to as the "**Saffron**") as part of promoter group and therefore, allegedly provided wrong shareholding details to NSE w.r.t to its promoter group.

2. SEBI had, therefore, initiated adjudication proceedings under SCRA against the Noticee to inquire into and adjudge the alleged violations of the provisions of Regulation 31(1) & 31(4) of the LODR Regulations read with Section 21 of SCRA by the Noticee and to impose penalties under Section 23A(a) of the SCRA.

APPOINTMENT OF ADJUDICATING OFFICER

3. In this regard, SEBI appointed the undersigned as the Adjudicating Officer **("AO")** vide order April 23, 2024, communicated vide communique dated April 30, 2024 under Section 23 I (1) of the SCRA read with Rule 3 of the Securities Contract (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as **SC(R) Rules**) to inquire into and adjudge under the provisions of Section 23A(a) of the SCRA for the aforesaid alleged violation by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Accordingly, a Show Cause Notice No SEBI/HO/EAD/EAD3/P/OW/2024/0000016618/1 dated May 13, 2024 (hereinafter referred to as **'SCN'**) was issued to the Noticee under Rule 4(1) of the SC(R) Rules, to show cause as to why an inquiry should not be held and penalty be not imposed upon it under Section 23A(a) of the SCRA for the aforesaid alleged violation.

5. The said SCN was duly served upon the Noticee via SPAD and digitally signed email dated May 14, 2024. The proof of service is on record. In response, Noticee submitted its reply to the SCN vide email dated June 04, 2024 wherein it sought inspection of documents relied upon in the matter. Accordingly, vide email dated June 05, 2024, the Noticee was advised to specify the documents to be inspected by it. However, vide email dated June 06, 2024, the Noticee expressed its unwillingness to inspect the documents and also opportunity of personal hearing in the matter. Vide email dated June 06, 2024, the Noticee was advised to confirm whether it desired to avail the opportunity of hearing virtually in the matter. In response, Noticee vide email dated June 06, 2024 denied the hearing

opportunity and requested to pass the Order on merits. Submissions made by the Noticee vide its reply dated June 04, 2024 are summarized hereunder:

a) *Noticee submitted that Saffron became a shareholder for the first time in January 2022, when Saffron had purchased its 60,000 shares between January 17, 2022 and January 21, 2022 and Saffron currently holds 1,02,000 shares representing 0.87% of its paid-up equity share capital.*

b) *During the statement recording at SEBI, Mr Tushar Pandya did not deny that Saffron was a shareholder or that he was a promoter of Saffron but he mentioned that he didn't start Saffron. Noticee submitted that Mr Tushar Pandya mentioned that he was not the founder promoter of Saffron but had acquired from another group of shareholders.*

c) *On June 04, 2024, it had informed NSE of the oversight and will correctly classify Saffron as a constituent of the promoter group and disclose it in the shareholding pattern to be filed, for the half-year ended September 30, 2024.*

d) *Noticee submitted that the Regulation 31(1) of the LODR Regulations is not attracted in the instant case as the said Regulation requires a listed entity to submit a shareholding pattern for each class of securities in the format specified by SEBI, within the timelines specified it and in the instant case, it had filed its shareholding pattern in the format and timelines specified by SEBI including Saffron in its shareholding. It further submitted that the said Regulation is attracted when the shareholding pattern has not been filed in a timely manner or where the shareholding pattern filed does not contain an accurate depiction of the total shareholding of the listed company.*

e) *It added that the sub-classification and bifurcation of the shareholding pattern between members of the promoter/promoter group and members of the public is not governed by Regulation 31(1) but by Regulation 31(4) of LODR Regulations.*

f) *Noticee submitted that there was a bona-fide oversight in classifying Saffron as promoter/promoter group shareholder. However, Saffron was disclosed as a related party in its Annual Reports for the FY 2021-22 and 2022-23.*

g) *It submitted that no investor had suffered any loss nor have there been grievances pertaining to the alleged erroneous classification and that given the miniscule holding of Saffron, the non-disclosure could not at all said to be material to induce investors to alter their investment decisions.*

CONSIDERATION OF ISSUES AND FINDINGS: -

6. I have carefully perused the charges levelled against the Noticee, reply of the Noticee and the documents / material available on record. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee has violated the provision of SCRA and LODR Regulations as mentioned at para 2 above?

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 23A(a) of the SCRA?

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 23J of the SCRA?

