BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AK/VP/2023-24/25885)

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

High Growth Vincom Private Limited,
(PAN–AACCH1789A)

In the matter of Gautam Gems Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had received an email, dated 22.04.2021, from Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**) whereby it was informed that High Growth Vincom Private Limited **(**hereinafter referred to as **'Noticee'**), an acquirer which is in the category of a shareholder whose shareholding is 1% or more of the total number of shares of Gautam Gems Limited **(**hereinafter referred to as **'Target Company'),** had sold share of the target company during the period 24.02.2021 to 01.03.2021, for which disclosures were required to be filed under Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 **(hereinafter referred to as "SAST Regulations").**

2. Pursuant to receipt of the above reference, SEBI examined the case and it was, prima facie, found that the Noticee has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Upon being satisfied that there were sufficient grounds to inquire into and adjudicate upon the violations of provisions of SAST Regulations, SEBI initiated adjudication proceedings against the Noticee, in exercise of powers u/s 19 r/w section 15-I of the SEBI Act, 1992 **(hereinafter referred to as "SEBI Act")** r/w rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules"**) and appointed me as Adjudicating Officer (AO), vide order dated 13.03.2023, to inquire into and adjudge the alleged violation committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice ref. no.EAD-6/AK/VP/11155/1/2023 dated March 17, 2023 (hereafter referred to as "**SCN"**) was issued to the Noticee in terms of the provisions of rule 4(1) of the Adjudication Rules r/w Section 15-I of SEBI Act requiring the Noticee to show cause as to why an inquiry should not be held against it and why penalty, if any, should not be imposed on it under the provision of Section 15A(b) of the SEBI Act for the alleged violation of Regulation 29(2) read with Regulation 29(3) of SAST Regulations for the transaction dated 24.02.2021.

5. The Noticee submitted its reply, vide email dated 18.04.2023, whereby the Noticee, inter alia, admitted to the violation stated in the SCN. An opportunity of a personal hearing was granted to the Noticee on 18.04.2023, vide Hearing Notice dated 05.04.2023. Mr. Abhishek Venkatraman, Advocate and Mr. Robin M Shah, Advocate, authorized representatives of the Noticee, appeared on the scheduled date for hearing and reiterated the submissions, made vide letter dated 18.04.2023.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have taken into consideration the submissions of the Noticee, facts and material available on record. The issues that arise for consideration in the present case are as follows:

6.1. Whether the Noticee violated Regulation 29(2) read with Regulation 29(3) of SAST for the transaction dated 24.02.2021?

6.2. Do the violations, if any, attract monetary penalty u/s 15A(b) of SEBI Act?

6.3. If so, what should be the monetary penalty that should be imposed upon the Noticee after taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

7. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated by the Noticee. The said provisions are reproduced hereunder:

Regulation 29 of SAST Regulations

Disclosure of acquisition and disposal.

29.(1) Any acquirer, together with persons acting in concert with him acquiring shares or voting rights in a target company, which taken together aggregates 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"]

(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.

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" and any reference to "two percent" shall be read as "five per cent".]

(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.

8. I now proceed to deal with the issues as under;

Issue I: Whether the Noticee violated Regulation 29(2) read with Regulation 29(3) of SAST for the transaction dated 24.02.2021?

9. I note from the SCN that the examination team observed from the shareholding pattern of the company that the Noticee was holding 6,60,000 shares of the target company comprising 6.56% of the shareholding in the target company. It was further observed that the Noticee had sold 2,05,000 shares of the target company on 24.02.2021 by which Noticee's shareholding reduced from 6,60,000 shares to 4,55,000 shares (6.56% to 4.52% i.e. change in 2.04%). Hence, in terms of 29 (2) read with Regulation 29(3) of SAST Regulations the Noticee was required to make the disclosure of the transaction dated 24.02.2021 within two working days that is within 26.02.2021. It was observed that the Noticee did not make the required disclosure to the stock exchange and to the target company.

10. I note that the examination team during the examination sought information in respect of the transaction dated 24.02.2021 from the Noticee, vide letter dated November 10, 2021 and December 03, 2021. However, both the letters returned undelivered. Further, for examination emails dated September 29, 2021, November 01, 2021, November 03, 2021, November 30, 2021, January 31, 2022, February 11, 2022 and August 17, 2022 were also sent to the Noticee. I further note from the records that an email was received from the Noticee on September 9, 2022 forwarding the disclosure which was addressed to SEBI. Thereafter, the examination team, vide email dated October 21, 2022 asked the

Noticee to make the disclosure to the stock exchanges and the target company, however, no reply was received from the Noticee. Based on the above it was alleged that the Noticee has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations**.**

11. I note from the provision of Regulation 29 (2) of SAST Regulations which states that, any person together with persons acting in concert with him, holds shares or voting rights entitling him/ 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) of Regulations 29 or under sub-regulation (2) of Regulation 29 of SAST Regulations and such change exceeds two percent of total shareholding or voting rights in the target company. Then that person is required to make disclosures 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.

