BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/HP/2022-23/16624-16628]

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

In respect of –

1. **Bholebaba Suppliers Pvt. Ltd. (PAN: AADCB8132G)** having address at - House No. 13, B B Ganguly Street, Ground Floor, Kolkata - 700012
2. **Neha Nandlal Agarwal (PAN: AGBPA3501D)** having address at - Agrawal House, 132 Ft. Road, Opp. Medilink Hospital, Satellite, Ahmedabad, Gujarat - 380015
3. **Monica Tibrewal (PAN: ABDPT4757D)** having address at - 1 Sanidhya Bunglows, Opp. Ashwamegh Bunglows, Satellite, Ahmedabad, Gujarat - 380015
4. **Shyamsunder Tibrewal (PAN: AADHS4291N)** having address at - 1 Sanidhya Bunglows, Opp. Ashwamegh Bunglows, Satellite, Ahmedabad, Gujarat - 380015
5. **Suryanagri Finlease Ltd. (PAN: AADCS0465P)** having address at - 101-104, GCP Business Centre, Opp. Memnagar Fire Station, Vijay Cross Road, Ahmedabad- 380014

In the matter of Suryanagri Finlease Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, **'SEBI'**) initiated adjudication proceedings under Section 15A(b) of the SEBI Act, 1992 (hereinafter referred to as, **'SEBI Act'**), against Bholebaba Suppliers Pvt. Ltd. (**Noticee 1**), Neha Nandlal Agarwal (**Noticee 2**), Monica Tibrewal (**Noticee 3**),

Shyamsunder Tibrewal (**Noticee 4**) and Suryanagri Finlease Ltd. (**Noticee 5/Company/Scrip/SFL**). The Noticees 1 to 5 are collectively referred to as **'Noticees/You'.**

2. Adjudication proceedings have been initiated against,

   a) Noticee 1 under section 15A(b) of SEBI Act for alleged violation of Regulation 13(1) and 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as, '**PIT Regulations**') and Regulation 29(1) and 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as, '**SAST Regulations**').

   b) Noticee 2 under section 15A(b) of SEBI Act for alleged violation of Regulation 13(3) of PIT Regulations and Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.

   c) Noticee 3 under section 15A(b) of SEBI Act for alleged violation of Regulation 29(1) read with 29(3) of SAST Regulations.

   d) Noticee 4 under section 15A(b) of SEBI Act for alleged violation of Regulation 29(2) read with 29(3) of SAST Regulations.

   e) Noticee 5 under section 15A(b) of SEBI Act for alleged violation of Regulation 13(6) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Shri B J Dilip as Adjudicating Officer under Section15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the **'Adjudication Rules'**), vide order dated November 26, 2020 to inquire into and adjudge under section 15A(b) of the SEBI Act, the aforesaid alleged violations against the Noticees. Subsequently, the undersigned was appointed as Adjudicating Officer (hereinafter referred to as "AO") vide an order dated December 29, 2020.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD5/MC/HP/12451/1-5/2021 dated June 15, 2021 (hereinafter be referred to as, the "**SCN**") was served upon the Noticees under Rule 4(1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticees under Section 15A(b) of SEBI Act for the aforesaid alleged violations.

5. The allegations levelled against the Noticees in the SCN are summarized as below:

6. SFL was incorporated in the year 1992. SFL is engaged in lease financing and deals in estate business. It is also involved in share trading and investment activities. SFL is based in Ahmedabad, India.

