BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/SR/SJ/AO/36-37/2018-19]

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

In respect of

Sr. No	Name of the Entity	PAN	Order No.
1	Mr. Zafar Yunus Sareshwala	ANYPS8494D	EAD/SR/SJ/AO/36/2018-19
2	Mr. Uves Yunus Sareshwala	AOFPS5856M	EAD/SR/SJ/AO/37/2018-19

In the matter of Parsoli Corporation Limited

BACKGROUND

1) The Whole Time Member (**WTM**) of Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') passed an order dated July 27, 2010 in the matter of Parsoli Corporation Limited (hereinafter referred to as '**PCL**') under sections 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**the SEBI Act, 1992**') interalia against Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala (hereinafter collectively referred to as '**Noticees**') based on an investigation into fraudulent transfer of shares of PCL.

2) Following directions were given by the WTM in the said order dated July 27, 2010.

"(a) restrain Parsoli Corporation Ltd. (Permanent Account Number: AABCP9030F), Mr. Zafar Yunus Sareshwala (Permanent Account Number: ANYPS8494D) and Mr. Uves Yunus Sareshwala (Permanent Account Number: AOFPS5856M) from buying, selling or dealing in securities market in any manner whatsoever or accessing the securities market directly or indirectly for a period of seven years from the date of this Order (except for complying with directions mentioned at (c) below);

(b) restrain Mr. Zafar Yunus Sareshwala and Mr.Uves Yunus Sareshwala from holding the position of Director in any listed company for a period of seven years from the date of this Order;

(c) direct Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order;

(d) direct BSE to facilitate valuation of shares to be purchased as at (c) above, and compulsorily delist Parsoli Corporation Ltd., if the public shareholding reduces below the minimum level in view of aforesaid purchase".

(the direction at para 2(c) above is hereinafter referred to as "**aforesaid direction")**

3) Thereafter, the Noticees had preferred an appeal before the Securities Appellate Tribunal (hereinafter referred to as '**SAT**') against the said SEBI order dated July 27, 2010. SAT vide order dated January 12, 2011 upheld the said SEBI order dated July 27, 2010. Subsequently, the Noticees filed civil appeals before the Hon'ble Supreme Court and the Hon'ble Supreme Court set aside the said order of SAT and remitted the matter to SAT. Thereafter, SAT vide order dated August 12, 2011 upheld the SEBI order dated July 27, 2010. A Department of SEBI observed that the Noticees have not made any public announcement of public offer to be made by Noticees to the shareholders of PCL as per aforesaid direction of WTM and therefore, the said Department initiated adjudication proceedings against the Noticees for their non-compliance of WTM's aforesaid direction under sections 11(4) and 11B of the SEBI Act, 1992 vide order dated July 27, 2010 regarding making public offer to acquire shares from public shareholders of PCL.

APPOINTMENT OF ADJUDICATING OFFICER

4) In this regard, Shri Jayanta Jash was appointed as the Adjudicating Officer, under section 15-I of the SEBI Act, 1992 read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**'), to inquire into and adjudge under section 15HB of the SEBI Act, 1992 the alleged failure on the part of the Noticees to comply with the aforesaid direction issued by WTM of SEBI vide Order dated July 27, 2010. On transfer of Shri Jayanta Jash, Shri Prasad Jagdale was appointed as the Adjudicating

Officer and on his transfer, Shri Nagendraa Parakh was appointed as the Adjudicating Officer. Lastly, the matter was transferred to me and I was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5) A common Show Cause Notice dated March 27, 2014 (hereinafter referred to as 'SCN') was issued to the Noticees under rule 4(1) of Adjudication Rules to show cause as to why an inquiry should not be held against them for their alleged failure to comply with aforesaid direction issued by the WTM of SEBI vide order dated July 27, 2010. The said SCN reads as follows:

"..It is observed that you have failed to make a public offer through a merchant banker to acquire shares from public shareholders of Parsoli Corporation Limited by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Share) Regulations, 2009 and acquire the shares offered in response to the public offer...

