BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SV/DP/2024-25/30567]

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

In respect of:

Dynamic Services & Security Limited

[PAN: AAGCD1656A]

In the matter of Mehai Technology Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**), conducted the inspection of Merchant Banker, M/s Finshore Management Services Limited ("MB") for FY 2021-22, wherein open offer in the matter of Mehai Technology Limited ('**Mehai/ Target company**') was shortlisted as one of the samples for inspection of due diligence undertaken by said MB. The Acquisition was done by Dynamic Services & Security Limited (hereinafter referred to as '**Acquirer/Noticee'**) from promoters of Mehai Technology Limited. Based on the findings of the examination, SEBI found certain non compliances of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations'**) by the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had appointed undersigned as the Adjudicating Officer (hereinafter referred to as '**AO**') in the matter vide communique dated August 04, 2023 under Section 15-I of the SEBI Act read with 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 the provisions of the Section 15A(b) of the SEBI Act, for the following violations alleged to have been committed by the Noticee:

2.1 Regulation 29(1) read with Regulation 29(3) of SAST Regulations

2.2 Regulation 29(2) read with Regulation 29(3) of SAST Regulations

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Based on the findings by SEBI, Show Cause Notice dated August 24, 2023 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed on it under Section 15A(b) of SEBI Act for the alleged violation of the provisions mentioned at para 2. The SCN, inter alia, alleged the following:

   a. *The Noticee had made open offer to Promoters of the target company in February 2022.*

   b. *During the examination of the said open offer, certain discrepancies were observed in the shareholding of the Noticee as filed in the disclosures under provisions of SAST Regulations.*

   c. *The* chronology of transactions with respect to acquisition and sale of equity shares of the Target Company by the Noticee and alleged violations committed by Noticee are tabulated below:

Date	Transaction w.r.t. equity shares of Mehai by the acquirer	No. of shares	% to total paid up capital	Disclosure rqmt. under SAST	Due date for compliance	Actual date of compliance	Description of violation
05.04.2022	Acquisition under SPA	14,96,100	13.97%	Reg. 29(1) r/w 29(3)	07.04.2022	-	1 instance of non-filing: acquisition of 14,96,100 shares (13.97%)
06.04.2022	Acquisition under SPA	14,40,000	13.45%	Reg. 29(2) r/w 29(3)	08.04.2022	-	1 instance of non-filing: acquisition of 14,40,000 shares (13.45%)

Date	Transaction w.r.t. equity shares of Mehai by the acquirer	No. of shares	% to total paid up capital	Disclosure rqmt. under SAST	Due date for compliance	Actual date of compliance	Description of violation
12.04.2022	Acquisition under SPA	16,50,000	15.41%	Reg. 29(2) r/w 29(3)	14.04.2022	-	1 instance of non-filing: acquisition of 16,50,000 shares (15.41%)
18.04.2022	Acquisition under SPA	13,13,000	12.26%	Reg. 29(2) r/w 29(3)	20.04.2022	-	1 instance of non-filing: acquisition of 13,13,000 shares (12.26%)
21.04.2022	Acquisition under SPA	18,07,000	16.87%	Reg. 29(2) r/w 29(3)	25.04.2022	-	1 instance of non-filing: acquisition of 18,07,000 shares (16.87%)
29.06.2022	Sale	1,00,000	0.93%	None	NA	27.07.2022	1 instance of non-filing: sale of 8,878 shares (0.08%)
30.06.2022	Sale	8,878	0.08%	None	NA	None	1 instance of incorrect filing: pre-sale shareholding and post-sale shareholding in the disclosure
25.07.2022	Sale	1,44,857	1.35%	Reg. 29(2) r/w 29(3) (cumulatively 2.36%)	27.07.2022	27.07.2022	
26.07.2022	Sale	80,000	0.75%	None	NA	12.08.2022	1 instance of incorrect filing: pre-sale shareholding and post-sale shareholding in the disclosure
27.07.2022	Sale	87,700	0.82%	None	NA	12.08.2022	
10.08.2022	Sale	3,35,538	3.13%	Reg. 29(2) r/w 29(3) (cumulatively 4.70%)	12.08.2022	12.08.2022	
11.08.2022	Sale	2,58,099	2.41%	Reg. 29(2) r/w 29(3)	16.08.2022	12.08.2022	1 instance of incorrect filing: pre-sale shareholding and post-sale shareholding in the disclosure

