BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. Order/SBM/KL/2021-22/13602-13603]

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

In respect of

Ms. Varsha Jitendra Vakharia
(PAN: AACPV7868F)

Mr. Jitendra Kantilal Vakharia
(PAN: AABPV4208L)

48, Sagar Darshan, 81/83,
Bhulbhai Desai road, Mumbai 400026

In the matter of
IND Renewable Energy Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) received a Draft Letter of Offer ('**DLOF**') dated February 12, 2020 from the Merchant Banker, Navigant Corporate Advisors Limited (hereinafter referred to as '**Merchant Banker'**), in respect of the open offer made by Mr Anupam Gupta and Mr Abhay Narain Gupta to the shareholders of IND Renewable Energy Limited (hereinafter referred to as '**Target Company'/ 'IND'**). The shares of the Target Company are listed on the Bombay Stock Exchange ('**BSE')**. While processing the said DLOF, it was observed by SEBI that the Promoters of the Target Company viz. Ms Varsha Jitendra Vakharia (hereinafter referred to as '**Noticee no.1'**) and Mr Jitendra Kantilal Vakharia (hereinafter referred to as **'Noticee no. 2'**) had allegedly failed to make the necessary disclosures to the Target Company and to the stock exchange i.e BSE under the provisions of Regulations 29(2) r/w 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**').

2. In this regard, during examination conducted by SEBI, it was observed that Noticee no.1 acquired 1,31,723 shares of the Target Company during the period March 31, 2015 to December 02, 2015. It was further observed by SEBI that the acquisition of the above shares by Noticee no.1 had triggered the requirement of making the disclosures u/r 29(2) r/w Reg. 29(3) of the SAST Regulations as on December 2, 2015. Similarly, Noticee no. 2 acquired 4,62,824 shares of the Target Company during the period April 1, 2017 to March 28, 2018. It was observed that the acquisition of the above shares by Noticee no. 2 had triggered the requirement of making the disclosures u/r 29(2) r/w Reg. 29(3) of the SAST Regulations as on March 28, 2018. It is therefore alleged that Noticee nos. 1 & 2 (hereinafter also collectively referred to as **'Noticees'**) have failed to make the aforementioned disclosures under the SAST Regulations. In view of the same, adjudication proceedings have been initiated against the Noticees under the provisions of section 15 A (b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as the Adjudicating Officer ('**AO**') in the matter vide communique dated May 03, 2021 under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**), to inquire into and adjudge under the provisions of section 15 A(b) of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A show cause notice ('**SCN**') ref no. SEBI/EAD1/SBM/KL/12340/2021 dated June 15, 2021 was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on them in terms of the provisions of section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticees. The SCN, *inter-alia,* alleged the following :-

a. *During the processing of Draft Letter of Offer (DLOF) dated February 12, 2020, received in respect of open offer of IND, SEBI observed certain violations of SAST Regulations by the Noticees. It is observed from the public disclosure made by the company that the shareholding of Noticee no.1 was 7.01% as on quarter ending March 2015. Subsequently, the shareholding of the Noticee increased and pursuant to acquisition of 0.06% shares of IND on December 02, 2015, her total shareholding in the company increased to 9.04%. In this context, it is observed that Noticee no. 1 had crossed the threshold of 2% acquisition limit from the previous shareholding of 7.01% in IND, as disclosed in March 2015. It is noted that as per the provisions of Regulation 29 (2) r/w 29 (3) of SAST Regulations, in respect of the aforementioned acquisition, Noticee no. 1 was required to make disclosures to the stock exchange (BSE- where the shares of IND were listed) and also to the company viz. IND, at its registered office within two working days from the date of acquisition i.e by December 04, 2015. However, it is alleged that Noticee no. 1 had failed to submit the aforementioned disclosures.*

b. *Further, it is also observed from the public disclosure made by the company that the shareholding of Noticee no.2 was 13.85% as on quarter ending March 2017. Subsequently, the shareholding of Noticee no.2 increased and pursuant to acquisition of 0.73% shares of IND on March 28, 2018, his total shareholding in the company increased to 16.44%. In this context, it is observed that Noticee no. 2 had crossed the threshold of 2% acquisition limit from the previous shareholding of 13.85% in IND, as disclosed in March 2017. It is noted that as per the provisions of Regulation 29 (2) r/w 29 (3) of SAST Regulations, in respect of the aforementioned acquisition, Noticee no. 2 was required to make disclosures to the stock exchange (Bombay Stock Exchange – BSE- where the shares of IND were listed) and also to the company viz. IND, at its registered office within two working days from the date of acquisition i.e by March 30, 2018. However, it is alleged that Noticee no. 2 had failed to submit the aforementioned disclosures.*

c. *In this regard, BSE vide email dated January 14, 2021 submitted to SEBI that in respect of the aforementioned transactions, disclosures were not submitted by the Noticees to BSE under SAST Regulations. Therefore, it is alleged that the Noticees have violated the provisions of Regulation 29 (2) r/w 29 (3) of SAST Regulations*.

