BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BD/BM/2019-20/6983-6985

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT,1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

In respect of:

1. Shri Abhay Ram Dahiya **(PAN: ABVPD0924C),** **R/o House no. 329,** **Sector 21-A,** **Chandigarh 160022**	**2. Shri Pankaj Dahiya** **(PAN: AGLPD1665M),** **R/o House no. 329,** **Sector 21-A,** **Chandigarh 160022**
3. Shri Amardeep Singh Dahiya **(PAN: AANPD3910B) ,** **H. No. 344, Sector-2,** **Panchkula-134112, Haryana**	

In the matter of M/s Polo Hotels Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') upon receiving various complaints regarding the irregularities in a substantial acquisition of equity shares of Haryana State Industrial Development Corporation Limited ("HSIDC") by M/s Polo Hotels Limited (hereinafter referred to as 'PHL'/Target company) examined into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there under.

2. It was observed that acquirers namely Abhay Ram Dahiya, Pankaj Dahiya and Amardeep Dahiya (hereinafter referred to as Noticee 1-3/Collectively referred to as Noticees) of the Target company had acquired 3,00,000 equity shares of HSIDC for ₹71,25,466/- i.e. at the rate of ₹23.75/- per share and under Regulation 20(2)(b) of SAST 1997 the minimum acquisition prices to acquire the 20% shareholding of public should have been ₹23.75/- per shares and not ₹8.75/- as offered by the Acquirer being the minimum price paid for any acquisition.

3. Consequently, vide order dated June 03, 2019 passed by SEBI read with SEBI order dated August 01, 2003, inter alia, directed to make public announcement by Noticees. However, it was observed that Noticees failed to comply with the orders dated June 03, 2019 read with August 01, 2003 passed by SEBI.

APPOINTMENT OF ADJUDICATING OFFICER

4. Based on the findings of the examination, SEBI has initiated Adjudication Proceedings and I have been as the Adjudicating Officer vide order dated October 18, 2019 under section 15 I of SEBI Act to inquire into and adjudge the alleged non-compliance of order dated June 03, 2019 passed by SEBI read with SEBI order dated August 01, 2003, inter alia, directing to make public announcement by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD-7/BD/BM/2019/32491/1-3/2019 dated December 06, 2019 was issued to the Noticees under Rule 4 of SEBI Adjudication Rules 1995 to show cause as to why an inquiry be not held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 HB of the SEBI Act.

6. Vide letter dated January 04, 2020 Noticees submitted preliminary reply to the SCN. Noticees have submitted as under:

We had preferred to file an appeal before Hon'ble Supreme Court against order dated February 15, 2019 passed by Tribunal. However, Vide order dated April 05, 2019, the Hon'ble Supreme Court dismissed our Civil Appeal. Pursuant thereto, we have filed Review Application before Supreme Court, which is pending for disposal."

7. In the interest of natural justice, vide letter dated January 05, 2020, the Noticees were provided with an opportunity of personal hearing on February 14, 2020. Vide letter dated February 13, 2020 Noticee requested to adjourn the date of personal hearing scheduled on February 14, 2020 on health reason.

8. Vide letter dated February 14, 2020 the Noticees were provided another opportunity to file reply on merits by February 24, 2020 and opportunity of personal hearing on 25, 2020. Vide letter dated February 24, 2020 the Noticees again sought extension for personal hearing and reply on merits.

9. I note that Noticees have failed to file reply on merits and also failed to attend the personal hearing scheduled on February 25, 2020.

10. I am of the view that sufficient opportunity of hearing has been granted to the Noticee and the principles of Natural Justice have been complied with. Therefore, I am proceeding based on the material available on record and on the written submissions made by Noticees.

CONSIDERATION OF ISSUES

11. On careful perusal of the material available on record, I note that the issues that arise for consideration in the present case are:
    a) *Whether the Noticees failed to comply with order dated June 03, 2019 read with order dated August 01, 2003 passed by SEBI?*
    b) *Does the violation, if any, attract monetary penalty under Sections 15 HB of SEBI Act?*

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?*

12. Before proceeding further, I would like to refer that Noticees did not file any reply on merits to SCN although same was served on them at the last known address in accordance with the Adjudication Rules.