Date	Transaction w.r.t. equity shares of Mehai by the acquirer	No. of shares	% to total paid up capital	Disclosure rqmt. under SAST	Due date for compliance	Actual date of compliance	Description of violation
12.08.2022	Sale	2,09,987	1.96%	None	NA	18.08.2022	1 instance of incorrect filing: pre-sale shareholding and post-sale shareholding in the disclosure
16.08.2022	Sale	6,722	0.06%	Reg. 29(2) r/w 29(3) (cumulatively 2.02%)	18.08.2022	18.08.2022	
22.08.2022	Sale	1,00,000	0.93%	None	NA	NA	1 instance of non-filing: sale of 1,00,000 shares (0.93%) 1 instance of incorrect filing: pre-sale shareholding and post-sale shareholding in the disclosure
23.08.2022	Sale	2,00,000	1.87%	Reg. 29(2) r/w 29(3) (cumulatively 2.80%)	25.08.2022	25.08.2022	
24.08.2022	Sale	2,00,918	1.88%	None	NA	25.08.2022	1 instance of delayed filing: Sale of 1,87,219 shares (1.75%) 1 instance of incorrect filing: pre-sale shareholding and post-sale shareholding in the disclosure
25.08.2022	Sale	1,87,219	1.75%	Reg. 29(2) r/w 29(3) (cumulatively 3.63%)	29.08.2022	31.08.2022	
30.08.2022	Sale	36,036	0.34%	None	NA	31.08.2022	1 instance of incorrect filing: pre-sale shareholding and post-sale shareholding in the disclosure
01.09.2022	Sale	1,14,897	1.07%	None	05.09.2022	03.09.2022	
02.09.2022	Sale	1,04,907	0.98%	Reg. 29(2) (cumulatively 2.39%)	06.09.2022	03.09.2022	

d. *It was observed that Noticee has allegedly not filed the requisite disclosures to Stock Exchange and Target Company in following 7 instances:*

i. The Noticee has not filed disclosure for acquisition of 14,96,100 shares (13.97%) on April 05, 2022 under Regulation 29(1) r/w 29(3) of SAST Regulations.

ii. The Noticee has not filed disclosure for acquisition of 14,40,000 shares (13.45%) on April 06, 2022 under Regulation 29(2) r/w 29(3) of SAST Regulations.

iii. The Noticee has not filed disclosure for acquisition of 16,50,000 shares (15.41%) on April 12, 2022 under Regulation 29(2) r/w 29(3) of SAST Regulations.

iv. The Noticee has not filed disclosure for acquisition of 13,13,000 shares (12.26%) on April 18, 2022 under Regulation 29(2) r/w 29(3) of SAST Regulations.

v. The Noticee has not filed disclosure for acquisition of 18,07,000 shares (16.87%) on April 21, 2022 under Regulation 29(2) r/w 29(3) of SAST Regulations.

vi. Pursuant to sale of shares on June 29, 2022 (100,000 shares i.e., 0.93%), June 30, 2022 (8,878 shares i.e., 0.08%) and July 25, 2022 (1,44,857 shares i.e., 1.35%). It is observed that the Noticee has filed the disclosure for sale of said 100,000 shares and 1,44,857 shares vide disclosure dated July 27, 2022. However, the Noticee has failed to disclose the sale of 8,878 shares in said disclosure.

vii. Pursuant to sale of shares on August 22, 2022 (1,00,000 shares i.e., 0.93%) and August 23, 2022 (2,00,000 shares i.e., 1.87%). The Noticee has filed the disclosure for sale of said shares vide disclosure dated August 25, 2022. It is observed that the Noticee has filed the disclosure for sale of said 2,00,000 shares. However, the Noticee has failed to disclose the sale of 1,00,000 shares in said disclosure.

e. In view of the above, it was alleged that by not filing the requisite disclosures to Stock Exchange and Target Company, Noticee has violated Regulation 29(1), 29(2) read with 29(3) of SAST Regulations.