7. Before proceeding further, I would like to refer to the relevant provisions of law as under:

Relevant provisions of Securities Contract (Regulation) Act, 1956

Conditions for listing

21. *Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange*

Relevant provisions of SEBI LODR Regulations, 2015

Holding of specified securities and shareholding pattern

31(1) *The listed entity shall submit to the stock exchange(s) a statement showing holding of securities and shareholding pattern separately for each class of securities, in the format specified by the Board from time to time within the following timelines –*
(a) one day prior to listing of its securities on the stock exchange(s);
(b) on a quarterly basis, within twenty one days from the end of each quarter; and,
(c) within ten days of any capital restructuring of the listed entity resulting in a change exceeding two per cent of the total paid-up share capital:

Provided that in case of listed entities which have listed their specified securities on SME Exchange, the above statements shall be submitted on a half yearly basis within twenty one days from the end of each half year.

(4) *All entities falling under promoter and promoter group shall be disclosed separately in the shareholding pattern appearing on the website of all stock exchanges having nationwide trading terminals where the specified securities of the entity are listed, in accordance with the formats specified by the Board.*

Issue No. I: Whether Noticee has violated the aforesaid provisions of SCRA and LODR Regulations as mentioned at para 2 above?

<u>Alleged Violation : Non-Classification of M/s.Saffron Hitech Equipment as part of promoter group of the Noticee & providing wrong shareholding details to NSE</u>

8. From form No. MGT-7A of Saffron for FY 2021-22 & FY 2022-23 obtained from Ministry of Corporate Affairs (MCA) website, it was observed that Mr Tushar Pandya and Mrs Rupalben Pandya were holding 800 shares and 200 shares respectively in Saffron whose paid up capital was Rs 1,00,000/- (1000 shares of Rs.100/- each). Thus, they were promoters of Saffron having 100% shareholding. The said Mr and Mrs Pandya were also the promoters of the Noticee.

9. Further, as per shareholding pattern provided by the Noticee from half-year ended March 2022 till September 2023 and the details of promoter and promoter group of the Noticee sought by SEBI from its RTA M/s Skyline Financial Services Pvt Ltd, it was observed that the Noticee had not classified Saffron as a part of its promoter group.

10. In this regard, SEBI vide email dated January 31, 2024 had sought comments of NSE regarding non-classification of Saffron as part of promoter group of the Noticee. NSE, vide email dated February 01, 2024 stated that based on shareholding pattern of the Noticee and Saffron, Saffron should have been categorized as part of the Promoter group of the Noticee.

11. However, it was observed that despite Mr Tushar Pandya and Mrs Rupalben Pandya who were the promoters of Noticee and being 100% shareholders of Saffron, the Noticee had allegedly not disclosed Saffron as part of its promoter group in terms of Regulation 2(1)(pp)(iv)(A) of SEBI (Issue of Capital And Disclosure Requirements) Regulations, 2018 (hereinafter referred to as the "**ICDR Regulations**").

12. Thus, in view of the above, it is alleged that the Noticee has violated provisions of Regulation 31(1) & 31(4) of the LODR Regulations read with Section 21 of SCRA by not classifying Saffron as part of its promoter group and allegedly provided wrong shareholding details to NSE regarding the promoter group shareholding.

13. Noticee submitted that the alleged breach was technical and venial and there was a bona-fide oversight in classifying Saffron as promoter/promoter group shareholder. However, Saffron was disclosed as a related party in its Annual Reports for the FY 2021-22 and 2022-23. It further submitted that Regulation 31(1) of the LODR Regulations is not attracted and that Regulation 31(4) is attracted since as per Regulation 31(1), a listed entity is required to submit a shareholding pattern for each class of securities in the format and the timelines specified by SEBI and in the instant case, it had filed its shareholding pattern in the format and timelines specified by SEBI including Saffron in its shareholding. Noticee added that the said Regulation 31(1) is attracted when the shareholding pattern has not been filed in a timely manner or where the shareholding pattern filed does not contain an accurate depiction of the total shareholding of the listed company.

14. As per Regulation 2(1)(pp)(iv)(A) of ICDR Regulations

(pp)“promoter group” includes:

iv)in case the promoter is an individual:

A) any body corporate in which twenty per cent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of their relative is a member;

15. I observe that Mr.Tushar Pandya and Mrs Rupalben Pandya are the promoters of Noticee. Mr and Mrs Pandya are also holding 100% shares in Saffron i.e. holding more than 20% equity shares in Saffron. By virtue of the holding of the promoters of Noticee in Saffron in terms of Regulation 2(1)(pp)(iv)(A) of ICDR Regulations Saffron comes under the promoter group of the Noticee. This necessitated

disclosure of Saffron in the promoter group in the shareholding with the Exchange filing from half-year ended March 2022 to September 2023.

16. Admittedly Noticee has not classified Saffron as a promoter group and filed wrong shareholding pattern with NSE. Further, Noticee's submission that it had disclosed Saffron as a related party in its Annual Reports for the FY 2021-22 and FY 2022-23, does not absolve it from classifying Saffron as a promoter group.

17. In this context, I would like to refer to the judgment of Hon'ble SAT in the case of **Premchand Shah & Ors. Vs. SEBI**, (Appeal No. 192 of 2010), wherein it was, inter alia, held that *"When law prescribes a manner in which a thing is to done, it must be done only in that matter or not at all".* Therefore, submission of the Noticee is bereft of merits.

18. Noticee contended that Regulation 31(4) is attracted for the alleged violation in the instant case instead of Regulation 31(1) and that it had correctly filed the shareholding pattern in the format prescribed by SEBI with exchange showing Saffron as its shareholder. It is observed that by not disclosing the shareholding of the promoter group separately in the shareholding pattern as required under 31(4) Noticee has not given correct depiction of the total shareholding as per the format prescribed by Board thus attracting 31(1) of the Regulation. Thus, the submission of the Noticee is not tenable.

19. As regards submission of the Noticee that no investor had suffered any loss nor have there been grievances pertaining to the alleged erroneous classification and that given the miniscule holding of Saffron, the non-disclosure could not at all said to be material to induce investors to alter their investment decisions, I note that the Noticee is now trying to absolve itself of the responsibility of the alleged violation committed by it which it was duty bound to perform as per the extant SCRA and LODR Regulations. At this juncture, I find it pertinent to refer to the judgment of ***Komal Nahata v. Securities and Exchange Board of India*** (Appeal No. 5 of 2014 dated January 27, 2014) held that- "*Argument that no*

investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure".

20. I also note that in Appeal No. 66 of 2003 – ***Milan Mahendra Securities Pvt Ltd. Vs. SEBI-*** the Hon'ble Securities Appellate Tribunal(SAT) has observed that *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market".*

21. Therefore, submission of the Noticee is not tenable.

22. Accordingly, in view of the above, it stands established that the Noticee has violated Regulation 31(1) & 31(4) of the LODR Regulations read with Section 21 of SCRA by not classifying Saffron as part of its promoter group and provided wrong shareholding details to NSE regarding the promoter group shareholding.

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 23A(a) of the SCRA?

23. As it has been established that the Noticee has violated following provision of SCRA and LODR Regulations.

    a) Regulation 31(1) & 31(4) of the LODR Regulations read with Section 21 of SCRA.

24. In the 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 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......."*

25. Therefore, in view of the foregoing and placing reliance on the above judgement of the Hon'ble Apex Court, I am of the view that the Noticee is liable for imposition of monetary penalty Section 23A(a) of the SCRA which is reproduced hereunder:

Securities Contract (Regulation) Act, 1956

Penalty for failure to furnish information, return, etc

23A. *Any person, who is required under this Act or any rules made there under:*

(a)*to furnish any information, document, books, returns or report to the recognised stock exchange or to the Board, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or the Act or rules made thereunder, or who furnishes false, incorrect or incomplete information document, books, return or report, 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 for each such failure.*

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 23J of the SCRA?

26. While determining the quantum of penalty under Section 23A(a) of the SCRA, it is important to consider the factors stipulated in Section 23J of the SCRA which reads as under:

Securities Contract (Regulation) Act, 1956

Factors to be taken into account by the adjudicating officer under SCRA.

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.

27. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the losses, if any, suffered by the investors due to violation on the part of the said Noticee nor it has been alleged by SEBI. From the document available on record, I also note that the Noticee has not been penalized by SEBI in the past. However, I note that if any person who is to file correct shareholding pattern, files wrong shareholding details and is depriving the investing public of the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Timely, accurate and proper disclosure/filing is cornerstone of good corporate governance. Hence, non-classifying of Saffron as a promoter group and incorrect filing of shareholding pattern by the Noticee as brought out in the preceding paragraphs clearly shows the violation committed by it and calls for appropriate penalty.

ORDER

28. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 23J of the SCRA, and also taking into account judgment of the Hon'ble Supreme Court in ***SEBI vs. Bhavesh Pabari (2019)***5 SCC 90 and in exercise of power conferred upon me under Section 23-I of the SCRA read with Rule 5 of the SC(R) Rules, I hereby impose following penalty under Section 23A(a) of SCRA on the Noticee for violation of the following provision of SCRA and LODR Regulations:

    a) Regulation 31(1) & 31(4) of the LODR Regulations read with Section 21 of SCRA.

Name of the Noticee	Penal provisions	Penalty
ASCOM LEASING & INVESTMENTS LTD	Section 23A(a) of the SCRA.	Rs 2,00,000/- (Rupees Two Lakhs Only)

29. The Noticee 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**

30. The forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA IV), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of the Noticee:	
3. PAN No. of the Noticee	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

31. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 23JB of the SCRA for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

32. In terms of the provisions of Rule 6 of the SC(R) Rules, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Date: June 12, 2024 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**