You are, therefore called upon to show cause as to why an inquiry should not be held against you in terms of Rule 4(3) of the captioned Rules r/w section 15I of the SEBI Act, 1992 and penalty be note imposed under section 15HB of the SEBI Act, 1992"

6) The said SCN was received by the Noticees as seen from the proof of delivery on record. Noticees, vide their respective letters dated April 09, 2014 replied to the said SCN. Details of said letter dated April 09, 2014 are as follows:

- AO has *"failed to mention that in the very next line of the SEBI order dated 27 July 2010, SEBI has directed BSE to facilitate the valuation of shares to be purchased as described in the order"*
- *"....BSE...failed to facilitate valuation"*, therefore Noticees were unable to make public offer. PCL has written to BSE vide letter dated *August 04, 2012 to start valuation* of shares to be offered by Noticees in compliance of the WTM's order.
- Noticees are shocked that SCN is being issued to them rather than BSE, which has failed to comply with direction of SEBI, which would have allowed Noticees to comply with directive of SEBI by making the public offer.

- Noticees requested that, *"not to issue any inquiry against"* them and that, *"no penalty be imposed"*.
- Noticees replied that PCL had written to BSE in the matter vide letter dated August 04, 2012. Said letter of PCL to BSE mentions that, *"all legal proceedings in the said matter however got over in January 2012 but we are still waiting to hear from BSE regarding valuer which is to be facilitated by BSE and is the prerequisite before the public offer.....we once again request you to kindly help facilitate the process of valuation....kindly let us know as to how to proceed with the process of implementation of this specific order by SEBI since the initial process of valuation of the shares needs to be facilitated by BSE.."*

7) After the receipt of the replies dated April 09, 2014 from the Noticees, previous AO issued a letter dated June 16, 2014 to BSE stating that, *"BSE is called upon to state as to what action it had taken subsequent to the receipt of the aforesaid letter dated August 04, 2012"* from PCL, and also that *"BSE is also called upon to submit documentary evidence substantiating its statements"*.

8) BSE vide letters dated June 26, 2014, July 23, 2014, November 18, 2014 and January 01, 2015 replied to the previous AO. BSE also enclosed supporting evidences ie copies of correspondence with Noticees/PCL and informed the previous AO as under:
   - BSE stated vide letter dated November 18, 2014 that it wrote several times to Noticees, *"asking for the details of the appeal but due to lack of any satisfactory replies backed by evidence, the process was in limbo"*. Copies of letters etc. have been submitted by BSE.
   - Vide letter dated November 18, 2014 BSE informed AO that initial shortlisting of valuers was already done before seeking quotes from valuers vide letter dated September 06, 2010, and BSE confirmed the valuer vide letter dated October 4, 2010. The matter was then kept on hold under instruction of Noticees and later on KJMC Corporate Advisor (India) Limited (KJMC) was appointed as valuer. KJMC sent original valuation report to PCL and a copy to BSE vide letter dated November 11, 2014.
   - BSE vide letter January 1, 2015 informed previous AO regarding email dated December 23, 2014 sent to PCL informing about *"detailed steps to be taken by the company"* including *"checklist of documents to be submitted for final*

delisting, if as a result of the buyback of shares from the public" the public shareholding reduces below the minimum level.

9) Previous AO granted an opportunity of personal hearing to the Noticees vide Hearing Notices dated January 10, 2015 for a hearing scheduled on February 10, 2015. In the said Hearing Notices previous AO reminded Noticees that, Noticees were yet to send detailed reply, if any, as mentioned in their first reply(April 09, 2014) to SCN and shared copies of aforementioned replies from BSE. Hearing Notices dated January 10, 2015 was delivered on January 13, 2015 through Western Region Office of SEBI and proof of delivery is on record. On the said date of hearing i.e. February 10, 2015, Mr. Zafar Sareshwala (one of the Noticees) personally appeared before the then AO on behalf of himself and on behalf of his brother Mr. Uves Sareshwala (hearing minutes are on record) and inter-alia submitted the following:

- Noticees informed that, *"just a month ago we have received the valuation report"*, and that they have requested BSE to request valuer who is a category 1 merchant banker to act as merchant banker for the said open offer as the said valuer is aware of everything and this will also save time.
- The Noticees *"are ready to comply with said SEBI Order as soon as the Merchant Banker takes up further steps, or in any case, before three months i.e. before May 31, 2015."*
- However, Noticees would like to know what action SEBI has taken against Baadar Bank AG and Gulf Investment Corporation, when they acquired shares of PCL had triggered takeover code but got listed without open offer and also despite not being an FII, they sold nine lakh shares of PCL. When Noticees make open offer Baadar Bank AG and Gulf Investment Corporation should be debarred from participating in the interest of natural justice.
- Noticees will submit written submissions by February 20, 2015.

