BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/AS/DP/2024-25/31031]

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

In respect of:

Premier Polyfilm Limited
(PAN : AAACP0371Q)

In the matter of Premier Polyfilm Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), received an exception report from National Stock Exchange of India Ltd. (hereinafter referred to as "NSE") wherein NSE inter alia submitted that Premier Polyfilm Limited (hereinafter referred to as "the Noticee") did not comply with certain provisions of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 (hereinafter referred to as "LODR Regulations") with regard to the requirement of obtaining prior approval of the shareholders for material related parties transactions (RPTs) for the FY 2023-2024. SEBI examined the matter and initiated adjudication proceedings against the Noticee for the alleged violation of Regulations 23(2), 23(4) and 23(9) read with Regulations 4(1)(e) of LODR Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI appointed Shri Shashikumar Valsakumar as the Adjudicating Officer, vide communique dated April 15, 2024, under Section 15-I (1) of the SEBI Act, 1992 read with

Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'SEBI Adjudication Rules') to inquire into and adjudge under the provisions of the Section 15HB of the SEBI Act for the violations alleged to have been committed by the Noticee. Subsequent to his transfer, vide communique dated July 29, 2024, the undersigned has been appointed as the Adjudicating Officer.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated May 17, 2024 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules and Rule 4(1) of SCR Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under Sections 15 HB of the SEBI Act. The SCN, inter alia, alleged the following:

    3.1 *From the Minutes of the Audit Committee Meeting of the Company held on May 22, 2023 and statement of RPTs filed with Exchanges under Regulation 23(9) of LODR for half year ended September 2022 and March 2023, it was observed that, Noticee had entered into related parties transactions with several other related parties between April 1, 2022, to March 31, 2023 without taking prior approval of the Audit Committee required under Regulation 23(2) of the LODR Regulations.*

    3.2 *It was observed from Noticee's letters dated January 20, 2024 and January 23, 2024 that Noticee had taken the approval of Audit Committee for RPTs entered in FY 2022-23 in the Audit Committee meeting held on May 22, 2023. Therefore, it was alleged that by not taking as required prior approval of the Audit Committee for the RPTs entered by the Noticee between April 1, 2022, to March 31, 2023, Noticee had violated Regulation 23(2) of LODR Regulations.*

    3.3 *It is further observed from the minutes of the Audit Committee meeting of the company held on May 22, 2023 and from the submissions of the Noticee made* *vide replies dated December 11, 2023, January 20, 2024 and January 23, 2024, that the Noticee did not take prior approval of Audit Committee for the RPTs entered between April 01, 2023 to May 21, 2023. It is noted from the submissions of the Noticee that approval of Audit Committee for the said transactions was taken on May 22, 2023. Therefore, it was alleged that Noticee have violated Regulation 23(2) of LODR Regulations.*

*3.4 It was further observed that the Noticee entered into material RPT with RMG Polyvinyl India Limited (hereinafter referred to as "**RMG Polyvinyl**")for the FY 2022-23 as under. The said RPTs exceeded 10% of the turnover of the company:*

Period of Disclosure	No. of Transactions	Value of Transactions (in Cr.)	Annual Consolidated Turnover (March 31, 2022) (in Cr.) (source: Annual report)	10% of Turnover (in Cr.)	Materiality Crossed
First half year April 1, 2022, to September 30, 2022	-	-	-	-	No
Second half year October 1, 2022, to March 31, 2023	2	25.29	243.86	24.39	Yes

**Based on RPT submissions by the company*

3.5 It was observed that the Noticee did not take approval of the shareholders of the company for the material RPTs entered with RMG Polyvinyl India Limited during April 1, 2022, to March 31, 2023. The Company at its Annual General Meeting held on September 18, 2023, ratified the said material RPTs with RMG Polyvinyl India Limited for FY 2022-23. It is seen that the Company had also submitted the same vide its letters dated January 20, 2024 and January 23, 2024, that the RPT with RMG Polyvinyl India Limited in FY 2022-23 exceeded the 10% of the turnover of the company and the shareholder approval was taken in the AGM on September 18, 2023 with retrospective effect for the period April 2022 to March 31, 2023. Therefore, it was alleged that the Noticee has violated Regulation 23 (4) of LODR Regulations by not taking prior approval of the shareholders for the aforementioned transactions.