7. **Shareholding Pattern of SFL**

	Mar-14	Dec-13	Sep-13	June-13	Mar-13
Promoter and Promoter Group	0.56%	0.56%	0.56%	3.53%	6.25%
Public	99.44%	99.44%	99.44%	96.47%	93.75%
Total	33,64,500	33,64,500	33,64,500	33,64,500	33,64,500

8. **<u>Analysis of alleged disclosure violations by Noticees</u>**

<u>Noticee 1:</u>

9. It was observed that Noticee 1 has traded in the scrip from December 31, 2013 to March 20, 2014. Details of transactions are as under:

Date of Transaction	No. of shares Traded (+buy, -sell)	Holding post transaction	% Holding post transaction	Disclosure Required under regulation
31.12.2013	-	146077	4.34%	-
13.02.2014	**139800**	**285877**	**8.50%**	**29(1) of SAST and 13(1) of PIT**
12.03.2014	-50000	235877	7.01%	-
14.03.2014	**-53800**	**182077**	**5.41%**	**29(2) of SAST and 13(3) of PIT**
18.03.2014	-42277	139800	4.16%	-
20.03.2014	**-100000**	**39800**	**1.18%**	**29(2) of SAST and 13(3) of PIT**

10. From the above table it is observed that Noticee 1 has purchased 1,39,800 shares on February 13, 2014, as a result, the shareholding of Noticee 1 crossed

5%. Subsequently, on March 14, 2014 and March 20, 2014 shareholding of Noticee 1 in the scrip changed by 2%, when it sold the shares. Noticee 1 was required to make the disclosure under SAST and PIT Regulations for aforesaid transactions. From the information received from the exchange, it was observed that Noticee 1 failed to make any disclosure to the company and the exchange after executing aforesaid transactions as required under PIT and SAST Regulations.

11. In view of the above, it was alleged that Noticee 1 has violated Regulation 13(1) and 13(3) of PIT Regulations and Regulation 29(1) and 29(2) of SAST Regulations.

12. **Noticee 2 and 5:**

13. It was observed that Noticee 2 was not part of the promoter group and she has acquired 4,00,000 shares of SFL in 4 tranches in the month of March 2014. Her shareholding in SFL increased from 2.97% to 14.86%. Details of transactions are as under:

Date of Transaction	No. of shares Traded (+buy, -sell)	Holding post transaction	% Holding post transaction	Disclosure Required under regulation	Date of disclosure to the Company	Date of disclosure to the Exchange	Delay in disclosure
04.03.2014	+79900	179900	5.35%	29(1) of SAST and 13(1) of PIT	06.03.2014	13.03.2014	5 days delay by Noticee 2 (SAST). 3 days delay by company to the exchange (PIT)
10.03.2014	+100600	280500	8.34%	29(2) of SAST and 13(3) of PIT	12.03.2014	13.03.2014	1 day (SAST)
12.03.2014	+100000	380500	11.31%	29(2) of SAST and 13(3) of PIT	13.03.2014	18.03.2014 (PIT) 14.03.2014	1 day (PIT)

						(SAST)	
14.03.2014	+119500	500000	14.86%	29(2) of SAST and 13(3) of PIT	18.03.2014	19.03.2014	1 day (SAST)

14. From the above table it is observed that Noticee 2 purchased the shares on 4 occasions in March 2014. Her shareholding in the scrip crossed 5% on purchase of 79,900 shares on March 04, 2014. Subsequently, in each of the three buy transactions on March 10, 12, and 14, 2014 her shareholding in the scrip changed by 2%. She was required to make the disclosure under SAST and PIT Regulations. Noticee 2 has made delayed disclosures to the exchange for aforesaid 4 transactions as mentioned in above table.

15. In view of the above, it was alleged that Noticee 2 is in violation of Regulation 13(3) of PIT Regulations and Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.

16. Further, Noticee 5 has made delayed disclosure to the exchange for the transaction executed by Noticee 2 on March 04, 2014. Therefore, it was alleged that Noticee 5 is in violation of Regulation 13(6) of PIT Regulations.