5. Vide separate letters dated September 06, 2021, Noticees submitted their reply to the SCN, details of which are mentioned below: -

Reply of Noticee no.1/Ms. Varsha

a. *It has been alleged that my shareholding was 7.01% as on quarter ending March 2015 and pursuant to acquisition of 0.06% shares of IND Renewables on December 02, 2015, I acquired more than 2% of shares from the last disclosures and failed to make any disclosures stipulated under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. In this regard my submissions have been made in following paragraphs.*

b. *I submit that pursuant to March 31, 2015, I acquired 25600 amounting to 0.08% from April 06,2015 to April 13, 2015 which was disclosed to BSE on April 15, 2015, subsequent to which my total shareholding in the Company became 7.09%.*

c. *I submit that pursuant to that I acquired 34000 shares amounting to 0.10% from April 20, 2015 to April 21, 2015 which was disclosed to BSE on April 23, 2015 after which my shareholding in the Company became 7.19%. I submit that thereafter I acquired some more shares due to which my shareholding in the company became 7.23%. Subsequently, after quarter ending September 2015, I acquired 46584 (0.10%) shares of IND Renewables after which my shareholding became 7.38% in the Company for which the necessary disclosures were made on BSE.*

d. *It appears that there is a factual error on the part of the Investigating Authority as pursuant to acquisition of 0.06% my shareholding became 7.44% and not 9.04%. The SHPs for the quarter ending September, 2015 and December, 2015 are attached herewith as Exhibit "5" and Exhibit "6", respectively which clearly reveals that my shareholding as on September, 2015 and December, 2015 was 7.29 % & 7.45% respectively which clearly reveal that I have not acquired more than 2% of share capital to warrant any disclosure under SAST Regulations.*

e. *I further submit that as on quarter ending March, 2015 my shareholding in the Company was 7.09% and after purchasing 0.06% shares of the Company on December 02, 2015 my shareholding changed to 7.44%. I submit that in the table provided in Annexure 2 of the SCN alleges that my shareholding in the Company right before the acquisition of 0.06% of shares on December 02, 2015 was 8.98%, however it is evidently clear from Exhibit 4 that it was 7.38%. Hence, I submit and reiterate that the said figure of 8.98% arrived at by the Investigating Authority is factually incorrect.*

f. *I request your honor to provide me the details of calculation/working of the figure provided in the SCN as I vehemently deny the figures arrived at by the Investigating Authority and brought to your kind notice for issue of SCN. In view of the above, it is submitted that the shares of IND Renewables were acquired by me following all the necessary compliances. In my collective acquisition I have never crossed the threshold* *limit of 2% as provided under the SAST Regulations to warrant disclosures under the same.*

g. *I reiterate that the SCN alleges that I have crossed the threshold of 2% after certain acquisition from the previous shareholding of 7.01% in IND Renewables, thereby violating the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. However, I submit that my shareholding pursuant to the acquisition of 0.06% of shares changed to 7.44% and not to 9.04% which required any disclosure to be filed. Further, no material harm has been caused to investors for failure to make disclosure under the same as similar disclosure was already filed by me under the PIT Regulations,1992 and 2015. Hence, it is submitted that violation, if any was merely procedural and technical in nature, due to inadvertence and was totally devoid of any malafide intention.*

h. *I submit that the alleged non- disclosures, if any under the SAST Regulations neither resulted in any loss to the retail investors nor any unfair advantage was gained by me, IND Renewables and any other person. Moreover, there was no resultant adverse effect on the market or the investors at all regarding the alleged violations. Further, no investor complaint has been received in this regard. The same was only a procedural lapse, and devoid of any ulterior motive. I did not have any intention to conceal the information from investors or give any wrong information regarding the matter, neither did I have any unfair gain or advantage nor any loss or harm was caused to the investors with the incorrect disclosure of the said information.*

