BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/SM/2020-21/8434/48]

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

In respect of

Hardeep Singh Bedi
(PAN: AEEPB6057Q)
(Address – C-4/4, Vasant Vihar
New Delhi -110057)

In the matter of M/s Pipavav Defence & Offshore Engineering Company Ltd., M/s Parsvanath Developers Ltd., M/s Goldyne Technoserve Ltd. and M/s Tulip Telecom Ltd.

BACKGROUND

1. A Department (**OD**) of Securities and Exchange Board of India (hereinafter referred to as the **SEBI**) conducted an investigation regarding trading/dealing in the scrip of M/s Pipavav Defence & Offshore Engineering Company Ltd., M/s Parsvanath Developers Ltd., M/s Goldyne Technoserve Ltd. and M/s Tulip Telecom Ltd. pursuant to downward movement of share price in the said scrips. The companies were listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE) during the investigation. During the course of investigation, it was observed by Investigating Authority (**IA**) of SEBI that Hardeep Singh Bedi (hereinafter referred to as **Noticee**), one of the promoter of the M/s Tulip Telecom Ltd. (hereinafter referred to as **TTL**/**Company**) has violated the provisions of regulations 31(1), 31(2) read with (r/w) 31(3) of SEBI (Substantial Acquisition of shares and takeovers) regulations, 2011 (hereinafter referred to as **SAST Regulations, 2011**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the examination, OD initiated adjudication proceedings against the Noticee, to inquire into and adjudge under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**), the alleged violations of provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011. The adjudication proceedings were approved by the Competent Authority. Shri Jayanta Jash was appointed as the Adjudicating Officer (AO) under section 15-I of the SEBI Act, 1992 r/w rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged violation of the provisions under regulation 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 by the Noticee. The adjudication Proceedings were transferred to Shri Nagendraa Parakh from Shri Jayanta Jash and subsequently to undersigned. Undersigned was appointed as AO vide AO order dated July 10, 2017, whereas all relevant record was conveyed vide office note dated January 17, 2020, upon which proceedings continued.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. EAD/NP/JS/OW/5694/4/2016 dated February 26, 2016 (hereinafter referred to as **SCN**) was issued to the Noticee at the address *"C-4/4, Vasant Vihar, New Delhi – 110057"* in terms of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against him for the alleged violations of provisions under regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and why penalty be not imposed on the Noticee under section 15A(b) of the SEBI Act, 1992 for the alleged violations as specified in the SCN. The SCN was served upon the Noticee through speed post acknowledgement due (SPAD) as seen from the reply submitted by the Noticee vide e-mail dated March 16, 2016 from the e-mail colbedi@gmail.com referring the said SCN. Noticee vide its letter dated May 02,

2016 submitted reply to the SCN and requested for hearing. In the interest of natural justice, vide hearing notice dated November 15, 2016, an opportunity was granted by previous AO to the Noticee for a personal hearing scheduled on November 30, 2016. As seen from the Noticee's letter dated November 26, 2016, Noticee requested for additional time to appear before the then AO. Accordingly, vide hearing notice dated December 6, 2016 another opportunity of hearing was granted to the Noticee on December 19, 2016. As available on record, further opportunity of hearing was granted to the Noticee on January 17, 2017 and May 24, 2017.

4. Upon appointment as AO, undersigned vide hearing notice dated November 22, 2017 granted an opportunity of hearing on December 12, 2017 sent at the address C-4/4, Vasant Vihar, New Delhi – 110057 through SPAD and the same returned undelivered. Thereafter, the said hearing notice was uploaded on the SEBI website under "Unserved Summons / Notices". Subsequently, by way of release of public notice dated February 16, 2018 in the newspapers in New Delhi editions, for the last known address of the Noticee was there. Vide said newspaper publication, Noticee was provided with an opportunity of hearing on February 28, 2018. However, Noticee neither reply to the said hearing notice nor attended the hearing scheduled hearing on February 28, 2018. Upon perusal of the available record, it was observed that earlier AO sought certain information/documents in the instant matter such as details of shares pledged and invoked, disclosure made with the company and stock exchanges etc. Vide office note dated July 31, 2018, June 26, 2019, undersigned requested the concerned department to provide the required information alongwith the supporting documents to proceed further. Accordingly, after receipt of the required information on January 20, 2020, supplementary SCN no. SEBI/HO/EAD-10/E&AO/SR/SM/OW/2915/1, 2 and 6 dated January 22, 2020 was issued to the Noticee through SPAD at the addresss *"Address – 1: Shri Hardeep Singh Bedi, C-4/4, Vasant Vihar, New Delhi – 110057, Address-2: Shri Hardeep Singh Bedi, Director of Cedar Infonet Private Ltd., G-04/HR-140/7, Pul Pehladpur, New Delhi-110044 and Address-3: Shri Hardeep Singh Bedi, Director*