17. **Noticee 3 and 4:**

18. It was observed that Noticee 3, 4 and their PACs have traded in the scrip in the month of March and April 2014. Details of transactions are as under:

Date of Transaction	**Name**	**No. of shares Traded**	**Cumulative Holding post transaction**	**% Cumulative Holding post transaction**	**Disclosure Required under regulation**	**Date of disclosure to Company**	**Date of disclosure to Exchange**	**Delay in disclosure**
25.03.2014	Siddharth Tibrewal	40,000	40,000	1.19%	-	-	-	-

	(ABFPT6335D)							
26.03.2014	Noticee 4	40,000	80,000	2.38%	-	-	-	-
26.03.2014	Siddharth Tibrewal (AAGHS7353J)	60,000	1,40,000	4.16%	-	-	-	-
03.04.2014	Laxmidevi Tibrewal (ACIPT9106E)	25,000	1,65,000	4.90%	-	-	-	-
03.04.2014	Noticee 3	25,000	1,90,000	5.65%	29(1) r/w 29(3) of SAST	4.4.2014	15.4.2014	5 days
04.04.2014	Laxmidevi Tibrewal (ACIPT9106E)	25,000	2,15,000	6.39%	-	-	-	-
04.04.2014	Noticee 3	25,000	2,40,000	7.13%	-	-	-	-
25.04.2014	Noticee 4	60,000	3,00,000	8.92%	29(2) r/w 29(3) of SAST	29.04.2014	02.05.2014	2 days

19. From the above table it is observed that Noticee 3 and 4 and their PACs have bought the shares in the scrip on several occasions in March and April 2014. Cumulative shareholding of aforesaid PACs crossed 5% on April 04, 2014 when Noticee 4 purchased 25,000 shares. Subsequently, on April 25, 2014 cumulative shareholding of PACs in the scrip changed by 2%. For executing aforesaid transactions, Noticee 3 and 4 were required to make the disclosure under SAST Regulations. From the information received from the exchange, it was observed that Noticee 3 and 4 were PACs and they have made delayed disclosures of aforesaid transactions as required under SAST Regulations.

20. In view of the above, it was alleged that Noticee 3 has violated Regulation 29(1) read with Regulation 29(3) and Noticee 4 has violated Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

21. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15A(b) of the SEBI Act.

22. SCN was duly served to the Noticees. Noticees 3 and 4 filed their reply to the SCN vide letters dated June 26, 2021 and April 09, 2022. Noticee 2 filed her reply to the SCN vide letter dated July 24, 2021. SCN was served to the Noticee 1 through affixture on its address on February 24, 2022 and Noticee 5 through email address i.e. sfl1992@ymail.com obtained from the website of BSE under corporate information.

23. The key submissions of the Noticees 2, 3 and 4 are summarised below:

Noticee 2:

a) Noticee 2 stated that in connection with the purchase of shares of Suryanagri Finlease Limited in the month of March 2014, there was a minor delay in submitting required reportings and disclosures PIT and SAST Regulations. The said delay in reporting was less than 4 days and was not material in nature.
b) Noticee stated that the delay for disclosures under PIT Regulations and SAST Regulations were by oversight and inadvertently without any malafide or ill intentions. The necessary reporting and disclosures were made in the month of March 2014 itself for the transactions of purchase of shares of the Company by her. Further, in the month of June 2016 and July 2016 the said shares of the Company were disposed of by her for which applicable reporting and disclosures were made well within the time frame.
c) She further stated that she is an individual female investor and was not fully aware about the various complex regulations as investor. She was not a promoter or PAC, in relation to the said company. The delay has not caused harm to any person/investors and this is the first time non-

compliance by the undersigned. She had not made any profit out of the concerned transactions, but suffered a loss.

Noticees 3 and 4:

a) Noticees 3 and 4 submitted that the present proceeding is liable to be disposed-off on the sole ground of inordinate delay and latches in issue of the SCN. The alleged disclosures pertains to the year 2014 whereas the SCN has been issued in the year of 2021. There is no explanation provided in the SCN regarding inordinate delay in initiation of the present proceeding. In this regard, they relied upon certain Orders of Hon'ble SAT such as Mr. Ashok Shivpal Rupani & Ors vs SEBI, Mr. Rakesh Kathotia & Ors. vs SEBI.

b) They stated that the documents provided along with the SCN do not contain details concerning to the disclosures made by them. Further, copy of the Investigation Report has not been provided to them.