13. As stated above, sufficient opportunities to submit reply and appear in personal hearing have been given to the Noticees, none of which were availed by the Noticees. Therefore, I find it pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of **Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003)** wherein, it observed, "*… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them*". I also observe that the Hon'ble Securities Appellate Tribunal in the matter **of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014)** had, inter alia, observed that, "*...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices...*" Thus, I am of the view that the allegations levelled in the SCN and the evidences enclosed therewith are not in dispute in absence of any reply from the Noticees.

FINDINGS:

14. I note that PHL was incorporated under the Companies Act, 1956 and its shares are listed on BSE Limited ("BSE"). The Board of Directors of the Target Company are as under:

TABLE I – BOARD OF DIRECTORS OF TARGET COMPANY [SOURCE: BSE WEBSITE]

	NAME	DESIGNATION
1.	ABHEY RAM DAHIYA	NON–EXECUTIVE NON–INDEPENDENT DIRECTOR CHAIRPERSON RELATED TO PROMOTER
2.	AMARDEEP SINGH DAHIYA	NON–EXECUTIVE INDEPENDENT DIRECTOR
3.	VIKAS TIBREWAL	NON–EXECUTIVE INDEPENDENT DIRECTOR
4.	GURPREET SINGH TOOR	EXECUTIVE DIRECTOR
5.	ANSHUMAN SINGH	NON–EXECUTIVE INDEPENDENT DIRECTOR

15. I note from the chronology of events in the instant case as under:

- On January 04, 1993, V. P. Garg ("Garg") (erstwhile Promoter of the Target Company) had entered into an Assisted Sector Agreement with the Haryana State Industrial Development Corporation Limited ("HSIDC") for the purpose of setting up a hotel in Haryana. As part of the Assisted Sector Agreement, HSIDC extended a term loan to Garg and also subscribed to 3 Lakh shares of the Target Company. The Assisted Sector Agreement also provided for buy– back of the aforesaid 3 Lakh shares of HSIDC. Garg defaulted in repayment of loan as well as in buying back the shares of HSIDC in the Target Company.

- In March 1999, Garg entered into another Agreement with A. R. Dahiya and his Associates, viz. Amardeep Singh Dahiya and Pankaj Dahiya (Collectively referred to as "**Acquirers**") for sale of his entire shareholding of 28.09% in the Target Company. The aforementioned Agreement was subject to the approval of HSIDC and contained a clause that Garg would be absolved of fulfilling the buy–back obligation provided HSIDC agreed to accept the Acquirers in place of Garg. Subsequently, the Acquirers, Garg and HSIDC entered into a *Tripartite Financial Collaboration Agreement*, whereby HSIDC consented to the Acquirers stepping into the shoes of Garg.

- On April 20, 1999, Garg and the Acquirers entered into an Agreement whereby the Acquirers agreed to purchase the entire share capital of 28.09% held by Garg at the rate of ₹ 8.50 per share. Since the aforesaid acquisition was in excess of 15% of the total shareholding of the Target Company, SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as SAST 1997), was to be complied with. In order to comply with the aforementioned Regulations, the Acquirers made a Public Announcement on April 24, 1999, making an Open Offer to the remaining shareholders of the Target Company to purchase a minimum of 20% shares of the said Company at an offer price of ₹ 8.75 per equity share.

