BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[Adjudication Order No: Order/GR/PU/2022-23/18085-18089]

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

S.No.	Name of Noticee	PAN
1	Ritu Singal	ABHPS3711N
2	Brij Bhushan Singal	AEFPS6298M
3	Neeraj Singal	ANRPS7986B
4	Brij Bhushan Singal HUF	AAAHB6923R
5	Neeraj Singal HUF	AAEHN4557P

In the matter of Mishka Finance and Trading Pvt. Ltd.

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as "Noticees", unless the context specifies otherwise).

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 Mishka Finance and Trading Pvt. Ltd. (hereinafter referred to as **'MFTPL/Company'**) from February 14, 2013 to December 31, 2014 (hereinafter referred to as '**Investigation Period'**) to ascertain whether there were any violation of the provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**") and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations'**).

2. The investigation inter-alia revealed that the Noticees had allegedly failed to make disclosures to the Company and BSE when their collective shareholding crossed 5% pursuant to the preferential allotment of 1,97,000 shares of the company on September 24, 2012. Accordingly, SEBI initiated Adjudication Proceedings against the Noticees

for alleged violation of Regulation 13(1) of PIT Regulation and Regulation 29(1) read with 29(3) of SAST Regulation.

APPOINTMENT OF THE ADJUDICATING OFFICER

3. SEBI appointed Ms. Rachna Anand, as Adjudicating Officer (‘**AO**’) vide communique dated February 22, 2018 under Section 19 read with 15-I of the SEBI Act, 1992 and 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, Shri Suresh B. Menon, CGM was appointed as the AO in the matter in the place of Ms. Rachna Anand. 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 29, 2019 (hereinafter referred to as ‘SCN’) was issued by the erstwhile AO Mr. Suresh B. Menon, to the Noticees 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 Noticees for the alleged violation of the Regulation 13(1) of PIT Regulation and Regulation 29(1) read with 29(3) of SAST Regulation.

5. The details of the SCNs served on the Noticees and the replies, filed are as under;

S.No.	Name of Noticee	SCN	SCN delivery status Yes/No	Reply
1	Ritu Singal	29.03.2019	Yes	26.04.2019, 02.05.2022
2	Brij Bhushan Singal	29.03.2019	Yes	26.04.2019, 02.05.2022
3	Brij Bhushan Singal HUF	29.03.2019	Yes	26.04.2019, 02.05.2022
4	Neeraj Singal	29.03.2019	Yes	26.04.2019, 02.05.2022
5	Neeraj Singal HUF	29.03.2019	Yes	26.04.2019, 02.05.2022

6. From the above table it is observed that the SCNs were duly served upon all the Noticees, by way of SPAD. Further, common replies dated 26.04.2019 and 02.05.2022, have been filed by the Noticees.

7. Pursuant to the service of the SCN, the Noticees were provided opportunities of personal hearing in the matter vide hearing notices dated 27.04.2022, which were duly served through SPAD. The details of dates of hearing and their attendance are specified in the table below;

S. No.	Name of Noticee	Hearing date	Hearing Notice delivery status Yes/No	Attended Y/N
1	Ritu Singal	09.05.2022	Yes	Yes
2	Brij Bhushan Singal	09.05.2022	Yes	Yes
3	Brij Bhushan Singal HUF	09.05.2022	Yes	Yes
4	Neeraj Singal	09.05.2022	Yes	Yes
5	Neeraj Singal HUF	09.05.2022	Yes	Yes

8. From the above table it is observed that all the Noticees have attended the personal hearing scheduled on May 09, 2022.

