BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/AN/SM/2024-25/30828-30830

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

Noticee No.	Noticee Name	PAN
1.	Jatin Shah	AEGPS5807M
2.	Daivik Jatin Shah	BXYPS2715J
3.	Heli Jatin Shah	BXYPS2148P

In the matter of ETT Limited.

A. BRIEF BACKGROUND

1. SEBI had initiated Adjudication Proceedings under Section 15-I of the SEBI Act, 1992 in respect of Jatin Shah (Noticee 1), Daivik Jatin Shah (Noticee 2) and Heli Jatin Shah (Noticee 3); (hereinafter Noticee 1, Noticee 2 and Noticee 3 collectively also referred to as ‘Noticees’) for the alleged violation of Regulations 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter also referred to as ‘SEBI SAST Regulations, 2011’ / ‘SEBI (SAST) Regulations, 2011’ / ‘SAST Regulations, 2011’ / ‘SAST Regulations’) inter alia pursuant to an examination conducted by SEBI in the matter of ETT Limited.

B. APPOINTMENT OF ADJUDICATING OFFICER

2. Whereas, the Competent Authority was prima facie of the view that there were sufficient grounds to adjudicate upon the alleged violations by the Noticees, as stated and therefore, in exercise of the powers conferred under Section 19 read with Section 15 I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for

Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter also referred as "***Adjudication Rules***"), the Competent Authority appointed the undersigned as Adjudicating Officer ("***AO***") vide order dated April 08, 2024 to inquire into and adjudicate under Section 15A(b) of the SEBI Act, 1992 the alleged violations by the Noticees. The said proceeding of appointment was communicated to the undersigned vide Communique dated April 12, 2024

C. SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice No. SEBI/EAD5/P/OW/2024/14932/1-3 dated April 22, 2024 (hereinafter also referred to as 'SCN' / 'SCN dated April 22, 2024' in short) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992, Rule 4 of SEBI Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty be not imposed under Section 15A(b) of SEBI Act, 1992 for the aforesaid alleged violations. The SCN was duly served on the Noticees through Digitally Signed Email dated April 23, 2024 and SPAD. In this regard, copy of the Acknowledgment card and email delivery receipt dated April 23, 2024 have been placed in file. Thereafter, a Supplementary Show Cause Notice SEBI/HO/EAD/EAD5/P/OW/2024/19270/1-3 dated June 10, 2024 ('SSCN' in short) was issued to Noticees. SCN and SSCN sent to Noticees collectively referred to as 'SCNs'.

4. Following was inter alia alleged and observed in the SCNs in respect of the Noticees:

"…

4.1. ***Delayed filing of requisite disclosure to Stock Exchange and Target Company (Two instances of violations)***

4.1.1. In this regard SEBI Observed the following:

Table D

Violation	***Comments of SEBI***

Violation I *(Reg. 29(2) read with Reg. 29(3) of the SAST Regulations*	*On perusal of the comments of BSE in Table B and disclosure submitted under Reg. 29(2) (placed as **Annexure 4**), it is observed that Mr. Jatin Shah (Acquirer) along with Daivik Jatin Shah (PAC) and Heli Jatin Shah (PAC), holding 7.42% of the total shares carrying voting rights in the Target Company (TC) under public category, had acquired 2.66% shares from open market from June 30, 2022 to August 02, 2022.* *In view of the above, since the change in shareholding exceeded 2% of the total share capital of the Company, disclosure was required under Reg. 29(2) by August 04, 2022 (due date) i.e. two working days from the date of acquisition exceeding the threshold limit.* *However, Disclosure from Mr. Jatin Shah (Acquirer) along with PACs was received by BSE on December 16, 2022 i.e. delay of 134 days.*
Violation II *(Reg. 29(2) read with Reg. 29(3) of the SAST Regulations*	*On perusal of the comments of BSE in Table B and disclosure submitted under Reg. 29(2) (placed as **Annexure 5**), it is observed that Mr. Jatin Shah (Acquirer) along with Daivik Jatin Shah (PAC) and Heli Jatin Shah (PAC), holding 10.09% of the total shares carrying voting rights in the Target Company (TC) under public category, had acquired 3.69% shares from open market from August 05, 2022 to September 21, 2022.* *In view of the above, since the change in shareholding exceeded 2% of the total share capital of the Company, disclosure was required under Reg. 29(2) of the SAST by September 23, 2022 (due date) i.e. two working days from the date of acquisition exceeding the threshold limit.* *However, Disclosure from Mr. Jatin Shah (Acquirer) along with PACs was received by BSE on December 17, 2022 i.e. delay of 85 days.*

4.1.2. ***In view thereof, it is alleged that Noticees delayed filing of requisite disclosure to Stock Exchange and Target Company and therefore…violated Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.***