- On May 05, 1999, a draft Letter of Offer was sent by the Merchant Banker (on behalf of the Acquirers) to SEBI for its approval. In the draft Letter of Offer the Acquirers *inter alia* made a disclosure about the *Financial Collaboration Agreement* entered into between the Acquirers, Garg and the HSIDC on April 19, 1999 and the details of how the price will be determined at the time of buy–back of shares from HSIDC by the Acquirers. SEBI reverted with a letter dated May 26, 1999, seeking clarifications from the Merchant Banker. The SEBI letter stated that the price at which the Acquirers proposed to acquire the shares from HSIDC as per the *Financial Collaboration Agreement*, had to be specified upfront in the Offer document. Further, SEBI also stated that if the price payable to HSIDC as per the said Agreement was higher than the offer price of ₹ 8.75 per share, then the offer price must be justified as required under Regulation 20(6) of the Takeover Regulations 1997. Vide a letter dated May 31, 1999, the Merchant Banker replied *inter alia* stating that as the price to be paid to HSIDC cannot be determined as on that date, it cannot be considered for pricing under Regulation 20 of the SAST 1997. SEBI cleared the draft Letter of Offer vide its letter dated September 30, 1999 advising the Acquirers to *inter alia* disclose in the draft Letter of Offer that the acquisition of shares under the *Financial Collaboration Agreement* will be governed by the relevant provisions of the SAST 1997 when the acquisition actually takes place. Accordingly, the Letter of Offer was sent to the shareholders of the Target Company by the Acquirers containing the disclosures as advised by SEBI. It was subsequently gathered that the buy–back

transaction with HSIDC had, in fact, been concluded on April 19, 1999 at ₹ 23.75 per share and this fact was not disclosed by the Acquirers to SEBI. As it transpired, in response to the Public Announcement, the Acquirers could acquire only 2.42% of the shares of the Target Company under the Open Offer as the shareholders were not willing to offer their shares at ₹ 8.75 when the face value was ₹ 10.

- Subsequently, SEBI received various complaints, inter-alia, alleging that acquirers of the Target company had acquired 3,00,000 equity shares of HSIDC for ₹ 71,25,466/- i.e. at the rate of ₹ 23.75/- per share and under Regulation 20(2)(b) of SAST 1997 the minimum acquisition prices to acquire the 20% shareholding of public should have been ₹ 23.75/- per shares and not ₹ 8.75/- as offered by the Acquirer being the minimum price paid for any acquisition.

16. Vide order dated August 01, 2003, acquirers/Noticees were directed to-

    - *make public announcement, within 45 days of the order coming into effect, for 20% shares as required under Chapter III of the said Regulations in terms of regulation 10 to the shareholders of the Target company and to pay the shareholders whose shares are accepted in the offer, the price at the rate of ₹23.75/- per share along with interest @ 15% p.a. for the period from 16/11/99 to the actual date of payment of consideration.*

    - *pay the balance amount, within 45 days of the order coming into effect, to all the shareholders whose shares have been accepted in the public offer made on 24.4.99, the balance amount being ₹15 [₹23.75/- minus ₹8.75/- {already paid}] plus interest @ 15% p.a. for the period from 16.11.99 (date of actual payment of ₹8.75/- being 15/11/99) to actual date of payment of balance consideration.*

17. Thereafter, the acquirers filed an appeal before SAT, which was dismissed vide SAT order dated April 19, 2006. Subsequently, the acquirers filed an appeal before Hon'ble Supreme Court against the aforesaid SAT order, which was also dismissed

vide Supreme Court order dated November 26, 2015. Thereafter, the acquirer also filed curative petition before Hon'ble Supreme Court, which was also dismissed vide order dated March 02, 2017.

18. Subsequently, vide observation letter dated May 11, 2018, the acquirers were once again advised to comply with the direction given under SEBI order dated August 01, 2003. Thereafter, the Acquirers filed an appeal challenging the Observation Letter dated May 11, 2018, before the Hon'ble SAT, which was dismissed vide order dated February 15, 2019.

19. Thereafter, the Acquirers filed an appeal against SAT Order dated February 15, 2019, before the Hon'ble Supreme Court, which was dismissed vide an Order dated April 5, 2019. Subsequent to the aforementioned, the Acquirers vide letter dated April 16, 2019, informed SEBI that they had filed a Review Application before the Hon'ble Supreme Court. The acquirers, vide mail dated May 8, 2019, also requested SEBI to grant time for compliance with the SEBI Order dated August 01, 2003, till the disposal of the aforementioned Review Application.

