BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/AS/VC/2022-23/21846-21849)

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

In respect of

Noticee No.	Name and PAN of the Noticee
1	Sanjay Singal (PAN- ANRPS7985C)
2	Aarti Singal (PAN- AEFP6299L)
3	Aniket Singal (PAN- CZCPS6126E)
4	Sanjay Singal HUF (PAN- AAMHS8301N)

In the matter of Grandma Trading & Agencies Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an investigation into the scrip of Grandma Trading & Agencies Limited (hereinafter referred to as **'GTAL' / 'Company'**) for the period of June 1, 2011 to June 30, 2012, to examine whether there was any violation of disclosure requirements under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'SEBI (SAST) Regulations, 2011**') and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as **'SEBI (PIT) Regulations, 1992'**).

2. Pursuant to the said investigation, it was observed that Sanjay Singal (Noticee1), Aarti Singal (Noticee 2), Aniket Singal (Noticee 3) and Sanjay Singal HUF (Noticee 4) (collectively referred to as **"Singal Family" /**

“Noticees” / “You”) failed to make disclosures under Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011 with regard to their shareholding as “Persons acting in Concert” during the Investigation Period.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated Adjudication proceedings against the Noticees under section 15A (b) of SEBI Act, 1992 for alleged violation of provision of Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011. SEBI appointed Shri Prasanta Mahapatra as the adjudicating Officer *vide* order dated March 07, 2022, under Section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **‘SEBI Act, 1992’**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **‘Adjudication Rules’**) read with section 19 of the SEBI Act, 1992, to inquire into and adjudge under Section 15A (b) of SEBI Act, 1992 for the alleged violations by all the Noticees of Regulation 29 (1) read with 29 (3) of (SAST) Regulations, 2011. Pursuant to the transfer of erstwhile Adjudicating officer Shri Prasanta Mahapatra, the instant matter *vide* order dated June 06, 2022, was transferred to the undersigned.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A common Show Cause Notice dated July 25, 2022 (hereinafter referred to as **‘SCN’**) were served on the Noticees, in terms of the provisions of rule 4 of the Adjudication Rules read with section 15-I of SEBI Act, 1992, requiring the Noticees to show cause as to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and why penalty should not be imposed on them under rule 5 of the Adjudication rules and section 15 A (b) of SEBI Act, 1992, for the aforesaid alleged violations. I note that SCN’s issued to the Noticees were duly served to the Noticees by Speed Post Acknowledgement Due and by e-mails.

5. Since no reply was received for the SCN, pursuant to the transfer of the matter to the undersigned, in the interest of natural justice, an opportunity of hearing on September 28, 2022 was granted to the Noticees through video conference on cisco Webex, vide Hearing Notices dated September 05, 2022. The Authorised Representative (hereinafter referred to as **'ARs'**) of the Noticees v*ide* email dated September 26, 2022, requested for additional two weeks' time to reply to the SCN and also requested to reschedule the hearing. The request was acceded to and the hearing was rescheduled to October 14, 2022. The Noticees furnished their reply to the SCN *vide* letter dated October 13, 2022. On October 14, 2022, the AR again requested to postpone the hearing. Thereafter, the hearing was rescheduled to October 20, 2022 on which date the ARs appeared before the undersigned and reiterated the submissions made by Noticees *vide* letter dated October 13, 2022.