24. Opportunity of hearing was provided to the Noticees through video conferencing and Authorized Representative (AR) attended the hearing on behalf of Noticees 2, 3 and 4. Mr. Vikas Bengani appeared for the hearing on April 18, 2022 as AR of the Noticees 3 and 4. Mr. Kavin Dave and Mr. Kunal Sharma appeared for the hearing on April 18, 2022 as AR of the Noticee 2. AR of the Noticees 2, 3 and 4 reiterated the submissions made in their replies to the SCN.

25. Hearing Notice was duly served to Noticee 1 through affixture to its address on February 24, 2022. Further, Hearing Notice was duly served to Noticee 5 vide email dated March 24, 2022. The Noticees 1 and Noticee 5 neither appeared on the scheduled date of hearing nor filed any reply to the SCN. I note that through the SCN and Hearing Notices, they were advised to furnish their reply, if any, within stipulated time, failing which, it shall be presumed that they have no reply

to submit and the matter will be proceeded with on the basis of the material available on record.

26. As sufficient opportunity was given to the Noticees 1 and Noticee 5 to submit reply and appear for hearing and no response was received from them, the adjudication proceedings against them is undertaken *ex-parte* on the basis of material available on record.

27. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, replies made by the Noticees 2, 3 and 4 and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

28. The issues that arise for consideration in the instant matter are:

Issue No. I Whether,

a) Noticee 1 has violated Regulation 13(1) and 13(3) of PIT Regulations and Regulation 29(1) and 29(2) of SAST Regulations;
b) Noticee 2 has violated Regulation 13(3) of PIT Regulations and Regulation 29(1) and 29(2) read with 29(3) of SAST Regulations;
c) Noticee 3 has violated Regulation 29(1) read with 29(3) of SAST Regulations;
d) Noticee 4 has violated Regulation 29(2) read with 29(3) of SAST Regulations;
e) Noticee 5 has violated Regulation 13(6) of PIT Regulations.

Issue No. II If yes, whether the failure on the part of the Noticees would attract monetary penalty under Section 15A(b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I **Whether, the Noticees are in violation of aforesaid Regulations**

29. Before going into the merits of the case, I note the contention of the Noticee 3 and 4 that the documents provided along with the SCN do not contain details concerning to the disclosures made by them. Further, copy of the Investigation Report has not been provided to them. In this regard, I note that all the documents relied up on in the instant proceedings are already provided as annexures to the SCN.

30. Noticee 3 and 4 further contended that the alleged disclosures pertain to the year 2014 whereas the SCN has been issued in the year of 2021. In this regard, I note that SEBI initiated the examination in the instant matter in 2014, which was completed in October 2014. However, on account of procedural issues, adjudication proceedings were initiated in December 2020, and SCN in the matter was issued on June 15, 2021. I take note of this delay. I further note that no limitation has been prescribed in SEBI Act for initiating proceedings for violation of securities laws.

31. **Alleged violation of SAST and PIT Regulations by Noticee 1**

32. It is alleged in the SCN that Noticee 1 was holding 4.34% in the shares of SFL, on 13.02.2014 it has purchased 139800 shares, thereby its shareholding in the company has crossed 5%. Subsequently, on March 14, 2014 and March 20, 2014 shareholding of Noticee 1 in the company changed by 2% when it has sold the

shares. On all 3 occasions Noticee 1 failed to make disclosures to the company and the exchange as required under PIT and SAST Regulations.

Date of Transaction	No. of shares Traded (+buy, -sell)	Holding post transaction	% Holding post transaction	Disclosure Required under regulation
31.12.2013	-	146077	4.34%	-
13.02.2014	**139800**	**285877**	**8.50%**	**29(1) of SAST and 13(1) of PIT**
12.03.2014	-50000	235877	7.01%	-
14.03.2014	**-53800**	**182077**	**5.41%**	**29(2) of SAST and 13(3) of PIT**
18.03.2014	-42277	139800	4.16%	-
20.03.2014	**-100000**	**39800**	**1.18%**	**29(2) of SAST and 13(3) of PIT**