20. Subsequently, vide order dated June 03, 2019, Noticees were, inter alia, directed as under:

- *Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya shall ensure compliance with the SEBI Order dated August 1, 2003 and complete the pending Open Offer after duly incorporating the observations issued vide the Observation Letter dated May 11, 2018 within twelve working days from the date of receipt of this Order.*

- *Abhey Ram Dahiya, Amardeep Singh Dahiya and Pankaj Dahiya shall within seven working days from the date of receipt of this Order, deposit an amount of ₹11,94,40,349 (Rupees Eleven Crore Ninety Four Lakh Forty Thousand Three Hundred Forty Nine only) in an interest bearing Escrow Account ["Escrow Account in Compliance with SEBI Order dated June 3, 2019 – A/c (in the name*

of the respective persons/entities)"] created specifically for the purpose in a Nationalized Bank.

21. I note that vide order dated August 01, 2003, acquirers/Noticees, inter alia, were directed to-make public announcement, for 20% shares as required under Chapter III of the said Regulations in terms of regulation 10 to the shareholders of the Target company and to pay the shareholders whose shares are accepted in the offer, the price at the rate of ₹23.75/- per share along with interest @ 15% p.a. for the period from November 16, 1999 to the actual date of payment of consideration.

22. Vide letter dated June 06, 2019 Noticees, inter alia, requested to grant further six weeks' time to deposit an amount of ₹ 11,24,40,249/- (incorrectly mentioned in the letter whereas the correct figure should be ₹ 11,94,40,349/-) as directed by SEBI's order dated June 3, 2019.

23. However, instead of depositing the amount of ₹11,94,40,349/- in an interest bearing Escrow Account, the Noticees applied their delaying tactics and moved for forum shopping which demonstrates that the Noticees never intended to comply with the directions of the regulator in true spirit.

24. Vide order dated August 29, 2017 Hon'ble SAT has observed in the appeal filed by the Noticee 1 as under:

Facts relevant to the present appeal are as follows:-

(a) By an order dated 1.8.2003 the Chairman of SEBI had directed the appellant to make a public announcement for acquisition of 20% shares of the target company for the reasons stated therein.

(b) Appeal filed by the appellant against the order dated 1.8.2003 was dismissed by this Tribunal on 19.4.2006.

(c) Further appeal filed by the appellant against the decision of this Tribunal dated 19.4.2006 was dismissed by the Apex Court on 26.11.2015.

(d) Challenging the Apex Court order dated 26.11.2015 appellant filed a review petition which was dismissed by the Apex Court on 13.7.2016.

(e) Appellant thereupon filed a curative petition before the Apex Court which was also dismissed by the Apex Court on 2.3.2017.

(f) Thereafter, the appellant addressed a letter to SEBI on 9.5.2017 stating that on account of the conduct of its Merchant Banker the appellant is unable to comply with the order of SEBI. Subsequently by a letter dated 22.5.2017 the appellant sought extension of time to comply with the order of SEBI.

(g) By a letter dated 7.6.2017 SEBI granted 15 days time for the compliance of its order dated 1.8.2003.

(h) As the appellant failed to comply with the order of SEBI dated 1.8.2003 inspite of granting extension of time, SEBI by the impugned communication dated 3.8.2017 called upon the appellant to comply with SEBI's order dated 1.8.2003 within 7 days failing which appropriate action would be initiated.

(i) Present appeal is filed to challenge the aforesaid communication of SEBI dated 3.8.2017 and the email received by the appellant from its merchant banker (Respondent No.2) on 4.8.2017.

25. In the aforesaid appeal the SAT levied the cost of ₹ 50,000/- on Noticee 1 and held *that in our opinion the present appeal is filed in gross abuse of the process of law merely with a view to delay implementation of the order of SEBI dated 1.8.2003 which was upheld by this Tribunal and finally by the Apex Court on 26.11.2015. Even after SEBI considered the plea of the appellant and granted extension of time, the appellant has failed and neglected to comply with the order of SEBI dated 1.8.2003.*

26. I find from the case status that the Noticee Abhay Ran Dahiya has filed Review Petition on April 16, 2019 and since then the same is pending before the Hon'ble Supreme court without any change in status.