6. The allegations levelled against the Noticees in the SCN are summarised as under:

"Preferential Allotment by GTAL:

6.1 *It was observed that during the investigation period, GTAL made preferential allotments to 42 allottees. Details of allotment of preferential issue to the 4 Noticees are as follows:*

Table No. 1: Preferential Allotment to the Noticees

Sr. No.	Name of Entity	PAN	Date of Allotment	Qty of Equity of FV 10 each allotted
1	Aniket Singal	CZCPS6126E	16-Jan-12	750000
2	Singal Aarti	AEFPS6299L	16-Jan-12	750000
3	Singal Sanjay	ANRPS7985C	16-Jan-12	750000
4	Sanjay Singal HUF	AAMHS8301N	16-Jan-12	550000
Total				**2800000**

Non-Disclosure of shareholding by Sanjay Singal, Aarti Singal, Aniket Singal, and Sanjay Singal HUF:

6.2 *It was observed from the investigation report that prior to the preferential allotment, all the Noticees (Sanjay Singal, Aarti Singal, Aniket Singal and Sanjay Singal HUF) had 'Nil" shareholding. Post preferential allotment, their shareholding increased to 750000 (5.74%), 750000 (5.74%), 750000 (5.74%), and 550000 (4.21%) respectively, which collectively constituted 21.43% of total shareholding. Since all the Noticees are immediate relatives of each other, therefore, they are deemed to be acting as "Persons acting in Concert" as per the regulation 2(1)(q) of SEBI (SAST) Regulations, 2011 for the aforesaid acquisition of shares in the preferential issue on January 16, 2012. As persons acting in concert, Singal family's shareholding of more than 5% required disclosure under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011 to the company and to BSE.*

6.3 *In this regard, BSE vide email dated February 8, 2022, informed that no disclosures have been received from the Noticees as* "Persons acting in Concert" *under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.*

6.4 *Further, clarifications were sought from Sanjay Singal (Noticee 1) vide email dated February 10, 2022 and February 18, 2022, however, no reply has received till date.*

6.5 *Therefore, in view of the above, it is alleged that all the noticees have not disclosed their acquisition of more than 5% of shareholding of the company in the preferential issue on January 16, 2012 to the company and to BSE."*

7. The Noticees *vide* separate letters dated October 13, 2022 furnished the reply to the SCN which are similar except for certain additional submissions made by Noticee 2 and 3. The replies are summarised as under:

7.1 *“The Company has made preferential allotment of equity shares in the year 2012 to the undersigned after taking all the necessary approvals under applicable laws including Companies Act and SEBI regulations. After allotment of shares, the Company has filed Return of Allotment with the Registrar of Companies ("ROC") and also got the shares listed on the Bombay Stock Exchange ("BSE") in a transparent manner. Therefore, the shareholding of the undersigned was appearing in the records of ROC and BSE since the date of allotment.*

7.2 *Further, the undersigned has made his investment into the Company as per the advice received from an Investment Advisor at that point in time. The Investment Advisor was solely responsible to ensure compliance/ documentation in respect of investments of undersigned. The undersigned is unable to trace said Investment Advisor as he does not know his present whereabouts. The undersigned believes that Investment Advisor being expert in this field, must have complied with all the laws including the provisions under SEBI Act as well as the rules and regulations prescribed thereunder.*

7.3 *It is further relevant to state that to the best knowledge of undersigned, disclosures were made in compliance of both SEBI (PIT) Regulations as well as SAST Regulations to the Company and Stock Exchange under SAST Regulations on acquiring share capital of Company together with shares held by him and his relatives aggregating to more than 5% of total paid capital of the Company. It is pertinent to note that said preferential allotment in question pertains to the year 2012, therefore due to lapse of approximately 10 years, the undersigned is unable to find the records and the relevant documents pertaining to the said transaction. It is unfortunate that in spite of our best efforts, the documents are not traceable on present date.*

7.4 *It is submitted that even otherwise, the shareholding of the undersigned was duly available in the records maintained by ROC and BSE and his shareholding was in public record and accessible to everyone. Therefore, as such no loss has been caused to any investor or any other stakeholder due to alleged allegations of non-disclosure against the undersigned.*

7.5 *The undersigned has purchased Equity Shares in the Company in a bona fide manner and only on the basis of investment advice of the said Investment Advisor. It is pertinent to note that undersigned has not attained any disproportionate gain or unfair advantage from the alleged non-disclosures under SAST regulations. Even otherwise, the alleged non-disclosure is technical in nature and neither caused disproportionate gain or unfair advantage to the undersigned nor caused loss to the investors due to alleged non-disclosure.*