10) Thereafter, an opportunity of personal hearing was granted to the Noticees by another previous AO vide Hearing Notices dated March 30, 2017 sent by Speed Post Acknowledgement Due (SPAD) for a hearing scheduled on April 24, 2017. Proof of delivery is on record. PCL (in which the Noticees are the directors) vide letter dated April 20, 2017 requested the AO to postpone the hearing to a later date on the ground that Mr. Zafar Sareshwala (one of the Noticees) himself wanted to attend the hearing but as he is on tour and travelling abroad he is not in a position to attend the hearing.

Thereafter, upon my appointment as the AO, I granted an opportunity of personal hearing to the Noticees vide Hearing Notices dated September 04, 2017 sent by SPAD for hearing scheduled on September 21, 2017. The said Hearing Notices were delivered and proof of delivery is on record. However, the Noticees failed to avail the said opportunity of hearing on the said date. In the interest of Natural Justice, a final opportunity of personal hearing was granted to the Noticees vide Hearing Notices dated September 22, 2017 sent by SPAD for a hearing scheduled on October 09, 2017. Proof of delivery is on record. On the said date, Mr. Zafar Yunus Sareshwala (one of the Noticees) personally appeared on behalf of himself and his brother Mr. Uves Yunus Sareshwala. Hearing minutes are on record. Noticees reiterated the submissions made in the replies dated April 09, 2014 and were given time till October 26, 2017 for additional submissions.

11) Noticees sent a reply dated October 14, 2017 mentioning that

- KJMC *"…. did not proceed in making the offer document…."*
- Noticees approached *"several other merchant bankers, but none of them was willing to proceed & and the all required fresh clear cut letter from SEBI to this effect. We sought clarification from SEBI by our letter dated 12th June 2017. As per Annexure-A & and now we are in receipt of clarification from SEBI wide there letter dated August 31, 2017."*
- Noticees "*have engaged a Merchant banker and process of valuation alongwith due delegation is on-going*".
- Noticees will soon submit offer document to SEBI

Noticees sent a letter dated December 04, 2017 informing that Registrar has been identified.

Noticees sent a letter dated January 3, 2018 stating the following:

- Noticees "*have completed the formalities of proceeding to make the "open offer" as per SEBI direction. We are enclosing copy of Engagement letter with Merchant Banker."*
- Noticees "*hope that merchant banker will put-up offer document to be vetted by SEBI in next 2-3 weeks."*

12) After taking into account, the allegations levelled in the SCN, replies of the Noticees and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

13) The issues that arise for consideration in the present case are:

(a) **Whether the Noticees have failed in complying with aforesaid direction, i.e. *"to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order"*, issued by the Whole Time Member of SEBI vide order dated July 27, 2010?**

(b) **Do the violations, if any, on the part of the Noticees attract any monetary penalty under section 15HB of the SEBI Act, 1992?**

(c) **If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in section 15J of the SEBI Act,1992 read with rule 5(2) of the Adjudication Rules?**

EVIDENCES AND FINDINGS:

14) On perusal of the materials available on record and giving regard to the facts and circumstances of the case, I record my findings as under:

Issue a: Whether the Noticees have failed in complying with the aforesaid direction,i.e. *"to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order"*, issued by the Whole Time Member of SEBI vide order dated July 27, 2010?

