BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/SR/SM/AO/100-102/2018-19]

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	Abdul Zameer Hakim Khan	ASXPK2911K	EAD/SR/SM/AO/100/2018-2019
2	Amir Hamza Hakim Khan	ASXPK2912L	EAD/SR/SM/AO/101/2018-2019
3	Rehana Khan	BVFPK4495L	EAD/SR/SM/AO/102/2018-2019

In the matter of Finalysis Credit & Guarantee Company Limited

FACTS OF THE CASE IN BRIEF

1. Investigation Department (hereinafter referred to **OD**) of Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation in the trading activities of certain entities in the scrip of Finalysis Credit & Guarantee Company Limited (hereinafter referred to as **FCGCL / Target Company**). The said investigation revealed that Abdul Zameer Hakim Khan (hereinafter referred to as **Noticee 1)**, Amir Hazma Hakim Khan (hereinafter referred to as **Noticee 2**) and Rehana Khan (hereinafter referred to as **Noticee 3**) had not made required disclosures under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **SAST Regulations, 2011**). All three are collectively referred to as Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said investigation, OD of SEBI initiated Adjudication Proceedings against the Noticees and appointed Ms Sangeeta Rathod as Adjudicating Officer, under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**, 1992) and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**) to inquire into and adjudge under section 15A(b) of SEBI Act, 1992, the alleged violations

of provisions of regulations 29(1) and 29(2) read with (r/w) 29(3) of SAST Regulations, 2011 by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A show cause notice dated September 25, 2017 (hereinafter referred to as SCN) was issued to the Noticees under rule 4 of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be held against them and why penalty under section 15A(b) of SEBI Act, 1992 be not imposed on them for the violations alleged and specified in the said SCN. The SCN was sent through the speed post acknowledgment due. The said SCN did not return undelivered, however, the acknowledgment of delivery have not been received. The Noticees are in receipt of said SCN and vide letters dated October 05, 2017 replied to the said SCN.

4. It was alleged in the said SCN that the shares of the Target Company are listed at Bombay Stock Exchange Ltd. (**BSE**). OD of SEBI conducted investigation in the scrip of Target Company for the period March 28, 2012 to May 31, 2013 (hereinafter referred to as IP). However, wherever deemed necessary reference was made outside the IP also. The Noticees 1, 2 and 3 viz. Abdul Zameer Hakim Khan , Amir Hazma Hakim Khan and Rehana Khan are siblings (Noticee 1 and 2 are brothers and Noticee 3 is the sister of Noticees 1 and 2 and hence they are immediate relatives) and are therefore, deemed PACs in terms of SAST Regulations, 2011.

5. It is alleged in the SCN that on July 17, 2013, the Noticee 2 acquired 1,50,000 shares of FCGCL representing 2.72% of the paid up capital of FCGCL through off-market transaction. Further, on July 26, 2013, the Noticee 3 acquired 1,50,000 shares of FCGCL representing 2.72% of the paid up capital of FCGCL through off-market transaction. The shareholding of the Noticees 1, 2 and 3 who are deemed PACs have therefore increased from 2.72% to 5.44% of the total paid up capital of FCGCL. As per regulations 29(1) r/w 29(3) of SAST Regulations, 2011, any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company to every stock exchanges on which shares of the target company are listed and to the target company at its registered

office within two working days of acquisition of shares of such target company. As the shareholding of the deemed PACs (the Noticees 1, 2 and 3) crossed 5% benchmark provided under regulation 29(1) of SAST Regulations, 2011 on July 26, 2013, they were under an obligation to make disclosure to BSE and FCGCL under regulation 29(1) within two working days of July 26, 2013. It is alleged that the Noticees 1, 2 and 3 viz. Mr. Abdul Zameer Hakim Khan, Mr. Amir Hamza Hakim Khan and Ms. Rehana Khan failed to make the disclosure to BSE and FCGCL under regulation 29(1) r/w Regulation 29(3) of SAST Regulations, 2011 and therefore alleged to have violated the said provisions of SAST Regulations, 2011.

6. Further, it is alleged that on July 26, 2013, the Noticee 1 acquired 1,00,000 shares of FCGCL representing 1.82% of the paid up capital of FCGCL through off-market transaction. Thus, the total shareholding of the deemed PACs (Noticees 1, 2 and 3) increased from 5.44% to 7.26% of the total shareholding of FCGCL. Further, on July 27, 2013, the Noticee 3 acquired 1,00,000 shares of FCGCL representing 1.82% of the paid up capital of FCGCL through off-market transaction. Thus, post-acquisition, the total shareholding of the deemed PACs (Noticees 1, 2 and 3) further increased from 7.26% to 9.08% of the total shareholding of FCGCL. As per regulations 29(2) r/w 29(3) of SAST Regulations, 2011 any person, 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 the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made and such change exceeds two per cent of total shareholding or voting rights in the target company. The disclosure shall be made to the stock exchanges on which shares of the target company are listed and to the target company at its registered office within two working days of acquisition. It is observed that as the shareholding of the deemed PACs (Noticees 1, 2 and 3) was more than 5% and further increased from 5.44% to 9.08% (change in shareholding more than 2%) on July 27, 2013, the Noticees 1, 2 and 3 were under an obligation to make disclosure to BSE and FCGCL under regulation 29(2) r/w 29(3) of SAST Regulations, 2011 within two working days from July 27, 2013. It is alleged that the Noticees 1, 2 and 3 named above failed to make the required disclosure under regulation 29(2) r/w 29(3) of SAST Regulations, 2011 and

therefore, alleged to have violated the said provisions of SAST Regulations, 2011. In this respect, BSE vide email dated January 06, 2015 confirmed that no disclosures under SAST Regulations, 2011 had been received from the Noticees 1, 2 and 3. The alleged transactions and violations of the Noticees 1, 2 and 3 are summarily depicted in the following table:

Date	Name of the entity	No of shares held - pre Acquisition/ disposal sud	% of shareholding held - pre Acquisition/ disposal	Consolidated % of shareholding of promoters/ PAC pre-Acquisition /disposal	No of shares Acquired/ (disposed off)	No of shares Acquired/ (disposed off) as a % of paid up capital	No of shares held - post Acquisition/disposal	% of shareholding held - post Acquisition/disposal	Mode	Consolidated % of shareholding of promoters/ PAC post-Acquisition /disposal	Date of disclosure to company	Date of disclosure to stock exchange	Violation of Regulation(s)
17/07/2013	Amir Hamza Hakim Khan	0	0.00	0.00	150000	2.72	150000	2.72	off-market	2.72	No disclosure made	No disclosure made	NA
26/07/2013	Rehana Khan	0	0.00	2.72	150000	2.72	150000	2.72	off-market	5.44	No disclosure made	No disclosure made	SAST 29 (1)
26/07/2013	Abdul Zameer Hakim Khan	0	0.00	5.44	100000	1.82	100000	1.82	off-market	7.26	No disclosure made	No disclosure made	NA
27/07/2013	Rehana Khan	150000	2.72	7.26	100000	1.82	250000	4.54	off-market	9.08	No disclosure made	No disclosure made	SAST 29 (2)
27/07/2013	Abdul Zameer Hakim Khan	100000	1.82	9.08	100000	1.82	200000	3.63	off-market	10.9	No disclosure made	No disclosure made	NA

7. I granted an opportunity of personal hearing to the Noticees on April 19, 2018 vide separate hearing notices dated March 15, 2018. The said hearing notices were sent though SPAD and the same were delivered as seen from available record. The delivery proofs are on record. The Noticees did not appear for the said hearings and the Noticees vide their letter dated April 16, 2018 informed that they are unable to come for hearing on the scheduled date i.e. April 19, 2018. Therefore, another opportunity of personal hearing was provided to the Noticees on September 27, 2018 vide separate hearing notices dated September 12, 2018. However, this time also the Noticees did not appear for the hearings and the Noticees vide letters dated September 25, 2018 stated that they do not wish to attend the hearings and they have already submitted their responses. In

view of this, I find that ample opportunity of hearings were provided to the Noticees. The Noticees submitted their reply vide letters dated October 05, 2017 (enclosing the letters dated December 10, 2016, April 13, 2017 and October 05, 2017), April 16, 2018 and September 25, 2018.The summary of the Noticees' submissions made in the replies dated October 05, 2017, April 16, 2018 and September 25, 2018 are as follows:

Noticee 1

Noticee 1 submitted that he brought the shares of the Company by fair means with his hard earned money. The decision was solely of himself. He was in financial problems and need of funds. That time he came to know that, one Mr. Sarkhot was arranging funds for his family. Mr. Sarkhot suggested to take loan against the shares and after getting the loan, he could pay him back for the sale of shares. This was the reason, he transferred the shares in the Noticee's account. Also Noticee 1 stated that he did not know about disclosures of more than 5% shares of the Company and also he did not have 5% shareholding in the company.

Noticee 2

Notice 2 submitted that he has his own business and he is the decision maker of his own business and there was no joint decisions made. All the shares bought by him are legitimate. He was in need of money and for this, one Mr. Vinayak Sarkhot offered to help him to arrange loan. Mr Sarkhot told that he was ready to help Noticee 2 by advancing the shares to him so that Noticee 2 can use it to take loan. Mr. Sarkhot told that once Noticee 2 get the shares, he can get loan against the shares from market and pay the dues. Noticee 2 agreed to it since he was in need of money and hence the shares were transferred to him. Also Noticee 2 stated that he did not know about disclosures of more than 5% shares of the Company and also he did not have 5% shareholding in the company.

Noticee 3

Notice 3 submitted that she wanted to start her business for which she was in need of money. Her brother, Amir Hamza said he knows someone who can arrange money for her. He spoke to Mr. Sarkhot on behalf of her as he has already made some deal with Mr. Sarkhot for himself. Mr. Sarkhot agreed to sell the shares and told payment can be done after I get loan. She was pleased with the arrangement and asked her brother to help with the transfer. The decision was on her own and no one is responsible or partner

to her share. She did not know about disclosures of more than 5% shares of the Company and also she did not have 5% shareholding in the company.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

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

a. Whether the Noticees have violated the provisions of regulations 29(1) and 29(2) r/w 29(3) of SAST Regulations, 2011?

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

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 r/w rule 5(2) of the Adjudication Rules, 1995?

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

SAST Regulations, 2011

Disclosure of acquisition and disposal*.*

29.(1) *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*

(2) *Any person, 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 the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-*

regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

(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*

FINDINGS:

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

Issue a: ***Whether the Noticees have violated the provisions of regulations 29(1) and 29(2) r/w 29(3) of SAST Regulations, 2011?***

i. I find that Abdul Zameer Hakim Khan (Noticee 1), Amir Hazma Hakim Khan (Noticee 2) and Rehana Khan (Noticee 3) are siblings (Noticee 1 and 2 are brothers and Noticee 3 is the sister of Noticees 1 and 2 and hence they are immediate relatives) and are therefore, deemed PACs in terms of SAST Regulations, 2011. From the material available on record, I observe that on July 17, 2013, the Noticee 2 acquired 1,50,000 shares of FCGCL through off-market representing 2.72% of the paid-up capital of FCGCL. Further, on July 26, 2013 the Noticee 3 acquired 1,50,000 shares of FCGCL through off-market representing 2.72% of the share capital of FCGCL and Noticee 1 acquired 1,00,000 shares of FCGCL through off-market representing 1.82% of the share capital of FCGCL . Thus, the shareholding of Noticees, the deemed PACs (the Noticees 1, 2 and 3) became 7.26 % i.e. more than 5% of the total shareholding of FCGCL.

ii. Regulation 29(1) of SAST Regulations, 2011 provides any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company

in such form as may be specified. As the Noticee,s shareholding in FCGCL went above 5% benchmark, they were under an obligation to make disclosure to BSE and FCGCL of their aggregate shareholding of FCGCL under the said provision of SAST Regulations, 2011. I find that the Noticees had not produced any proof that they made the disclosures under the said provisions to FCGCL and BSE. Further, BSE vide its e-mail dated January 06, 2015 stated that no disclosure received from the Noticees under the said provision of SAST Regulations, 2011. Therefore, I hold that the Noticees failed to make disclosures to BSE and FCGCL under regulation 29(1) within two working days of the acquisition of shares in FCGCL and therefore, violated the provisions of regulation 29(1) r/w 29(3) of SAST Regulations, 2011.

iii. Further, I observe that on July 27, 2013, the Noticee 1 and Noticee 3 acquired 1,00,000 shares each of FCGCL through off-market. Thus, post-acquisition of shares by Noticee 1 and 3, shareholding of the deemed PACs (the Noticees 1, 2 and 3) further increased from 7.26 % to 10.9 % of the total shareholding of FCGCL

iv. As per regulations 29(2) r/w 29(3) of SAST Regulations, 2011 any person, 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 the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made and such change exceeds two per cent of total shareholding or voting rights in the target company. The disclosure shall be made to the stock exchanges on which shares of the target company are listed and to the target company at its registered office within two working days of acquisition. It is observed that as the shareholding of the deemed PACs (Noticees 1, 2 and 3) was more than 5% (i.e. 7.26%) and further increased from 7.26% to 10.90% (change in shareholding more than 2%) on July 27, 2013, the Noticees 1, 2 and 3 were under an obligation to make disclosure to BSE and FCGCL under regulations 29(2) r/w 29(3) of SAST Regulations, 2011 within two working days from July 27, 2013. I find that the Noticees had not produced any proof that they made the disclosures under the said provisions to FCGCL and BSE. Further, BSE vide its e-mail dated January 06, 2015 stated that no disclosure received from the Noticees

under the said provision of SAST Regulations, 2011. Therefore, I hold that the Noticees failed to make disclosures to BSE and FCGCL under regulation 29(2) within two working days of the acquisition of shares in FCGCL and therefore, violated the provisions of regulation 29(2) r/w 29(3) of SAST Regulations, 2011.

v. In view of the above, I conclude that Noticee failed to make disclosure to the Company and BSE and hence violated the provisions of regulations 29(1) and 29(2) r/w 29(3) of SAST Regulations, 2011.Therefore, the allegations levelled in the said SCN against the Noticees stand established.

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

Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the said failure on the part of the Noticees to make required disclosures attracts the imposition of monetary penalty under section 15A(b) of SEBI Act, 1992, which is reproduced below:

The SEBI Act, 1992

Penalties and Adjudication

"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,—*

(a) .....

(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.

12. **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 r/w rule 5 (2) of the Adjudication Rules, 1995?**

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

The SEBI Act, 1992

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

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

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

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

(c) the repetitive nature of the default."

ii. I observe, that the material available on record, does not quantify any disproportionate gains 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. Further, material available on record does not show that the said failure is repetitive.

iii. The object of the SAST Regulations, 2011 mandating disclosure of acquisition beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision.

iv. In this regard, it would be appropriate to refer to the observations made in Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. Vs. SEBI–the Hon'ble 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." Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow."*

v. After taking into consideration the facts / circumstance of the case and the above case laws, I am of the view that the Noticees are jointly and severally liable for monetary penalty of Rs. 2,00,000/- (Rupees Two Lakh only), for their failure to make required disclosures under the aforesaid provisions of SAST Regulations, 2011.

ORDER

9) In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby imposed a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on the Noticees under section 15A(b) of the SEBI Act, 1992. The Noticees are jointly and severally liable to pay the said penalty. I am of the view that the said penalty is commensurate with the defaults committed by the Noticees.

10) 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

11) 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

12) In terms of the rule 6 of the Adjudication Rules, 1995, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: February 26, 2019 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**