7.6 *In view of the above, the undersigned humbly submits that he is making best efforts at his end to find the records and would certainly forward the same, if found. The undersigned also assures his complete co-operation in the present investigation.*

7.7 *Without prejudice to the above, the present notice has been issued to undersigned for a preferential allotment pertaining to the year 2012. The Notice for the same has been issued on 25.07.2022 i.e., after an inordinate delay of about 10 years without explaining any reasons of delay. The undersigned submits that delay in sending such notice has caused inconvenience to the undersigned as it is very difficult for the undersigned (being individual) to trace documents filed in the year 2012. It will be grave injustice to the undersigned if he would be punished for such delayed notice as it is settled law that delayed proceedings defeat the very purpose of the proceedings. In this reliance is placed on judgment titled as "Mr. Rakesh Kathotia v. Securities and Exchange Board of India" (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) whereby the proceedings were* *quashed by Hon'ble SAT on account of inordinate delay. The said decision is squarely applicable to the instant case, the relevant paragraph of the order is extracted hereunder:*

"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India v. Citedal Fine pharmaceuticals, Madras, [(1989) 3 SCC 483: AIR (1989) SC 1771} held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) 12 SCC 670, State of Punjab v. Bhatinda District Coop. Milk P. Union Ltd (2007) 11 SCC 363 and Joint Collector Ranga Reddy Dist. v. D. Narsing Rao (2015) 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI v. Bhavesh Pabari 2019 SCC OnLine SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would de pend upon the (acts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

7.8 Similarly, in the case titled as "Ashok Shivlal Rupani and Anr. Vs Securities and Exchange Board of India" [2019 SCC OnLine SAT 169] the Hon'ble SAT quashed the Show Cause Notice and Adjudication Order as the same were issued after inordinate delay in initiation of the proceedings. The relevant extract of the Order is reproduced below:

"8. In the light of the aforesaid, we are of the opinion that there has been an inordinate delay in the issuance of the show cause notice and (or completion of the adjudication proceedings. Since the power to adjudicate has not been exercised within a reasonable period no penalty could have been imposed for the alleged violations.

7.9 As a result, without going into the merits of the case, we are of the opinion that on account of inordinate delay the initiation of proceedings by issuance of the show cause notice which culminated into a penalty order cannot be sustained. The show cause notice and the impugned orders passed by the AO are quashed. Both the appeals are allowed."

8. In addition to above submissions, Aarti Singal (Noticee 2) and Aniket Singal (Noticee 3) submitted the following:

*"It is relevant to state that the undersigned made disclosures in compliance of both PIT Regulations as well as SAST Regulations, however BSE in its email dated 08.02.2022 only acknowledged/ confirmed the disclosures made under PIT Regulations. As, the disclosure under Regulation 13 (1) of PIT Regulation, 1992 and Regulation 29 (1) of SAST Regulations, 2011, are substantially the same and since he has already complied with disclosures requirement under Regulation 13 (1) of PIT Regulation, 1992, it should be treated as sufficient disclosures under Regulation 29 (1) of SAST Regulations, 2011. The formats for disclosures under both the Regulations have been examined and it is found that the information to be disclosed under both the Regulations are substantially the same and the transaction is also one. Accordingly, since disclosure under Regulation 13 (1) of PIT Regulations, 1992, were made, the same amounts to substantial compliance since the disclosure which has the similar information has already been made and therefore, the alleged non-disclosure under Regulation 29 (1) of SAST Regulations, needs to be viewed leniently. This view has also been taken by Adjudication Officer in the case titled as **"Bakulesh***

