BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[**ADJUDICATION ORDER NO. Order/GR/RK/2022-23/18189-18190]**

UNDER SECTION 15-I OF THE 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

S. No.	Name of Noticee	PAN
1	Suresh Venkatachari	ATNPS3289H
2	8K Miles Software Services (Presently SecureKloud Technologies Ltd.)	AABCP6266D

In the matter of "8K Miles Software Services Ltd."

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as ***"SEBI"***) had conducted an investigation in the matter of 8K Miles Software Services Ltd., (Presently SecureKloud Technologies Ltd) , a company listed on Bombay Stock Exchange ("BSE") and National Stock Exchange ("NSE") in order to ascertain whether there was any violation of the provisions of SEBI (Prohibition of Insider Trading) Regulation, 2015 (hereinafter referred as "**PIT Regulations**") and of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(hereinafter referred as "**SAST Regulations**") by certain entities for the period from November 14, 2017 to June 05 , 2018 (hereinafter referred to as "**Investigation Period/IP**").

However, wherever deemed necessary, reference has been made outside this period.

2. Investigation revealed that **Suresh Venkatachari (Noticee No.1),** Chairman and Managing Director and promoter of 8K Miles Software Service Ltd., (hereinafter referred to as "**8K Miles / Company/Noticee No.2**") had allegedly failed to make required disclosure on the encumbrance of his shareholding in the company, thereby violating the provisions of Regulations 29(2) read with 29(3), 31(1), 31(2) read with 31(3) of SEBI SAST Regulations, 2011. Further, it was also revealed that the Noticee No.1 allegedly failed to make timely disclosure of his trades in the nature of pledge/ off-market transfers/ invocation and release of pledge, leading to incorrect disclosure with incorrect information, thereby violating the provisions of Regulations 7(2)(a) of SEBI PIT Regulations. Further, the investigation revealed that Noticee No. 2 had also allegedly failed to make necessary disclosure, thereby violating the provisions of Regulation 7(2)(b) of SEBI PIT Regulations. (Hereinafter Noticee No.1 and Noticee No.2 together referred to as "**Noticees**")

APPOINTMENT OF ADJUDICATING OFFICER

3. In this regard, SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as Adjudicating Officer, communicated vide communique dated May 11, 2022 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 *(*hereinafter referred to as ***Adjudication Rules)*** to inquire into and

adjudge under Section 15A(b) of the SEBI Act, 1992 for the aforesaid violation alleged to have been committed by the Noticees as specified in the SCN.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated June 15, 2022 (hereinafter referred to as ***SCN***) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty, if any, under Section 15A(b) of the SEBI Act, 1992 be not imposed upon the Noticees.

5. The said SCN was issued to the Noticees via SPAD and also through email dated June 16, 2022, which were duly delivered. However, since no reply was received in the matter, in the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on July 19, 2022 vide Hearing Notice dated July 07, 2022 served through email on the same day. In response to this, the Noticees vide letter dated July 13, 2022 submitted their reply to the SCN which is summarized as under:

- *The transfer of 26,00,000 shares was made on various dates from March 19, 2018 to 28th June 2018 to the demat accounts opened pursuant to the financial arrangements made with Quantum Global Securities Ltc1., and Desert River Capital P. Ltd., from my own DP Account. The disclosure was made for sale of 25,70,000 shares of 8K Miles / Securekloud under the relevant SAST Regulations. The covering letter of the disclosure dated October 12, 2018, stated , inter alia as Pursuant to provisions of Regulations 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and the* *amendments made therein, I, Suresh Venkatachari, shareholder or 8K Miles Software Services Limited, wish to inform you that 25,70,000 shares ,i.e.42% Equity Shares, have been wrongfully and illegally transferred through Off-Market transactions without my knowledge/consent.*

- *I have filed a police complaint on September 17 , 2018, before the Commissioner of Police, Chennai in this regard. My holding in the Company prior to this transfer/sale was 1,70,29,533 (55.80%) Equity Shares. My holding in the Company after this sale is 1,44,59,533 (47.38/%) Equity Shares. I further submit that 26,00,000shares were transferred off-market to my own DP account details of which is provided in the table below:*

Table 1

Date	*From DP*	*To DP*	*No. of Shares*
19-Mar-18	*HDFC*	Quantum Global Securities Limited	*14,00,000*
21-May-18	*HDFC*	Quantum Global Securities Limited	*4,50,000*
28-Jun-18	*HDFC*	Quantum Global Securities Limited	*4,50,000*
19-Mar-18	*HDFC*	Kumar Share Brokers Limited Kumar	*2,50,000*
21-May-18	*HDFC*	Share Brokers Limited	*50,000*
TOTAL			***26,00,000***

- *The said DPs (Quantum Global Securities Limited and Kumar Share Brokers Limited) illegally transacted with his shares without his knowledge and consent. I has already filed a complaint with SEBI in this regard on 12th October 2018 for which he still awaits actions and updates from SEBI.*
- *The company ,Noticee 2 has also submitted to SEBI details of all the legal actions taken by me with regards to this matter on 27th November 2020.The SAST disclosure was not filed for 26,00,000 shares because these were transferred between my own DP Accounts.*

The SAST disclosure was made only for 25,70,000 shares which were illegally moved out of iny DP Account with the above two DPs. The balance 30,000 shares remained in my own DP account, therefore, no SAST disclosures ought to have been made for these 30,000 shares. The details were explained elaborately in my above complaint to SEBI on this matter.

- *I submit that 12,50,000 shares were transferred off- market in favour of Mr Ashish Nanda who had his demat account with the Depository Participant namely Ventura Securities Limited on 1st October 2018.This transfer was made as a consideration payable to Mr Ashish tanda towards acquiring 50% interest in his business venture Techno Gulf Dive Services having office at 2301, Tiffany Towers W Cluster, JLT P.O.Box 4452, Dubai, UAE.*
- *I further submit that the disclosures were made by me on January 20, 2019 for sale of 32,77,830 shares and the disclosures included total shares invoked by IFCI Financial Services Ltd. and the off-market share transfer made to Ventura Securities Limited. It may please be noted that Ventura (For Ashish Nanda) involved 12,50,000 and IFCI Financial Services Ltd., - IFIN - invoked 20,27,830 Shares which make up for total 32,77,830 shares from October 1, 2018 to November 2,2018 for transfer and invocation o1 shares.*
- *I submit that the disclosures were not made by me for release of 2,47,170 shares on December 7,2018 by IFIN, inadvertently.*
- *I further submit that the disclosures were made by me for pledge creation on December 27, 2018 for 10,00,000 shares in favour of Indian Bank on January 20, 2018 within the stipulated time as per SAST Regulations*
- *Pledge of 19,00,000 shares- I further submit that this pledge was executed in favour of IFCI as collateral for working capital loans availed by the Company, Noticee 2. In*

addition, on 1st October 2018, IFCI requested for an additional collateral of 6,75,000 shares as for the loan availed by the company. Accordingly, I had additionally pledged the required shares.

- *Pledge of 25,75,000 shares — I further submit that this pledge was executed by in favour of Indian Bank as collateral for working capital and term loans availed by the Company. In addition, on 1st October 2018, Indian Bank requested for an additional collateral of 3,50,000 shares as for the loan availed by the company. Accordingly, I had additionally pledged the required shares. Disclosures under 31(1) and 31(2) of SAST were made for the above pledges. The above pledges pertain to working capital availed by the Company and does not relate to loans availed by me.*

- *I submit that I am victim of the fraud played on me by Sebi registered intermediary. Due to the pressure of fraud and consequent economic loss of Rs. 144 Crores approximately lot of mental pressure got created on me. I may have delayed disclosure or omitted disclosures or made some incorrect statement for certain transactions under SAST and PIT due to this major incident. The said DPs (Quantum Global Securities Limited and Kumar Share Brokers Limited) illegally transacted with his shares without his knowledge and consent. I have already filed a complaint with SEBI in this regard on 12th October 2018 for which he still await actions and updates from SEBI. We also attach copies of FIR dated 2 .02.2019 and 26.09.2019 lodged by him against them.*
- *We submit that the Company, Management and its Corporate employees were shocked with this fraudulent incident. The whole Corporate Team of the Company got involved in checking and taking steps to safeguard the shares of the Shareholders of the Company and started consulting Lawyers/Consultants for remedial action to save further loss to the Promoter, Noticee 1 or any other shareholder.*