f. It was observed that Noticee has allegedly made incorrect filing of requisite disclosures to Stock Exchange and Target Company in following 7 instances:

i. Pursuant to sale of shares on June 29, 2022 (100,000 shares i.e., 0.93%), June 30, 2022 (8,878 shares i.e., 0.08%) and July 25, 2022 (1,44,857 shares i.e., 1.35%), the requirement for disclosure under Regulation 29(2) r/w 29(3) of SAST Regulations was triggered. The pre-sale shareholding as per the disclosure has been shown as 75,11,875 (inadvertent error – as confirmed by the Acquirer) and the same should be read as 77,61,875 shares. Thus, Noticee has provided incorrect pre-sale shareholding and post-sale shareholding in the said disclosure.

ii. Pursuant to sale of shares on July 26, 2022 (80,000 shares i.e., 0.75%), July 27, 2022 (87,700 shares i.e., 0.82%) and August 10, 2022 (3,35,538 shares i.e., *3.13%), the requirement for disclosure under Regulation 29(2) r/w 29(3) of SAST Regulations was triggered. The Noticee has filed the disclosure for sale of said shares vide disclosure dated August 12, 2022.The pre-sale shareholding as per the disclosure has been shown as 72,67,018, (inadvertent error – as confirmed by the Acquirer) and the same should be read as 75,08,140 shares. Thus, Noticee has provided incorrect pre-sale shareholding and post-sale shareholding in the said disclosure.*

iii. *Pursuant to sale of shares on August 11, 2022 (2,58,099 shares i.e., 2.41%), the requirement for disclosure under Regulation 29(2) r/w 29(3) of SAST Regulations was triggered. The Noticee has filed the disclosure for sale of said shares vide disclosure dated August 12, 2022. The pre-sale shareholding as per the disclosure has been shown as 67,63,780 (inadvertent error – as confirmed by the Acquirer) and the same should be read as 70,04,902 shares. Thus, Noticee has provided incorrect pre-sale shareholding and post-sale shareholding in the said disclosure.*

iv. *Pursuant to sale of shares on August 12, 2022 (2,09,987 shares i.e., 1.96%) and August 16, 2022 (6,722 shares i.e., 0.06%), the requirement for disclosure under Regulation 29(2) r/w 29(3) of SAST Regulations was triggered. The Noticee has filed the disclosure for sale of said shares vide disclosure dated August 18, 2022.The pre-sale shareholding as per the disclosure has been shown as 65,05,681 (inadvertent error – as confirmed by the Acquirer) and the same should be read as 67,46,803 shares. Thus, Noticee has provided incorrect pre-sale shareholding and post-sale shareholding in the said disclosure*

v. *Pursuant to sale of shares on August 22, 2022 (1,00,000 shares i.e., 0.93%) and August 23, 2022 (2,00,000 shares i.e., 1.87%), the requirement for disclosure under Regulation 29(2) r/w 29(3) of SAST Regulations was triggered. The Noticee has filed the disclosure for sale of said shares vide disclosure dated August 25, 2022. The pre-sale shareholding as per the disclosure has been shown as 62,88,972 (inadvertent error – as confirmed by the Acquirer) and the same should be read as 64,30,094 shares. Thus, Noticee has provided incorrect pre-sale shareholding and post-sale shareholding in the said disclosure.*

vi. *Pursuant to sale of shares on August 24, 2022 (2,00,918 shares i.e., 1.88%) and August 25, 2022 (1,87,219 shares i.e., 1.75%), the requirement for disclosure under Regulation 29(2) r/w 29(3) of SAST Regulations. The Noticee has disclosed sale of said 2,00,918 shares and 1,87,219 shares vide disclosures dated August 25, 2022 and August 31, 2022 respectively. On August 24, 2022, the pre-sale shareholding as per the disclosure has been shown as 62,88,972 (inadvertent error – as confirmed by the Acquirer) and the same should be read as 64,30,094 shares. Thus, Noticee has provided incorrect pre-sale shareholding and post-sale shareholding in the said disclosure.*