12. I note, from the submissions of the counsel of the Noticee, that the records of the Noticee show that the disclosures dated February 26, 2021 were "presumably" sent by the Noticee to the BSE and GGL by post i.e. within two working days of sale of shares of target company, however, due to passage of time, the Noticee was unable to trace the acknowledgement of delivery or details of the registered post tracking number from Indian Post website. I note that the Noticee has not provided any cogent evidence to prove that it made the required disclosures to BSE and to the target company. It is pertinent to refer the judgement of Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of Arun Kumar Bajoria v/s SEBI – Order dated March 27, 2001. The Hon'ble Court while examining the issue of compliance with regard to regulation 7 (the provision deals

with disclosure by an acquirer to the target company) of SAST Regulations, made the following observations:-

"…… *Therefore, it is obligatory on the part of the person so acquiring to inform the company. In what mode or manner such information should be given has not been prescribed. It has not also been mentioned that the subject information or disclosure must be given in writing. Such disclosure, therefore, may be made orally or through telephone or in writing transmitted in some known manner. The information or disclosure must, however, reach the company. In law, anyone sending written information through the agency of someone else appoints such agency as his agent. If a letter is posted, unless the law specifies, the Postal Authority acts as an agent of the sender. As appears to me, by law, in respect of two instances the post office is considered as the agent of the receiver of the letter. The first is in relation to acceptance of an offer and the second is in respect of a letter sent by registered post. In all other circumstances, the post office acts as a mere agent of the sender of the letter. The Certificate of Posting may be an evidence of engaging the Postal Authority as an agent of the sender to deliver the subject letter, but not the proof of receipt of the letter by the addressee. In the event, it is contended by the addressee that the letter has not been received by him, it must be established and if necessary through the agent that the letter has been received by the addressee. Merely because the letter was sent by post, it cannot be contended that the sender has discharged his obligations under Regulation 7 of the said Regulations as the said regulation cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned and argument contrary thereto is not acceptable. It is not permissible for the sender to contend that he has no control over the mode of transmission inasmuch as he has free choice of selecting the mode of transmission and for that purpose to engage a suitable agent."*

13. I note from the reply of the Noticee that it has submitted that owing to the second wave of the pandemic, officials of the Noticee were working remotely at the time and the relevant records appear to have been misplaced. I note that the Noticee has also relied on an Adjudication Order and submitted that the learned Adjudicating Officer of SEBI in the matter of Ashari Agencies Ltd. (ref:

Adjudication Order: Order/MC/VS/2022-23/16080) in respect of *Sabah Taiyab Noorani*, held as under:

"29. I note that there is no material on record to indicate any specific disproportionate gains or unfair advantage which accrued to the Noticee, or loss suffered by the investors on account of delayed disclosure to the Company and the BSE regarding the sale of shares by the Noticee. Further, I note that the decreased shareholding of the Noticee was effectively reflected in the shareholding pattern for quarter ended September 2020. I also take into account the Noticee's submission that the pandemic had affected the Noticee's ability to file disclosures on time.

30. Therefore, taking into account the facts and circumstances in the matter and mitigating factors, I am of the view that a penalty of Rs. 1,00,000/- will be commensurate with the violations committed by the Noticee."

14. In view of the above, I find that the Noticee has failed to provide any evidence to prove that it made requisite disclosures of shares held and change in shareholding as stipulated in Regulation 29 (2) read with (3) of the SAST Regulations. Accordingly, I find that the allegation regarding violation of Regulation 29 (2) read with regulation 29 (3) of the SAST Regulations stands established in respect of the Noticee.

15. **Issue No. II & III. Do the violations, if any, attract monetary penalty u/s 15A(b) of SEBI Act? If so, what should be the monetary penalty that should be imposed upon the Noticee after taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?**

16. As it is established that the Noticee has violated Regulation 29 (2) read with 29 (3) of the SAST Regulations, the Noticee is liable for imposition of monetary penalty in terms of Section 15A (b) of the SEBI Act.

17. The text of the relevant provision is reproduced as follows:-

SEBI Act.

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 or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

c)...

18. While determining the quantum of penalty under Section 15A (b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:-

SEBI Act

"15J. Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 23-I, the adjudicating officer shall have due regard to the following factors, namely:-

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

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

(c) the repetitive nature of the default."

19. I note that there is no material on record to indicate any specific disproportionate gains or unfair advantage which accrued to the Noticee, or loss suffered by the investors on account of delayed disclosure to the Company and BSE regarding

the sale of shares by the Noticee. I also take into account the Noticee's submission that the pandemic had affected the Noticee's ability to file disclosures on time.

ORDER

20. After taking into consideration the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act 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 under Section 15A (b) of the SEBI Act, for violation of Regulation 29 (2) read with 29 (3) of the SAST Regulations.

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

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

22. The Noticee shall forward the confirmation of penalty so paid to "The Division Chief (Enforcement Department-1 DRA-IV), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee shall also provide the following details while forwarding payment information:

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 etc.)	Penalty

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

Place: Mumbai	**AMIT KAPOOR**
Date: April 25, 2023	**ADJUDICATING OFFICER**