- *We further submit that during the investigation period there was change in the Company Secretary and Compliance Officer of the Company, Noticee 2. Ms. Jayashree Jagannathan resigned on 30 May 2018 and Mr. Ashwin Jayagopal joined the Company on 30 May 2018. It is quite natural that new incumbent takes some time to understand the background of the department and working of the Company.*
- *We submit that due to change in Company Secretary and the pressure in the whole system of the Company due to this unprecedent incident of fraud of such large scale, the Benpos report would not have been downloaded or seen by the Company Secretary or any other person which led to non-reporting of change in shareholding of the Promoter, Noticee 1 by the Company, Noticee 2. It is also respectfully submitted that it is generally a norm that the SAST / PIT disclosuresare made by the Company to stock exchange once these are received from the concerned shareholder. The obligation of such reporting under SAST and PIT Regulations arises only when disclosures are received from the shareholder. Benpos report does not contain the number of shares under pledge, their release/invocations, etc. which makes it almost impossible for Noticee 2 to ascertain the increase/decrease in the shareholding of the promoters.*
- *Change in Company Secretary and the pressure in the whole system of the Company due to this unprecedent incident of fraud of such large scale, the Benpos report would not have been downloaded or seen by the Company Secretary or any other person which led to non- reporting of change in shareholding of the Promoter, Noticee1 by the Company, Noticee 2. It is also respectfully submitted that it is generally a norm that the SAST/PIT disclosures are made by the Company to stock exchange once these are received from the concerned shareholder. The obligation of such reporting under SAST and PIT Regulations arises only when disclosures are received from the shareholder. Benpos report does not contain the number of shares under pledge, their release/invocations,*

etc which makes it almost impossible for Noticee 2 to ascertain the increase/decrease in the shareholding of the promoters.

- *Noticees are not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. Noticee has not acted in defiance of law. Noticees have not taken regulatory proceedings in a casual manner.*
- *This is for the first time that any proceedings against Noticees has been initiated by SEBI on this kind of alleged breaches. There is no loss or harm done to any other investor(s) in the market due to alleged conduct of the Noticee There is no undue gain made by the Noticee*
- *In the present matter, it may be noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of the defaults by Noticee . It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default.*

6. The said hearing was attended by Authorised Representative ('AR') of the Noticees, in which the AR reiterated the submissions made by the Noticees vide their aforesaid email dated July13, 2022.

7. Taking into account the aforesaid facts, I am of the view that principle of natural justice has been followed in the matter by granting the Noticees ample opportunities for replying to the SCN and of being heard. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and replies submitted by the Noticees.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the submissions made by the Noticees and documents available on record, and the issues that arise for consideration in the present case are:

(a) *Whether Noticee No. 1 has violated the provisions of Regulations 29(2) read with 29(3), 31(1), 31(2) read with 31(3) of SEBI SAST Regulations, 2011 the provisions of Regulations 7(2)(a) of SEBI PIT Regulations and whether Noticee No. 2 has violated the provisions of Regulations 7(2)(b) of SEBI PIT Regulations?*

(b) *Does the violation, if any, on the part of the Noticees attract penalty under Section 15A(b) of the SEBI Act, 1992?*

(c) *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?*

9. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the PIT Regulations and SAST Regulations alleged to have been violated by the Noticees. The same are reproduced below:

- ***PIT Regulations***

Disclosures by certain persons

7 (2) Continual Disclosures.

(a).Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b) Every company shall notify the particulars of such trading to the stock exchanges on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information…..”

- ***SAST Regulations***

29.(2) *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights 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 two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

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

(b) the target company at its registered office.

Continual disclosures.

30(1) *Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form* *as maybe specified.*

(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 end of each financial year to,—*

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

(b) the target company at its registered office.

Issue a: Whether Noticee No. 1 has violated the provisions of Regulations 29(2) read with 29(3), 31(1), 31(2) read with 31(3) of SEBI SAST Regulations, 2011 the provisions of Regulations 7(2)(a) of SEBI PIT Regulations and whether Noticee No. 2 has violated the provisions of Regulations 7(2)(b) of SEBI PIT Regulations?

A. Non-Disclosure under SAST Regulations by Noticee No. 1

Non-disclosure with regards to the encumbrance

10. The pattern of shareholding in the Company at the end of the relevant quarters are tabulated below.

Table 1 (Source: BSE Website)

Particular	Quarter ended Mar 2018			Quarter ended June 2018			Quarter ended Sept 2018			Quarter ended Dec 2018		
	No.of holder	**No. of shares**	**%**	**No.of holder**	**No. Of share**	**%**	**No.of holder**	**No. of shares**	**%**	**No.of holder**	**No. of share**	**%**
Promoters	3	17516066	57.40	3	17516066	57.40	3	14936066	48.94	3	11658236	38.20
Non- Promo	19780	13001539	42.60	23037	13001539	42.60	30,784	15581539	51.06	36,608	18859369	61.80
Total	19783	30517605	100.00	23040	30517605	100.00	30,787	30517605	100.00	36,611	30517605	100.00

11. I note from the Investigation Report (**IR**) that the shareholding pattern of the promoter for various quarters (as available on the website of BSE) had declined from 1,75,16,066 (57.40% of the total paid-up share capital of the company) at the end of Quarter ended June 30, 2018, to 1,49,36,066 (48.94%) at the end of Quarter ended September 30, 2018.

12. In view of the reduction of shareholding, I note that an analysis of shareholding of the Noticee No.1 was undertaken. The details of which are as under:

Table 2

Name of Entity	**Quarter ended 2018**		**Quarter June 2018**		**Quarter Sept 2018**		**Quarter Dec 2018**	
	No. of shares	**% to shares**	**No. of shares**	**% to shares**	**No. of shares**	**% to shares**	**No. of shares**	**% to shares**
Venkatachari Suresh	1,70,29,533	55.80	1,70,29,533	55.80	1,44,59,533	47.38	1,11,81,703	36.64

From the above, I note that there was no change in shareholding of Noticee No.1 from the quarter ended March 2018 to quarter ended June 2018 (i.e. he was holding 1,70,29, 533 shares constituting 55.80%). However, during the quarter ended September 2018, there was a reduction of shareholding to the extent of 25,70,000 shares (1,70,29,533 – 1,44,59,533) which is 8.42% of the total paid-up share capital of the company.

13. In this regard, I note from the IR that during the investigation, a copy of demat transaction statement of Noticee No.1 was obtained from NSDL for the period from January 1, 2018 to December 31, 2018, wherein it was observed that Noticee No.1 had encumbered certain shares of the company with Quantum Global Service Limited

(QGSL) and Desert River Capital Private Ltd (DRCPL) which required the disclosure under Regulation 31(1) of SAST Regulations, 2011. However, no disclosure was made under the said SAST Regulations, 2011. The details of the encumbered shares which should have been disclosed by Noticee No.1 are as under:

Table 3

Date of Transfer	No. of Shares	Due date for disclosu	Date of actual disclo	No. of delay
		Under Reg 31 of the SAST Regulations		
19/03/2018	250,000	28-Mar-18	Nil	Failed to disclose the encumbrance
19/03/2018	1400,000	28-Mar-18	Nil	
21/05/2018	50,000	30-May-18	Nil	
21/05/2018	450,000	30-May-18	Nil	
28/06/2018	450,000	9-Jul-18	Nil	
Total	2,600,000			

14. In respect of the above, I note from the IR that during the investigation, the company submitted the copies of MoU and Agreement for Short Term Loan entered by Noticee No.1, wherein it was observed that Noticee No.1 entered into the aforesaid MoU dated March 14, 2018 with QGSL for a credit facility of Rs.37 Crores against 14,00,000 shares of 8K Miles as collateral for a period of 1 year at an interest rate of 21% per annum. Further, it was also observed that a Short Term Loan Agreement (tripartite agreement) was executed with DRCPL as lender, 8K Miles Media Pvt. Ltd (8K Media) as the borrower and Noticee No.1 as the guarantor for the loan of Rs.7 crores against security of shares of 8K Miles tendered by Noticee No.1.

15. Further, the MOU also depicts the arrangement of shares being transferred from one demat account of Noticee No.1 to his other demat account as collateral for borrowing the aforesaid amounts to pledge / encumbrance of shares. However, while making disclosure of the aforesaid transactions i.e. the transfer of shares was indicated as

sale and the mode of sale indicated was “off-market” in the disclosure dated October 12, 2018 made by Noticee No.1.

16. Thus, Noticee No. 1 did not disclose the aforesaid encumbrance and release/invocation of encumbrance of part his holding when the shares were transferred and offered as collateral security either as borrower himself in the case of QGSL or as a guarantor for the financial arrangement made by the 8K Miles Media Pvt Ltd.

17. Further, I also note that as per the covenants of the loan arrangement entered between DRCPL and Noticee No.1, it is mentioned, *“……. the said securities or any part thereof shall also be deemed to be pledged/retained with/by the lender and the guarantor agreed that there is no need for signing any additional supplementary agreement in this respect*”.

18. In this regard, I note that the Noticee No.1 contented and admitted that the transfer of 26,00,000 shares was made on various dates from March 19, 2018 to 28th June 2018 to the demat accounts opened pursuant to the financial arrangements made with Quantum Global Securities Ltc1., and Desert River Capital P. Ltd., from his own DP Account. The details of which are as under:

Table 4

Date	**From DP**	**To DP**	**No. of Shares**
19-Mar-18	HDFC	Quantum Global Securities Limited	14,00,000
21-May-18	HDFC	Quantum Global Securities Limited	4,50,000

28-Jun-18	HDFC	Quantum Global Securities Limited	4,50,000
19-Mar-18	HDFC	Kumar Share Brokers Limited Kumar	2,50,000
21-May-18	HDFC	Share Brokers Limited	50,000
TOTAL			**26,00,000**

19. Further, he stated that the said DPs (Quantum Global Securities Limited and Kumar Share Brokers Limited) illegally transacted with his shares without his knowledge and consent. He further contented that not only he filed a complaint with SEBI in this regard on 12th October 2018 but also the Noticee No.2 submitted to SEBI, details of all the legal actions taken by him with regards to this matter on 27th November 2020.

20. Further, he also stated that the disclosure was made for sale of 25,70,000 shares of 8K Miles / Securekloud under the relevant SAST Regulations. But the covering letter of the disclosure dated October 12, 2018, inter alia stated that *"pursuant to provisions of Regulations 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and the amendments made therein, I, Suresh Venkatachari, shareholder or 8K Miles Software Services Limited, wish to inform you that 25,70,000 shares, i.e.42% Equity Shares, have been wrongfully and illegally transferred through Off-Market transactions without my knowledge/consent."* In this regard, he also stated that a police complaint was filed on September 17, 2018, before the Commissioner of Police, Chennai.

21. Noticee No. 1 further stated that the SAST disclosure was not filed for transfer of 26,00,000 shares because these were transferred between his own DP Accounts and

the SAST disclosure was made only for 25,70,000 shares which were illegally moved out of his DP Account with the above two DPs. He further stated that the balance 30,000 shares remained in his own DP account and therefore, no SAST disclosures ought to have been made for these 30,000 shares.

22. In this context, I note that Regulation 28(3) of SEBI (SAST) Regulations, 2011 provides as follows:
"For the purpose of this Chapter, the term "encumbrance" shall include a pledge, lien or any such transaction, by whatever name called."

23. Further I note that the aforesaid arrangements/agreements/MOU between QGSL & Noticee No.1 and DRCPL & Noticee No.1 was done by way of encumbrance of shares and was required to be disclosed by Noticee No. 1, within the stipulated time as required under Regulation 31(1) of SAST Regulations, 2011, which the Noticee No.1 failed to do as can be seen from Table 4 above. Thus, the contention of Noticee No. 1 that the transfer of shares from his one demat account to another demat account didn't require disclosure is untenable.

24. Noticee No. 1 has also contented that 25,70,000 equity shares had been wrongfully and illegally transferred through off-market without his knowledge/consent as the pledged shares were invoked by the lenders unilaterally. I do not agree with the aforesaid contention regarding not having "knowledge/consent" of invocation of pledge transactions on the three following grounds:

a) Firstly, from the bare reading of Regulation 31 of the SAST Regulations, I note that the said regulation clearly stipulates the mandatory requirement of disclosures to be done from the day of creation / invocation / release of pledge irrespective of "knowledge / consent" of the borrower. Therefore, "knowledge /consent" of the borrower is not the intent of the statute.

b) Secondly, while making / creating pledge of shares by the borrower, certain terms/ condition as well as the timeline of invocation of pledged shares in case of breach in making payment/loan, are pre fixed between the borrower and the lender. Needless to say that if such time line towards the pledged shares are there, then, the borrower is supposed to know the day / timeline after which invocation of pledged share may take place by the lender upon breach of payment.

c) Thirdly, the manner of creation / invocation of pledge has been laid down in Regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as '**DP Regulations'**). For the purpose of invocation, Regulation 58 (8) and 58 (9) of the said Regulation warrants hereunder;

(8) Subject to the provisions of the pledge document, the pledgee may invoke the pledge and on such invocation, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.

(9) After amending its records under sub-regulation (8) the depository shall immediately inform the participants of the pledger and pledgee of the change who in turn shall make the necessary changes in their records and inform the pledger and pledgee respectively.

25. It is clear from the aforesaid provision of the DP Regulations that it is the duty of the Depository towards the participants to immediately inform about such invocation and in turn it is an obligation on participants towards the pledger / pledgee with regards the same,. The intent of the statute in respect of word "immediately" should be construed in true sense and it is expected that such invocation has been informed to the pledger / pledgee immediately. Therefore, if the argument advanced by the Noticee is accepted, then, the very purpose of aforesaid SAST Regulations would be defeated. Hence, the submission of the Noticee regarding not having knowledge/consent of invocation of pledge is not acceptable.

26. The above facts established that the aforesaid arrangements/agreements/MOU between QGSL & Noticee No.1 and DRCPL & Noticee No.1 is observed to be have done by way of encumbrance of Shares and was required to be disclosed by Noticee No. 1, within the stipulated time which requires a disclosure to be made under Regulation 31(1) of SAST Regulations, 2011, which the Noticee No.1 failed to do as can be seen from Table 3 above thereby violating the aforesaid Regulation.

Non-disclsoure/delayed disclosure for the transactions of Noticee No.1 for the IP

27. In this regard, I note that during the quarter ended December 31, 2018, there was a reduction of shareholding of Noticee No.1 to the extent of 32,77,830 shares (1,44,59,533-1,11,81,703) which constitutes 10.74% of the total paid-up share capital, (Table 2 above). However, the relevant transactions happened on various dates from October 1, 2018 to November 1, 2018, whereas the disclosure to that

effect was made belatedly only on January 3, 2019 under Regulation 29(2) of SAST Regulations as detailed at Sl. No. 3-11 in Table 5 below:

Table 5

Sl. No.	Date	Nature of Transaction	Counter Party	No. of shares involved	SAST Reg under which disclosure to be made	Due date for disclosure	Actual Date of disclosure	No. of days delay, if any
1	01-Oct-18	Pledge	IFIN	6,75,000	31(1)	08-Oct-18	08-Oct-18	--
2	01-Oct-18	Pledge	Indian Bank	3,50,000	31(1)	08-Oct-18	08-Oct-18	--
3	01-Oct-18	Transfer (off market)	Ventura	12,50,000	29(2)	04-Oct-18	20-Jan-19	107
4	16-Oct-18	Invocation	IFIN	1,12,376	31(2)	26-Oct-18	20-Jan-19	85
5	17-Oct-18	Invocation	IFIN	9,707	31(2)	29-Oct-18	20-Jan-19	82
6	01-Nov-18	Invocation	IFIN	9,27,917	31(2)	09-Nov-18	20-Jan-19	71
7	01-Nov-18	Invocation	IFIN	1,50,000	31(2)	09-Nov-18	20-Jan-19	71
8	01-Nov-18	Invocation	IFIN	1,00,000	31(2)	09-Nov-18	20-Jan-19	71
9	01-Nov-18	Invocation	IFIN	2,29,630	31(2)	09-Nov-18	20-Jan-19	71
10	02-Nov-18	Invocation	IFIN	70,370	31(2)	12-Nov-18	20-Jan-19	68
11	02-Nov-18	Invocation	IFIN	4,27,830	31(2)	12-Nov-18	20-Jan-19	68
12	07-Dec-18	Release	IFIN	2,47,170	31(2)	18-Dec-18	No disclosure	--
13	27-Dec-18	Pledge	Indian Bank	10,00,000	31(1)	20-Jan-18	20-Jan-18	--

28. Further, from the Transaction Statements obtained from NSDL, I note that in respect of the transactions made in favour of other financial institutions viz., IFCI Financial Services Ltd.(IFIN) and Indian Bank, as shown in Table 5 above, disclosures were required to be made under Regulation 29(2), 31(1) and 31(2) of SAST Regulations. However, from above, it is observed that the said disclosures were either made in certain instances with delay or no disclosures were made.

29. Further I also note that, all the transactions indicated were either in the nature of off-market transfers or invocation/release of pledge. However, Noticee No.1 has indicated all the said transactions as "open market" sale in his disclosures made on January 20, 2019 under Regulation 29(2) of SAST Regulations.

30. In this regard, the Noticee No. 1 has contended that the disclosures were made by him on January 20, 2019 for sale of 32,77,830 shares which included total shares invoked by IFCI Financial Servcies Ltd and the off- market share transfer made to Ventura Securities Limited. However, the Noticee admitted in his reply that the disclosures were inadvertently not made by him with regards to the release of 2,47,170 shares on December 7, 2018 by IFIN.

31. In view of the above, it is established that Noticee No.1 has violated Regulations 29(2) read with 29(3), 31(1) ,31(2) read with 31(3) of SEBI (SAST) Regulations 2011:

    a) by making an incorrect statement in the disclosure,

    (b) by making delayed disclosures of the shares debited to his demat account by invocation of pledge, and

    (c) by failing to disclose the aforesaid encumbrance and release/invocation of encumbrance of part of his holdings in company.

B. Non-Disclosure under PIT Regulations by Noticee No. 1 and 2

32. In this regard, I note from the IR that Noticee No.1 did not make any disclosure under the PIT Regulations despite being a promoter and MD/CEO of the Company for the transactions as detailed below:

Table 6

S.No.	Sales/Pleadge/Release				Due date of disclosure to be made by the Promoter to the Company under Reg. 7(2)(a) of PIT 2015	Whether disclosure made by promoters to the company under Reg/ 7(2)(a) of PIT 2015	Delay if any (no/ of days)	Whether disclosure made by company under Reg/ 7 (2)(b) of PIT 2015 to the exchange	Delay if any (no/ of days)
	Date (Nature) Of Transaction	No of shares involved	Closing Price on the day(Exchange)	Value Securities Pledged same(in Rs)					
1.	19/03/2018 (Transfer as collateral)	250,000	674.80 (BSE/ NSE)	16,87,00,000	21-Mar-2018	No	NA	No	NA
2.	19/03/2018 (Transfer as collateral)	1400,000	674.80 (BSE/ NSE)	94,47,20,000	21-Mar-2018	No	NA	No	NA
3.	21/05/2018 (Transfer as collateral)	50,000	531.00 (BSE)	2,65,50,000	23-May-2018	No	NA	No	NA
4.	21/05/2018 (Transfer as collateral)	450,000	531.00 (BSE)	23,89,50,000	23-May-2018	No	NA	No	NA
5.	28/06/2018 (Transfer as collateral)	450,000	477.85 (NSE)	21,50,32,500	02-Jul-2018	No	NA	No	NA
6.	01-Oct-18 (Pledge)	6,75,000	182.65 (BSE)	12,27,15,000	04-Oct-2018	No	NA	No	NA
7.	01-Oct-18 (Pledge)	3,50,000	182.65 (BSE)	6,39,27,500	04-Oct-2018	No	NA	No	NA
8.	01-Oct-18 (Off-market Transfer)	12,50,000	182.65 (BSE)	22,83,12,500	04-Oct-2018	No	NA	No	NA
9.	16-Oct-18 (Invocation)	1,12,376	173.85 (NSE)	1,35,01,976	18-Oct-2018	No	NA	No	NA
10.	17-Oct-18 (Invocation)	9,707	144.90 (BSE)	11,08,054	19-Oct-2018	No	NA	No	NA
11.	01-Nov-18 (Invocation)	9,27,917	120.15 (NSE)	5,71.13,291	05-Nov-2018	No	NA	No	NA
12.	01-Nov-18 (Invocation)	1,50,000	114.15 (NSE)	92,32,500	05-Nov-2018	No	NA	No	NA
13.	01-Nov-18 (Invocation)	1,00,000	61.55 (NSE)	61,55,000	05-Nov-2018	No	NA	No	NA
14.	01-Nov-18 (Invocation)	2,29,630	61.55 (NSE)	1,41,33,727	05-Nov-2018	No	NA	No	NA
15.	02-Nov-18 (Invocation)	70,370	61.55 (NSE)	46,40,902	06-Nov-2018	No	NA	No	NA

16.	02-Nov-18 (Invocation)	4,27,830	65.95 (BSE)	282,15,389	06-Nov-2018	No	NA	No	NA
17.	07-Dec-18 (Release)	2,47,170	173.85 (NSE)	429,70,505	11-Dec-2018	No	NA	No	NA
18.	27-Dec-18 (Pledge)	10,00,000	144.90 (BSE)	14,49,00,000	31-Dec-2018	No	NA	No	NA

33. Thus, from above, it is observed that Noticee No.1, by failing to disclose the aforesaid trades which were in the nature of pledge, off-market transfers, invocation and release of pledge of his holdings in company, has admittedly violated Regulations 7(2)(a) of SEBI (PIT) Regulations 2015.

34. As regards to the allegation of non-disclosure under PIT Regulations by Noticee No. 2, I note that the Company's RTA had submitted a weekly Beneficiary Position report ("Benpos Report"), as downloaded from the depository systems, to Noticee no. 2 via e-mail. Further, from the IR, it is noted that the Benpos Report contains details of the shareholding of each of the promoters, top 10 shareholders etc from which, any increase and decrease in the shareholding of the promoters can easily be observed. However, I note that Noticee No. 2 failed to disclose such increase/decrease in the shareholding of the promoters.

35. Noticee No. 2 has contended that the obligation of such reporting under PIT Regulations arises only when disclosures are received from the shareholder and that Benpos report does not contain the number of shares under pledge, their release/invocations, etc. which makes it almost impossible for it to ascertain the increase/decrease in the shareholding of the promoters. In this regard, I note that the transactions in question were in the nature of off-market transfer, transfer as collateral, pledge, invocation of pledge and release and all these transactions took place in the depository system. I further note that many of the said transactions

resulted in reduction of shareholding of Noticee No.1 which would have been reflected in the Benpos Report. Accordingly, the Company should have disclosed such increase/decrease in the shareholding of Noticee No. 1 under the PIT Regulations, which it has failed to do.

36. Further, Noticee No. 2 has contended that there was no loss or harm to any other investor(s) in the market and no undue gain was made by the Noticees and that for the first time any proceedings were initiated against the it. Here, I find it pertinent to refer to the judgment of **Komal Nahata v. Securities and Exchange Board of India** (Appeal No. 5 of 2014 dated January 27, 2014) held that- "*Argument that no investor has suffered on account of non disclosure 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 non disclosure*."

37. In view of the above, I note that though the Company (Noticee No. 2) was in possession of the aforesaid changes in the shareholding of the promoter (Noticee No.1), it did not disclose the same to the exchange as required under the provisions contained in Regulation 7(2)(b) of the PIT Regulations, 2015 and thereby has violated the said PIT Regulations.

Issue (b) - Does the violation, if any, attract penalty under Section 15A(b) of the SEBI Act, 1992?

38. I note that the Hon’ble Supreme Court of India in the matter of **SEBI v/s Shri Ram Mutual Fund** [2006] 68 SCL 216(SC)held that “*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.”*

39. I also note that in Appeal No. 66 of 2003 –**Milan Mahendra Securities Pvt. Ltd. Vs. SEBI**–the Hon’ble Securities Appellate Tribunal (SAT) has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market”.*

40. In the context of disclosure related violations, I observe that Hon’ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation.

41. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15A(b) of SEBI Act for violation of the above mentioned PIT Regulations and SAST Regulations. The provisions of Section 15A(b) of the SEBI Act, 1992 read as under:

SEBI Act, 1992

15A. Penalty for failure to furnish information, return, etc.

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 there for 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) - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

42. While determining the quantum of penalty under Section 15A(b) 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, 1995 which read as under:

SEBI Act, 1992

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.

43. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of the their failure. However, I note that securities market is based on free and open access to information, and that

protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticees Hence, I note that the Noticees failed to make disclosures about the change in shareholding and thereby have violated the relevant provisions of PIT Regulations and SAST Regulations, as mentioned above.

ORDER

44. Having considered all these 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, 1995, I hereby impose the following penalties under Section 15 A (b) of SEBI Act, 1992, on the Noticee for the violations as specified in this order;

Name of the Noticee	Penal provisions	Penalty(Rs)/Violations
Suresh Venkatachari	Section15A(b) of the SEBI Act, 1992	**Rs. 2,00,000/- (Rupees Two Lakhs Only)** for the violation of Regulations 29(2) read with 29(3), 31(1) ,31(2) read with 31(3) of SEBI (SAST) Regulations 2011 and Regulation 7(2)(a) of PIT Regulations
8K Miles Software Services Ltd (Presently SecureKloud Technologies Ltd)	Section 15A(b) of the SEBI Act, 1992	**Rs. 1,00,000/- (Rupees One Lakh Only)** for the violation of Regulation 7(2)(b) of PIT Regulations

45. 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 website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

46. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Division Chief, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

47. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

48. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: July 29, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**