a. *Further on August 25, 2022 the pre-sale shareholding as per the disclosure has been shown as 58,88,054 (inadvertent error – as confirmed by the Acquirer) and the same should be read as 60,29,176 shares. Thus, Noticee has provided incorrect pre-sale shareholding and post-sale shareholding in the said disclosure.*

vii. *Pursuant to sale of shares on August 30, 2022 (36,036 shares i.e., 0.34%), September 1, 2022 (1,14,897 shares i.e., 1.07%) and September 2, 2022 (1,04,907 shares i.e., 0.98%), the requirement for disclosure under Regulation 29(2) r/w 29(3) of SAST Regulations was triggered. The Noticee has disclosed sale of said 36,036 shares vide disclosure dated August 31, 2022 and remaining 1,14,897 shares and 1,04,907 shares vide disclosure dated September 3, 2022. The pre-sale shareholding as per the disclosure has been shown as 58,88,054 (inadvertent error – as confirmed by the Acquirer) and the same should be read as 60,29,176 shares. Thus, Noticee has provided incorrect pre-sale shareholding and post-sale shareholding in the said disclosure.*

g. *In view of the above, Noticee has effected incorrect filing of requisite disclosures to Stock Exchange and Target Company has allegedly violated 29(2) r/w 29(3) of SAST Regulations.*

h. *It was further observed that Noticee has made delayed filing of requisite disclosures to Stock Exchange and Target Company in following instance:*

i. *Pursuant to sale of shares on August 24, 2022 (2,00,918 shares i.e., 1.88%) and August 25, 2022 (1,87,219 shares i.e., 1.75%), the requirement for disclosure under Regulation 29(2) r/w 29(3) of SAST Regulations. The Noticee has disclosed sale of said 2,00,918 shares and 1,87,219 shares vide disclosures dated August 25, 2022 and August 31, 2022 respectively. It is observed that the Noticee had filed the disclosure with a delay of 2 days.*

i. *In view of the above, it was alleged that by not filing the requisite disclosures in a timely manner to Stock Exchange and Target Company, Noticee has violated Regulation 29(2) read with 29(3) of SAST Regulations.*

4. Vide letter dated September 12, 2024, Noticee filed its reply to the SCN and *inter alia* submitted the following:

   a. *The 5 counts of non disclosure in terms of Regulation 29(1), 29(2) read with 29(3) of SAST Regulations i.e. transactions between April 05, 2022 to April 21, 2022 which were pursuant to the Share Purchase Agreement entered into by and between the Noticee (Acquirer) and the Target Company (TC) was intimated to the Board vide TC's email dated 13.01.2023. While the same may have been omitted inadvertently by the Acquirer, the same were duly notified to the BSE, being the concerned stock exchange, and thus such transactions cannot be essentially seen as "undisclosed".*

   b. *With reference to the alleged omissions in disclosure vide disclosure dated July 27, 2022 regarding the sale of 8,878 shares and thereafter, the alleged omission in disclosing the sale of 1,00,000 shares vide disclosure dated August 25, 2022, the same are wholly inadvertent and are not, by any means, willful non-disclosures. These transactions were open market transactions, and there was no mala fide intent on the part of the Noticee in its lapse in compliance.*

   c. *With reference to the alleged incorrect disclosure of pre-sale and post-sale shareholdings as required in terms of Regulation 29(2) read with 29(3) of SAST Regulations, the Board has acknowledged that the 7 counts of errors as alleged are inadvertent in nature. These discrepancies are inadvertent computation/errors and cannot be attributed to the negligence of the Noticee. On account of the stringent timeline prescribed in terms of Regulation 29(3) of the SAST Regulations, there may have been certain instances which have lead to inadvertent errors in disclosing the accurate data of pre-sale and post-sale shareholdings. One transaction of 2,50,000 shares on June 29, 2022 was only partly executed, whereby 1,00,000 shares got successfully executed and therefore, the partial deliveries in certain transactions gave rise to various confusions which are attributable to the inadvertent errors committed by the Noticee in reporting the said transactions to the Exchange.*

d. The bona fide effort on the part of the Noticee to comply with the regulatory mechanisms in a timely manner is clearly reflected in the data furnished to the Board by the BSE vide its email dated January 25, 2023, and even otherwise. However, with reference to the allegations at para 11 of the SCN, the delay of 2 working days in disclosing the sale of shares on August 24, 2022 (2,00,918 shares i.e. 1.88%) and August 25, 2022 (1,87,219 shares i.e. 1.75%) was inadvertent, unavoidable and beyond the control of the Noticee. A short delay of 2 days in one instance is a technical lapse having no adverse impact on the TC, or public investors at large.