33. Regulation 13(1) and 13(3) of PIT Regulations and Regulation 29(1) and 29(2) of SAST Regulations states that,

*"**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.
***(3)** Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, 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 2% of total shareholding or voting rights in the company."*

*"**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.*

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

34. I note from the SCN that Noticee 1 has purchased 139800 shares in the scrip on February 13, 2014, which led to increase in its holding from 4.34% to 8.50%. Subsequently, it has sold the shares in the scrip on four occasions, which led to change in its holding by 2% twice on March 14, 2014 and March 20, 2014. Material on record shows that Noticee 1 failed to make the required disclosures under SAST and PIT Regulations. I note that Noticee 1 has failed to make any reply to the SCN.

35. In view of the above, I find that by not disclosing purchase of 139800 shares and subsequent sale of shares in the scrip, Noticee 1 has violated Regulation 13(1) and 13(3) of PIT Regulations and Regulation 29(1) and 29(2) of SAST Regulations.

36. **Alleged violation of SAST and PIT Regulations by Noticee 2 and PIT Regulation by Noticee 5**

37. It is alleged in the SCN that Noticee 2 has purchased 79900 shares in the scrip on March 04, 2014, pursuant to this transaction its shareholding in the company has crossed 5%. Subsequently, on March 10, 2014, March 12, 2014 and March 14, 2014 Noticee 1 purchase more shares and its shareholding in the company increased by 2% after each of the 3 transactions. On all 4 occasions Noticee 2 has made delayed disclosures to the exchange as required.

Date of Transaction	**No. of shares Traded (+buy, -sell)**	**Holding post transaction**	**% Holding post transaction**	**Disclosure Required under regulation**	**Date of disclosure to the Company**	**Date of disclosure to the Exchange**	**Delay in disclosure**
04.03.2014	+79900	179900	5.35%	29(1) of SAST and 13(1) of PIT	06.03.2014	13.03.2014	5 days delay by Noticee 2 (SAST). 3 days delay by company to the exchange (PIT)
10.03.2014	+100600	280500	8.34%	29(2) of SAST and 13(3) of PIT	12.03.2014	13.03.2014	1 day (SAST)
12.03.2014	+100000	380500	11.31%	29(2) of SAST and 13(3) of PIT	13.03.2014	18.03.2014 (PIT) 14.03.2014 (SAST)	1 day (PIT)
14.03.2014	+119500	500000	14.86%	29(2) of SAST and 13(3) of PIT	18.03.2014	19.03.2014	1 day (SAST)

38. I note from the SCN that Noticee 2 has purchased 79900 shares in the scrip on March 04, 2014. Noticee 2 has made timely disclosure to the company on March 06, 2014, however, she made the disclosure to the exchange under Regulation 29(1) of SAST Regulations with the delay of 5 days. Subsequently, she has

purchased 100600 shares on March 10, 2014. Noticee 2 has made timely disclosure to the company and made delayed disclosure to the exchange with the delay of just one day under Regulation 29(2) of SAST Regulations. Thereafter, she has purchased 100000 shares on March 12, 2014. Noticee 2 has made timely disclosure to the company and made delayed disclosure to the exchange with the delay of one day under Regulation 13(3) of PIT Regulations. On March 14, 2014, Noticee 2 has purchased 119500 shares. Noticee 2 has made timely disclosure to the company and made delayed disclosure to the exchange under Regulation 29(2) of SAST Regulations with the delay of one day.

39. Noticee 2 in her reply contended that there was a minor delay in submitting required disclosures under PIT and SAST Regulations. The said delay in reporting was less than 4 days and was not material in nature.

40. It is also alleged in the SCN that Noticee 2 has purchased 79900 shares on March 04, 2014 and made timely disclosure to the company on March 06, 2014, however, company (Noticee 5) has made delayed disclosure to the exchange with a delay of 3 days under Regulation 13(6) of PIT Regulations.