…"

"…

Vide SEBI letter dated July 19, 2023 (also sent by email dated July 20, 2023) and email dated March 04, 2024,(copy enclosed as Annexure i, ii and iii, respectively) Noticees had inter alia been issued Notice of seeking summary settlement option in the matter of ETT Limited inter alia indicating that Noticees may be liable for proceeding under Section 15A(b) and that the proceedings to be initiated may be settled and disposed of upon filing of settlement application under Chapter II of the SEBI (Settlement Proceedings) Regulations, 2018 upon remittance of the settlement amount, as stated therein, to SEBI in terms of Chapter VII of SEBI (Settlement Proceedings) Regulations, 2018 within the time as stated therein. It was observed by SEBI that the Noticees had failed to file settlement application with SEBI within prescribed timeframe and that no response was received from any of the Noticee's.

…"

5. Noticees vide their common letter dated April 29, 2024 inter alia sought inspection of doucments. Vide email dated May 07, 2024, Noticees were given an opportunity of inspection of relied upon documents on May 10, 2024. On the scheduled date of inspection, common Authorised Representative (AR) viz. Shri. Vikas Bengani Advocate of the Noticees availed the inspection of relied upon documents on May 10, 2024.

6. Noticees submitted their common reply to the SCN vide letter dated June 01, 2024. Key submissions of the Noticees as reply to the SCN are as under:

"…

Brief Background

Earlier, SEBI has examined the Draft Letter of Offer (DLOF) w.r.t Open Offer made under SAST Regulations, 2011 in the matter of ETT Limited. Further, during the course of examination, SEBI sought information from BSE regarding requisite Disclosures made by the entities. BSE vide its email dated 31-05-2023 and 13-06-2023 and 14-06-2023 had submitted that there was a delay in filing disclosures by the Noticees herein.

In the SCN it is further stated that Noticees were holding 7.42% of the total shares carrying voting rights in the Target Company (TC) i.e. ETT Limited, under public category, and had acquired 2.66% more shares from open market in between June 30, 2022 and August 02, 2022. Since the change in shareholding exceeded 2% of the total share capital of the Company, the Noticees were required to file disclosure under Reg. 29(2) by August 04, 2022 (due date) i.e. two working days from the date of acquisition exceeding the threshold limit. The Noticees filed the Disclosures only on 16-12-2022. Thus, the Noticees made a delay of 134 days in filing the aforesaid disclosure.

It is further stated that the Noticees were holding 10.09% of the total shares carrying voting rights in the Target Company (TC) under public category and had acquired 3.69% more shares from open market in between August 05, 2022 and September 21, 2022 and therefore the Noticees were required to file disclosures under Reg. 29(2) of the SAST by September 23, 2022 (due date) i.e. two working days from the date of acquisition exceeding the threshold limit. The Noticees filed the Disclosures only on 17-12-2022. Thus, the Noticees had made a delay of 85 days in filing the aforesaid disclosure.

In view of the aforesaid, the Noticees herein are called upon to show cause as to why an inquiry should not be held against the Noticees herein in terms of Rule 4(1) (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 read with Section 15-I of the SEBI Act, 1992 and why penalty should not be imposed upon us under Section 15 A(b) of SEBI act, 1992 for the alleged violations.

After receipt of the Show Cause Notice, the Noticees vide their common letter dated 29-04-2024 requested for the inspection of the documents collected during the course of examination of the matter. The request of the Noticees was acceded and the inspection of the documents was allowed on 10-05-2024. The AR of the Noticees took the inspection of the documents on behalf of the Noticees. During the course of inspection, the AR of the Noticees was given access of only those documents which had already been provided alongwith the SCN. Therefore, the AR of the Noticees had requested to provide copy of the Examination Report and communications exchanged in between SEBI and Merchant Banker. Vide email dated 27-05-2027 a copy of the Examination Report (redacted/masked certain parts) and Annexure 1 i.e. communication made in between SEBI and Merchant Banker, was provided. However, the Annexure 1 was not legible and therefore vide email dated 01-06-2024, it was requested to provide legible copy of the Annexure 1. Further, the AR of the Noticees has requested to provide a copy of the Enforcement Policy i.e. relied upon in the Examination Report and further on the basis of SEBI's own policy decision, no action has been recommended in case of certain entities. Thus, the Enforcement Policy is a vital document in the present matter.
The Noticees are filing their reply to the SCN. However, the Noticees reserve their right to add, amend or alter their reply if so, warranted in case of supply of the Enforcement Policy and Annexure 1. The Reply of the Noticees to the allegation made against them in the SCN are as follows:

Delay in issue of the SCN:

1. *The SCN is bad in law as the same has been issued after a delay of more than 16 months from the date of information made public. The Noticees have filed their disclosures in December, 2016 whereas the SCN has been issued in April, 2024. This highly prejudiced the case of the Noticees herein as justice delayed is justice denied. The Noticees further submit that although under the SEBI Act, there is no mention about limitation period for starting and concluding the Proceedings. However, the Hon'ble SAT and Hon'ble Supreme Court of India in a catena of cases have held that whenever in a Statute, limitation period is not mentioned, the proceedings should be initiated and concluded within a reasonable period of time. The reasonable period depends on fact and circumstances of each case. The Noticees further submits that SEBI has not been clothed with blanket powers to initiate and conclude proceedings at any time. The proceedings should be initiated and concluded within a reasonable period of time. In this connection, the Noticees place reliance on the following Judgements and Orders passed by the Hon'ble Supreme Court of India and Hon'ble Tribunal. In all these following Judgement and Orders, SEBI, the Hon'ble Supreme Court of India and Hon'ble Securities Appellate Tribunal allowed the Appeals of the respective parties on the ground of inordinate delay and latches:*

1.1. *In the matter of Mr. Ashok Shivpal Rupani & Ors. v/s SEBI, the Hon'ble Tribunal vide its Order dated 22-08-2019 set aside the Order of the SEBI and allowed the Appeal. (Appeal Nos. 417 and 440 of 2018)*

"5. We have heard the learned counsel for the parties. It was contended that there was an inordinate delay in the issuance of the show cause notice for violation of provisions of PIT Regulations or of the LODR Regulations and therefore on the ground of inordinate delay the proceeding should have been dropped and no penalty could have been imposed. It was contended that the alleged violation occurred in the year 2010 whereas the show cause notice was issued in the year 2018 after eight years for which no explanation has been given.

6. Having considering the matter, we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellants for alleged violations. Much water has flown since the alleged violations and at this belated stage the appellants cannot be penalized. It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST Regulations the investors became aware of the change in the shareholding. The non-compliance of Regulation 13 if any becomes technical in nature.

7. In Mr. Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) proceedings were quashed on account of inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order is extracted hereunder:

> *"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each*

case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

8. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice and for completion of the adjudication proceedings. Since the power to adjudicate has not been exercised within a reasonable period no penalty could have been imposed for the alleged violations. As a result, without going into the merits of the case, we are of the opinion that on account of inordinate delay the initiation of proceedings by issuance of the show cause notice which culminated into a penalty order cannot be sustained. The show cause notice and the impugned orders passed by the AO are quashed. Both the appeals are allowed."

It is very pertinent to mention that SEBI had challenged the said Order before the Hon'ble Supreme Court of India by filing Civil Appeal Nos. 8444-8445 of 2019. The Hon'ble Supreme Court of India, by passing Order dated 15-11-2019 had pleased to dismiss the Appeals filed by SEBI. Thus, the said Order passed by the Hon'ble Tribunal became binding upon SEBI.

1.2. *In the Appeal filed by Anilkumar Nandkumar Harchandani & Ors. vs. SEBI (Appeal No. 75 of 2019), the Hon'ble Tribunal vide its Order dated 05-12-2019 has held that*

"7. Upon hearing both the sides, in our view the appeal deserved to be allowed for the following reasons:- ……………………………………

The time line of the events would show that the alleged violation had occurred between March, 2004 to June, 2004. The appellant had disclosed the transaction to the BSE at that time. The show cause notice however was issued in the present case dated 7th November, 2017. The investigation report itself would show that for non availability of the documentary evidences the investigating authority did not recommend taking drastic action to direct making of public announcement. Thus, there was inordinate delay in initiation of the proceedings. In the circumstance, it would be relevant to quote the reasoning forwarded by us in the case of Ashok Shivlal Rupani & Anr. vs. SEBI, Appeal nos.471 of 2018 and 440 of 2018 dated 22nd August, 2019 in para nos. 6 and 7 as under:-

8. In the light of the reasons quoted above there is no escape from the conclusion that the proceedings are required to be quashed. Therefore the appeal is hereby allowed with no order as to costs."

The said Order of the Hon'ble Tribunal was also challenged by SEBI before the Hon'ble Supreme Court. The Hon'ble Supreme Court of India vide its Order dated 20-02-2020 pleased to dismiss the Appeal filed by SEBI and upheld the Order of the Hon'ble Tribunal.