e. These lapses on the part of the Noticee were identified months after the same took place, and by then it was too late to rectify the same. But Noticee, having taken notice of the same, took firm steps to develop and strengthen its internal functioning with the view to ensure that such regulatory lapses are not connected in future.

f. The imposition of penalty on account of failure to discharge statutory obligations is an outcome of quasi-criminal proceedings; and penalty would not ordinarily be imposed unless the party so penalized has acted either in deliberate defiance of law or was guilty of misconduct, or simply disregard of its obligations. Imposition of penalty is discretionary power vested in the hands of the adjudicating authority to be exercised in a judicious manner, and penalty would not be imposed merely because the statute permits the imposition of some penalty.

g. The phrase "liable to a penalty" as seen in Section 15A of the Act does not caste an invariable obligation on the part of the Adjudicating Officer to impose penalties in cases of technical lapses.

h. The factors for consideration as per Section 15J of the Act, viz. amount of disproportionate gain or loss causes, and the repetitive nature of default are all absent in the instant case.

i. The very objective of SAST Regulations is to provide for transparency and dissemination of information to the acquirer and the Stock Exchange. While the

Noticee has made every endeavor to comply with its disclosure obligations in a timely manner, there have been some inadvertence leading to the alleged contraventions. However, the Noticee submits that it has at all times endeavoured to ensure complete regulatory compliances in all aspects, and has strived to ensure a high standard in that respect. The Hon'ble SAT, in Piramal Enterprises Ltd. v. SEBI, Appeal No. 466 of 2016 has unequivocally held that where there is an infraction of a rule, remedial measures are to be taken before punitive measures, and condemned the imposition of penalties on account of mechanical lapses.

5. Subsequently, vide Notice dated September 22, 2023, the Noticee was granted an opportunity of personal hearing on October 05, 2023. Vide email dated October 04, 2023, Noticee authorized Shri Udayan Mukherjee, Advocate to appear on behalf of the Noticee.

6. The Authorised Representative of the Noticee (hereinafter referred to as "**AR**") appeared for the hearing on October 05, 2023 and reiterated the submissions made vide reply dated September 12, 2023. The AR of the Noticee further submitted that Noticee is in the process of filing settlement application with SEBI.

7. Vide October 06, 2023, Noticee informed that it has filed settlement application.

8. Subsequently vide email dated June 12, 2024, it was informed by the concerned department of SEBI that the settlement application filed by the Noticee has been rejected.

9. Pursuant to same, in the interest of natural justice, vide letter dated June 13, 2024, Noticee was advised to file additional reply, if any, on or before June 21, 2024.

10. Vide email dated June 21, 2024, Noticee filed submissions, reiterating/emphasizing the submissions made vide reply dated September 12, 2023.

CONSIDERATION OF ISSUES AND EVIDENCE

11. I have carefully perused the allegations levelled against the Noticee in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination: -

I. **Whether *Noticee has violated following provisions :***

a. Regulation 29(1) read with Regulation 29(3) of SAST Regulations
b. Regulation 29(2) read with Regulation 29(3) of SAST Regulations

II. Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?

III. If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

12. Before proceeding with the matter on merits, it would be relevant to reproduce the provisions of law:

*"**Disclosure of acquisition and disposal.***

29.(1) Any acquirer, together with persons acting in concert with him acquiring shares or voting rights in a target company, which taken together aggregates to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified:

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

(2) Any person together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held

and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

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

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to,—

(a)every stock exchange where the shares of the target company are listed; and

(b)the target company at its registered office."