i. *I submit that I am a law-abiding citizen of the country and a regular tax payer. I have followed the procedures, as stipulated by regulatory authorities, abided by the rules, regulations, instructions etc. issued by government agencies, and our intention has always been to comply with the rules/ regulations/ filings etc. and not to conceal any information. I further submit that I have not been penalized by any regulatory authority till date. I further undertake that in future too, I shall comply with the acts, rules, regulations etc., in letter and in spirit, and would not violate any of the provision of any Act, rules, and regulations etc. of any regulatory authority.*

j. *In view of the above, I categorically deny that I have violated the provisions of Regulation 29(2) read with 29(3) of the SAST Regulations to warrant any penalty under Section 15A(b) of the SEBI Act.*

Reply of Noticee no.2/Mr. Jitendra

a. It has been alleged that my shareholding was 13.85% as on quarter ending March 2017 and pursuant to acquisition of 0.73% shares of IND Renewables on March 28, 2018, I acquired more than 2% of shares from the last disclosures and failed to make any disclosures stipulated under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. In this regard my submissions have been made in following paragraphs

b. I submit that pursuant to March 31, 2017, I acquired 3,90,750 shares (1.29%) on 19 April, 2017 pursuant to which my shareholding in the Company became 15.13%. I filed the stipulated disclosures under Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "PIT Regulations") with the company which was intimated by the Company to BSE on April 20, 2017 and same is appearing on BSE website. This establishes that the information I am holding 15.13% of shareholding in the company was in public domain and there has been no non-disclosure on my part.

c. As regards the allegations w.r.t non-disclosures I submit that the change in my shareholding in IND Renewables was duly reported to BSE and the same was reflected in the shareholding pattern for the concerned quarter. It may be submitted that in the shareholding pattern for quarter ended December 2017 and quarter ended March, 2018 my shareholding is shown as 15.63% and 16.44% respectively which establishes that there has been no non -disclosure on my part, I have made the requisite disclosure to the company and same have been filed with stock exchange. In view of the said submissions, I deny that I have violated Regulation 29(2) read with 29(3) of SAST Regulations.

d. Pursuant to the above, I have further purchased shares on April 6, 2018 for which the relevant disclosures have been filed with stock exchange. Same is available on BSE website also. This establishes that I have been compliant with disclosure requirements as and when required and there has been no non-compliance on my part.

e. I submit that although the alleged disclosures have not been filed by me in a specific format, however the said information is already available in the public domain as is clear from the disclosures filed by the company under PIT Regulations and the shareholding pattern for the quarter ended December, 2017 and March 2018. In view of the above, I deny that I have violated Regulation 29(2) read with Regulation 29(3) of the SAST Regulations. I submit that in view of the aforesaid arguments, my case is squarely covered under order passed by Hon'ble SAT in the matter of Vitro Commodities Private Limited v SEBI (Appeal No. 183 of 2013, decided on September 04, 2013).

f. I humbly submit that the alleged violations of disclosure requirements is merely procedural and technical in nature with no wrongful / malafide intention or any ulterior motive behind the same. I further submit that Navigant Corporate Advisors Limited (hereinafter referred to as the "Merchant Banker") was the Lead Manager to the said offer. I submit that I had myself informed the Merchant Banker about the above violations at the time of takeover so that the company is taken over on a clean slate and with full disclosures from my end. In view of the same there has been no non - disclosure on my part and is totally devoid of any malafide intention.

g. Therefore, the alleged non- disclosures, under the SAST Regulations neither resulted in any loss to the retail investors nor any unfair advantage was gained by me, IND Renewables and any other person. Moreover, there was no resultant adverse effect on the market or the investors at all regarding the alleged violations. Further, no investor complaint has been received in this regard.

h. I also submit that my violation, if any, was venial in nature and same was totally unintentional. I further submit and reiterate that due to the non- disclosure of relevant information, no gain or advantage has occurred to me, nor any loss or harm has been caused to any investor. The same was only a procedural lapse, and devoid of any ulterior motive. I did not have any intention to conceal the information from investors or give any wrong information regarding the matter, neither did I have any unfair gain or advantage nor any loss or harm was caused to the investors with the incorrect disclosure of the said information.

i. I reiterate that the very fact that the information was reflected in the Shareholding Pattern filed by IND Renewables, is in itself a compelling factor that the information had been in public knowledge and the same cannot be said to be concealed.

j. I submit that I am a law-abiding citizen of the country and a regular tax payer. I have followed the procedures, as stipulated by regulatory authorities, abided by the rules, regulations, instructions etc. issued by government agencies, and our intention has always been to comply with the rules/ regulations/ filings etc. and not to conceal any information. I further submit that I have not been penalized by any regulatory authority till date. I further undertake that in future too, I shall comply with the acts, rules, regulations etc., in letter and in spirit, and would not violate any of the provision of any Act, rules, and regulations etc. of any regulatory authority.

k. In view of the above, I categorically deny that I have violated the provisions of Regulation 29(2) read with 29(3) of the SAST Regulations thereby not liable for the imposition of any monetary penalty under Section 15A(b) of the SEBI Act.

l. *I rely upon the following judgements passed by Hon'ble Courts/ Hon'ble SAT/ Ld. which conclude that if the breach is merely technical and unintentional, penalty may not be levied. It is also held in one of the judgements that the disclosure under PIT Regulations and SAST Regulations are not stand alone and one is corollary of other.*
    a. *In the order passed by the Hon'ble Tribunal in the matter of Vitro Commodities Private Limited v SEBI (Appeal No. 183 of 2013, decided on September 04; 2013)*
    b. *Reliance Industries Ltd. v SERI (SAT Appeal No. 39/2002*

6. In terms of the Adjudication Rules, the Noticees were provided with an opportunity of personal hearing in the matter on September 08, 2021, through the online webex platform. Ms. Aishwarya Shubhangi appeared as the Authorized Representative (hereinafter referred to as '**AR**') on behalf of the Noticees on the stipulated date of hearing. During the hearing, the AR reiterated the submissions made by the Noticees in their letter dated September 06, 2021. Further, the Noticees made additional submissions in the matter vide letter dated September 20, 2021, details of which are mentioned below:

<u>Reply of Noticee no.1/Ms. Varsha</u>

a. *The details of purchase and sale transaction details carried out by me in the scrip of IND Renewables for the period from April 01, 2017 to March 31, 2018, the details of which are being provided in the table given below:*

Date of transaction	*Total no. of shares acquired*	*Total no. of shares sold*	*% of total shares of company*	*Mode of acquisition/Sale (off market/open market)*
10-04-2015	*12550*	*0*	*7.055*	*Open market*
17-04-2015	*13050*	*0*	*7.098*	*Open market*
24-04-2015	*34000*	*0*	*7.21*	*Open market*
01-05-2015	*3569*	*0*	*7.222*	*Open market*
19-06-2015	*1200*	*0*	*7.226*	*Open market*
17-07-2015	*877*	*0*	*7.229*	*Open market*
24-07-2015	*1500*	*0*	*7.234*	*Open market*
31-07-2015	*2200*	*0*	*7.241*	*Open market*
21-08-2015	*7799*	*0*	*7.267*	*Open market*

04-09-2015	*1200*	*0*	*7.271*	*Open market*
11-09-2015	*2500*	*0*	*7.279*	*Open market*
25-09-2015	*2300*	*0*	*7.287*	*Open market*
30-09-2015	*1800*	*0*	*7.293*	*Open market*
09-10-2015	*1600*	*0*	*7.298*	*Open market*
16-10-2015	*4799*	*0*	*7.314*	*Open market*
23-10-2015	*10650*	*0*	*7.349*	*Open market*
27-11-2015	*4450*	*0*	*7.364*	*Open market*
04-12-2015	*25679*	*0*	*7.448*	*Open market*
11-12-2015	*23*	*0*	*7.448*	*Open market*
08-01-2016	*5000*	*0*	*7.465*	*Open market*
15-01-2016	*250*	*0*	*7.466*	*Open market*
29-01-2016	*8500*	*0*	*7.494*	*Open market*
12-02-2016	*1000*	*0*	*7.497*	*Open market*
19-02-2016	*0*	*1250200*	*3.367*	
At the end of year 31-03-2016			*3.367*	

b. *In view of the above, I categorically deny that I have violated the provisions of Regulation 29(2) read with 29(3) of the SAST Regulations thereby not liable for the imposition of any monetary penalty under Section 15A(b) of the SEBI Act.*