Trambaklal Shah vs Securities and Exchange Board of India" *[Adjudication Order NO. EAD-5/SVKM/AO/11/2017-18] vide Order dated 12.05.2017. The relevant extract of the Order is reproduced hereinbelow:*

"20. In view of the above, I note that the noticee have filed timely disclosures to both the Company and the stock exchanges under Regulation 29 (1) read with 29 (3) of SAST Regulations, 2011. But he failed to file disclosure to Company in terms of Regulation 13 (1) of PIT Regulations, 1992, with regard to the acquisition of 10,37,092 shares on 12.04.2013. The Company in turn has to inform the aforesaid disclosure under Regulation 13 (6) of PIT Regulations, 1992 to the stock exchange. Both the disclosures under Regulation 29 (1) of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992 are quite similar in nature. It is also pertinent to note that the intention of both the Regulations is dissemination of information. On filing of said disclosures under Regulation 29 (1) of SAST Regulations, 2011, by the noticee which was similar to the erstwhile Regulation 7 (1) of SEBI (SAST) Regulations, 1997, the essential information about the said acquisition of shares had already been disseminated to the general public. Under the above circumstances, the noticee having complied with Regulation 29 (1) of SAST Regulations, 2011, the non-compliance of Regulation 13 (1) of SEBI PIT Regulations, 1992, may not be viewed seriously and be visited with any penalty following the decision of Hon'ble SAT in the matter of Vitro Commodities Private Limited.

21. After taking into consideration the facts and circumstances of the case, the submissions made by the noticee and the mitigating factors, I, in exercise of the powers conferred under Section 15 I (2) of SEBI Act, 1992, read with Rule 5 of the SEBI Adjudication Rules, 1995 am of the considered view that it is not a fit case to impose a penalty on Shri Bakulesh Trambaklal Shah under Section 15A (b) of the SEBI Act, 1992, for the reasons more specifically set out in the preceding paragraphs. Accordingly, the matter is disposed of without any penalty."

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the charges levelled against the Noticees in the SCN and material available on record. I have also perused the submissions made by the Noticees in this regard. The issues that arise for consideration in the present case are as follows:

   I. Whether the Noticees have violated the provisions of the Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011?

   II. Does the violations, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?

   III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15-J of SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

10. Before proceeding forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated. The said provisions are reproduced hereunder:

    SEBI (SAST) Regulations, 2011:

    Definitions.

    2(1)(q) "persons acting in concert" means, -

    (1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

    (2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established, —

    …………

    (v) immediate relatives;

    …………

    2(1)(l) "immediate relative" means any spouse of a person, and includes parent, brother, sister or child of such person or of the spouse;

Disclosure of acquisition and disposal.

"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 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."

Issue I. Whether the Noticees have violated the provisions of the Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011?

11. Before proceeding with the matter on merits, I would first deal with the contention of delay in issuance of SCN as raised by the Noticees. In support of their contention the Noticees have relied upon the judgement of Hon'ble Securities Appellate Tribunal (hereinafter referred to as **'SAT'**) in the matter of Rakesh Kathodia vs SEBI and Ashok Shivlal Rupani vs. SEBI where the adjudication proceedings were squashed by the Hon'ble SAT. In this regard, I observe from the records that investigation in the said matter was initiated in October, 2015 and pertained to the period from June 1, 2011 to June 30, 2012. The investigation involved analysis of shareholding pattern of the Company, examination of bank account statements of GTAL and preferential allottees, examination of fund flow among promoters / company and preferential allottees and any other connection. The investigation was completed in February, 2022 and adjudication proceedings in the matter were approved. Subsequently, vide Order dated March 07, 2022 Shri Prasanta Mahapatra was appointed as the Adjudicating Officer and pursuant to transfer of Shri Prasanta Mahapatra, the

instant matter was transferred to the undersigned *vide* order dated June 06, 2022. Thereafter the SCN dated July 25, 2022 was issued to the Noticees. Considering the time taken to complete the investigation, I do not find that there is an inordinate delay in issuance of the SCN. I find that in the SAT judgement relied upon the Noticees in the matter of **Rakesh Kathotia vs SEBI**, Hon'ble SAT has held that "*held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case."*

In this context, I would also like to refer to observations of the Hon'ble SAT in **Bipin R Vora vs SEBI**, *"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".*

12. In view of the aforesaid judgements, I conclude that there is no merit in the objections raised by the Noticees regarding the delay in issuance of SCN.