9. The summaries of the said common responses/replies dated 26.04.2019 & 02.05.2022 submitted by Noticees in the matter are as under:
   - The Noticees contended that Regulation 13 (1) of PIT Regulations stipulates that if any person holds more than 5% of shares or voting rights then he/she has to disclose to the company. However, in the instant case none of the Noticees held more than 5% of the share or voting rights, hence none of the Noticee were liable to make any disclosures. Hence there is no violation of Regulation 13 (1) of PIT Regulations.
   - The Noticee while admitting that the discloures under Regulation 29(1) of SAST Regulations was done belatedly by them also submitted that since the required information was already available in the public domain, they did not have intention to conceal or hide their shareholding in MFTL from anyone. Further, they have stated that no gain or advantage has accrued to them nor was any loss caused to the investors. Therefore, the Noticees have not contravened the provisions of SAST Regulations.
   - The Noticee have contended that there has been an inordinate delay of 7 years in issuing the SCN.

CONSIDERATION OF ISSUES

10. Considering the above facts, in the present proceedings, the examination has been done with respect to the allegations against the Noticees taking into consideration of their replies to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are:

    a. ***Whether the Noticees have violated the provisions of PIT Regulations and SAST Regulations as alleged in the SCN, as applicable?***

    b. ***Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act for the Noticees, as applicable?***

    c. ***If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?***

11. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the PIT Regulations and SAST Regulations alleged to have been violated by the Noticees. The same are reproduced below:

- ***PIT 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.

- ***SAST 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.*

(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 a: Whether the Noticees have violated the applicable provisions of PIT regulations and SAST Regulations as alleged in the SCN, as applicable?

12. It is observed that the Company had a total paid up capital of 49,80,000 represented by 4,98,000 shares at the start of investigation period. Thereafter, the company, on September 24, 2012, issued 7,93,700 shares of face value 10/- each on preferential basis to 46 entities at Rs. 85 per share with face value of Rs. 10 per share at premium of Rs. 75 per share. It was observed that the Noticees were 5 of the allottees in the abovementioned preferential allotment. It is observed that Noticees were allotted the following number of shares in the preferential allotment dated September 24, 2012:

Name of the Allottee	**Number of shares allotted**	**Percentage of total shares**
Ritu Singal	49,000	3.79%
Brij Bhushan Singal	49,000	3.79%
Neeraj Singal	49,000	3.79%
Brij Bhushan Singal HUF	25,000	1.94%
Neeraj Singal HUF	25,000	1.94%

13. Since Noticees 1 to 3 are immediate relatives to one another and Noticee 2 and Noticee 3 respectively are the Karta of Noticee 4 & Noticee 5, they fall within the ambit of 'persons *acting in concert*' in terms of Regulation 2(q)(2)(v) of SAST Regulations and after preferential allotment of 1,97,000 shares i.e. 15.24% of total share capital of the Company, their collective shareholding exceeded 5% on September 24, 2012. This required the Noticees to make necessary disclosures to the Company in terms of Regulation 13(1) of PIT Regulation and to the Company and BSE under Regulation 29(1) read with 29(3) of SAST Regulation within 2 working days from September 24, 2012. The investigation also revealed that, as observed from the replies received from BSE and the Company, the Noticee did not make any disclosure to either of them.

Therefore, the Noticees had allegedly violated the provisions of Regulation 13(1) of PIT Regulations and Regulation 29(1) read with 29(3) of SAST Regulations.

14. With regard to the contention of the Noticee's that there is an inordinate delay of 7 years in issuing the SCN, it is to be noted that there is no provision under SEBI Act which prescribes a time limit for taking cognizance of a breach of the provision of SEBI Act and Rules and Regulations made there under. Further, as per Section 11C of SEBI Act, SEBI can initiate investigation at any point of time, for any period of alleged violation or any period of alleged transactions. I also note that the investigations relating to the PFUTP Regulations, 2003 are complex (considering the volume of transactions, connections and examination of trading of shares, etc.,) and time consuming process, which may require detailed analysis of the case facts. In this regard, I note that the Hon'ble SAT in the matter of **Pooja Vinay Jain vs SEBI** (Appeal No. 152 of 2019 decided on March 17, 2020) held that, "*The record would show that all the documents concerning the defence of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same*".

15. I also note that the Hon'ble SAT in the matter of **Bipin R Vora vs SEBI** (decided on March 22, 2006) held that, "*As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market*".

16. In view of the above, and considering the facts and circumstances, I note that there was no delay in the issuance of SCN in the matter as argued by the Noticees, so the said contention in this regard is without merits.

17. As regard the contention of the Noticees that Regulation 13 (1) of PIT Regulations stipulates that if any person holds more than 5% of shares or voting rights then he/she has to disclose to the company and in the instant case none of the Noticees held more than 5% of the share or voting rights, hence none of the Noticee were liable to make any disclosures. I note that Regulation 13 of PIT Regulations, deals with Disclosure of interest or holding in listed companies by certain persons – initial disclosure while sub regulation 1 of the said regulation specifically talks about 'any person' who holds more than 5% of shares or voting rights, which in this case none of the Noticee were individually in possession of. Further, I also note that the said sub regulation also does not specify collective shareholding of a group of persons i.e. 'persons acting in concert'. Thus, I accept the contention of the Noticees in this regard and note that since the individual shareholding of any of them did not exceed 5%, they were not required to make disclosures under PIT Regulations. Therefore, I find that the charges of violating Regulation 13(1) of PIT Regulations, levelled against the Noticees may be dropped.

18. The Noticees have contended that the discloures under Regulation 29(1) of SAST Regulations was done belatedly by them and since the required information was already available in the public domain, they stated that they did not have intention to conceal or hide their shareholding in MFTL from anyone. Further, they have stated that no gain or advantage has accrued to them nor was any loss caused to the investors, due to which they have not contravened the provisions of SAST Regulations. With regard to the same, upon perusal of the documents and BSE website, I note that the Noticees have made disclosure to BSE on January 16, 2015 while the allotment of shares had happened on September 24, 2012 i.e. with a delay of more than two years and further, they have not made any disclosure to the company, as required in Regulation 29 (1) of the SAST Regulations. With regard to the contention of the Noticees that no gain has been accrued to them or loss has been caused to investors, I note that when protection of the interests of the investors is the prime objective making gain or loss is immaterial, also the charge against the Noticee in this case is of non-discloure to the company and delayed disclosure to BSE. I also note that the objective behind the requirement of disclosure is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market.

19. In view of the above, I find that the Noticees have violated Regulation 29(1) read with 29 (3) of SAST Regulations.

Issue b: Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15 A(b) of the SEBI Act?

20. 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".*

21. I also note that in Appeal No. 66 of 2003 – **Milan Mahendra Securities Pvt. Ltd. Vs. SEBI** – the Hon'ble Securities Appellate Tribunal (SAT) has observed 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".*

22. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation.

23. In view of the foregoing, I am convinced that the Noticees are thus liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulation 29(1) read with 29(3) of SAST Regulations. The provisions of Section 15A(b) of the SEBI Act, 1992 read 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 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, 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]];

Issue c: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

24. While determining the quantum of penalty under Section 15 A(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.

25. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the Noticees's failure. 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 Noticees. Hence, I note that the Noticees failed to make disclosures about the change in shareholding to the stock exchange and thereby has violated Regulation 29(1) read with 29(3) of SAST Regulations.

ORDER

26. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the 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 SEBI Adjudication Rules, I hereby impose the following penalties on the Noticees, for the violations as specified in this order:

<table>
<tr><th>S.No.</th><th>Noticee</th><th>Penal Provisions</th><th>Penalty (Rs.)</th></tr>
<tr><td>1.</td><td>Ritu Singal</td><td rowspan="5">Section 15 A (b) of the SEBI Act, 1992</td><td rowspan="5">₹ 1,00,000/- (Rupees One Lakh Only) to be paid jointly and severally.</td></tr>
<tr><td>2.</td><td>Brij Bhushan Singal</td></tr>
<tr><td>3.</td><td>Neeraj Singal</td></tr>
<tr><td>4.</td><td>Brij Bhushan Singal HUF</td></tr>
<tr><td>5.</td><td>Neeraj Singal HUF</td></tr>
</table>

27. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor 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

28. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA II), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

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 etc.)	

29. 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.

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

Date: July 28, 2022 **G. Ramar**

Place: Mumbai **Adjudicating Officer**