a) I note that WTM of SEBI vide order dated July 27, 2010 directed the Noticees to make an offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in terms of SEBI (Delisting of Equity Shares) Regulations, 2009 within three months from the date of this Order and directed BSE to facilitate valuation of shares to be so purchased by Noticees and compulsorily delist PCL, if the public shareholding reduces below the minimum level. It is a matter of record, the Noticees preferred an appeal before SAT against the said SEBI order and SAT vide order dated January 12, 2011 upheld the said SEBI order dated July 27, 2010. Subsequently, the Noticees filed civil appeals before the Hon'ble Supreme Court and the Hon'ble Supreme Court set aside the said order of SAT and remitted the matter to SAT. Hon'ble SAT vide order dated August 12, 2011 upheld the SEBI order dated July 27, 2010. I note that there is no material on record to show that Noticees have challenged in the Hon'ble Supreme Court, the said Hon'ble SAT Order dated August 12, 2011 which upheld WTM's Order dated July 27, 2010. In terms of section 15Z of the SEBI Act, 1992 Noticees (the aggrieved party) had a period of sixty days to file an appeal in the Hon'ble Supreme Court from the date of communication of order / decision of Hon'ble SAT. I note that thus the WTM's Order has achieved finality.

b) In various letters and during hearings, Noticees have submitted information about being still in the process of compliance of the WTM's Order dated July 27, 2010 and it is therefore an admitted fact that till the date of their last letter (dated January 03, 2018 received on January 09, 2018), the Noticees had not made a public offer to acquire the shares of PCL from the public shareholders, so as to comply with the aforesaid direction issued vide SEBI Order dated July 27, 2010 and upheld by Hon'ble SAT vide order dated August 12, 2011. In their last letter though the Noticees have replied that they have completed the formalities of proceeding to make the "open offer" as per aforesaid direction. However, I note that Noticees have not submitted any documentary evidence to support their contention, though Noticees mention a fallacy that *"we have completed the formalities of proceeding to make the "open offer""*.

c) As regards Noticees' contention vide letter dated April 09, 2014 that, "*BSE has failed to comply with the initial directive of SEBI of valuation of share...*" I note from the direction issued to BSE vide WTM's order dated July 27, 2010 upheld by Hon'ble SAT vide order dated August 12, 2011 that BSE was directed to, *"to facilitate valuation of shares to be purchased as at (c) above, and compulsorily delist Parsoli Corporation Ltd., if the public shareholding reduces below the minimum level in view of aforesaid purchase".* In this regard, I note from the Mirriam Webster dictionary (https://www.merriam-webster.com/dictionary/facilitate) that the meaning of the word 'facilitate' is 'to make easier or help bring about'. In this regard, material available on record does not show that BSE failed to facilitate valuation. I also note that the onus of valuation remained on Noticees and did not shift to BSE, which seemed to be purported by the Noticees as noted from their various submissions. I note that Noticees have made statements such as *"....BSE...failed to facilitate valuation",* AO *"failed to mention that SEBI has directed BSE',* and that Noticees are shocked that SCN is being issued to them rather than to BSE. These statements show that the Noticees were trying to deflect the responsibility of valuation. From the various letters of BSE available on record, I find that the Noticees' contention that BSE failed to facilitate valuation is not acceptable to me. Additionally, I find that the Noticees have not submitted any documentary evidence supporting their contention that BSE has failed to 'facilitate' in terms of the direction issued vide WTM Order date July 27, 2010. I also note that BSE has submitted copies of its correspondence with Noticees regarding facilitating valuation for compliance of aforesaid directions by the Noticees, which shows that BSE was facilitating valuation and right after WTM's order dated July 27, 2010. BSE had selected a valuer and a confirmation was sent to the valuer vide letter dated October 4, 2010 with a copy to PCL. These copies of letters written by BSE were shared by the previous AO vide Notice dated January 10, 2015 with the Noticees and the same have not been rebutted by the Noticees in their subsequent responses to SEBI.

d) I also note from the replies of Noticees that the Noticees have promptly informed BSE when the matter regarding public offer was to be kept in abeyance due to appeal as above, but have delayed responding to BSE when the matter regarding public offer had to be proceeded with, for example,

   1) BSE confirmed appointment of Valuer vide letter dated October 04, 2010 (copy marked to Noticees). Noticees responded to said letter by informing BSE vide dated October 12, 2010 of having moved to Hon'ble SAT (i.e within

a few days of letter dated October 04, 2010), thereby process of compliance with the aforesaid direction of the WTM were to be halted,