13. I now proceed to deal with the merits of the cases as regards the allegations made against the Noticees and their submissions in this regard.

14. It is alleged in the SCN that post the preferential allotment of shares by GTAL to the Noticees on January 16, 2012, their shareholding increased from "NIL" to 750000 (5.74%), 750000 (5.74%), 750000 (5.74%), and 550000 (4.21%) in

case of Sanjay Singal, Aarti Singal, Aniket Singal and Sanjay Singal HUF respectively. Thus collectively their shareholding increased from 0% to 21.43%. Since all the Noticees are immediate relatives of each other, they are deemed to have acted as “persons acting in concert” as per Regulation 2(1)(q) of SEBI (SAST) Regulations, 2011 for the aforesaid acquisition of shares. As “persons acting in concert”, Singal family’s shareholding of more than 5% was required to be disclosed under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011 to the Company and to BSE. However, it was alleged that no disclosures were made by the Noticees as “persons acting in concert” under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

15. I note from the response of the Noticees that they have not denied that they are “persons acting in concert” as indicated in the SCN. Noticees in their separate responses have submitted that their investment into the Company was as per the advice received from an Investment Advisor at that point in time and the Investment Advisor was solely responsible to ensure compliance in respect of investment of the Noticees. Noticees further stated that according to their best knowledge, disclosures were made in compliance of both SEBI (PIT) Regulations, 1992 as well SEBI (SAST) Regulations, 2011 to the Company and Stock Exchange, on acquiring more than 5% share capital of the Company. In this regard, I am unable to accept the contentions of the Noticees as the onus of compliance with the regulations rests with the person/ entity who is buying and/or selling the securities. The Noticees may take investment advice from various persons, however they cannot shift or delegate the responsibility of compliance with securities rules and regulations.

16. Noticees have submitted that the shareholding of the Noticees was duly available in the records maintained by ROC and BSE and their shareholding was in public record and accessible to everyone and the alleged non-disclosures under SEBI (SAST) Regulations, 2011, neither caused disproportionate gain or unfair advantage to the Noticees nor caused loss to

any investor. In this regard, I note that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the SEBI (SAST) Regulations, 2011. Here, I find it pertinent to refer to the judgment of Hon'ble SAT in the matter of **Komal Nahata v. SEBI** (Appeal No. 5 of 2014 dated January 27, 2014) where SAT held that *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for noncompliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure".* In view of the same, I do not find merit in the submissions of the Noticees.

17. Noticee 2 and Noticee 3 further submitted that the disclosure under Regulation 13 (1) of SEBI (PIT) Regulations, 1992 and Regulation 29 (1) of SEBI (SAST) Regulations, 2011, are substantially the same and since they have already complied with disclosures requirement under Regulation 13 (1) of SEBI (PIT) Regulations, 1992, it should be treated as sufficient disclosures under Regulation 29 (1) of SAST Regulations, 2011. In this regard, Noticee 2 and Noticee 3 have placed their reliance on Adjudication Order in the matter of Bakulesh Trambaklal Shah vs SEBI***.***

18. I note that the objective of disclosure under SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011 is different. Regulation 13 (1) of SEBI (PIT) Regulations, 1992 stipulate that *"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."*

    Regulation 29(1) of SEBI (SAST) Regulations, 2011 states that *"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.*" Such disclosure has to be made to the company and stock exchanges.