of Cedar Infonet Private Ltd., D-159, Okhla Industrial Area, Phase-1, Third Cabin, Ist Floor New Delhi, South Delhi -110020". Also the same was sent through e-mail at colbedi@gmail.com. As per available record, the said supplementary SCN sent through SPAD was delivered to the Noticee except one address as seen from website of India post. Proof of delivery is on record. Vide hearing notice dated February 24, 2020, an opportunity of hearing was granted to the Noticee on March 20, 2020 and the same was sent through SPAD and emails at colbedi@gmail.com and cedarinfonet@gmail.com. The said notice sent through e-mail was delivered to the Noticee. However, the said notice sent through SPAD returned undelivered. In the interest of natural justice the said hearing was uploaded on the SEBI website under "Unserved Summons / Notices". Subsequently, by way of release of public notice dated March 23, 2020 in the newspapers namely The Hindustan Times and Nav Bharat in New Delhi editions, for the last known address of the Noticee was there. Vide said newspaper publication, Noticee was provided with an opportunity of hearing on April 21, 2020. Noticee vide e-mail dated April 06, 2020 requested for additional time citing Covid-19 pandemic and sought time till May 30, 2020. Acceding the request of the Noticee and also for Covid-19 pandemic, hearing was granted on June 04, 2020 at Delhi office of SEBI. The authorised representative (AR), on behalf of the Noticee vide e-mail dated May 29, 2020 submitted replies to the notice and requested to conduct hearing through online media. Further, AR vide e-mail dated June 01, 2020 requested for another date of hearing citing the reason of Covid-19 and also the Noticee being a senior citizen unable to attend hearing. The AR also request for video conference for the hearing in the instant matter. Accordingly, vide e-mail dated June 02, 2020, hearing was granted on July 08, 2020. Vide e-mail dated July 06, 2020 the AR submitted additional reply to the notices issued in the matter. ARs on behalf of the Noticee and the Noticee attended the hearing through telephone on the scheduled date i.e. July 08, 2020 and reiterated the submissions made i.e. May 02, 2016, May 29, 2020 and July 06, 2020. Also the AR requested additional time to submit additional information and acceding the request of AR, Noticee was given time till July 15, 2020. Vide e-mail dated July 15, 2020 the AR submitted additional reply to the notices.

5. It was alleged in SCN and supplementary SCN that Noticee was one of the promoter of the company during investigation period. IA observed that shareholding of Noticee was reduced by 1.01% in the quarter ended September 2012 over the quarter ended June 2012. The details of pledged shares and invocation of pledged shares in the scrip of Tulip Telecom Ltd. are tabulated below:

Pledge Creation		**Pledged invocation**	
Date of pledge	**No. of shares pledge**	**Date of pledge**	**No. of shares pledge**
11-Sep-12	21,81,000	27-Aug-12	54,000
11-Sep-12	5,78,000	27-Aug-12	27,000
12-Sep-12	6,57,000	20-Sep-12	5,00,000
12-Sep-12	11,10,000	24-Sep-12	3,00,000
13-Sep-12	3,65,000	24-Sep-12	1,00,000
18-Sep-12	28,92,000	24-Sep-12	3,00,000
26-Sep-12	18,00,000	**Total**	**12,81,000**
Total	**95,83,000**		

6. The demat statements of the Noticee in the scrip of Tulip Telecom Ltd. were provided to the Noticee as Annexure-A and the disclosures made to the Stock Exchanges provided to the Noticee as Annexure-B. It was alleged that lenders to whom promoter group entities pledged the shares had invoked pledge of shares from Noticee's account. However, Noticee failed to make disclosure of pledge and invocation of pledge and hence it is alleged that Noticee violated the provision of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011".