2) Advocate on behalf of the Noticees informed BSE that they were in the process of filing an appeal in Supreme Court against SAT order dated January 12, 2011 and when BSE sought update vide letter dated April 27, 2011, the Noticees informed BSE vide letter dated August 04, 2012 that all the legal proceedings in the matter got over in January 2012. In this regard, I note that the WTM's Order had achieved finality when Hon'ble SAT upheld the said order vide SAT order dated August 12, 2011, hence Noticees took a whole year before informing BSE about the proceedings. I note from record that vide letter dated May 12, 2014, PCL has written to BSE that, "*all details of the case are in public domain...your claim of ignorance regarding this matter, when all records are in public domain is truly unfathomable*". This shows that Noticees waited for letter from BSE seeking update from Noticees instead of proactively following up with BSE, which was merely 'facilitating' valuation of the shares of PCL.

Dates of these letters show dillydallying tactics on part of the Noticees, when it came to compliance, but quick response when it came to stalling of compliance.

e) I note from hearing minutes dated February 10, 2015 that the Noticees have submitted that they requested BSE to request a Valuer (which also happens to be a Category 1 Merchant Banker) to take the mandate of the said open offer. Additionally, I note from the submissions of BSE that Noticees requested BSE to 'guide them as to the exact steps' needed to be taken by the Noticees to take this matter forward. I note that despite the specific role of merely 'facilitating' the Noticees, BSE has responded to Noticees with relevant information and that too with regularity.

f) As regards, Noticees' contention that Valuer KJMC "*....did not proceed in making the offer document....*", I note that Noticees have not submitted any evidence to support their contention or show that that Noticees proposed the mandate of merchant banking to the Valuer in addition to mandate of valuation. As regards, Noticees' various submissions regarding engaging a merchant banker, I have noted from record that, vide letter dated October 14, 2017, Noticees submitted that, ..."*we have now moved & engaged a merchant bankers & the process of valuation alongwith due delegation* *is on-going".* However, I also note from a subsequent letter dated January 3, 2018 from the Noticees that the actual engagement had not happened till December 26, 2017 (as seen from the engagement letter on record). From this material on record, I note that the Noticees submitted false statement vide letter dated October 14, 2017 regarding engagement of merchant banker for compliance of the aforesaid direction of WTM.

g) As regard, Noticees' contentions that all merchant bankers demanded a *"fresh clear cut letter from SEBI"* to go ahead with the open offer for compliance of the aforesaid direction issued by SEBI order dated July 27, 2010 and upheld by SAT order dated August 12, 2011. I note from record, that Noticees have written a letter dated June 12, 2017 to SEBI. I note from the said letter dated June 12, 2017 that Noticees have submitted the following to SEBI:

- *"Promoters were unable to comply with the above order so far, though we intend to make a public offer belatedly now. We intend to relist the company on the exchanges"*
- *"Can promoters of Parsoli Corporation make a public offer.......would that be sufficient compliance for relisting this company from SEBI's side?"*
- *"If yes, are there any pending proceedings/compliance against the company/its promoters? Please provide details thereof"*
- *"We request you to direct that, in that public offer, Baader Bank and his associates should not be allowed to participate......."*
- *"We request you to guide us in achieving compliance in accordance with law"*

The aforementioned letter of Noticees have no reference to merchant bankers seeking clarity, or merchant bankers seeking any letter from SEBI (in absence of which they were not willing to take the mandate of Noticees). Noticees have, not only not furnished any evidence in support of their contention that merchant bankers were not willing to take the mandate unless clarification was received from SEBI, but also furnished evidence of their own fallacy by providing copy of the letter to SEBI and SEBI's reply in this regard, which are both entirely devoid of any reference to Noticees' said contentions. I note from record that SEBI replied vide letter dated August 31, 2017 informing Noticees about the various proceedings which need to be disclosed in the offer document and also that *"directions against Baader Bank and GIS vide SEBI order* *dated March 02, 2016 are sub-judice and there is no provision/direction to prohibit public shareholders from participating in the public offer which the promoters are required to make".*

h) I note from the various submissions of Noticees through letters and during hearings that Noticees have stated the following:

- Noticees requested, *"not to issue any inquiry against"* them and that, *"no penalty be imposed"*. Noticees will submit a detailed reply. (letter dated April 09, 2014)
- Noticees are ready to comply with said SEBI Order as soon as the Merchant Banker takes up further steps. (Hearing minutes signed on February 10, 2015)
- Noticees will comply with the aforesaid directions issued by WTM before May 31, 2015. (Hearing minutes signed on February 10, 2015)
- Noticees will submit written submissions by February 20, 2015. (Hearing minutes signed on February 10, 2015)
- Merchant banker has been engaged and process of due diligence is going on and soon Noticees will submit an offer document to SEBI. (letter dated October 14, 2017)
- Noticees hope that merchant banker will put-up offer document to be vetted by SEBI in next 2-3 weeks. (letter dated January 03, 2018)

I note that all these submissions made by the Noticees seem to take the instant proceedings in a lighter vein ab initio, as I note from the record for each of the above points respectively, the detailed reply was not submitted, compliance by Noticees is not contingent upon merchant banker's steps but the other way around, Noticees did not comply with aforesaid direction before May 31, 2015, Noticees did not make submissions by February 20, 2015, Noticees have submitted no proof of submitting offer document, despite passage of 2-3 weeks as mentioned by Noticees, no evidence submitted of having offer document been put up by Noticees through their merchant bankers to SEBI.

i) Thus, it is an undisputed fact that Noticees have failed to make a public offer through merchant banker to acquire shares of PCL from public shareholders by paying them the value determined in the manner prescribed in Regulation 23 of SEBI (Delisting of

Equity Shares) Regulations, 2009 and acquire shares offered in response to the public offer as per aforesaid direction of WTM of SEBI vide order dated July 27, 2010.

j) In view of aforesaid observations and undisputed fact that the Noticees did not make a public offer through a merchant banker to acquire shares of PCL from the public shareholders within three months of obtaining certified copy of the SAT order dated August 12, 2011 upholding the WTM order dated July 27, 2010, I conclude that the Noticees have failed to comply with the aforesaid direction issued by SEBI vide Order dated July 27, 2010. Therefore, allegations leveled in the SCN dated March 27, 2014 against the Noticees regarding non-compliance of the aforesaid direction issued by SEBI vide order dated July 27, 2010 stand established.

Issue b: Do the violations, if any, on the part of the Noticees attract any monetary penalty under section 15HB of the SEBI Act, 1992?

k) Therefore, after taking into account the aforesaid entire facts / circumstance of the case, submissions of the Noticees and other material available on record, I am of the view that the said failure on the part of the Noticees to comply with the aforesaid direction issued by WTM of SEBI vide order dated July 27, 2010 i.e. *"to make a public offer through a merchant banker to acquire shares from public shareholders by paying them the value determined by the valuer in the manner prescribed in Regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 and acquire the shares offered in response to the public offer, within three months from the date of this Order"* attracts the imposition of monetary penalty under Section 15HB of SEBI Act, 1992 which is reproduced below:

Penalties and Adjudication

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

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

l) While determining the quantum of penalty under section 15J of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 read with rule 5 (2) of the Adjudication Rules, 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."

m) I observe, that there is no material on record quantifying any disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors due to such failure on the part of the Noticees to comply with the aforementioned direction issued by WTM of SEBI vide order dated July 27, 2010. There is no material on record to show that the failure is repetitive.

n) Therefore, taking into consideration the facts/circumstance of the case, I am of the view that the Noticees are liable for monetary penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only), jointly and severally, for their failure to comply with the aforesaid direction issued by WTM of SEBI vide order dated July 27, 2010. However, I note that despite the instant proceedings being concluded vide these orders, the onus of complying with the aforesaid direction of WTM continues to lie on the Noticees. These orders do not vitiate the right of SEBI to take any further action and initiate any proceedings as deemed fit within the regulatory jurisdiction of SEBI.

ORDER

15) In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, I hereby imposed a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) on the Noticees under section 15HB of the SEBI Act, 1992.

The Noticees are jointly and severally liable to pay the penalty. I am of the view that the said penalty is commensurate with the default committed by the Noticees.

16) 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 e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

17) The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

18) In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: June 22, 2018

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER