BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[Adjudication Order No:Order/GR/PU/2021-22/13501]

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

In respect of

Makkena Rama Krishna PAN: BCKPK1101P

Address: B 104 Usha Enclave Novodaya Colony

Srinagar Colony, Hyderabad – 500073

In the matter of Venus Power Ventures (India) Ltd.

BACKGROUND OF THE CASE

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") had conducted an investigation in the matter of trading activity of certain entities in the scrip of Venus Power Ventures (India) Ltd (hereinafter referred to as **'VPVIL/Company'**) from January 01, 2012 to December 31, 2012 (hereinafter referred to as '**Investigation Period'**) to ascertain whether there was any violation of the provisions of SEBI Act, 1992 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003**'), SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**') and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**').

2. Investigation inter-alia revealed Makkena Rama Krishna (hereinafter referred to as '**the Noticee**') was alleged to have failed to disclose his acquisition of more than 5% shares to the exchange, the Bombay Stock Exchange (hereinafter referred to as "**BSE**") and the target company. Accordingly, SEBI initiated Adjudication Proceedings against the Noticee for alleged violation of Regulations 29 (1) and (3) of the SEBI (SAST) Regulations, 2011 and Regulation 13 (1) and (5) of SEBI (PIT) Regulations, 1992.

APPOINTMENT OF THE ADJUDICATING OFFICER

3. SEBI appointed Shri D. Ravi Kumar, as Adjudicating Officer ('**AO**') vide communique dated April 02, 2014 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge the violations alleged to have been committed by the Noticee. Subsequently, Ms. Rachna Anand was appointed as the AO in the matter in the place of Shri D. Ravi Kumar. Pursuant to the transfer of Ms. Rachna Anand, Shri Suresh B. Menon was appointed as the AO in the matter. Thereafter, pursuant to the transfer of Shri Suresh B. Menon, the undersigned was appointed as the AO vide communique dated April 09, 2019 in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated March 11, 2015 (hereinafter referred to as 'SCN') was issued by the erstwhile AO, Ms. Rachna Anand, to the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act, 1992 to show-cause as to why an inquiry should not be initiated and penalty be not imposed under Section 15A(b) of the SEBI Act, 1992 on the Noticee for the alleged violation of the Regulations 29 (1) and (3) of the SEBI (SAST) Regulations, 2011 and Regulation 13 (1) and (5) of SEBI (PIT) Regulations, 1992.

5. The SCN inter-alia alleged that the Noticee had 9,65,674 (6.35%) shares in his stock brokers margin accounts which was accumulated during the investigation period and had failed to disclose about the change in his shareholding after becoming a holder of 5% share or voting rights in the Company to both the Stock Exchange (BSE) and the company. Further, the Company vide its letter dated October 4, 2013, had confirmed that it had not received any disclosures from the Noticee during the period January 2012 to January 2013 and BSE had also confirmed that it had not received any disclosures from the Noticee since March 20, 2011 in addition to the Noticee's name not appearing in the list of shareholders having more than 5% shares of the company as on quarter ending December 2011.

6. The said SCN was served to the Noticee vide RPAD at the above mentioned address, but it returned undelivered. Thereafter, the erstwhile AO, Shri Suresh B. Menon, had served a copy of the SCN along with hearing notice dated July 01, 2015 granting an opportunity of personal hearing on August 04, 2015, but it also returned undelivered. Subsequently, the erstwhile AO, Shri Suresh B. Menon had granted another opportunity of personal hearing scheduled on November 05, 2015 vide hearing notice dated October 23, 2015, which was duly delivered to the Noticee. However, the Noticee did not appear for the said personal hearing. Consequent to the appointment of undersigned as AO, another opportunity of personal hearing was granted to the Noticee on September 17, 2021, vide hearing notice dated September 07, 2021. The said notice was sent to the Noticee at his e-mail IDs mrk393@hotmail.com; mrk393@gmail.com and was duly delivered to him.

7. Considering the fact that the Noticee has neither filed any reply nor has availed the opportunity of personal hearing despite being granted several opportunities for the same, I am of the view that he has nothing to submit and presume that he has admitted the charges levelled against him. In this regard, it is pertinent to note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006)** has, inter alia, held that,

> *"......the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them".*

8. Further, the Hon'ble SAT in the matter of **Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014)**, has also, inter-alia, and held that:

> *"...appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices..."*

9. Further, the same position is reiterated by the Hon'ble SAT in the matter of **Dave Harihar Kirtibhai Vs SEBI (Appeal No. 181 of 214 dated December 19, 2014)**, wherein the Hon'ble SAT held as under:

> *"...further, it is being increasingly observed by the Tribunal that many persons/entities do not appear before SEBI (Respondent) to submit reply to SCN or, even worse, do not accept notices/letters of*

Respondent and when orders are passed ex-parte by Respondent, appear before Tribunal in appeal and claim non-receipt of notice and do not appear and/or submit reply to SCN but claim violation of principles of natural justice due to not being provided opportunity to reply to SCN or not provided personal hearing. This leads to unnecessary and avoidable loss of time and resources on part of all concerned and should be eschewed, to say the least. Hence, this case is being decided on basis of material before this Tribunal..."