3.6 From the statement of RPTs for half year ended September 2022 and March 2023 filed by the Noticee, it is observed that the Noticee reported the total of amount of transactions with RMG Polyvinyl India Limited as Rs. 25.29 Cr. However, in form AOC-2 annexed with the Annual Report, the Noticee reported the amount of RPTs with RMG Polyvinyl India Limited as Rs. 5628.87 Lakhs i.e. Rs. 56.29 Crore. Further, according to the clarification provided by the Company to NSE vide letter dated January 20, 2024, the total amount of transactions which exceeded the threshold limit is Rs. 56.29 Cr.

3.7 Hence, it was alleged that the Noticee made wrong submissions in half-yearly statements of RPTs submitted to the Exchange in FY 2022-23 with respect to the value of RPTs entered with RMG Polyvinyl India Limited, and therefore, violated Regulation 23(9) read with Regulation 4(1)(e) of LODR Regulations.

4. Vide email dated May 30, 2024, Noticee had sought extension of time to file reply to the SCN which was acceded to.

5. Vide email dated June 14, 2024, Noticee filed reply to the SCN and made the following submissions:

5.1 From 1 April 2022 to 21 May 2023, the Company entered into transactions with several entities in the ordinary course of business, on an arm's length basis for the sale and purchase of goods/raw materials, leasing of property, payment of rent, etc. The internal auditor and accounting team of the Company were under a bonafide belief that these entities were not related parties, since these entities did not fall under the ambit of "related parties" as per the definition prescribed in the Companies Act, 2013.

5.2 However, during the statutory audit of the Company's financial statements for the for the financial year 2022-2023, the Statutory Auditor of the Company pointed out that some of the aforesaid entities would fall within the ambit of the term related party, as defined in the Indian Accounting Standard 24 ("AS 24") and therefore *within the definition of "related party" prescribed by the SEBI Listing Obligations and Disclosure Requirements Regulations, 2015 ("LODR"). The Company was therefore advised to obtain the requisite approvals of its Audit Committee, Board of Directors and shareholders for such transactions and make the necessary declarations to the concerned stock exchanges on which its shares are listed.*

5.3 *In a sincere attempt to rectify this oversight, the Company immediately convened a meeting of its Audit Committee on May 22, 2023 whereby it sought retrospective approval of the Committee for the related party transactions entered into between April 1, 2022 and March 31, 2023. Omnibus approval of the audit committee was granted up to the limits mentioned therein, subject to a maximum of Rs. 100,00,00,000/- (Rupees One Hundred Crores Only) per entity. At the aforesaid meeting, the Audit Committee also granted retrospective approval for the related party transactions carried out between April 1, 2023 and May 21, 2023 and omnibus approval for all upcoming related party transactions in the said financial year up to the limits mentioned therein and subject to a maximum of Rs.100,00,00,000/- (Rupees One Hundred Crores Only) per entity. The aforesaid transactions were also approved by the Board of Directors on 22 May 2023.*

5.4 *For the financial year 2022-2023, the Company had entered into material related party transactions with RMG Polyvinyl India Limited ("RMG Polyvinyl"), a related party under AS 24. RMG Polyvinyl is one of the Company's customers and the Company competes for RMG Polyvinyl's business with other suppliers. Since the Company was under the bonafide belief that RMG Polyvinyl was not a related party, therefore, the company did not seek the prior approval of its shareholders for such material related party transaction, as mandated by Regulation 23(4) of the LODR. Hence, the Company sought the ratification of the material related party transactions carried out between the Company and RMG Polyvinyl at its Annual General Meeting held on 18 September 2023. In the said Annual General Meeting, the Company also sought the approval of its shareholders for all material* *transactions to be entered into with RMG Polyvinyl in the financial year 2023-2024. It is pertinent to note, that as of 18 September 2023, i.e. the date when the Annual General Meeting was held, transactions with related parties had not crossed the threshold of materiality for the financial year 2023-2024. No related party voted on the said resolutions and the same were passed by the General Body.*

