BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/HP/2022-23/16583-16589]

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) **HDIL Infra Projects Limited (PAN: AABCH9573R)** having address at - HDIL Tower, 9th Floor, Anant Kanekar Marg, Station Road, Bandra (East), Mumbai - 400051
2) **Rakesh Wadhawan (PAN: AAEPW7656G)** having address at - "Wadhawan House", Plot No. 32/A, Union Park Road No. 5, Near Shatranj Hotel, Bandra (West), Mumbai - 400050
3) **Sarang Wadhawan (PAN: AAAPW2530R)** having address at - "Wadhawan House", Plot No. 32/A, Union Park Road No. 5, Near Shatranj Hotel, Bandra (West), Mumbai - 400050
4) **Waryam Singh (PAN: ACZPA6044P)** having address at - 1401, Stellar Tower, Lokhandwala, Andheri (West), Mumbai - 400053
5) **Ashok Kumar Gupta (PAN: AACPG9453B)** having address at - 401, Dheeraj Dhan, St. Alexious Road, Bandra (West), Mumbai - 400050
6) **Karan Kumar Gupta (PAN: AJJPG1303J)** having address at - 401, Dheeraj Dhan, St. Alexious Road, Bandra (West), Mumbai - 400050
7) **Broadcast Initiatives Limited (PAN: AAICS3595F)** having address at - 101, Sumer Kendra Society, Pandurang Budhkar Marg, Near Doordarshan Kendra, Behind Mahindra & Mahindra Tower, Worli, Mumbai - 400013

In the matter of Broadcast Initiatives 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 HDIL Infra Projects Limited (**Noticee 1**), Rakesh Wadhawan (**Noticee 2**), Sarang Wadhawan (**Noticee 3**), Waryam Singh (**Noticee 4**), Ashok Kumar Gupta (**Noticee 5),** Karan Kumar Gupta (**Noticee 6**) and Broadcast Initiatives Limited **(Noticee 7/Company/BIL)** pursuant to examination in the matter of Broadcast Initiatives Limited. The Noticees 1 to 7 are collectively referred to as **'Noticees/You'.**

2. Adjudication proceedings have been initiated against,

    a) Noticees 1 to 5 for alleged violations of provisions of 7(1A) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as, '**SAST Regulations 1997**').
    b) Noticees 1 to 6 for alleged violations of provisions of Regulation 30(2) read with 30(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as, '**SAST Regulations 2011**').
    c) Noticee 1 for alleged violations of provisions of Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as, '**PIT Regulations**').
    d) Noticee 7 for alleged violations of provisions of Regulation 8(3) of SAST Regulations 1997.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI appointed Shri Amit Pradhan 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 December 16, 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 June 18, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice No. EAD/ADJ/AP/AKS/226/1-6/2021 dated January 04, 2021 (hereinafter be referred to as, the “**SCN**”) was served upon Noticees 1 to 6 and SCN No. EAD/ADJ/AP/AKS/221/2021 dated January 04, 2021 was served upon Noticee 7 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. BIL is listed on the Bombay Stock Exchange (BSE). While examining the Letter of Offer filed by Prosperity Agro India Limited (hereinafter referred as, ‘**PAIL**’) to acquire 26% of the total paid up equity share capital of the Company, SEBI had observed certain non-compliances with regard to SAST Regulations 1997 as follows:

7. Noticees 1, 2, 3 and 6 were promoters of the Company at relevant time and Noticee 4 and 5 were the person acting in concert (‘PAC’) with Noticee 1, 2 and 3 (hereinafter referred as, ‘**Acquirers**’). The Noticees 1 to 5 via Letter of Offer dated July 24, 2008 offered to acquire 20% of post issue capital from existing shareholders of the Company.

8. From the aforesaid Letter of Offer dated July 24, 2008, it was observed that the Noticees 1 to 5 *inter-alia* entered into a Share Subscription Agreement (SSA) on

June 24, 2008, with the Company to acquire 60 lakh equity shares of the Company of face value Rs 10/- each at a price of Rs 36.50 per share. The Acquirers and PAC had further entered into a Share Purchase Agreement (SPA) on June 24, 2008 with Mr. Gautam Adhikari and Mr. Markand Adhikari (hereinafter Mr. Gautam Adhikari and Mr. Markand Adhikari referred as, '**Sellers**') to acquire 69,10,140 shares at a price of Rs 10/- per share. With regard to aforesaid arrangement, the Acquirers made a public announcement on June 26, 2008 under Regulations 10 and 12 of the SAST Regulations 1997.

9. It was observed from Clause 2.1.e of the Letter of offer dated July 24, 2008, that the acquisition of shares under SPA would be subject to approval of Ministry of Information and Broadcasting ("MIB"), Government of India as per the "Guidelines for uplinking from India" as amended time to time.

10. As per the submissions made by the Merchant Banker of the Company, the approval for change of management and approval for allotment and transfer of shares were received from MIB in May, 2010. In its announcement dated May 14, 2010, the Company had *inter-alia* informed BSE that it had made allotment of 60 lakh shares of the Company to Acquirers and PAC on preferential basis consequent upon the approval received from MIB and in pursuance to aforesaid SPA dated June 24, 2008.

11. On account of aforesaid preferential allotment on May 13, 2010, the total shareholding of the Company increased from 1,93,14,000 shares to 2,53,14,000 shares.

12. Pursuant to SPA dated June 24, 2008, Acquirers and PAC received 41,23,932 shares of the Company from the Sellers, which were held in an escrow account and were transferred to them on June 08, 2010 upon the receipt of approval from MIB.

13. The details of aforesaid acquisitions by the Acquirers and PAC is as follows:

Date of Transaction	Shareholding before the transaction	No. of shares acquired	Shareholding after the transaction	Due Date for Compliance under Reg 7(1A) of SAST Regulations 1997	Actual Date of Compliance under Reg 7(1A) of SAST Regulations 1997	Delay
13.05.2010	29,51,932 (15.23%)	60,00,000 (23.70%)	89,51,932 (35.36%)	15.05.2010	No Disclosure available at BSE	Failure in making disclosure
08.06.2010	89,51,932 (35.36%)	41,23,072 (16.29%)	1,30,75,004 (51.65%)	10.06.2010	16.06.2010	6 days

14. From the transaction dated May 13, 2010, it was observed that the promoter and promoter group of the Company viz. Noticees 1, 2 and 3 along with PAC viz. Noticees 4 and 5, were together holding more than 15% of the shareholding in the Company. Further, the said transaction resulted in the change in the shareholding of the Company of Acquirers and PAC in excess of 2%. Similarly, with respect to transaction dated June 08, 2010, the transaction resulted in the change in the shareholding of the Company, of Acquirers and PAC in excess of 2%. Accordingly, the Noticees 1 to 5 were under the obligations to make disclosure to the Company and Stock Exchanges within 2 days of such acquisitions of shares by them in terms of Regulation 7(1)(A) read with 7(2) of the SAST Regulations 1997. However, on first occasion they failed to make any disclosure and on second occasion they disclosed it with the delay of 6 days.

15. **Therefore, it was alleged that the Noticees 1 to 5 have violated the provisions of 7(1)(A) read with 7(2) of the SAST Regulations 1997.**

16. It was further observed that the Promoter and Promoter Group of the Company and PAC viz. Noticees 1 to 6 were holding following number of shares as on 31.03.2012 and 31.03.2013, respectively:

Financial Year ending on	**Shareholding of the Promoter and Promoter Group and PAC as on end of Financial Year**	**Due date for Compliance under Regulation 30(2) of SAST Regulation 2011**	**Actual date of Compliance under Regulation 30(2) of SAST Regulation 2011**	**Delay**
31.03.2012	1,32,40,168 (52.30%)	10.04.2012	12.04.2012	2
31.03.2013	1,32,40,168 (52.30%)	09.04.2013	06.05.2013	27

17. In view of above table, the Noticees 1 to 6 were under the obligation to make disclosure with regard to their aggregate shareholdings in the Company at the end of respective financial year, to the Company and stock exchanges within 7 working days from the end of respective financial year in terms of Regulation 30(2) read with 30(3) of the SAST Regulations 2011. However, they made the disclosures for the financial year ending on 31.03.2012 and 31.03.2013 with the delay of 2 days and 27 days respectively.