10. In the absence of any response from the Noticee to the SCN, the matter can be proceeded ex-parte on the basis of the material available on record, in terms of Rule 4(7) of the Adjudication Rules. Further, in view of the aforesaid observations made by the Hon'ble SAT, I find no reason to take a different view and accordingly, therefore, I deem it appropriate to proceed against the Noticee ex-parte, based on the material available on record.

ISSUES FOR CONSIDERATION

11. I have carefully perused the documents available on record, and the issues that arise for consideration in the present case are:

a. Whether the Noticee has violated the provisions of Regulations 29 (1) and 29(3) of SAST Regulations, 2011 and Regulations 13(1) and 13(5) of PIT Regulations, 1992?
b. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act, 1992?
c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act, 1992?

12. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations 2011 and PIT Regulations, 1992 which reads as under:

SAST Regulations 2011

Regulation 29

(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified:

Provided that in case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to "five percent" shall be read as "ten percent"

(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.

PIT Regulations, 1992

Regulation 13.

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :-

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

FINDINGS

13. The first issue for consideration is whether the Noticee has violated Regulations 29 (1) and 29 (3) of SAST Regulations, 2011 and Regulations 13(1) and 13(5) of PIT Regulations, 1992.

13.1 As per Regulation 29 (1) of SAST Regulations, 2011, any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified. From the facts of the case, I note that the Noticee had 9,65,674 (6.35%) shares, in his stock brokers margin accounts which was accumulated during the investigation period i.e. January 01, 2012 to January 23, 2013, which is clearly more than five percent as specified in Regulation 29 (1) of SAST Regulations, 2011. Further, BSE had also confirmed that it had not received any disclosures from the Noticee since March 20, 2011 in addition to the Noticee's name not appearing in the list of shareholders having more than 5% shares of the company as on quarter ending December 2011.

13.2 This illustrates the fact that the Noticee held shares amounting to less than five percent prior to December 2011 and subsequently has acquired shares which has resulted in him holding more than five percent during the investigation period. Hence, it triggered disclosure requirement by the Noticee under Regulation 29(3) of SAST Regulations, 2011, which states that disclosures 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, every stock exchange where the shares of the target company are listed and to the target company at its registered office. Additionally, upon perusal of the letter dated October 4, 2013, received from the Company, wherein, it has confirmed that it had not received any disclosures during the period January 2012 to January 2013, it is observed that the Noticee has failed to disclose about the change in his shareholding after becoming a holder of more than 5% shares or voting rights in the Company to both the Stock Exchange (BSE) and the company.

13.3 As per Regulation 13 (1) of PIT Regulations, 1992, any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights, as the case may be. From the facts of the case, I note that the Noticee had 9,65,674 (6.35%) shares, in his stock brokers margin accounts which was accumulated during the investigation period i.e. January 01, 2012 to January 23, 2013, which is clearly more than five percent as specified in Regulation 13 (1) of PIT Regulations, 1992. Additionally, upon perusal of the letter dated October 4, 2013, received from the Company, wherein, it has confirmed that it had not received any disclosures during the period January 2012 to January 2013, it is observed that the Noticee has failed to disclose about the change in his shareholding after becoming a holder of more than 5% share or voting rights to the company.

13.4 In this regard I place reliance on Hon'ble SAT's judgment dated October 14,2014 in the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014), in which, Hon'ble **SAT** observed that *"………. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures." (Emphasis supplied).*

13.5 In view of the above, it is evident that the Noticee has failed to make disclosures to the company and the stock exchanges (BSE) and has violated Regulation 29 (1) and 29 (3) & of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992. Further, it may be noted that since Regulation 13 (5) of PIT Regulations, 1992 pertains to disclosure made under sub-regulation (3), (4) and (4A) of Regulation 13 of PIT Regulations, 1992, therefore, it is not applicable to the Noticee.

14. The second issue for consideration is whether the the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act, 1992.

14.1 I note that Hon'ble Supreme Court of India, in the matter of Chairman, *SEBI vs. Shriram Mutual Fund* {*[2006] 5 SCC 361*} held that *"In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

14.2 In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 15A (b) of SEBI Act for violation of Regulation 29 (1) and 29 (3) & of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992, which reads as under:

Penalty for failure to furnish information, return, etc. –

15A. If any person, who is required under this Act or any rules or Regulations made there under-

(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less".

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

Factors to be taken into account by the adjudicating officer.

Section 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 a result of the default;*

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

(c) *the repetitive nature of the default.*

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 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.*

16. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, and suffered by the investors as a result of the Noticee's failure. I also note that no prior default of the Noticee is available on record. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticee. Hence, I note that the Noticee failed to make disclosers for its change in shareholding to the company and the stock exchange (BSE), thereby violating Regulation 29 (1) and 29 (3) & of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992.

ORDER

17. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of **Rs 1,00,000/-** (Rupees One Lakh Only) on the Noticee, in terms of the provisions of Section 15A(b) of the SEBI Act, 1992. I am of the view that the said penalty is commensurate with the violation committed by the Noticee in this case.

18. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

19. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department -DRA-5), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 –A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount	

20. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: September 27, 2021 **G. RAMAR**

Place: Mumbai **Adjudicating Officer**