<u>Reply of Noticee no.2/Mr. Jitendra</u>

a. *The details of purchase and sale transaction details carried out by me in the scrip of IND Renewables for the period from April 01, 2017 to March 31, 2018, the details of which are being provided in the table given below:*

Date of transaction	*Total no. of shares acquired*	*Total no. of shares sold*	*% of total shares of company*	*Mode of acquisition/Sale (off market/open market)*
07-04-2017	*1*	*0*	*13.85*	*Open market*
14-04-2017	*1689*	*0*	*13.85*	*Open market*
21-07-2017	*394050*	*0*	*15.16*	*Open market*
28-04-2017	*1465*	*0*	*15.16*	*Open market*

05-05-2017	*700*	*0*	*15.16*	*Open market*
12-05-2017	*1192*	*0*	*15.17*	*Open market*
19-05-2017	*2400*	*0*	*15.17*	*Open market*
09-06-2017	*1138*	*0*	*15.18*	*Open market*
16-06-2017	*490*	*0*	*15.18*	*Open market*
23-06-2017	*1400*	*0*	*15.18*	*Open market*
07-07-2017	*360*	*0*	*15.19*	*Open market*
14-07-2017	*500*	*0*	*15.19*	*Open market*
21-07-2017	*6450*	*0*	*15.21*	*Open market*
28-07-2017	*2100*	*0*	*15.22*	*Open market*
04-08-2017	*4000*	*0*	*15.23*	*Open market*
25-08-2017	*2965*	*0*	*15.24*	*Open market*
01-09-2017	*1100*	*0*	*15.24*	*Open market*
08-09-2017	*1000*	*0*	*15.25*	*Open market*
15-09-2017	*1000*	*0*	*15.25*	*Open market*
22-09-2017	*2797*	*0*	*15.26*	*Open market*
30-09-2017	*162*	*0*	*15.26*	*Open market*
06-10-2017		*0*	*15.26*	*Open market*
10-11-2017	*1380*	*0*	*15.30*	*Open market*
17-11-2017	*855*	*0*	*15.33*	*Open market*
24-11-2017	*158*	*0*	*15.34*	*Open market*
15-12-2017	*8300*	*0*	*15.61*	*Open market*
29-12-2017	*650*	*0*	*15.63*	*Open market*
05-01-2018	*30*	*0*	*15.63*	*Open market*
12-01-2018	*850*	*0*	*15.66*	*Open market*
19-01-2018	*379*	*0*	*15.67*	*Open market*
09-02-2018	*500*	*0*	*15.69*	*Open market*
16-02-2018	*300*	*0*	*15.70*	*Open market*
23-02-2018	*180*	*0*	*15.71*	*Open market*
16-03-2018	*120*	*0*	*15.71*	*Open market*
23-03-2018	*123*	*0*	*15.71*	*Open market*
31-03-2018	*22040*	*0*	*16.44*	*Open market*
At the end of year 31-03-2018			*16.44*	

b. *In view of the above, I categorically deny that I have violated the provisions of*

Regulation 29(2) read with 29(3) of the SAST Regulations thereby not liable for the imposition of any monetary penalty under Section 15A(b) of the SEBI Act.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully perused the allegations leveled against the Noticees in the SCN, the reply of the Noticees and also the documents/evidence available on record.
   The issues that arise for consideration in the present case are:-
   I. Whether the Noticees have violated the provisions of Regulations 29 (2) read with 29 (3) of the SAST Regulations?
   II. If yes, whether the violation would attract monetary penalty on the Noticees under the provisions of section 15A (b) of the SEBI Act?
   III. If yes, what should be the quantum of monetary penalty?

8. Before moving forward, the relevant provisions of the SAST Regulations, allegedly violated by the Noticees are reproduced as under:

   Regulation 29(2) and 29(3) of SAST Regulations

   DISCLOSURES OF SHAREHOLDING AND CONTROL

   29 (2) *Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified*

   29 (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 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.

ISSUE I :- Whether the Noticees have violated the provisions of Regulations 29 (2) read with 29 (3) of the SAST Regulations?

ISSUE II: - If yes, whether the violation committed by the Noticees would attract monetary penalty under section 15A(b) of the SEBI Act?