7. Reply of the Noticee vide letter dated May 02, 2016, vide e-mails dated May 29, 2020, July 06, 2020 and July 15, 2020 are as follows:

a) Noticee replied that he is the promoter of Tulip Telecom Limited. The Company pledged shares with NBFC and Financial Institutions such as L&T Finance Limited, Religare Finvest Limited, JM Financial Services Private Limited, ECL Finance Limited, STCI Finance Limited, Cholamandlam Securities Limited from time to time. On 12the day of February 2015, the winding up petition of the Company was admitted and the Official liquidator attached to the Hon'ble High Court of Delhi was appointed to take charge of the books of accounts and other documents.

b) The Authorised representative on behalf of the Noticee replied that the alleged violations by SEBI in the SCN dated 22 January 2020 against Noticee pertains to non-disclosure of encumbered shares held by Noticee in Tulip Telecom Limited **(Target Company)** as statutorily required under regulation 31 of SAST Regulations, 2011. Noticee made the submissions below are without prejudice to each other and are alternative to one another.

Inordinate delay in proceedings against natural justice

c) The alleged violation of disclosures of encumbered shares of Target Company under question in the SCN date 22 January 2020 dates back to the year 2012. There has been an inordinate delay of approximately 8 years on the part of SEBI in issuing the SCN dated 22 January 2020. Although there is no limitation under the SEBI Act, 1992, it is well settled that adjudication proceedings have to be initiated within a reasonable time frame.

d) Noticee cited the case law of Hon'ble Securities Appellate Tribunal ("**SAT**") in the matter of *Ashlesh Gunvantbhai Shah V. SEBI* dated 31 January 2020. In this case, there was an inordinate delay of 7 years on the part of SEBI in issuing a show cause notice to the appellant for alleged violation under SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003. SAT observed that no urgency was shown by SEBI to culminate the proceedings and that SEBI moved at a leisurely pace. Accordingly, SAT quashed the Adjudicating Officer's order and held that the penalty cannot be sustained on account of the inordinate delay in the initiation of the proceedings by issuance of a show cause notice. The relevant extracts from the judgment are reproduced below:
"15. 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. Even though there is no period of limitation prescribed in the Act and Regulations in the issuance of a show cause notice or for completion of the adjudication proceedings the authority is required to exercise its powers within a reasonable period as held recently in Adjudicating Officer, Securities and Exchange Board of India vs. Bhavesh Pabari (2019) SCC OnLine SC 294. In the instant case, we are of the

opinion that the power to adjudicate has not been exercised within a reasonable period and therefore no penalty could be imposed.
16. As a result, without going into the merits of the case, we find that on account of the inordinate delay in the initiation of the proceedings by issuance of a show cause notice, the penalty order cannot be sustained. The impugned order passed by the AO is quashed. All the appeals are allowed. In the circumstances of the case, there shall be no order on costs."

e) Further, SAT in the case of *Ashok Shivlal Rupani V. SEBI* decided on 21 August 2019, while dealing with the question of inordinate delay of 8 years in issuing show cause notice for initiating proceeding against the appellant for alleged violation under SEBI (Listing and Disclosures Requirements) Regulations, 2015 and SEBI (Prohibition of Insider Trading Regulations,1992), observed that:
"6. Having considering the matter, we are of the view that there has been an inordinate delay on the part of the respondent in initiating proceedings against the appellants for alleged violations. Much water has flown since the alleged violations and at this belated stage the appellants cannot be penalized. ..."