18. **Thereforer, it was alleged that the Noticees 1 to 6 have violated the provisions of Regulation 30(2) read with 30(3) of SAST Regulations 2011.**

19. Further, from the Company letter dated June 16, 2010 to BSE, it was observed that Noticee 1 was holding 27,87,068 shares (14.43%) of the Company on June 08, 2010. On June 09, 2010 it received 28,57,372 shares from escrow account and its shareholding in the Company increased to 56,44,440 shares (i.e. inceased by 14.79%). Noticee 1 was holding 5% or more shares of the Company before receiving shares from the escrow account and such receipt of shares has resulted in change in its shareholding in the Company in excess of 2%.

Therefore, in terms of Regulation 13(3) read with 13(5) of PIT Regulations, Noticee 1 was under the obligation to make disclosure to the Company in Form 'C' regarding such change in its shareholding.

20. The details were sought from the Noticee 1 with respect to aforesaid transaction and disclosure, if any made by it. It was observed from the email of Noticee 1 dated February 02, 2016 that no disclosure in this regard was made by the Noticee 1 under the PIT Regulations. **In view of the above, it was alleged that the Noticee 1 has violated the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations.**

21. From the submissions dated October 07, 2013 of the Merchant Banker, it was observed that the Noticee 7 had made delayed disclosure under Regulation 8(3) of SAST Regulations 1997 about the holdings of the persons referred to under Regulation 8(1) and also holdings of promoters or person(s) having control over the company as on 31st March. The details of same is as follows:

Regulation	Annual/ Record Date for dividend declaration	Due date for Compliance	Actual Date of Compliance	Delay
8(3) of SAST Regulations 1997	Annual	30/04/2010	29/12/2010	243 Days

22. **In view of aforesaid delayed disclosure by the Noticee 7, it was alleged that the Noticee 7 has violated the provisions of Regulation 8(3) of SAST Regulations 1997.**

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

24. SCN was duly served to the Noticees. Noticee 5 and 6 filed their reply to the SCN vide letters dated March 18, 2021. SCN was served to the Noticees 1 to 4 and Noticee 7 through paper publication. However, Noticees 1 to 4 and 7 did not file any reply to the SCN.

25. The key submissions of the Noticee 5 and 6 are summarised below:

a) Noticee 5 and 6 submitted that these proceedings deserve to be disposed of forthwith without any action against them, owing to the inordinate delay. The allegations in the SCN dated 04.01.2021 refer to certain transactions during the year 2010 and shareholdings as on 31.03.2012 and 31.03.2013 i.e., about 8-11 years old and the SCN in the matter has been issued to them on 04.01.2021 i.e. after 8-11 years of the alleged transactions. In this regard, they relied upon certain judgments of Hon'ble SAT in the matters of Sanjay Jethalal Soni and Others vs SEBI, Mr. Rakesh Kathotia & Ors. vs SEBI, Ashlesh Gunvantbhai Shah and Ors vs SEBI and Parag Sarda and Ors Vs SEBI.

b) SEBI had observed these alleged violations while examining the Letter of Offer filed by Prosperity Agro India Limited i.e. during the year 2013 i.e. 8 years ago. The Letter of Offer was to be dispatched to the shareholders by Prosperity Agro India Limited latest by December 20, 2013 and hence the Letter of Offer was examined by SEBI during the year 2013 but definitely prior to December 20, 2013. Further, the SCN in the matter was issued on 04.01.2021 i.e. after 11 years of alleged transactions and about 8 years after SEBI admittedly came to know of the alleged violation in the year 2013. In the matter of Parag Sarda & Others Vs SEBI, Rakesh Kathotia & Others. vs SEBI, Sanjay Jethalal Soni & Others Vs SEBI etc. (*supra*), the Hon'ble Securities Appellate Tribunal, while quashing the impugned orders had observed a delay of 5 years in issuing SCN, as against 8 years in the instant case.

c) Some documents have been provided to them with SCN, however, they have not been furnished the requisite details and documents of their acquisitions/ shareholdings which have been alleged in the SCN. Since the matter is 11 years old and they ceased to be the promoter/promoter group of Broadcast Initiatives Limited, due to the non-availability of these old documents in support of the allegations in the SCN has led to impairment of their ability to defend this matter effectively and adequately. In this regard, Noticee 5 and 6 relied upon judgment of Hon'ble Supreme Court in the matter of State of Punjab v. Chaman Lal Goyal.

d) Noticee 5 stated that the shares mentioned at paragraph 2d and 2f of SCN were acquired by HDIL Infra Projects Private Limited and not by him. As per the corporate announcement dated May 14, 2010, both the observations at paragraphs 2d and 2f of SCN, in so far as the name of the allottee is concerned, are incorrect. He further stated that the shares mentioned at paragraph 2g of SCN on both the occasions were acquired by HDIL Infra Projects Private Limited and not by him.

As per SCN		**As per the last page of 'Annexure C' to SCN**
Date	**No of shares acquired**	**Acquired by**
13.05.2010	60,00,000	HDIL Infra Projects Private Limited
08.06.2010	41,23,072	HDIL Infra Projects Private Limited

e) The provisions of Regulations 7(1)(A) and 7(2) of SAST Regulations 1997 cast an obligation to disclose purchase or sale of the share capital of the target company, to the target company and to the stock exchanges within two days of such purchase or sale if:

i) person is an acquirer;
ii) that person has acquired shares or voting rights;
iii) such acquisition is under sub-regulation (1) to regulation 11; and
iv) purchase or sale aggregates two per cent or more of the share capital of the target company.

f) Therefore, to attract the provisions of Regulation 7(1)(A), it is necessary that all the four conditions stipulated above are satisfied. Since the shares referred at paragraph 2.g of SCN, i.e. 60,00,000 shares on 13.05.2010 and 41,23,072 shares on 08.06.2010, were not acquired by him, all the four conditions stipulated under Regulation 7(1)(A) were not attracted in his case. Further, since in terms of Regulation 7(1)(A) read with Regulation 7(2) of SAST Regulations 1997, the obligation to make disclosures has been fastened only upon the 'acquirer who has acquired shares', there was no obligation cast upon him to make any disclosures in this regard in terms of the provisions of these Regulations. Consequently, there is no violation of the provisions of Regulation 7 (1)(A) read with Regulation 7 (2) on his part, as alleged and hence, the SCN deserves to be disposed of without any penalty upon him.

g) With respect to allegations in paragraph 2i and 2j of SCN, Noticee 5 and 6 submitted that as per the provisions of Regulations 30(2) and 30(3) of SAST Regulations 2011, the obligation of disclosure has to be fulfilled within 7 working days of SEBI, from the end of each financial year. It is stated at paragraph 2i of SCN that the disclosure pertaining to the financial year ending on 31.03.2012 was made on 12.04.2012 with a delay of 2 days. Owing to the reasons stated against each date, the following 5 dates mentioned at table below were the 'non-working days' of SEBI during the period from 01.04.2012 to 12.04.2012.

Date	**'Non-Working Day' of SEBI due to**
01.04.2012	Ram Navami/ Sunday
05.04.2012	Mahavir Jayanti
06.04.2012	Good Friday
07.04.2012	Saturday
08.04.2012	Sunday
Total 'non-working days' of SEBI during 01.04.2012 to 12.04.2012	**5**

h) Since, there were 5 'non-working days' during the aforesaid 12 days' period from 01.04.2012 to 12.04.2012, there were only 7 'working days' of SEBI during the said 12 days' period, i.e. 12 calendar days (-) 5 'non-working days' = 7 'working days' of SEBI. Therefore, in terms of Regulation 30(2) read with 30(3) of SAST Regulations 2011, the due date of compliance with the disclosure requirement pertaining to the financial year ended on 31.03.2012, works out to be 12.04.2012 and not 10.04.2012 as calculated in SCN. Further, since the SCN brings out that the disclosure pertaining to the financial year ended on 31.03.2012 was made on 12.04.2012 which was the due date of compliance as calculated above, there is no delay in making any disclosure whatsoever on their part. Consequently, on the basis of above and on the basis of documents furnished by SEBI with the SCN, there is no violation of provisions of Regulations 30(2) and 30(3) of SAST Regulations 2011 by them in this regard. In view of the above, the SCN deserves to be disposed of without any penalty upon them.

i) Further, with respect to allegation made in paragraph 2i of the SCN that the disclosure pertaining to financial year ending on 31.03.2013, which was due on 09.04.2013, was made on 06.05.2013 i.e. with a delay of 27 days, Noticee 5 and 6 stated that owing to the reasons stated against each date, the following 12 dates mentioned at table below were the 'non-working days' of SEBI during the period from 10.04.2013 to 06.05.2013.

Date	**'Non-Working Day' of SEBI due to**
11.04.2013	Gudi Padwa
13.04.2013	Saturday
14.04.2013	(Sunday) Dr. Babasaheb Ambedkar Jayanti
19.04.2013	Ram Navami
20.04.2013	Saturday
21.04.2013	Sunday
24.04.2013	Mahvir Jayanti
27.04.2013	Saturday
28.04.2013	Sunday
01.05.2013	Mahrashtra Day

04.05.2013	Saturday
05.05.2013	Sunday
Total 'non-working days' of SEBI during 01.04.2012 to 12.04.2012	**12**

j) Since, there were 12 'non-working days' during the aforesaid 27 days period from 10.04.2013 to 06.05.2013, there were only 15 'working days' of SEBI during the said 27 days period. Therefore, the alleged delay works out to be 15 working days and not 27 days as alleged in SCN. In terms of Regulation 30(3) read with Regulation 2(1)(z)(f) of SAST Regulations 2011, timeline of the disclosure requirement is in terms of 'working days' of SEBI. In order to compute the due date of disclosure in terms of Regulation 30(2) read with 30(3) of SAST Regulations 2011, the SCN has already excluded all intermittent 'non-working days'. In view of the same, in order to ensure consistency, any delay in this regard has also to be computed in terms of 'working days' alone and not in terms of the 'calendar days' and any other mode of calculation is inconsistent with the SCN and the provisions of Regulation 30(3) read with regulation 2(1)(z)(f) of SAST Regulations 2011. Since, the matter pertains to year 2013 i.e. 8 year old and since due to the non-availability of old documents has led to impairment of their ability to defend this matter effectively and adequately, even as per the details provided in SCN, the alleged delay in disclosure works out to be 15 days and not 27 days as alleged in SCN.

k) In this regard, Noticee 5 and 6 relied on the ratio laid down in the aforesaid Orders of Hon'ble Supreme Court of India and Hon'ble Securities Appellate Tribunal including the orders by the Hon'ble Securities Appellate Tribunal in appeal no. 279 of 2020 in Parag Sarda and Ors Vs SEBI and in appeal no. 7 of 2016 in the matter of Rakesh Kathotia & Ors. vs SEBI (supra), regarding inordinate delay of 8 years in initiating these proceedings.

l) Further, the SCN has not brought out that by making a delayed disclosure on 06.05.2013 as alleged, they have caused any loss to any investor. They have not made any profit as a result of delayed disclosure on 06.05.2013 as alleged. Admittedly, their shareholding as on 31.03.2012 was already in public domain.

26. Opportunity of hearing was provided to the Noticees through video conferencing. Mr. Prithviraj Bhagat, Authorized Representative (AR) of Noticee 5 and 6 attended the hearing on April 18, 2022. Vide hearing notices dated March 24, 2022 an opportunity of personal hearing through video conferencing was provided to Noticees 1 to 4 and Noticee 7 on April 08, 2022. Hearing Notices were duly served to the Noticees 1 to 4 and Noticee 7 through emails dated March 24, 2022 and March 25, 2022.

27. The Hearing Notices have been sent to the Noticees 1 to 4 and Noticee 7 through the email addresses obtained from the depositories and the stock exchanges. The Noticees 1 to 4 and Noticee 7 neither appeared on the scheduled date of hearing nor any reply to the SCN received from them. 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.

28. As sufficient opportunity was given to the Noticees 1 to 4 and Noticee 7 to submit reply and appear for hearing and no response was received from them, the adjudication proceeding against them is undertaken *ex-parte* on the basis of material available on record.

29. 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 Noticee 5 and 6 and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

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

Issue No. I Whether,

a) Noticees 1 to 5 have violated provisions of 7(1A) read with 7(2) of SAST Regulations 1997.
b) Noticees 1 to 6 have violated provisions of Regulation 30(2) read with 30(3) of SAST Regulations 2011.
c) Noticee 1 has violated provisions of Regulation 13(3) read with 13(5) of PIT Regulations.
d) Noticee 7 has violated provisions of Regulation 8(3) of SAST Regulations 1997.

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

31. Before going into the merits of the case, I note the contention of the Noticee 5 and 6 that they have not been furnished the requisite details and documents of their acquisitions/ shareholdings which have been alleged in the SCN. In this regard, I note that all the documents relied up on in the instant proceedings are already provided as annexures to the SCN. I note from the replies received from

the Noticee 5 and 6 that they have submitted comprehensive reply to the SCN after perusal of the documents provided to them with the SCN.

32. Noticee 5 and 6 further contended that the SCN is issued after 11 years post the alleged transactions were executed. In this regard, I note that SEBI initiated the examination in the instant matter in 2015, which was completed in February 2015. However, on account of procedural issues, adjudication proceedings were initiated in December 2020, and SCN in the matter was issued on January 04, 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.

33. **Alleged violation of SAST Regulations 1997 by Noticees 1 to 5**

34. It is alleged in the SCN that Noticees 1 to 5 (Promoters/promoter group and their PACs) were holding more than 15% holding in the shares of BIL and on 13.05.2010 and 08.06.2010 the shareholding of Noticees 1 to 5 taking together has increased by more than 2%. For the first transaction as aforesaid, Noticees 1 to 5 failed to make any disclosure and for the second transaction they disclosed it with the delay of 6 days, as shown below:

Date of Transaction	**Shareholding before the transaction**	**No. of shares acquired**	**Shareholding after the transaction**	**Due Date for Compliance under Reg 7(1A) of SAST Regulations 1997**	**Actual Date of Compliance under Reg 7(1A) of SAST Regulations 1997**	**Delay**
13.05.2010	29,51,932 (15.23%)	60,00,000 (23.70%)	89,51,932 (35.36%)	15.05.2010	No Disclosure available at BSE	Failure in making disclosure
08.06.2010	89,51,932 (35.36%)	41,23,072 (16.29%)	1,30,75,004 (51.65%)	10.06.2010	16.06.2010	6 days

35. Noticee 5 contended that 60,00,000 shares were acquired by Noticee 1 and not by him and according to the relevant regulation of SAST Regulations 1997, the

obligation to make disclosures has been fastened only upon the 'acquirer who has acquired shares', and therefore, there was no obligation cast upon him to make any disclosures.

36. I note from the SCN that the shares were acquired pursuant to Share Subscription Agreement (SSA) entered into on June 24, 2008, by Noticees 1 to 5 where Noticees 1 to 3 are mentioned as acquirers and Noticees 4 and 5 are mentioned as PAC.

37. Regulation 7(1A) of SAST Regulations 1997 states that,

“Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 or under second proviso to sub-regulation (2) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.” Further, the definition of ‘Acquirer’ as per SAST Regulations 1997 is as follows:

(b) “acquirer” means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;

38. I note that Noticees 1 to 4 have failed to make any reply to the SCN. As seen from the Letter of offer dated June 24, 2008, the SSA was entered into by Noticees 1 to 3 with BIL. Thus, in terms of the aforesaid provisions, Noticee 1 to 3 were the acquirers in the instant transaction. Noticee 4 and 5 were the PAC in this case who along with acquirers acquired control pursuant to the SSA and another Share Purchase Agreement with existing promoters of BIL dated June 24, 2008.

39. The change in shareholding considered for the purpose of disclosure is applicable to the share holding of the acquirers in the SSA. Thus, I find that obligation to disclose falls upon acquirers in this case as the acquisition of 60,00,000 shares was done by the acquirers only. Material on record states that the acquirers failed to make the required disclosures.

40. As far as the second transaction of for acquisition of 41,23,072 shares of BIL is concerned, I find that the alleged delay is only 6 days. I find that the working days between 10.06.2010 and 16.06.2010 were only 4 days and as such, the transaction which should have been disclosed on 14.06.2010 was disclosed on 16.06.2010. I find that this is a minor difference which may have occured due to procedural reasons. Thus, allegation of delayed disclosure in this instance is not established.

41. In view of the above, I find that by not disclosing acquisition of 60,00,000 shares for acquisition of 41,23,072 shares of BIL, Noticees 1 to 3 have violated the provisions of 7(1A) read with 7(2) of the SAST Regulations 1997.

42. **Alleged violation of SAST Regulations 2011 by Noticees 1 to 6**

43. It is alleged in the SCN that Noticees 1 to 6 being Promoter and Promoter Group of the company and PACs have disclosed their aggregate shareholdings in the company for the financial year ending on 31.03.2012 and 31.03.2013 with the delay of 2 days and 27 days respectively.

44. Regulation 30(2) and 30(3) of SAST Regulations 2011 states that,
"30(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within 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."

45. Noticee 5 and 6 contended that disclosure of aggregate shareholdings of Noticees 1 to 6 pertaining to the financial year ending on 31.03.2012 was made on 12.04.2012, which was due date of disclosure considering 5 non-working days during the period from 01.04.2012 to 12.04.2012. Therefore, there is no delay in the aforesaid aggregate shareholding pertaining to the financial year ending on 31.03.2012.

46. On perusal of information available on website of BSE regarding trading holidays, I note that during the period from 01.04.2012 to 12.04.2012, there were 5 non-working days including Saturday and Sunday. Therefore, the due date for making relevant disclosures was 12.04.2012. In view of the above, I find that Noticees 1 to 6 have made timely disclosure of aggregate shareholdings of Noticees 1 to 6 pertaining to the financial year ending on 31.03.2012 as prescribed under the provisions of Regulations 30(2) and 30(3) of SAST Regulations 2011.

47. With respect to disclosure of aggregate shareholdings of Noticees 1 to 6 for the financial year ending on 31.03.2013, Noticees 5 and 6 contended that the required disclosure was made on 06.05.2013 with the delay of 15 working days and not 27 working days after considering 12 non-working days during the period from 10.04.2013 to 06.05.2013.

48. On perusal of information available on website of BSE regarding trading holidays and as per the provisions of Regulations 30(2) and 30(3) of SAST Regulations 2011, I note that due date of disclosure of aggregate shareholdings of Noticees

1 to 6 for the financial year ending on 31.03.2013 was 09.04.2013. In view of the above, I note that the after the due date delay is of 27 days as calculated considering calendar days, but I take note that there were only 15 working days in the said period, as submitted by the Noticees 5 and 6.

49. In view of the above, I find that violation of the provisions of Regulations 30(2) and 30(3) of SAST Regulations 2011 for the disclosures required for financial year ending on 31.03.2013 is established against Noticees 1 to 6 on account of delay of 15 days.

50. **Alleged violation of PIT Regulations by Noticee 1**

51. It is alleged in the SCN that Noticee 1 was holding 27,87,068 shares (14.43%) of the Company on June 08, 2010 and on June 09, 2010 it received 28,57,372 shares from escrow account and its shareholding in the Company increased to 56,44,440 shares (i.e. increased by 14.79%). Noticee 1 failed to disclose the change in its shareholding.

52. Regulation 13(3) and 13(5) of the PIT Regulations states that,

(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.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

53. I note from the material available on record that no disclosure was made by the Noticee 1 to the company under the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations when it acquired more than 2% shares of the company while it was holding more than 5% before this acquisition of shares.

54. In view of the above, I find that Noticee 1 has violated the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations.

55. **Alleged violation of SAST Regulations 1997 by Noticee 7**

56. It is alleged in the SCN that Noticee 7 had made delayed disclosure under Regulation 8(3) of SAST Regulations 1997 about the holdings of the persons referred to under Regulation 8(1) and also holdings of promoters or person(s) having control over the company as on 31st March 2010.

57. Regulation 8(3) of SAST Regulations 1997 states that,
"8(3) Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March."

58. Noticee 7 did not file any reply to the SCN. I note from the material available on record that there was delay of 243 days by the Noticee 7 in disclosure requirement as prescribed under Regulation 8(3) of SAST Regulations 1997.

59. In view of the above, I find that Noticee 7 has violated the provisions of Regulation 8(3) of SAST Regulations 1997.

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?**

60. Since it is established that

a) Noticees 1 to 3 have violated the provisions of 7(1A) read with 7(2) of the SAST Regulations 1997;

b) Noticees 1 to 6 have violated the provisions of Regulations 30(2) and 30(3) of SAST Regulations 2011;

c) Noticee 1 has violated the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations;

d) Noticee 7 has violated the provisions of Regulation 8(3) of SAST Regulations 1997;

the aforesaid Noticees are 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 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;

61. 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.

62. I note that the material on record has not brought out any disproportionate gain made by the Noticees or loss caused to investors by the Noticees. I also note that the transactions took place in the year 2010 and considerable time has elapsed since the violations took place. I note that violation of the provisions of Regulations 30(2) and 30(3) of SAST Regulations, 2011 for the disclosures required for financial year ending on 31.03.2013 is established against Noticees 1 to 6 on account of delay in filing of just 15 working days. Considering the fact that the violation took place 9 years ago, I find that a delay of 15 working days does not make it a fit case for levy of penalty. In respect of remaining violations, taking into account the facts and circumstances of this matter, I find that a penalty of Rs.1,00,000/- (Rupees One Lakh only) to be paid jointly and severally by Noticees 1 to 3 for violation of the provisions of 7(1A) read with 7(2) of the SAST Regulations 1997, Rs. 1,00,000/- (Rupees One Lakh only) on Noticee 1 for violation of the provisions of Regulation 13(3) read with 13(5) of the PIT Regulations and Rs. 1,00,000/- (Rupees One Lakh only) on Noticee 7 for violation of the provisions of Regulation 8(3) of SAST Regulations 1997, to be levied under Section 15A(b) of the SEBI Act will be commensurate with the violations committed by them.

ORDER

63. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, I hereby impose the following penalty on the Noticees:

Sl. No.	Name of the Noticee	Penalty
1.	HDIL Infra Projects Limited (Noticee 1), Rakesh Wadhawan (Noticee 2) and Sarang Wadhawan (Noticee 3)	Rs. 1,00,000 (Rupees One Lakh only) under Section 15A(b) of the SEBI Act for violation of the provisions of 7(1A) read with 7(2) of the SAST Regulations 1997 (payable jointly and severally)
2.	HDIL Infra Projects Limited (Noticee 1)	Rs. 1,00,000 (Rupees One Lakh only) under Section 15A(b) of the SEBI Act for violation of provisions of Regulation 13(3) read with 13(5) of the PIT Regulations
3.	Broadcast Initiatives Limited (Noticee 7)	Rs. 1,00,000 (Rupees One Lakh only) under Section 15A(b) of the SEBI Act for violation of the provisions of Regulation 8(3) of SAST Regulations 1997
TOTAL PENALTY		**Rs. 3,00,000/- (Rupees Three Lakh only)**

64. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online

payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

65. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – IV of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

66. 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 27, 2022	**MANINDER CHEEMA**
PLACE: MUMBAI	**ADJUDICATING OFFICER**