As can be seen from the provisions indicated above, the concept of 'persons acting in concert' is not applicable in SEBI (PIT) Regulations, 1992 whereas under SEBI (SAST) Regulations, 2011 the Noticees were required to disclose the acquisition of more than 5% of shareholding along with 'persons acting in concert'. Therefore, I do not agree with the contention of the Noticee 2 and Noticee 3 that disclosure under Regulation 13 (1) of SEBI (PIT) Regulations, 1992 should be treated as sufficient disclosures under Regulation 29 (1) of SEBI (SAST) Regulations, 2011.

19. Noticees 2 and 3 have referred to an order passed by Adjudicating Officer in the matter of Bakulesh Trambaklal Shah where no penalty was imposed by the Adjudicating officer. In this regard, the Adjudicating officer has held that since Noticee complied with SAST Regulations, the non-compliance with PIT may not be viewed seriously and be visited with any penalty following the decision of Hon'ble SAT in the matter of Vitro Commodities Private Limited.

In **Vitro Commodities Private Limited v. SEBI**, the Adjudicating Officer had levied separate penalties for the violations of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13 (1) of SEBI (PIT) Regulations, 1992. In the said matter Hon'ble SAT in its order dated September 04, 2013, held that:

"... This is also to be seen from admission of appellant that acquisition of 5.36% of stake by appellant and its non-disclosure was due to their ignorance or non-appreciation of requirement of disclosure, since same occurred mostly by not as active action by appellant but as on result of bonus shares, shares allotted due to amalgamation and again by issue of bonus shares.

16. it may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.

17. In view totality of circumstances and in interest of justice we are of the considered view that it is adequate to impose a token penalty of Rs 1 lac on appellant for technical and inadvertent violation of Regulation 7(1) of Takeover Regulations, 1997 and for violation of Regulation 13(1) of PIT Regulations, 1992 .

In view of above, appeal is dismissed with reduction of penalty imposed to Rs 1 lac only for violation of Regulation 7(1) of Takeover Regulations, 1997 and violation of Regulation 13(1) of PIT Regulations, 1992. With aforesaid modification of penalty the impugned order dated March 28, 2013 is upheld. No order as to costs"

However, the reliance placed by the Noticees on the afore-mentioned cases does not support their case as both cases are not identical. In Vitro Commodities Private Limited the non-disclosure by the appellant occurred mostly by not as active action by appellant but as a result of bonus shares, shares allotted due to amalgamation and again by issue of bonus shares. However, in the instant matter, Noticees have acquired the shares in the preferential issue made by the company which was above the benchmark limit specified under regulation 29(1) of SEBI (SAST) Regulations, 2011. In Vitro Commodities Private Limited, Hon'ble SAT has held that if a Noticee has violated both Regulation 29 of SEBI (SAST) Regulations, 2011 and Regulation

13 (1) of SEBI (PIT) Regulations, 1992, then there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. In the instant matter, the allegation is only with respect to SEBI (SAST) Regulations, 2011.

As regards the order passed by the Adjudicating Officer in the matter of Bakulesh Trambaklal Shah, I find the facts are not identical to the current matter as in the instant matter there 4 Noticees who are 'persons acting in concert' whereas, in the Bakulesh Trambaklal matter, there was only one Noticee so there were no 'persons acting in concert' there. Further, a view taken by an Adjudicating Officer is not binding on another Adjudicating officer as I am of the view that disclosure under SEBI (PIT) Regulations, 1992 does not absolve Noticee 2 and 3 from their obligation to make the disclosures under SEBI (SAST) Regulations, 2011.

20. In this context, I refer to the matter of Blue Blends (India) Limited (BBIL), wherein, Bindal Synthetics Private Limited sold more than 2% of share capital in BBIL and made the disclosure under Regulation 13 (3) of SEBI (PIT) Regulations, 1992 for selling of shares, however, they failed to make disclosures under Regulation 7(1A) read with regulation 7(2) of SEBI (SAST) Regulations, 1997. Therefore, a penalty of Rs. 4,00,000/- was imposed on Bindal Synthetics Private Limited by Adjudicating officer in the matter. The said order of Adjudicating officer in the matter was challenged before Hon'ble SAT, and while dismissing the appeal SAT has *inter alia* stated that *"….Similarly, fact that the appellant had made disclosures under PIT Regulations, 1992 does not absolve appellants obligation to make disclosure under regulation 7(1A) of SAST Regulations, 1997."*

21. Therefore, in view of the above, the contentions of the Noticee 2 and Noticee 3 that disclosure under Regulation 13 (1) of SEBI (PIT) Regulations, 1992 should be treated as sufficient disclosures under Regulation 29 (1) of SEBI (SAST) Regulations, 2011, are devoid of any merit.

22. In light of the findings and observations made against the Noticees brought out in the foregoing paragraphs, I hold that the Noticees have violated Regulation 29 (1) read with Regulation 29 (3) of SEBI (SAST) Regulations, 2011, by failing to make disclosures with regard to their acquisition of more than 5% of shareholding of the company in the preferential issue.

Issue II. Does the violations, if any, attract monetary penalty under section 15A (b) of SEBI Act, 1992?

23. It has been established in the foregoing paragraphs that Noticees have violated the provisions of Regulation 29 (1) and Regulation 29 (3) of SEBI (SAST) Regulations, 2011.

24. In this regard, I place reliance on Hon'ble SAT's judgement 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."*

25. In view of the above since it is established that Noticees have violated the provisions of Regulation 29 (1) and Regulation 29 (3) of SEBI (SAST) Regulations, 2011, I find it a fit case for imposition of monetary penalty under the provisions of section 15A(b) of the SEBI Act, 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 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;.

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15-J of SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules?

26. While determining the quantum of penalty, it is important to consider the factors stipulated in section 15-J of SEBI Act, 1992 which reads as under:-

SEBI Act, 1992

Factors to be taken into account while adjudging quantum of penalty

***15J** While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely: —*

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

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

(c) the repetitive nature of the default.

[Explanation. —For the removal of doubts, it is clarified that the power 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.]

27. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the non-compliance of SEBI (SAST) Regulations, 2011 is not available. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of violations by the Noticees. With respect to the repetitive nature of the default, I find that *vide* Adjudicating order dated September 29, 2022, a penalty of Rs. 1,00,000 was imposed on the Noticees in the matter of Global Infratech Limited for violation of Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011, for non-disclosure of shares allotted on Januarry 9, 2012. I note that in the instant matter also the shares were allotted during the same period i.e. January 6, 2012. It is relevant to mention that timely disclosures to the company and the stock exchange as required under the SEBI (SAST) Regulations, 2011 are of significant importance from the point of view of the investors and regulators. These Regulations are aimed at bringing out transparency in the transactions by any shareholder.

    In this regard, the Hon'ble SAT, in the matter of ***Milan Mahendra Securities Pvt. Ltd. vs. SEBI***, vide its order dated April 15, 2005 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."* The non-compliance as found in this case, had clearly defeated the purposes of the Regulations. However, I also note that the impugned transactions took place in January 2012 and a considerable time has passed since, and this is also considered as a relevant factor while deciding the quantum of penalty.

ORDER

28. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-J of SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of Rs.

1,00,000/- (Rupees one lakh only) on the Noticees under section 15A (b) of the SEBI Act, 1992. The Noticees are jointly and severally liable to pay the penalty. In my view, the said penalty is commensurate with the violations committed by the Noticees in this case.

29. 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 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

30. The Noticees shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, SEBI, in the format given in table below:

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 and legal charges along with order details)	

31. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

32. In terms of Rule 6 of the SEBI Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai **ASHA SHETTY**

Date: December 06, 2022 **ADJUDICATING OFFICER**