f) Noticee submitted that recently, the Supreme Court of India in the case of *Adjudicating Officer, SEBI vs. Bhavesh Pabari* also held that*:*
"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 depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

g) Noticee submitted that no penalty should be imposed on our Client since there has been an inordinate delay of 8 years in the initiation of the proceedings by SEBI. This matter is a prime example of the fact that much water has flowed since the time of the alleged violation. Firstly, the Delhi High Court had appointed an Official Liquidator for winding up of the Target Company in the year 2015. The copy of the said order is annexed as Exhibit 2 to the reply**.** Secondly, the Target Company was even delisted from the recognized stock exchanges, i.e. Bombay Stock Exchange via notice dated 09 May 2018 and National Stock Exchange via notice dated 19 May 2018. The copy of the said notices for delisting of the Target Company from relevant stock exchanges is annexed as Exhibit 3 to the reply.

h) Noticee submitted that the transactions mentioned in the SCN, had followed all the applicable legal requirements and made necessary disclosures. However, the SCN has been issued after almost 8 (eight) years and Noticee does not have copies of all the disclosures made to the Target Company way back in 2012.

No statutory requirement of maintaining records

i) Noticee referred the Adjudication Order against *M/S J M Morgan Stanley Securities Pvt. Ltd* dated October 27, 2005, where SEBI had dealt with a similar issue. SEBI had noted that:

"27. In this context, what strikes me is the maxim of equity which is well settled namely "lex non cogit ed impossibilia" i.e., the law does compel the impossible. An insight into the rationale of the maxim, based on certain apex court pronouncements would enable a better appreciation of the same.

28. In the case of State of Rajasthan and Anr Vs. Shamsher Singh 1985 (supp) - SCC – 416, the Supreme Court was pleased to hold that the doctrine of the impossibility of performance indicates that however mandatory the provision may be, where it is impossible of compliance, that would be sufficient excuse for non-compliance particularly when it is a question of the time factor (emphasis not supplied).

29. In the case of Raj Kumar Vs. Tarapada (1987) 4 SCC 398, a similar view was held which reads as follows:

"……..…… The law, in its most positive and peremptory injunctions, is understood to disclaim, as it does in its general aphorisms, all intention of compelling impossibilities and the administration of laws must adopt that general exception in the consideration of all particular cases ……...the law does not compel a man to do that which he cannot possibly perform and an act of the Court shall prejudice no man would apply with full favour in the facts of this case ……."

…

36. From the above discussion, the issue that stands out is that where the law creates a duty or charge and the party is unable to perform the said duty without any default, then the law in general excuses such lapse.

37. Considering the facts and circumstances of this case in its entirety I am inclined to hold that this is not a case where the entity failed to furnish the information sought for, citing reasons like client confidentiality etc., but a case where it was not possible to furnish the said information since it did not exist as on the date when the information was sought and hence non submission of the information would not make them liable under the provisions of the SEBI Act."

j) Noticee submitted that during the period of previous 8 years, the Target Company has been delisted from the stock exchanges and has gone into liquidation. Further, Noticee is not associated with the Target Company in any manner. It is submitted that Noticee had made all the relevant disclosures under Regulation 31 of SAST Regulations. However, some records have been misplaced since the transactions happened a long time ago. In this regard, it is submitted that there is no regulatory requirement under the SAST Regulations to maintain records for such long periods of time.

All disclosures were made by our Client

k) Noticee submitted that he has followed all the procedures and the disclosure requirements as stipulated under the SAST Regulations and is not in violation of Regulation 31(1) read with Regulation 31(3) of the SAST Regulations, 2011, with respect to the shares encumbered through pledging as identified in the SCN dated 22 January 2020. As mentioned above, it has not been possible to trace all the records of the disclosures made by our Client. However, we are

submitting most of the disclosure along with this reply. The copy of these relevant disclosures for creation of pledge in scrip of the Target Company as identified in the SCN dated 22 January 2020 has been annexed as Exhibit 4 to the reply. Further, the details of these disclosures to the stock exchanges made by our Client for creation of pledge and invocation are detailed in Table below:

Pledge creation			**Pledged invocation**		
Date of pledge	**No. of Shares Pledged**	**Disclosure available**	Date of Pledged invocation	**No. of Shares Pledged**	**Disclosure available**
September 11, 2012	21,81,000	Available	August 27, 2012	54,000	Not Available
September 11, 2012	5,78,000	Available	August 27, 2012	27,000	Not Available
September 12, 2012	6,57,000	Available	September 20, 2012	5,00,000	Not Available
September 12, 2012	11,10,000	Available	September 24, 2012	3,00,000	Not Available
September 13, 2012	3,65,000	Available	September 24, 2012	1,00,000	Not Available
September 18, 2012	28, 92,000	Not Available	September 24, 2012	3,00,000	Not Available
September 26, 2012	18,00,000	Available			

l) Further, it is submitted that he has made all the disclosures to the stock exchanges for the invocation of pledged shares, as identified in the table provided in Para 2 of the SCN dated 22 January 2020, as required under Regulation 31(2) of the SAST Regulations. Additionally, Noticee disclosed all the information as required under Regulation 31 of the SAST Regulations to the Target Company.

Lenders would have also disclosed invocation of pledge

m) In this regard even if we *assume* that disclosures regarding invocation of pledge were not made by Noticee in the year 2012, the lenders to whom the respective shares of the Target Company were pledged, would have made disclosures to the stock exchanges under Regulation 29 of the SAST Regulation. It is hereby clarified that only for the purpose of this argument (without admitting such default in any manner), we have assumed that Noticee has not made the required disclosures under Regulation 31(2) of SAST Regulations. The primary purpose of making disclosure to the stock exchanges

is to make available such information in the public domain and inform the potential as well as the existing investors about the change in shareholding of the target company. Accordingly, the primary purpose of disclosure was fulfilled either with the disclosure made by under Regulation 31 of SAST Regulations or disclosures made by the lenders to the stock exchanges under Regulation 29 of the SAST Regulations. In this regard, such alleged non-compliance under Regulation 31(2) of SAST Regulations becomes a mere procedural technicality. It is submitted that the investors were well informed about the invocation of pledged share by respective lenders, no loss was caused to any investor as a result of any such alleged default by our Client.

n) In this regard, Noticee referred the order of Hon'ble SAT in *Ashok Shivlal Rupani V. SEBI* dated 21 August 2019, observed that,
"It is alleged that disclosure under PIT Regulations was not made but similar disclosure was made by the appellant under SAST Regulations. Therefore, information was available on the Stock Exchange and therefore it cannot be said that the respondents were unaware of the alleged violations. Further, the purpose of disclosure was to make the market aware of the change of shareholding of the shareholders. When a disclosure was made by the company under SAST Regulations the investors became aware of the change in the shareholding. The non-compliance of Regulation 13 if any becomes technical in nature."

No penalty should be imposed

o) Noticee replied that it is an established legal principle that whilst awarding penalty, Section 15J of the SEBI Act should be kept in mind. While determining the quantum of penalty under section 15A(b) of SEBI Act, 1992, SAT in various judgments has followed Section 15J of the SEBI Act, which reads as follows:
"Section 15J of SEBI Act - Factors to be taken into account by the Adjudicating Officer
While adjudging quantum of penalty under section 15-I of SEBI Act, 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."

p) Noticee referred the case of *Cabot International Capital Corporation Vs.* Adjudicating *Officer*, SAT while setting aside the impugned order of Adjudicating Officer imposing penalty on the appellant considered the scope of section I5J in the context of unintentional failure on the part of the appellant to comply with the requirement of Regulation 3(4) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and held that:
"21. On a perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" is of considerable significance,

especially in view of the guidelines provided by the legislature in section I5J. "The Adjudicating officer shall have due regard to the factors" stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub-section 1 of section 15I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case.