13. Now I deal with the allegations levelled against the Noticee.

Issue No. 1: Whether Noticee has violated following provisions :

- ***a. Regulation 29(1) read with Regulation 29(3) of SAST Regulations***
- ***b. Regulation 29(2) read with Regulation 29(3) of SAST Regulations***

14. It was alleged that the Noticee did not file requisite disclosure to the Stock Exchange and the Target Company on 7 instances. In this regard, Noticee has submitted that the 5 counts of non-disclosure in terms of Regulation 29(1), 29(2) read with 29(3) of SAST Regulations, i.e. transactions between April 05, 2022 to April 21, 2022 which were pursuant to the Share Purchase Agreement entered into by and between the Noticee (Acquirer) and the Promoters of Target Company (TC) was intimated to the Board by TC email on 13.01.2023. The same was omitted inadvertently by the Acquirer, the same were duly notified to the BSE. And therefore, such transactions cannot be essentially seen as "undisclosed". Further, disclosure with respect to sale of 8,878 shares and thereafter, the alleged omission in disclosing the sale of 1,00,000 shares, the same was inadvertent and was not a willful non-disclosure.

15. I have carefully examined the allegation of aforesaid 7 instances of non disclosures by the Noticee. It is noted that the first transaction of 14,96,100 shares (13.97%) on April 05, 2022 triggered disclosure requirement under Regulation 29(1) read with Regulation 29(3) of SAST Regulations. The subsequent transactions on April 06, 2022, April 12, 2022, April 18, 2022 and April 21, 2022 triggered the disclosure requirements under Regulation 29(2) read with Regulation 29(3) of SAST Regulations. As per the said provisions, the disclosures are required to be made within two (2) working days from the date of acquisition. I note that intent to acquire 77,06,100 shares of the Target Company was disseminated to the public through the Detailed Public Statement dated October 26, 2021. But the actual acquisition took place much later, that is in April 2022 in 5 tranches, for which the disclosures under SAST Regulations were required to be made and as per the material available on record, the disclosures for the said transactions were not made at all.

16. I further note that the Noticee made the disclosure with respect to the change in shareholding pursuant to the sale transactions on June 29.06.2022 and 25.07.2022 on 27.07.2022, however, it didn't mention the sale transaction of 8,878 shares made on 30.06.2022. Further, it is noted that the Noticee made disclosure with respect to change in the shareholding pursuant to the sale transaction made on 23.08.2022 on 25.08.2022, however, it did not mention about the sale transaction of 1,00,000 shares made on 22.08.2022.

17. Thus, I note that the above instances of non filing of acquisition/sale as alleged in the SCN have been established. Therefore, I am of the opinion by not making disclosures with respect to the aforesaid transactions, the Noticee has violated Regulation 29(1), 29(2) read with Regulation 29(3) of SAST Regulations.

18. Further, in the SCN it had been alleged that in 7 instances the Noticee had made incorrect filing of requisite disclosures of pre-sale shareholding and post-sale shareholding as mentioned in para 3(f)(i) to (vii) on paged 5 and 6 of this order. In this regard, the Noticee in its reply has accepted the violations while at the same time

submitting that these discrepancies are inadvertent computation errors/ confusion over partial execution of trades/deliveries and also mentioned about stringent timelines for compliance.

19. The explanations given by the Noticee do not absolve the Noticee from the violations. Thus, I note that the above-mentioned instances of incorrect filing of requisite disclosures of pre-sale shareholding and post-sale shareholding as alleged in the SCN have been established.

20. Further, in the SCN it had been alleged that the Noticee had made delayed filing of requisite disclosures for the trades done on 24.08.2022 and 25.08.2022 on August 31, 2022 instead of by August 29, 2022 i.e. delay of 2 days.

21. In this regard, the Noticee in its reply has accepted the violation and submitted that a short delay of 2 days in one instance is a technical lapse having no adverse impact. In this regard, I note that the Noticee has admittedly did not make any disclosure within two days of the trades and made it with a delay of 2 days. It is important to make such disclosures on time so that the investors are made aware on time regarding the shareholding of a company to make an informed decision. Thus, I note that the above-mentioned instance of non-disclosure as alleged in the SCN has been established.

22. The Noticee has contended that the omissions in disclosure were inadvertent and are not, by any means, willful non-disclosures.