5.5 *The Company computed the related party transactions correctly i.e. Rs. 30,99,77,000/- (Rupees Thirty Crores, Ninety-Nine Lakhs Seventy-Seven Thousand Only) for the half-yearly period ending September 2022 and Rs. 25,29,00,000/- (Rupees Twenty-Five Crores, Twenty-Nine Lakhs Only) for the half yearly period ending March 2023. Since the Company was under the bonafide belief that RMG Polyvinyl was not a related party, in September 2022 it did not disclose the said transactions. However, once it was made aware of the same, it started quoting the entire quantum of Rs. 56,28,77,000/- (Rupees Fifty-Six Crores, Twenty-Eight Lakhs, Seventy-Seven Thousand Only) i.e. the entire quantum of transactions entered into between the Company and RMG Polyvinyl for the financial year 2022-2023. It is therefore humbly submitted that the Company has not violated Regulation 23(9) of the LODR.*

5.6 *While filing the Corporate Governance report with the concerned stock exchanges for the quarter ending on 30 June 2023, the Company disclosed therein that it had entered into related party transactions for the financial year 2023-2024 and that the same were approved by the Board and Audit Committee on May 22, 2023. It also disclosed that it sought to obtain the approval of its shareholders for these transactions at its upcoming Annual General Meeting on 18 September 2023. Upon receiving the said report, the NSE made inquiries with the Company regarding its failure to obtain prior approval of the shareholders and Audit Committee. Upon receiving the inquiries from the NSE, the Company disclosed the prevailing circumstances to the Exchange forthwith and complied with further requests for additional information as and when the same was sought by the NSE.*

5.7 *The Company has proactively filed revised XBRL files with the National Stock Exchange, for the half-yearly period ending September 2022 and March 2023 which have been appropriately amended to reflect the aforesaid related party transactions. The same was filed on 31 January 2024 and an acknowledgement email from NSE was received.*

5.8 *The aforesaid non-compliance occurred on account of a bonafide error on part of the Company's secretarial and accounting departments, that the concerned entities were not related parties. As soon as the error was brought to the notice of the senior management, it took prompt corrective action to rectify its non-compliance, amend its disclosures and has proactively provided and complied with the NSE's request for additional information. This demonstrates that the Company has not knowingly suppressed material information from the concerned exchanges and its shareholders. No undue gain has accrued to either the Company, its key managerial personnel or any related parties on account of the said procedural lapses and no undue loss has been caused to any market participant on account of the same. The same is evidenced by the fact that the share price of the Company has not decreased subsequent to the amendment of the disclosures on 31 January 2024, to reflect the said related party transactions.*

6. Vide notice of hearing dated June 18, 2024, Noticee was granted an opportunity of personal hearing before the Adjudicating Officer on July 02, 2024. Vide email dated June 25, 2024, Noticee forwarded name of its Authorised Representative (AR). However, the said hearing was adjourned and the Noticee was informed the new date of hearing shall be intimated separately.

7. Subsequently vide Notice of hearing dated August 01, 2024, Noticee was granted opportunity of hearing on August 12, 2024. The AR of the Noticee appeared for the hearing and reiterated the submissions made by it vide reply dated June 14, 2024. During the hearing, the AR of the Noticee relied upon the orders of Hon'ble Securities Appellate Tribunal (SAT) in the matters of Svam Software v. SEBI (date : 12.10.2022)

and SecureKould v. SEBI (Date: 12.06.2023) and requested that a lenient view may be taken.

CONSIDERATION OF ISSUES AND EVIDENCE

8. I have carefully perused the allegations levelled against the Noticee in the SCN, its reply and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

   I. Whether Noticee has violated Regulations 23(2), 23(4) and 23(9) read with Regulations 4(1)(e) of LODR Regulations?

   II. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15 HB of the SEBI Act?

   III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

9. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

> *"**Principles governing disclosures and obligations.***
> *4.(1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations, in accordance with the following principles:*
> *…*
> *(e)The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.*
>
> ***Related party transactions.***
> *23...*
> *(2)All related party transactions and subsequent material modifications shall require prior approval of the audit committee of the listed entity:*

Provided that only those members of the audit committee, who are independent directors, shall approve related party transactions.
Provided further that:
(a) the audit committee of a listed entity shall define "material modifications" and disclose it as part of the policy on materiality of related party transactions and on dealing with related party transactions;
(b) a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year exceeds ten per cent of the annual consolidated turnover, as per the last audited financial statements of the listed entity;
(c) with effect from April 1, 2023, a related party transaction to which the subsidiary of a listed entity is a party but the listed entity is not a party, shall require prior approval of the audit committee of the listed entity if the value of such transaction whether entered into individually or taken together with previous transactions during a financial year, exceeds ten per cent of the annual standalone turnover, as per the last audited financial statements of the subsidiary;
(d) prior approval of the audit committee of the listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.
Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred to in (d) above, the prior approval of the audit committee of the listed subsidiary shall suffice.
…
(4)All material related party transactions and subsequent material modifications as defined by the audit committee under sub-regulation (2)]shall require prior approval of the shareholders through resolution and no related party shall vote to approve such resolutions whether the entity is a related party to the particular transaction or not:
Provided that prior approval of the shareholders of a listed entity shall not be required for a related party transaction to which the listed subsidiary is a party but the listed entity is not a party, if regulation 23 and sub-regulation (2) of regulation 15 of these regulations are applicable to such listed subsidiary.
Explanation: For related party transactions of unlisted subsidiaries of a listed subsidiary as referred above, the prior approval of the shareholders of the listed subsidiary shall suffice.
Provided further that the requirements specified under this sub-regulation shall not apply in respect of a resolution plan approved under section 31 of the Insolvency Code, subject to the event being disclosed to the recognized stock exchanges within one day of the resolution plan being approved;
…

(9) The listed entity shall submit to the stock exchanges disclosures of related party transactions in the format as specified by the Board from time to time, and publish the same on its website:
Provided that a 'high value debt listed entity' shall submit such disclosures along with its standalone financial results for the half year:
Provided further that the listed entity shall make such disclosures every six months within fifteen days from the date of publication of its standalone and consolidated financial results: Provided further that the listed entity shall make such disclosures every six months on the date of publication of its standalone and consolidated financial results with effect from April 1, 2023."

10. It was alleged that the Noticee entered into RPTs between April 1, 2022, to March 31, 2023 and April 01, 2023 to May 21, 2023 without taking prior approval of Audit Committee. It was alleged that the approval of the Audit Committee for the said transactions was taken on a later date on May 22, 2023.

11. In this regard, the Noticee has submitted that the Noticee was under a bonafide belief that these entities were not related parties, since these entities did not fall under the ambit of "related parties" as per the definition prescribed in the Companies Act, 2013. It was submitted by the Noticee that it obtained requisite approval only when its statutory auditor pointed out the error.

12. Admittedly, Noticee did not obtain prior approval for the RPTs executed between April 01, 2022 to March 31, 2023 and April 01, 2023 to May 21, 2023. In this regard, I am of the opinion that the Noticee being a listed company since 1994 is reasonably expected to understand the nuances of compliances. Being a listed company for two decades, Noticee cannot plea ignorance of law. I note that it is a cardinal principle of law that, '*Ignorantia juris non excusat*'. In other words, ignorance of the law cannot be an excuse. Therefore, I am of the opinion that by not taking prior approval of the audit committee for the RPTs executed between April 01, 2022 to March 31, 2023 and April 01, 2023 to May 21, 2023, Noticee has violated Regulation 23(2) of LODR Regulations.

13. It was further alleged that the Noticee entered into material RPT with RMG Polyvinyl for the FY 2022-23. The said RPTs exceeded 10% of the turnover of the company,

however, the shareholder approval for the same was taken in the AGM on September 18, 2023 with retrospective effect for the period April 01, 2022 to March 31, 2023. It was alleged that the prior approval of the shareholders was not taken for the said RPTs.

14. Noticee has submitted that it was under the impression that RMG Polyvinyl is not a related party and was later on informed that RMG Polyvinyl is a related party under AS 24. I note that Noticee has not denied the transaction value with RMG Polyvinyl and also not denied that RMG Polyvinyl is a related party under AS24. In fact, Noticee has accepted that after knowledge of its error, it took the shareholder approval of the RPTs with RMG Polyvinyl with a retrospective effect.

15. I note that in terms of Regulation 23(4) of LODR Regulations, Noticee was required to take prior approval of the shareholders for all the material transactions. I am of the opinion that Noticee being a compliant listed company so far is not expected to feign ignorance of law. Therefore, I hold that Noticee has violated Regulation 23(4) of LODR Regulations.

16. It was further alleged in the SCN that the Noticee made wrong submissions in half-yearly statements of RPTs submitted to the Exchange in FY 2022-23 with respect to the value of RPTs entered with RMG Polyvinyl.

17. In this regard, the Noticee has submitted that the Noticee was under the belief that RMG Polyvinyl is not a related party, therefore, did not make the requisite disclosure in the half yearly statements of RPTs submitted to the Exchange.

18. I note that Noticee by its own admission did not disclose the RPTs entered with RMG Polyvinyl. The Noticee made the disclosure in its corporate governance report for the quarter ending June 2023. It is pertinent to mention the order of Hon’ble SAT in the matter of Kesar Petroproducts Ltd. Vs. Deputy Manager, Listing, BSE (Appeal No. 432 of 2022), wherein Hon’ble SAT observed that:

"*Regulation 23 relates to related party transaction and a transaction involving payments made to related party transactions are required to be disclosed to the Stock Exchange within the stipulated period*."

19. In the light of the above, the violation of Regulation 23(9) read with Regulation 4(1)(e) of LODR is established.

20. In its defense, the Noticee has relied upon the orders of Hon'ble SAT in the matter of Svam Software Ltd. v. SEBI (Appeal No. 801 of 2021) and SecurKloud Technologies Limited v. SEBI (Appeal No. 918 of 2022).

21. I have perused the orders and I am of the opinion that Hon'ble SAT has observed that technical violations under LODR do not warrant higher penalty and therefore, reduced the penalty in both the matters. Therefore, the said orders of Hon'ble SAT can only be the mitigating factor while deciding the quantum of penalty and do not have any bearing on the merits of the case

***Issue II:* Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15 HB of the SEBI Act?**

22. It has been established in the aforesaid paragraphs that Noticee has violated the provisions of law as alleged in the SCN and therefore Noticee is liable for payment of monetary penalty in terms of Section 15HB of SEBI Act.

23. In this context, I would also like to refer to the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} wherein Hon'ble Supreme Court of India 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 and hence the intention of the parties committing such violation becomes wholly irrelevant A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty*

irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.''

24. The text of Section 15HB of the SEBI Act is reproduced below:

"Penalty for contravention where no separate penalty has been provided.
15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

ISSUE (III): If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

"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."

26. The material available on record has neither quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee nor the amount of loss, if any, caused to an investor/clients as a result of the default of the Noticee. As regard the repetitive nature of the default, there is nothing on record to show that the nature of the default by the Noticee is repetitive.

27. However, it may be noted that the purpose of obtaining prior approval and adequate disclosure of RPTs is that RPTs are not misused by the key managers of a company for personal gains and the company takes the interest of company and its stakeholders while conducting any RPTs.

28. Therefore, I am of the view that as a listed entity, Noticee did not conduct as per required prudence in carrying out such RPTs and therefore, violated the provisions of LODR. Therefore, the quantum of penalty must be commensurate with the aforesaid violation.

ORDER

29. Having considered all the facts and circumstances of the case, the material available on record including submissions of the Noticee as well as the factors mentioned in section 15J of SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules 1995, I hereby impose a penalty of Rs. 3,00,000 (Rupees Three Lakh) on Noticee under Section 15HB of SEBI Act. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

30. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

31. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee 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.

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

Date : December 09 , 2024 **Asha Shetty**
Place : Mumbai **Adjudicating Officer**