29. … Even though the Adjudicating Officer has given the benefit of doubt to the Appellant in the matter of the alleged violation of regulation 11/ section 15 (ii), for the reasons best known to him he has not extended that benefit as far as non-compliance of regulation 3 (4) is concerned, though the facts and circumstances applicable are the same in both the cases. This differential treatment, in the absence of adequate explanation cannot stand. The observation made by the Adjudicating Officer based on his satisfaction cannot be limited to applicability to regulation 11/section 15 (ii) alone as the facts are common. Further the Adjudicating Officer has also clearly stated in the order "that the delay in filing of the report has not resulted in any gain" to the Appellant. There is not even a whisper in the impugned order of any loss to anybody. There is nothing on record to show that the Appellant had a past record of default. None of the factors of section 15J is attracted in this case. In the light of the totality of the facts and circumstances of the case and in view of the Supreme Court's guidelines in the Hindustan Steel's case imposition of monetary penalty on the Appellant in my view is unwarranted.

30. For the reasons stated above I am of the view that the order-imposing penalty on the Appellant cannot be sustained and the same deserves to be set aside. I do so."

q) Noticee referred the Hon'ble SAT in the matter of *Samrat Holdings Limited v. SEBI & Ors.*6, set aside the impugned order of Adjudicating Officer which imposed penalty on appellant. SAT further noted that:
"*As already stated above, in terms of section 15I whether penalty should be imposed for failure to perform the statutory obligation is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section I5J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment. … Thus the Adjudicating Officer's findings and the order-imposing penalty cannot stand together. The findings should serve as the basis for penalty. But in this his findings serve only to absolve the Appellant from the reach of penalty. There is nothing in the order supporting the Adjudicating Officer's decision imposing the penalty. In the light of the totality and circumstances of the case and the finding of the Adjudicating Officer thereon, and also in view of the Supreme Courts guidelines in the Hindustan Steel's case, imposition of monetary penalty on the Appellant, in my view is unwarranted. For the reasons stated above, the impugned order cannot be*

sustained. Therefore the appeal is allowed and the impugned order is set aside."

r) Noticee submitted that the primary purpose of disclosure was fulfilled as the lenders made disclosures to the stock exchanges under Regulation 29 of the SAST Regulation and such information being available in the public domain, no loss was caused to any investor as a result of such alleged non-disclosures. Further, it is submitted that no investor has raised any claim for any losses incurred or registered any complaint against the alleged non-disclosure by our Client. Further, there was no evidence for any disproportionate gain or any unfair advantage to our Client as a result of such alleged non-disclosure by our Client. Further, our Client has not committed any default in the past. Even if there was a default on the part of our Client, such default was not habitual or repetitive in nature. Therefore, there are no grounds to impose any penalty on our Client.

Minimum penalty should be imposed

s) Noticee submitted that if your Honour decides to impose a penalty despite the submissions made above, it is submitted that Section 15I and Section 15J should be kept in mind whilst awarding any penalty. In the context of justice and equity, it is humbly submitted before your Honour to award warning or minimal penalty, if absolutely necessary. Further, it is brought to the kind notice of your Honour that SEBI in a recent case of *Astrazeneca Pharma India Ltd.* decided on 05 June 2020, set a precedent by giving a warning to the alleged violators therein and directed them to refrain from indulging in such unfair trade practices in future or in any other similar act whatsoever. The relevant paragraphs have been reiterated below for reference:
"*40. In view of the foregoing, I, in exercise of the powers conferred upon me under Sections 11(1) and (4), and 11B read with Section 19 of the SEBI Act, 1992, hereby strongly censure the Noticees for displaying such gross professional misconduct and fraudulent trade practice in trying to arrive at a private arrangement amongst them so as to help the Company sail through the delisting procedure in a manner that was intended to dilute the Reverse Book Building procedure for discovery of the delisting price of the scrip as per stipulations in the SEBI (Delisting of Equity Shares) Regulations, 2009 thereby jeopardising the interests of the retail public shareholders and investors of the company at large. I hereby further;*
(a) caution the Noticees and direct them to refrain from indulging in such unfair trade practices in future or in any other similar act whatsoever, so as to violate the sanctity of the SCRA, 1956, the SEBI Act, 1992 and the Rules and Regulations made thereunder including the SEBI (Delisting of Equity Shares) Regulations, 2009 both in letter and in spirit by indulging any acts, which are detrimental to the interest of the shareholders and prejudicial to the interest of the investors of securities market;…"

t) Noticee submitted that the Target Company has been delisted from the stock exchanges and is currently under liquidation. In this regard, there arises no

valid reason for imposing any penalty. Further, it is submitted that Noticee has no office, no employees, no funds and almost no assets as of date. The said condition was even acknowledged by the Principal Bench of the National Company Law Tribunal, New Delhi in its order dated 19 September 2019. The copy of this order has been annexed as Exhibit 5 to the reply.

8. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other evidences available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

9. The issues arising for consideration in the instant proceedings before me are:-

a. Whether the Noticee violated the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011?

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

c. If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?

10. Before proceeding further, I would like to refer to the relevant provisions of SAST Regulations, 2011:

SAST Regulations, 2011
Disclosure of encumbered shares.

31(1) *The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*

(2) *The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.*

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—*

(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

FINDINGS:

11. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue (a): Whether the Noticee violated the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011?

a) It is alleged in the said SCN and supplementary SCN that Noticee was the promoter of the target company during the relevant period and Noticee pledged shares and invocation of pledged shares in the scrip of Tulip Telecom Ltd. The details of alleged pledge creation and pledged invocation of share in the said scrip are tabulated below:

Pledge Creation		**Pledged invocation**	
Date of pledge	**No. of shares pledge**	**Date of pledge**	**No. of shares pledge**
11-Sep-12	21,81,000	27-Aug-12	54,000
11-Sep-12	5,78,000	27-Aug-12	27,000
12-Sep-12	6,57,000	20-Sep-12	5,00,000
12-Sep-12	11,10,000	24-Sep-12	3,00,000
13-Sep-12	3,65,000	24-Sep-12	1,00,000
18-Sep-12	28,92,000	24-Sep-12	3,00,000
26-Sep-12	18,00,000	**Total**	**12,81,000**
Total	**95,83,000**		

With regard to the above mentioned pledge creation and pledged invocation of share in the said scrip, Noticee failed to make disclosures under the provision of the regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 and hence

it is alleged that Noticee violated the said provisions of the SAST Regulations, 2011.

b) Before proceeding on the merits of the case, the contention of the Noticee regarding the delay of issuance of the SCN is required to be addressed. Noticee replied that the said transactions were made by the Noticee during the period 2012 whereas the SCN issued in the year 2020. In this regard, it is clarified that in the instant matter SCN issued by earlier AO in the year 2016 and Noticee replied to the SCN in the same year. Also, opportunity of hearing was granted to the Noticee earlier. However, some information/documents were sought from the OD by previous AO. Undersigned, upon appointment of AO in the instant matter, continued to seek said information from OD and accordingly OD forwarded the information/documents like details of transactions made by the Noticee and the transaction statements etc. on January 17, 2020. Accordingly supplementary SCN issued on January 20, 2020 and then proceed further as per the Adjudication Rules, 1995. It is also pertinent to note that various Notices to the Noticee issued the same address on record, have gone undelivered and AO bound by the principles of natural justice followed many iterations for delivery in terms of AO Rules, 1995, thus adding significantly to the time lapse between first SCN and instant order.

c) Upon perusal of the available record, I find that Noticee was the promoter of the Company during the period of investigation and has Created pledge and the pledger has invoked the pledge on the shares pledged by the Noticee. The Company was listed with BSE and NSE during the period of investigation. As seen from record, Noticee created pledge of shares of Company on September 11, 2012, September 12, 2012, September 13, 2012, September 18, 2012 and September 26, 2012. Further, it is observed that pledged invocation of the shares were made in the said scrip on August 27, 2012, September 20, 2012 and September 24, 2012. For the said creation of pledged and invocation of pledged shares in the said scrip, being the promoter of the Company, Noticee was required to make disclosures to the Company and BSE under regulations 31(1)