23. Here I would like to rely on the ***SEBI Vs. Cabot International Capital Corporation*** matter wherein it was held by the Bombay High Court that the scheme of penalty prescribed under the SEBI Act and the SEBI Regulations is penalty for failure of statutory obligation or breach of civil obligation. There is no element of any criminal offence as contemplated under criminal proceedings and hence mens rea is not an essential element for imposing penalty under the SEBI Act and SEBI Regulations.

24. I note that purport of the disclosures under SAST Regulations is that the investors are aware of the true facts to make informed decision. Therefore, by not making required disclosures, I am of the opinion, Noticee has violated Regulation 29(1) and Regulation 29(2) read with Regulation 29(3) of the SAST Regulations.

25. I am of the view that the disclosures requirements under the SAST Regulations serve very important purposes. The stock exchange is informed through disclosures so that the investing public will come to know of the position enabling them to take informed decisions with respect to whether to continue with or exit from the company. Further, timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Further, Hon'ble Securities Appellate Tribunal ('SAT') in the matter of ***Coimbatore Flavors & Fragrances Ltd. vs SEBI*** (Appeal No. 209 of 2014 order dated August 11, 2014), has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

26. Further, Hon'ble SAT in its judgement dated October 14, 2014 in the matter of **Virendrakumar Jayantilal Patel vs. SEBI** (Appeal No. 299 of 2014), has held that ".......... *obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation*."

27. 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".

28. In view of all of above, I find that the Noticee has violated the provisions of Regulation 29(1) and 29(2) read with Regulation 29(3)of SEBI SAST Regulations.

Issue No. 2: Do the violations, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) of the SEBI Act, 1992?

29. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that :

"*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established......".*

30. In view that the violations committed by the Noticee have been established, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced 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 No. III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

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

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

32. From the material available on record, I observe that any quantifiable gain or unfair advantage accrued to the Noticee or loss cause to investors is not available on record. From the record and as brought out in the SCN and also narrated in the pre-pages it is seen that on multiple occasions the Noticee has either not made disclosures of substantial quantity of share transactions or made delayed or incorrect disclosure. At the same time, the Noticee has contended that these were technical, inadvertent unintentional lapses on their part to disclose. It may be noted that the significance of the mandatory disclosures cannot be done away with even if the information regarding said planned transactions was in public domain. In this case as mentioned the actual transactions happened much later and disclosure of it was not made. Further, there are also couple of other transactions for which the disclosures under the SAST Regulations were not made/delayed or incorrect disclosures were made. Therefore, the multiple transactions for which the disclosures were delayed/ not made or incorrect disclosures were made cannot be termed as technical lapses. It is important to note that the disclosures in respect of the vital information of acquisition/

shareholding/ disposal thereof of any company has been made mandatory for greater transparency and 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 and doesn't make it, he is depriving the investing public important information.

33. Hence, I note that the Noticee made delayed disclosures or made no disclosure/ incorrect disclosure as brought out in the preceding paragraphs and thereby have violated the relevant provisions of SAST Regulations, as mentioned above.

34. The said violations by the Noticee attract monetary penalty. Hence, I feel it appropriate to levy a penalty which is commensurate with the nature of violation, which acts as a deterrent factor for the Noticee and others in protecting the interest of investor in Securities market. Therefore, taking into account the facts and circumstances of this matter, submissions of the Noticee, I am of the view that suitable penalty under Section 15A(b) need to be levied on the Noticee.

ORDER

35. Having considered all the facts and circumstances of the case, the material available on record including submissions of the Noticee as well as the factors mentioned in section 15J of 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 Adjudication Rules 1995, I hereby impose a penalty of Rs.12,00,000/- (Rupees Twelve Lakh only) under section 15A(b) on the Noticee for having violated Regulation 29(1), 29(2) read with Regulation 29(3) of SAST Regulations. I am of the view that the said penalty is commensurate with the violations committed by Noticee.

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

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

37. In the event of failure to pay the said amount of penalty by Noticee within 45 days of the receipt of this Order, recovery proceedings may be initiated against Noticee 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.

38. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is being sent to the Noticee, viz., Dynamic Services & Security Ltd. and also to the Securities and Exchange Board of India.

Date : July 26, 2024
Place : Mumbai

Shashi Kumar Valsakumar
Adjudicating Officer