9. In terms of Regulations 29 (2) r/w 29(3) of the SAST Regulations, any person who together with the persons acting in concert with him holds shares entitling him/them to 5% or more of the shares or voting rights of the target company shall make the necessary disclosures to the target company and to the stock exchange within two working days if there is change in the shareholding and such change exceeds 2% of the total shareholding or voting rights in the target company. It is not a disputed fact that both Noticee nos. 1 and 2 were individually holding more than 5% of shares in the target company prior to their respective acquisition of shares of the target company from the open market during the relevant period. The details of the pre-acquisition holding of shares, post-acquisition holding, and the change in the shareholding of the Noticees as a result of their acquisition of shares of the Target Company during the relevant period are discussed in the following paragraphs.

10. From the shareholding disclosures / filings made by the Target Company to BSE and which is available on the BSE website, I note that the total share capital of the Target Company during the period when the Noticees acquired the shares was Rs 30.27 crore (represented by 3,02,73,600 shares). I find that Noticee no. 1 was holding 21,23,159 shares (7.01% of the total share capital) of the Target Company as on the quarter ended March 2015. The details of the acquisition of shares of the Target Company from the open market by Noticee no. 1 along with the change in her shareholding during the relevant period is mentioned in the Table below :-

Table-1 : Details pertaining to acquisition of shares by Noticee no.1

Period of transaction	No. of shares acquired	No. of shares sold	% of shares acquired to the total shares of the target Company	Total no. of shares held post acquisition	Shareholding % in the target company post acquisition	Total change in shareholding in % terms
Quarter Ending March, 2015	-	-	-	21,23,159	7.01%	7.45% - 7.01% = 0.44%
April 2015 – June 2015	64,369	-	0.21%	21,87,528 (QE June 2015)	7.22%	
July 2015 – September 2015	20,176	-	0.07%	22,07,704 (QE September 2015	7.29%	
October, 2015 – December 1, 2015	29,578	-	0.09%	22,37,282	7.39%	
December 02, 2015	17,600	-	0.06%	22,54,882	7.45%	
Quarter Ending December 2015			-	22,54,905	7.45%	

From the above Table, I find that Noticee no. 1 acquired 1,31,723 shares of the target company from the open market during the period April 01, 2015 to December 02, 2015. I note that, as on December 02, 2015, when Noticee no. 1 acquired 17,600 shares of the target company, her total shareholding in the target company was 22,54,882 shares, which represented 7.45% of the total paid up capital of the target company. I find that the change in her shareholding in the target company from her shareholding position as on the quarter ended March 2015 was only 0.44 % and had not exceeded the threshold of 2% as alleged in the SCN. I find from the observations made in the above Table that pursuant to the acquisition of 17,600 shares of the target company by Noticee no. 1 as on December 02, 2015, the total shareholding of Noticee no. 1 did not exceed the prescribed threshold of 2 %, which required her to make the necessary disclosures to the target company and to BSE in terms of Regulations 29(2) r/w 29 (3) of the SAST Regulations. I observe that the examination report has erroneously computed the total shareholding of Noticee no. 1 in percentage terms as 9.04% of the total share capital of the target company instead of 7.45% as on December 2, 2015. Therefore, from the above observations/findings, I conclude that Noticee no. 1 was not under any obligation to make the disclosures in terms of the aforementioned provisions of the SAST Regulations in respect of her acquisition of shares of the target company during the relevant period. In view of the same, the allegation levelled against Noticee no. 1 in the SCN that she has violated the provisions of Regulations 29(2) r/w 29 (3) of the SAST Regulations is without any merit and not sustainable.

11. I find that Noticee no. 2 was holding 41,92,131 shares (13.85% of the total share capital) of the Target Company as on the quarter ended March 2017. The details of the acquisition of shares of the Target Company by Noticee no. 2 along with the change in his shareholding during the relevant period i.e April 1, 2017 to March 28, 2018 is mentioned in the Table below:

Table-2- Details pertaining to acquisition of shares by Noticee no.2

<table>
<tr><th>Period of transaction</th><th>No. of shares acquired</th><th>No. of shares sold</th><th>% of shares acquired to the total shares of the target Company</th><th>Total no. of shares held post acquisition</th><th>Shareholding % in the target company post acquisition</th><th>Total change in shareholding in % terms</th></tr>
<tr><td>Quarter Ending March, 2017</td><td>-</td><td>-</td><td>-</td><td>41,92,131</td><td>13.85%</td><td rowspan="7">16.44% - 13.85% = 2.59%</td></tr>
<tr><td>April 2017 – June 2017</td><td>404525</td><td>-</td><td>1.34%</td><td>45,96,656
(QE June 2017)</td><td>15.18%</td></tr>
<tr><td>July 2017 – September 2017</td><td>22434</td><td>-</td><td>0.07%</td><td>46,19,090
(QE September 2017)</td><td>15.26%</td></tr>
<tr><td>October, 2017 – December, 2017</td><td>11343</td><td>-</td><td>0.37%</td><td>4,73,252
(QE December 2017)</td><td>15.63%</td></tr>
<tr><td>January 2018 – March 21, 2018</td><td>2482</td><td>-</td><td>0.08%</td><td>4,75,734</td><td>15.71%</td></tr>
<tr><td>March 28, 2018</td><td>22040</td><td>-</td><td>0.73%</td><td>4,97,774</td><td>16.44%</td></tr>
<tr><td>Quarter Ending March 2018</td><td></td><td></td><td>-</td><td>4,97,774</td><td>16.44%</td></tr>
</table>

12. From the above Table, I find that Noticee no. 2 acquired 4,62,824 shares of the target company from the open market during the period April 01, 2017 to March 28, 2018. I

note that, as on March 28, 2018 when Noticee no. 2 acquired 22,040 shares of the target company from the market, his total shareholding in the target company was 4,97,774 shares, which represented 16.44% of the total paid up capital of the target company. I find that the change in the shareholding of Noticee no. 2 in the target company from his shareholding position as on the quarter ended March 2017 was 2.59 % and the same has exceeded the prescribed threshold of 2%. I find from the observations made in the above Table that pursuant to the acquisition of 22,040 shares of the target company by Noticee no. 2 as on March 28, 2018, the total shareholding of Noticee no. 2 exceeded the prescribed threshold of 2 %, which required him to make the necessary disclosures to the target company and to BSE in terms of Regulations 29(2) r/w 29 (3) of the SAST Regulations.

13. It is an admitted fact that Noticee no. 2 had not made the required disclosures under the provisions of Regulations 29 (2) r/w 29 (3) of the SAST Regulations in respect of his acquisition of shares of the target company during the relevant period. Further, BSE vide its email dated January 14, 2021 has also confirmed that the above mentioned disclosures were not made to the stock exchange by Noticee no. 2. In this context, Noticee no. 2 has contended that he made the relevant disclosure to the target company under the provisions of Regulation 7(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015. In this regard, I note that the purpose and scope of the disclosure obligations mandated under the provisions of Regulation 7(2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 is totally different from the disclosure obligations prescribed under Regulations 29 (2) and 29 (3) of the SAST Regulations. The disclosure obligation u/r 7 (2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 obligates every promoter of a listed company to disclose to the company the details of the transactions or series of transactions executed by him in the shares of the company which are in excess of ten lakh rupees within two trading days of such transaction and also obligates the concerned listed company to make the necessary disclosures to the stock exchange within two trading days of the receipt of the disclosure from the promoter of the company. Whereas, the disclosure obligations prescribed u/r 29 (2) r/w Reg. 29 (3) of SAST Regulations obligates any person (including the promoter) who holds shares entitling him to 5% or more of the shares or

voting rights of the target company to make the necessary disclosures to the company and to the stock exchange if there is a change in his shareholding and if such change exceeds 2% of the total shareholding or voting rights in a target company. Thus, it is evident that the purpose and obligation cast under the aforesaid two Regulations are totally different.

14. Further, Noticee no. 2 in his submissions has also quoted several judgments of the Hon'ble SAT, including the order passed by Hon'ble SAT in the matter of Vitro *Commodities Private Limited vs SEBI decided on September 04, 2013*. I have perused the various judgments of Hon'ble SAT quoted by Noticee no. 2 and observe that the facts and circumstances of these judgments are factually different from the facts pertaining to the instant proceeding against Noticee no. 2. The order passed by Hon'ble SAT in the matter of Vitro *Commodities Private Limited vs SEBI,* which has been quoted by Noticee no. 2 was pertaining to separate penalty imposed by the Adjudicating Officer under the provisions of Regulation 7 (1) of the Takeover Regulations, 1997 and also under Regulation 13 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992. In the said Order, Hon'ble SAT had held that Reg. 7(1) of the Takeover Regulations, 1997 and Regulation 13 (1) of the PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other and further held that there is no justification for imposition of penalty separately for the breach of the same set of Regulations by an entity. Therefore, the judgment of Vitro Commodities quoted by Noticee no. 2 cannot be applied in the instant proceeding against Noticee no. 2. I also note that the disclosure dated April 9, 2018 made by Noticee no. 2 to BSE under Reg. 29(2) r/w Reg. 29 (3) of the SAST Regulations will not come to his rescue as the said disclosure was made in respect of the transactions executed by him in the scrip of the target company after March 31, 2018.
15. From the above observations, it is amply clear that Noticee no. 2 has failed to make the necessary disclosure under regulation 29(2) of the SAST Regulations within the prescribed time stipulated in regulation 29(3) of the SAST Regulations. In view of the same, I hold that Noticee no. 2 has violated the provisions of Regulations 29 (2) r/w 29 (3) of the SAST Regulations.

16. The contentions of Noticee no. 2 that the violations are technical and procedural in

nature and without any wrongful / malafide intention and also that the relevant details of the shareholding of promoters are available in the public domain etc cannot be accepted. It is pertinent to mention that the disclosure requirements under the respective regulations serve very important purposes. The stock exchanges are informed so that the investing public will come to know of the transactions enabling them to take a suitable decision whether or not to exit from the company. Timely disclosures of the details of the shareholding of the persons, including the promoters acquiring/transferring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. In this context, I note that the Hon'ble SAT in the matter of - Milan Mahendra Securities Pvt Ltd vs SEBI (Appeal no. 66 of 2003) vide its Order dated April 15, 2005 also held 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*" . Further, in the matter of Mr. Ankur Chaturvedi vs SEBI (Appeal no. 434 of 2014 and Order dated August 04, 2015), Hon'ble SAT has held that "*As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty".*

17. Therefore, in the facts and circumstances of this case, I am of the view that such defaults attract the liability to pay penalty as prescribed under Section 15 A (b) of the SEBI Act, which provides as follows : -

SEBI Act

PENALTIES AND ADJUDICATION

15A. Penalty for failure to furnish information, return, etc*.- If any person, who is required under this Act or any rules or regulations made thereunder, -*

(a)…..

(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 he shall be liable to a penalty which shall be not 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.

ISSUE 3: If yes, what should be the quantum of monetary penalty?

18. For the purpose of adjudication of the penalty, it is relevant to mention that under section 15I of the SEBI Act, imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The guidelines in this regard are provided by the legislature in section 15J of the SEBI Act. As per the explanation appended to section 15J, vide Part VIII of Chapter VI of the Finance Act, 2017, which was brought after the Judgment of Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty, the adjudicating officer has discretion and such discretion should be exercised after having due regard to the factors specified in section 15J of the SEBI Act, which reads as under:-

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

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

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

c) the repetitive nature of the default.

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

19. Having regard to the factors listed in section 15J, it is noted from the material available on record, any quantifiable gain or unfair advantage accrued to Noticee no. 2 or the extent of loss suffered by the investors as a result of the default by Noticee no. 2 in this case cannot be computed. It is also an admitted fact by Noticee no. 2 that he had not made the required disclosures under Regulation 29 (2) r/w 29 (3) of SAST Regulations, to the stock exchange and to the company till date. It is pertinent to mention that timely disclosures to the company/stock exchange, are of significant importance from the point of view of investors and the regulators.

ORDER

20. Considering all the facts and circumstances of the case 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, I hereby impose monetary penalty of Rs. 1,00,000/- (Rupees One Lakh only) on Noticee no. 2 viz. Mr. Jitendra Kantilal Vakharia under section 15A(b) of the SEBI Act for his violation of the provisions of Regulation 29(2) r/w Regulation 29(3) of SAST Regulations. In my view, the said penalty is commensurate with the violation committed by him in this case. As already brought out at para 10 of this Order, the adjudication proceeding initiated against Noticee no. 1 viz. Ms. Varsha Jitendra Vakharia vide SCN dated June 15, 2021 is disposed of without any penalty.

21. Noticee no. 2 shall remit / pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI- *Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee no. 2 may contact the support at portalhelp@sebi.gov.in.

22. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-IV, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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

7. Payment is made for: (like penalties/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

23. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees viz. Ms. Varsha Jitendra Vakharia and Mr. Jitendra Kantilal Vakharia and also to the Securities and Exchange Board of India.

Date: September 29, 2021 **Suresh B Menon**

Place: Mumbai **ADJUDICATING OFFICER**