41. I note that for the first transaction of the purchase of 79900 shares the delay in disclosure by Noticee 2 is only 5 days, and for other 3 transactions the delay is just one day. I also note that on all 4 occasions Noticee 2 has made timely disclosure to the company. Therefore, the said delay in disclosure is minor. Further, the delay by the company to disclose the first transaction of Noticee 2 to the exchange is also with a minor difference of 3 days.

42. In view of the above, I find that although there are minor delays in disclosures under Regulations 13(3) of PIT Regulations and Regulation 29(1) and 29(2) of SAST Regulations by Noticee 2 and under Regulations 13(6) of PIT Regulations by Noticee 5, the delay may have occurred due to procedural reasons.

Considering the fact that the violation took place 8 years ago, I find that this is not a fit case for levy penalty against Noticee 2 and Noticee 5.

43. **Alleged violation of SAST Regulations by Noticee 3 and 4**

44. It is alleged in the SCN that Noticee 3, 4 and their PACs have traded in the scrip in the month of March and April 2014 and made delayed disclosures of these transaction as required under SAST Regulations.

Date of Transaction	**Name**	**No. of shares Traded**	**Cumulative Holding post transaction**	**% Cumulative Holding post transaction**	**Disclosure Required under regulation**	**Date of disclosure to Company**	**Date of disclosure to Exchange**	**Delay in disclosure**
25.03.2014	Siddharth Tibrewal (ABFPT6335D)	40,000	40,000	1.19%	-	-	-	-
26.03.2014	Noticee 4	40,000	80,000	2.38%	-	-	-	-
26.03.2014	Siddharth Tibrewal (AAGHS7353J)	60,000	1,40,000	4.16%	-	-	-	-
03.04.2014	Laxmidevi Tibrewal (ACIPT9106E)	25,000	1,65,000	4.90%	-	-	-	-
03.04.2014	Noticee 3	25,000	1,90,000	5.65%	29(1) r/w 29(3) of SAST	4.4.2014	15.4.2014	5 days
04.04.2014	Laxmidevi Tibrewal (ACIPT9106E)	25,000	2,15,000	6.39%	-	-	-	-
04.04.2014	Noticee 3	25,000	2,40,000	7.13%	-	-	-	-
25.04.2014	Noticee 4	60,000	3,00,000	8.92%	29(2) r/w 29(3) of SAST	29.04.2014	02.05.2014	2 days

45. I note from the SCN that Noticee 3, 4 and their PACs were holding 4.90% shares in the company. On April 03, 2014, Noticee 3 has purchased 25,000 shares in the scrip, which led to increase in their cumulative holding to 5.65%. Noticee 3 has made timely disclosure to the company and made delayed disclosure to the exchange with the delay of 5 days under Regulation 29(1) read with 29(3) of SAST Regulations. Further, on April 25, 2014, Noticee 4 has purchased 60,000 shares in the scrip, which led to change in their cumulative holding by 2%. Noticee 4 has made timely disclosure to the company and delayed disclosure to the exchange with the delay of 2 days under Regulation 29(2) read with 29(3) of SAST Regulations.

46. Noticee 3 and 4 contended that the present proceeding is liable to be disposed-off on the sole ground of inordinate delay and latches in issue of the SCN. In this regard, they relied upon certain Orders of Hon'ble SAT such as Mr. Ashok Shivpal Rupani & Ors vs SEBI, Mr. Rakesh Kathotia & Ors. vs SEBI.

47. I note from the above that Noticee 3 has made disclosure to the exchange with the delay of 5 days and Noticee 4 had made it with the delay of only 2 days. I find that, Noticee 3 and 4 made timely disclosure to the company on both the occasions as required under SAST Regulations. Further, on perusal of information available on record, I find that Noticee 3 has sent the letters for disclosure of the said transactions executed on April 03, 2014 and April 25, 2014 to both the company and the exchange on the same day i.e. on April 04, 2014 and April 29, 2014 respectively. However, the letters have been received by the company within time, however the same were received by the exchange with slight delay. Therefore, I find that the said delay in disclosure appears to be occurred due to procedural reasons and the delay was very minor.