27. I note that the purpose of review is to look for any mistake or deficiency that occurred last time the case was decided. There are four grounds available for filing review as under:

(i) *Finding of certain new material facts or evidence which the party was unable to procure and produce before the court at the time when the court passed the decree despite exercising due care and diligence.*

(ii) *Error apparent on the face of record as held by Guwahati High Court in Uhsa Rani Vs Hardas Das.*

(iii) *Any other sufficient reason (Lily Thomas V. Union of India.*

(iv) *Misconception or misrepresentation of the factual scenario of the case.*

28. As per process of review the court must serve a notice of review petition to the opposite party to allow him/her to appear the court and defend the case. However, no material on record suggests that any intimation in the review has been received by SEBI from the Hon'ble Supreme Court in the matter.

29. Since the copy of the Review petition is not made available during the adjudication proceedings, I am not cognizant of any valid ground for review.

30. I also note that the Noticees have a long history of accessing the different appellate forums one after another despite frequent dismissal and rejection of their petitions. Therefore, I don't find merit in the submission of the notice that the adjudication proceedings can be kept in abeyance in view of filing of review in the matter.

31. I note that the defaults of the Noticees are serious in nature and continuing and they failed to make public announcement and deprived the shareholders from the exit opportunity. I note that correct and timely announcement play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decisions. Further, the failure to comply with the direction of the statutory Authority by the Noticees seriously aggravates and hampers the interests of investors.

32. I note that the violations under SAST 1997 in the captioned matter pertain to the year 1999 and the orders have already been passed on August 1, 2003 and June 03, 2019 by SEBI to comply with the directions thereunder. Noticees failed to comply

with the directions issued by SEBI. The leisure approach of the Noticees shows that they have never intended to comply with the direction of the statutory authorities.

33. It is, therefore, concluded that the charge of the non-compliance of the directions issued vide order dated June 03, 2019 read with the order dated August 1, 2003 against the Noticees stands established.

34. The aforesaid non-compliance by the Noticees makes them liable for penalty under Section 15 HB of the SEBI Act which reads as under:

Penalty for contravention where no separate penalty has been provided.
15HB of SEBI Act 1992.
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

35. The Hon"ble Supreme Court of India in the matter of **Chairman, SEBI v. Shriram Mutual Fund {[2006] 5 SCC 361}** 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…".*

36. While imposing monetary penalty it is important to consider the factors stipulated in Section 15J of SEBI Act which reads as under:

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

***Explanation**: For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

37. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticees could not be quantified. However, I find from the Order dated June 3, 2019 that within seven working days from the date of receipt of this Order, the deposit of an amount of ₹11,94,40,349 (Rupees Eleven Crore Ninety Four Lakh Forty Thousand Three Hundred Forty Nine only) had to be made by Noticees in an interest bearing Escrow Account and also complete the pending Open Offer after duly incorporating the observations issued vide the Observation Letter dated May 11, 2018 within twelve working days from the date of receipt of the Order dated June 3, 2019 which they grossly failed to comply with.

38. I note that Noticees have grossly failed to comply with SEBI order dated June 03, 2019 read with the order dated August 01, 2003 passed by SEBI. In view of above, I consider it as a fit case for imposition of exemplary penalty provided under Section 15HB of SEBI Act.

ORDER

39. In light of all the above stated facts and circumstances of the case, in exercise of the powers conferred upon me under Section 15 I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose a penalty as under:

Sr No.	Noticees	Violation	Actions Recommended	Penalties
1	Abhay Ram Dahiya	Non Compliances of directions contained in SEBI order dated June 03, 2019 read with August 01, 2003 passed by SEBI	Section 15 HB of SEBI Act, 1992	₹8,00,000(Rupees Eight Lakh Only)
2	Pankaj Dahiya			₹8,00,000(Rupees Eight Lakh Only)
3	Amardeep Dahiya			₹8,00,000(Rupees Eight Lakh Only)

	Total			**₹ 24,00,000/-(Rupees Twenty Four Lakh Only)**

40. I am of the view that the said penalty would be commensurate with the violations committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors and markets.

41. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → Orders → Orders of AO → PAY NOW

42. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format as given in table below:

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	

Payment is made for	Penalty

43. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

44. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date: February 27, 2020 **B J DILIP**

Place: Mumbai **ADJUDICATING OFFICER**