and 31(2) r/w 31(3) of SAST Regulations, 2011 within the prescribed time as specified in the SAST regulations, 2011. However, as seen from the reply of the stock exchanges i.e. BSE and NSE, Noticee did not make disclosures for all the transactions made during the period of investigation as alleged in SCN. The same was also admitted by the Noticee in the reply to the SCN. With regard to the creation of pledge, as seen, Noticee has admittedly made disclosures in all except one transaction and for invocation of the pledged shares, no evidentiary proof is placed on record by Noticee regarding disclosures made by made by the Noticee. The same is also admitted by the Noticee. With regard to the invocation Noticee has contended that the lenders to whom the respective shares of the Target Company were pledged, would have made disclosures to the stock exchanges. I don't find merit find in the contention of the Noticee, as Noticee has failed to submit any evidentiary proof in this regard. As regard the case law Hon'ble SAT in Ashok Shivlal Rupani V. SEBI cited by Noicee, I note that the said matter is different from the instant matter on the ground that the disclosures in the instant matter is not available with the stock exchanges as seen from the reply of stock exchange available on record. I note that specific obligation is cast upon the Noticee to make the disclosures to the target company and the stock exchanges under the SAST Regulations, 2011.

d) Noticee has replied that presently the said Company was delisted and also under the process of liquidation and provided the evidentiary proofs regarding the same. It is noted from MCA website (http://www.mca.gov.in/mcafoportal/companyLLPMasterData.do and CIN no. of company–L74899DL1992PLC048817), BSE website (https://www.bseindia.com/markets/MarketInfo/DispNewNoticesCirculars.aspx?page=20180509-3 and NSE website (https://www1.nseindia.com/corporates/content/public_notice.htm) , that the company appears to be under process of liquidation and BSE shows that the company is delisted from the platform of the Exchange, with effect from May 11, 2018 vide notice no. 20180509 dated May 09, 2018, NSE public Notice dated May 18, 2018 that the equity shares of the company delisted w.e.f. May 30, 2018.

In this regard, it is observed that the shares of the Company was listed on BSE and NSE during the investigation period, for which Noticee is charged.

e) In view of the above case laws and material available on record, I find that Noticee failed to make disclosures to the Company and BSE in one instance regarding creation of pledged shares and invocation of pledged shares on August 27, 2012, September 20, 2012 and September 24, 2012 as specified under the provisions of SAST Regulations, 2011. Therefore, Noticee violated the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 for the transactions wherein disclosures were not made by the Noticee.

Issue (b): Do the violations, if any, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act, 1992 for the alleged violations by the Noticee?

Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the said failure to make disclosure for the pledged shares as prescribed in Regulations at the time of creation and invocation of pledge on the part of the Noticee attracts the imposition of monetary penalty under section 15A(b) of the SEBI Act, 1992, respectively which is reproduced below:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995?

a) While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995 , which reads as under:-

The SEBI Act, 1992

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

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

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

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

(c) the repetitive nature of the default."

b) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. I find that the Noticee failed to make required disclosures for as specified under the provisions of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011.

c) The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. vs. SEBI–, *"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."*

d) Further, I do not find any merit in the submission of the Noticee that he has not made any profits and no loss to investors. In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of Komal Nahata Vs. SEBI vide order

dated January 27, 2014 has observed that: *"Argument that no investor has suffered on account of nondisclosure 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 non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such nondisclosure*." Further, I also note that in Appeal No. 78 of 2014 in the case of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has observed that: "… *Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".*

e) Therefore, taking into account the facts and circumstances of this matter and the above mentioned case laws, I am of the view that a penalty Rs. 4,00,000/- (Rupees Four Lakh only) will be commensurate with the violations of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011 under section 15A(b) of the SEBI Act, 1992 committed by the Noticee.

ORDER

12. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 4,00,000/- (Rupees Four Lakh only) upon the Noticee under section 15A(b) of the SEBI Act, 1992 for violations of regulations 31(1) and 31(2) r/w 31(3) of SAST Regulations, 2011.

13. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai

14. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.” and also to e-mail id :- tad@sebi.gov.in

a) Case Name
b) Name of the ‘Payer/Noticee’
c) Date of Payment
d) Amount Paid
e) Transaction No.
f) Bank Details in which payment is made
g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

15. 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.

16. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of rule 6 of the AO Rules, 1995.

Date: July 30, 2020 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**