48. In view of the above, I find that although there are minor delays in disclosures under Regulation 29(1) read with 29(3) of SAST Regulations by Noticee 3 and under Regulation 29(2) read with 29(3) of SAST Regulations by, considering the

fact that the violation took place 8 years ago, I find that this is not a fit case for levy penalty against Noticee 3 and Noticee 4.

Issue No. II	**If yes, whether the failure on the part of the Noticees would attract monetary penalty under Section 15A(b) of the SEBI Act?**
Issue No. III	**If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

49. Since the violation of Regulation 13(1) and 13(3) of PIT Regulations and Regulation 29(1) and 29(2) of SAST Regulations has been established against Noticee 1, it is liable for monetary penalty under Section 15A(b) of SEBI Act.

<u>SEBI Act:</u>

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 —*

(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.

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

Factors to be taken into account by the adjudicating officer

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.

51. While determining the quantum of penalty, I have found that name of Noticee 1 has been struck off from the Register of Companies. As per Company Master Data available on website of the Ministry of Corporate Affairs, the name of Noticee 1 is struck off from the ROC-Kolkata.

52. In this regard, I place reliance on the following judgments
    a. Judgment of the Hon'ble Delhi High Court in the case of Commissioner of Income Tax (CIT) vs Vived Marketing Services (P) Ltd., ITA NO. 273/2009 dated September 17, 2009 in which it was held that -"*When the Assessing Officer passed the order of assessment against the respondent company, it had already been dissolved and struck off the register of the Registrar of companies under Section 560 of the Companies Act. In these circumstances, the Tribunal rightly held that there could not have been any assessment order passed against the company which was not in existence as on that date in the eyes of law it had already been dissolved. We are of the opinion that the view taken by the Tribunal is perfectly valid and in accordance with law."*
    b. *Decision of the ITAT in the matter of M/s. Anujay Hycare Products (P) Ltd. Vs The Income Tax Officer (ITAT Delhi) Date of Judgement/Order -06/04/2018, Income Tax Appellate Tribunal, observed that "..........there could not have been any valid assessment order passed against the assessee-company which was not in existence as on the day of passing of the assessment order because it had already been dissolved. The assessment in the case of non-existing entity is thus nullity. Therefore, A.O. had no jurisdiction to pass the order against the non-existing company.......However, as on today, it is an established fact that assessee-company has already been dissolved and its*

name is struck-off from the Registrar of Companies. Therefore, it is a non-existing Company and as such, A.O. cannot pass the assessment order under section 143(3) of the I.T. Act, 1961 against the assessee-company. The issue is, therefore, covered in favour of the assessee-company by the above judgments of Hon'ble Delhi High Court, relied upon by the Learned Counsel for the Assessee."

c. *Precedents of SEBI orders in the matters of <u>Rajnandi Yarns Pvt. Ltd.</u> on 31.12.2020, and <u>Nitin Industries Ltd.</u> on 20.12.2017.*

53. I note that the material on record has not brought out any disproportionate gain made by the Noticee 1 or loss caused to investors by Noticee 1. I note that as the Noticee 1 has been struck-off from the RoC and stands dissolved, it would not be appropriate to determine liability against the Noticee 1 which no longer exists as on date of current proceedings. Should the Noticee 1 be revived or restored at any stage, a decision to initiate proceedings may be taken afresh at that stage.

ORDER

54. After taking into consideration all the facts and circumstances of the case, the Adjudication Proceedings initiated against Bholebaba Suppliers Pvt. Ltd. (Noticee 1), Neha Nandlal Agarwal (Noticee 2), Monica Tibrewal (Noticee 3), Shyamsunder Tibrewal (Noticee 4) and Suryanagri Finlease Ltd. (Noticee 5) vide SCN No. EAD5/MC/HP/12451/1-5/2021 dated June 15, 2021 are disposed of.

55. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: May 30, 2022 **MANINDER CHEEMA**
PLACE: MUMBAI **ADJUDICATING OFFICER**