1.3. *In the matter of Mr. Rajiv Bhanot & Ors. vs SEBI (Appeal No. 396 of 2018, Order dated 09-07-2021) and other connected Appeals, the Hon'ble SAT has held that*

"18. ……………………. We are constrained to observe that inspite of specific orders being issued from time to time on the question of delay the WTM chooses to ignore those decisions as if they do not exist or is not binding upon them. In the instant case, we find that the WTM has trenchantly asserted that it is a settled position that there is no time limit for issuing notice and that an order cannot be set aside on the ground of delay. Such assertion being used time and again in the order passed by the AO or the WTM is patently erroneous. This Tribunal in a large number of appeals have set aside the orders only on the ground of delay. In one such case namely, Ashok Shivlal Rupani vs. SEBI appeal no.417 of 2018 decided on August 22, 2019. This Tribunal held:

"…………………"

19. SEBI carried this matter to the Supreme Court in Civil Appeal no.8444-8445 of 2019 which was dismissed by judgment dated November 15, 2019. Thus, the order passed by this Tribunal became binding upon SEBI which they have chosen to ignore completely.

……

23. On the issue that the delay does not cause prejudice, we are of the opinion that the contention of the learned senior counsel for the respondent is patently misplaced. In the first instance, prejudice has been caused to the heirs of the deceased acquirers by issuing an order without impleading them and without giving them an opportunity of hearing. Further, promoters who have not made any acquisition are being prejudiced because they are not acting in concert nor was there any provision under the SAST Regulation of 1997 that promoters are deemed to be acting in concert. Further, there has to be an assessment and a finding that the promoters were acting with a common objective in mind which in the instant case, is lacking. Even otherwise, long delay in initiating proceedings by itself causes prejudice. In addition to the aforesaid, we find that the target Company had merged with another Company. Nothing has been brought on record to show as to who are the original shareholders to whom the open offer is to be made. It is not known as to whether the original shareholders of the original target Company are alive or dead. In the absence of any exercise being done by the respondent on these grounds a serious prejudice has been caused and, therefore, the contention of the respondent cannot be accepted.

……

25. In our view, considering the long lapse of time in initiating the proceedings, the direction to make an open offer was not appropriate in the circumstances of the case.

26. For the reasons stated aforesaid, the impugned order cannot be sustained and is quashed. The appeals are allowed. In the circumstances of the case, parties shall bear their own costs."

This Order of the Hon'ble Tribunal was also challenged by SEBI before the Hon'ble Supreme Court of India by filing Appeal being Appeal Nos. 6441-6443 OF 2021. However, the Hon'ble Supreme Court of India vide its Order dated 08-11-2021 pleased to dismiss the Appeal filed by SEBI and upheld the Order of the Hon'ble Tribunal.

1.4. *Further, in the matter of Shriram Insight Share Brokers Ltd (Appeal No. 559/2020, Order dated 04-01-2022), the Hon'ble Securities Appellate Tribunal while allowing the Appeal with costs has held that*

"7. In our view, the view taken by the AO is patently erroneous and cannot be allowed to stand. We are of the view, that when a defence is raised by the appellant it is the onerous duty of the AO, as a quasi-judicial authority, to deal with the matter instead of skirting the issue and pushing it under the carpet without dealing with it. The ground raised and not dealt with amounts to judicial indiscipline. We are of the view, when a question of delay has been raised, it is imperative for the AO to deal with the issue.

8. In the instant case, we find that there is an inordinate delay in the issuance of the show cause notice. No explanation whatsoever has been given by the respondent as to why the show cause notice could not be issued earlier. In the absence of any justification, we are of the view that the show cause notice was not issued within a reasonable time and, in fact there has been an inordinate delay in the issuance of the show cause notice. We are further of the opinion, that old and stale disputes should not be raised.

9. In Ashlesh Gunvantbhai Shah vs. SEBI (Appeal No.169 of 2019) decided on January 31, 2020. The relevant paragraphs are extracted herein below:-

10…………………

11 ……..

12. In view of the aforesaid, the impugned order cannot be sustained and is quashed. The appeal is allowed with costs. The Misc. Application is accordingly disposed of."

This Order of the Hon'ble Tribunal was also challenged by SEBI before the Hon'ble Supreme Court of India by filing Appeal being Appeal No. 1863 of 2022. However, the Hon'ble Supreme Court of India vide its Order dated 28-03-2022 has held that
"We have heard learned senior counsel for the appellant and perused the record. We do not see any cogent reason to entertain this Appeal. The judgment impugned does not warrant any interference. However, the cost imposed by the Securities Appellate Tribunal, Mumbai, vide its impugned order, is hereby waived."
Thus, the Appeal filed by SEBI was dismissed.

1.5. *Further, in the matter of Yatin Pandey HUF v/s SEBI (Appeal No. 719 of 2021), the Hon'ble Tribunal vide its Order dated 24-03-2022 has held that*

"3. The appellant on receipt of the show cause notice contended that there is an inordinate delay in the issuance of the show cause notice and at this belated stage the appellant is unable to collate the exact circumstances and situation with regard to the trades executed by him. It was contended that such delay has not only caused prejudice but has placed him in a disadvantage position and is unable him to defend the allegations levelled against him. It was contended that in view of the decision of this Tribunal in Ashok Shivlal Rupani & Anr. vs. SEBI Appeal No. 417 of 2018 decided on August 22, 2019, the adjudication proceedings are liable to be quashed on account of inordinate delay. The appellant also placed reliance on the order of the Hon'ble Supreme Court in Government of India vs. Citedal Fine Pharmaceuticals, Madras & Ors. [AIR 6 (1989) SC 1771].

…………..

7. Having heard the learned counsel for the parties, we find that there is an inordinate delay in the issuance of the show cause notice. The disputed trades are of the year 2008-2009. The investigation in the irregular trading activities was conducted during the period May 1, 2008 to September 30, 2009. After the investigation, it has taken the respondent more than 11 years to issue the show cause notice. There is no explanation in the impugned order as to why the show cause notice could not be issued earlier.

……….

11. In the instant case, we find that the disputed trades are of the year 2008-09. Investigation was done 11 years ago and no steps were taken to issue a show cause notice. No reason has been given in the impugned order as to why the show cause notice could not be issued earlier. An attempt has been made by the respondent in paragraph no. 9 of the reply justifying the delay in the issuance of the show cause notice. In our opinion, such new facts which are not borne out from the impugned order cannot be taken into consideration. We are of the view that there was an inordinate delay in the issuance of the show cause notice. On account of this delay serious prejudice was caused to the appellant as he was unable to collate the circumstances in executing the trades. We are further of the opinion that old and stale disputes should not be raised. Thus, on this short ground, the impugned order is liable to be quashed."

1.6. *The Noticees place reliance on the Hon'ble SAT's Order dated 28-06-2023 in the Appeal No. 524/2023 in the matter of Mr. Kiran M Joshi v/s SEBI wherein the Hon'ble SAT has held that*

"1. The appellant has challenged the order dated December 19, 2022 passed by the Adjudicating Officer (hereinafter referred to as 'AO') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI') imposing a penalty of Rs. 1 lakh for violation of Regulation 13(4A) read with Regulation 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations').

2. The facts leading to the filing of the present appeal is, that a show cause notice dated February 16, 2022 was issued to the appellant to show cause as to why an inquiry should not be initiated and penalty should not be imposed for violation of Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations. It was alleged that the appellant had acquired the shares in the scrip of Shree Krishna Biotech Ltd. but failed to make disclosures under the PIT Regulations.

…………………

10. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice. Even though there is no period of limitation prescribed in the Act and the Regulations for issuance of a show cause notice and for completion of the adjudication proceedings, nonetheless, the authorities are required to exercise its powers within a reasonable period. In AO, SEBI vs. Bhavesh Pabari, 2019 SCC OnLine SC 294 the Supreme Court held that an authority is required to exercise its powers within a reasonable period.

11. In view of the aforesaid, the impugned order cannot be sustained on account of an inordinate delay in initiating proceedings. Consequently, for the reasons stated aforesaid, the impugned order is quashed in so far as it relates to the appellant. The appeal is allowed."

The case of the Noticees herein is no different from the cases cited herein above. The delay in issuing the SCN from the date of the information made public has highly prejudiced the case of the Noticees herein. Thus, the allegation made in the SCN qua the Noticees are liable to be dropped on the ground of inordinate delay in issuing the SCN from the date of the information made public on 16-12-2022 and 17-12-2022.

2. *The Noticees refute and deny the allegations made against the Noticees herein. The Noticees further refute and deny that they have violated the provisions of SEBI SAST Regulations.*
3. *The Noticees further submits that in the Examination Report, it is recorded that the Promoter entities had not complied with the provision of SEBI SAST Regulation and/or LODR Regulations. Despite this, no enforcement action has been recommended against those entities. The Noticees herein is entitled for the same treatment as provided to the Promoters of the Company. It is needless to mention that the alleged violation committed by the Noticees is of technical nature and not a serious one and further an offence committed by the Promoters of the Company is viewed more seriously than a similar one committed by general public. In light of the aforesaid, no adverse Order to be passed against the Noticees herein.*
4. *The Noticees though belatedly filed the disclosures. Further, the holdings of the Noticees are duly reflected in the quarterly shareholding pattern filed by the Company. Thus, the investors were well aware about the acquisition made by the Noticees herein. The delay in filing the disclosures was not intentional. This should be considered as one of the mitigating factors in the captioned matter.*

On quantum of penalty:

5. *Without prejudice, in case of your goodself not agrees with the aforesaid submissions of the Noticees, the Noticees request for lesser penalty to be imposed in the present case. The Noticees place reliance on the two of the Orders passed by the Ld. Adjudicating Officers of SEBI wherein similar types of violation has been committed by the respective Noticee and a penalty of Rs. 1,00,000/- has been imposed against those respective Noticee:*
   (a) In the matter of Kavit Industries Limited, the Ld. AO vide its Order dated 31-07-2020 has imposed a penalty of Rs. 1,00,000/- against Ethan Constructions Pvt. Ltd for alleged violation of Regulation 29(2) r/w Regulation 29(3) of SAST Regulations; and
   (b) In the matter of Citizen Yarns Limited, the Ld. AO vide its Order dated 20-02-2019 has imposed a penalty of Rs. 1,00,000/- against
   Sai Mangesh Consultancy for alleged violation of Regulation 29(2) r/w Regulation 29(3) of SAST Regulations.

   In the present case, if the penalty is being imposed by your goodself, to be payable jointly and severally by the Noticees. The Noticees further request your goodself to consider the factors enumerated under Section 15J of the SEBI Act, 1992 while calculating the amount of penalty to be imposed against the Noticees.
6. *The Noticees further submit that the violation of alleged SEBI SAST Regulations by the Noticees is not a serious allegation like violation of SEBI PFUTP Regulations. Please note that SEBI vide its Order dated 17-02-2022 (Ref No. SEBI/HO/IVD/ID12/OW/P/2022/7311/1 has imposed no monetary penalty against Mr. Abhinaw Kumar Sharma though Mr. Abhinaw Kumar Sharma was facing very serious allegations of violation of SEBI PFUTP Regulations. The Noticees in the present case are*

standing at better footing than Mr. Abhinaw Kumar Sharma who was facing allegation of violation of SEBI PFUTP Regulation. Thus, same treatment should be given to the Noticees as given to Mr. Abhinaw Kumar Sharma.
In light of the aforesaid submissions, the Noticees humbly submits that the SCN should be disposed-off without passing any adverse order against the Noticees herein. The Noticees request for a personal hearing in the captioned matter. The Noticees reserve their right to file additional submissions during the pendency of the matter.

…"

7. Having regard to the principles of Natural Justice, vide Hearing Notice dated June 06, 2024, an opportunity of personal hearing was provided to the Noticees on June 07, 2024.

8. On the scheduled date of hearing, Noticees appeared through their common Authorised Representative (AR) viz. Shri. Vikas Bengani Advocate for the hearing held through online mode viz., video conferencing. During the hearing, the AR for Noticees relied upon and reiterated the submissions made by Noticees vide letter dated June 01, 2024. Further, the AR inter alia also submitted that there were no further/ additional submissions to be made and the submissions made vide coomon letter dated June 01, 2024 be taken as final and complete submissions in the matter.

9. In this regard, I also note from material on record that vide SEBI letter dated July 19, 2023 and email dated July 20, 2023 and email dated March 04, 2024, Noticees had inter alia been issued Notice of seeking summary settlement option in the matter inter alia indicating that Noticees may be liable for proceeding under Section 15A(b) and that the proceedings to be initiated may be settled and disposed of upon filing of settlement application under Chapter II of the SEBI (Settlement Proceedings) Regulations, 2018 upon remittance of the settlement amount, as stated therein, to SEBI in terms of Chapter VII of SEBI (Settlement Proceedings) Regulations, 2018 within the time as stated therein. I note from material available on record that the Noticees had failed to file settlement application with SEBI within prescribed timeframe and that no response was received from any of the Noticee's.

D. CONSIDERATION OF ISSUES AND FINDINGS

10. The issues that arise for consideration in the instant matter are as following:

Issue No. I: Whether the Noticees have violated the provisions of SEBI SAST Regulations, 2011, as alleged?

Issue No. II: If yes, whether the Noticees are liable for imposition of monetary , penalty under Section 15A(b) of SEBI Act, 1992?

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticees?

11. Before proceedings with the matter on merits, it would be pertinent to first deal with the technical contentions raised by the Noticees which are being dealt as here under:

11.1. Noticees as part of their submissions vide common letter dated June 01, 2024 as reply to the SCN had inter alia contended that there was inordinate delay of more than 16 months in issuance of SCN from the date of information made public. In this regard the Noticees have relied upon on various Judgements and Orders passed by the Hon'ble Supreme Court of India and Hon'ble SAT viz., Mr. Ashok Shivpal Rupani & Ors. v/s SEBI, Mr. Rakesh Kathotia & Ors. vs. SEBI, Anilkumar Nandkumar Harchandani & Ors. vs. SEBI, Mr. Rajiv Bhanot & Ors. vs SEBI, Shriram Insight Share Brokers Ltd, Yatin Pandey HUF v/s SEBI etc.

11.2. Further in this regard, I note that initiation of adjudication proceedings under the appropriate provisions of SEBI Act is a regulatory prerogative of SEBI depending upon the outcome of the fact finding exercise, which is the the examination in this matter. In this regard, reliance is placed upon following order passed by the Hon'ble SAT in ***In Hemant Sheth and Ors. vs. SEBI,*** *Appeal No. 521 of 2021, decided on January 07, 2022,* the Hon'ble SAT held that:

> *"9. Insofar as the delay is concerned we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant."*

11.3. Further, in this regard, I also note that no limitation period is prescribed in SEBI Act or Regulations for issuance of SCN or for completion of the Adjudication proceedings. In this regard, reliance is placed on the order passed by Hon'ble SAT in the matter of Metex Marketing Pvt. Ltd. vs.SEBI (order dated June 4, 2019) wherein Hon'ble SAT had inter alia held as follows:

> "*This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation*".

11.4. I also note from the submissions of the Noticees that they did not bring out how the facts and circumstances in the judgments and orders cited by the Noticees in this regard were applicable in the instant matter. Further, as regards delay, I note that the instant matter is distinct fom the cases cited by Noticees themselves in so far as while in the instant matter as per the Noticees the SCN is issued involving 16 months whereas in the matters relied upon by the Noticees themselves the delay involved is apparently in range of 8-14 years period. Further in this regard, I also note that the Noticees have not demonstrated with details as to how prejudice, if any, was caused to the Noticees by the aforesaid contended delay in the instant matter.

11.5. Further in this regard, it would be relevant to state that whether a delay in a particular case is justified or not depends on the facts and circumstances of each case. I note from material available on record that in the instant matter the violation pertains to August-September 2022, examination in respect of which was conducted by SEBI in this regard during year 2023 which inter alia included examination of reply of Merchant Banker/ Manager to the open offer and seeking comments of BSE, issuance of Summary Settlement Notices, seeking confirmation with regard to Summary Settlement Notices, additional time allowed for filing of Settlement Application etc., prior to approval of competent authority for adjudication proceedings in the matter. Thereafter, the Competent Authority appointed the undersigned as Adjudicating Officer ("AO") vide order dated April 08, 2024 to inquire into and adjudicate under Section 15A(b) of the SEBI Act, 1992 the alleged violations by the Noticees and the said proceeding of appointment was communicated to the undersigned vide Communique dated April 12, 2024 and the Show Cause Notice in the matter was issued on April 22, 2024. Hence, I note that there is no inordinate delay in issuance of the SCN in the instant proceedings.

Issue No. I: Whether the Noticees have violated the provisions of SEBI SAST Regulations, 2011, as alleged?

12. In this regard, I note from material available on record that the following was inter alia observed and alleged in respect of the Noticee 1, 2 and 3:

Delayed filing of requisite disclosure to Stock Exchange and Target Company (Two instances of violations viz., violation I and Violation II)

12.1. In this regard, it was inter alia alleged that Noticees delayed in filing of requisite disclosure to Stock Exchange and Target Company and therefore, had violated Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

12.2. In this regard, it was inter alia alleged and observed by SEBI wrt Violation I that Mr. Jatin Shah (Acquirer) along with Daivik Jatin Shah (PAC) and Heli Jatin Shah (PAC), holding 7.42% of the total shares carrying voting rights in the Target Company (TC) under public category, had acquired 2.66% shares from open market from June 30, 2022 to August 02, 2022. Since the change in shareholding exceeded 2% of the total share capital of the Company, disclosure was required under Regulation 29(2) by August 04, 2022 (due date) i.e. two working days from the date of acquisition exceeding the threshold limit. However, I note from material on record that disclosure from Noticee 1 (acquirer) along with PACs viz., Noticee 2 and 3 was received by BSE on December 16, 2022 i.e. inviolving delay of 134 days.

12.3. Further, wrt Violation II, it was inter alia alleged and observed by SEBI that Mr. Jatin Shah (Acquirer) along with Daivik Jatin Shah (PAC) and Heli Jatin Shah (PAC), holding 10.09% of the total shares carrying voting rights in the Target Company (TC) under public category, had acquired 3.69% shares from open market from August 05, 2022 to September 21, 2022. Since the change in shareholding exceeded 2% of the total share capital of the Company, disclosure was required under Regulation 29(2) of the SAST by September 23, 2022 (due date) i.e. two working days from the date of acquisition exceeding the threshold limit. However, I note from material on record that disclosure from Noticee 1 (acquirer) along with PACs viz., Noticee 2 and 3 was received by BSE on December 17, 2022 i.e. inviolving delay of 85 days.

12.4. However, I note from the material available on record that Disclosure was received on December 17, 2022 i.e. involving delay of 85 days.

12.5. In this regard, the relevant text of provisions alleged to have been violated are reproduced below:

Regulation 29(2) and 29(3) of the SAST Regulations, 2011:

"…

(2) Any person, 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.

(3) 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 [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.

…"

12.6. I note that the alleged violation in this regard has not been denied or disputed by the Noticees in their submissions to the SCN during the instant proceedings. Instead Noticees submsisions as part of the SCN are inter alia in nature of admission in so far as Noticees as part of their submissions have inter alia submitted that "*the alleged violation committed by the Noticees is of technical nature and not a serious one*"…" *The Noticees though belatedly filed the disclosures*"…" *The delay in filing the disclosures was not intentional*".

12.7. I note from material available on record that Noticees being Acquirer along with PACs were required to disclose the change in shareholding within two working days of the acquisition of 2.66% and 3.69% shares from open market.

12.8. In this regard, I note that Noticees have contended that, *" … the holdings of the Noticees are duly reflected in the quarterly shareholding pattern filed by the Company. Thus, the investors were well aware about the acquisition made by the Noticees herein. …. ".* In this regard, I note that the alleged violation in the instant matter is wrt Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011. As per Regulation 29(2) and 29(3) of

SEBI (SAST) Regulations, 2011, considering Noticees holding, for any change exceeding two percent, the Noticees were inter alia required to make disclosures regarding change in shareholding within two working days of acquisition of shares in the target company to the stock exchange (BSE in the instant matter) and the target company at its registered office. Therefore, the aforesaid contentions of the Noticees in this regard are devoid of merit and hence cannot be accepted.

12.9. Further, Notice has submitted that *"it is recorded that the Promoter entities had not complied with the provision of SEBI SAST Regulation and/or LODR Regulations. Despite this, no enforcement action has been recommended against those entities. The Noticees herein is entitled for the same treatment as* provided *to the Promoters of the Company."* In this regard, I note that the alleged violation in the instant matter pertains to Noticees. Further in this regard I note from material available on record that Regulation 30 was repealed wef April 01, 2022. Accordingly, Noticees submission in this regard is devoid of merit being out of context.

12.10. In view thereof, the allegation that Noticees delayed in filing of requisite disclosure to Stock Exchange and Target Company on two occations involving delay of 134 days and 85 days, stands established. Accordingly, I hold that Noticees had violated Regulation 29(2) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

Issue No. II: If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15A(b) of SEBI Act, 1992?

13. It has been established in the foregoing paragraphs that Noticees had violated Regulations 29(2) read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011.

14. In this regard, it is noted that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) inter alia 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 .... "*

15. Therefore, for the above violations, as brought out in the foregoing paragraphs, I find that the Noticees are liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992, which reads as under:

Securities and Exchange Board of India Act, 1992

[62][CHAPTER VIA
PENALTIES AND ADJUDICATION

"….

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations [66][or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [67][a penalty [68][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]];

(Note: for detailed/ complete text of the provisions, relevant Acts etc., may please be referred.)

Issue No. III: If yes, what should be the monetary penalty that can be imposed upon the Noticees?

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

SEBI Act

"…

Factors to be taken into account while adjudging quantum of penalty.

15J. *While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely:—*

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

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

c. the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

…"

17. In the instant case, I note that the material available on record does not quantify any disproportionate gain or unfair advantage or consequent loss caused to an investor or group of investors as a result of the violations committed by the Noticees. Further, there is nothing on record to show that the violation committed by the Noticees are repetitive in nature. However, I cannot ignore that compliance with extant applicable provisions of SAST Regulations, as cited, in the instant matter, was obligatory and which SEBI is duty-bound to enforce compliance of. In my opinion in a disclosure based regime the essence is about timely disclosures, which if compromised with, may pose threat to orderly functioning of the securities markets and /or loss of investor confidence in the integrity of the securities market. In the instant case, the Noticees had failed to make timely disclosures as brought out and dealt with in the foregoing, and such non-compliances accordingly need to be dealt with suitable penalty.

E. ORDER

18. After taking into consideration the facts and circumstances of the case, material available on record, submissions made by the Noticees and also the factors mentioned in the preceding paragraphs, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, I hereby impose penalty as per details in table below for the aforementioned violation, as discussed in this order. In my view, the said

penalty will be commensurate with the violation committed by the Noticees in this case.

Name of Noticee	Penalty Under Provisions	Penalty Amount (Rs.)
Jatin Shah	Section 15A (b) of SEBI Act,1992	2,00,000/- (One Lakh only) Joint and several
Daivik Jatin Shah		
Heli Jatin Shah		

19. The Noticees 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

20. 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 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.

21. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

PLACE: MUMBAI **AMAR NAVLANI**
DATE: September 30, 2024 **ADJUDICATING OFICER**