BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2018-19/2020-2022]

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

In respect of:

1. **Ms. Sangeeta Sethia (PAN No. ARHPS2827H)**
2. **Mr. Swaminathan Rajendran (PAN No. ARHPS2827H)**
3. **Mr. Prabhat Sethia (PAN No. ARHPS2827H**

In the matter of
Filatex Fashions Limited

1. Filatex Fashions Limited (hereinafter referred to as 'the target company/FFL') is a company listed on the Bombay Stock Exchange Limited (BSE). During the examination in the scrip for the period April 2007 to November 2007, SEBI *inter alia* observed that:

   a. As on August 10, 2007, Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran together held 1,39,593 shares i.e. a holding of 1.29% of total shareholding of the target company. They both acquired 3,00,000 shares each on August 31, 2007 which increased their consolidated holding to 6.85% of total shareholding of the target company.

   b. Ms. Sangeeta Sethia is the wife of Mr. Prabhat Sethia, the promoter and Managing Director of the target company. Mr. Swaminathan Rajendran, was employed as accountant in the target company during the period of examination and was having the same address as that of the target company. The demat account (bearing no. 1203070000109587) of Mr. Swaminathan Rajendran, maintained with PCS Securities Limited (a SEBI registered stock broker) was opened on September 12, 2007 and Ms. Sangeeta Sethia was his nominee. The bank account (no. 09790110003848) of Mr. Swaminathan Rajendran maintained with UCO Bank was opened on September 07, 2007 and was introduced by Ms. Sangeeta Sethia. These

facts make it clear that Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran were well connected to each other.

c. Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran had dematerialized the aforesaid 3,00,000 shares each on September 21, 2007. The bank account of Mr. Swaminathan Rajendran was opened on September 07, 2007 i.e., after the date of acquisition of shares. Further, the bank account no. 05211000057277 of Ms. Sangeeta Sethia with HDFC Bank did not have entry with respect to the payment made towards acquisition of the aforesaid shares of the target company by her. The consideration for these shares was paid by Mr. Prabhat Sethia to the transferee i.e. IFCI and later on the shares were transferred/ dematted in the account of Mr. Swaminathan Rajendran and Ms. Sangeeta Sethia. The consideration in respect of the shares purchased from IFCI was paid by Mr. Prabhat Sethia and the shares were transferred/ dematted in the accounts of Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran.

d. Mr. Swaminathan Rajendran had transferred ₹ 36,50,000 to the target company during October 8-10, 2007. Mr. Prabhat Sethia had claimed that the said amount was taken as a loan by the target company from Mr. Swaminathan Rajendran. However, he neither produced any documentary evidence for the same nor showed any repayment of the claimed loan.

e. Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran were only acting as front entities to Mr. Prabhat Sethia. All these three entities acted in concert with each other in respect of acquisition of 3,00,000 shares of the target company by Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran on August 31, 2007 as aforesaid. They acted with a common objective and purpose of acquisition of shares of the target company and were acting as 'persons acting in concert' (hereinafter referred to as 'PAC') in terms of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations'). Due to these acquisitions, the holding of the promoters of the target company increased from 28.88% as on quarter ended June 30, 2007 to 35.73% (increase by 5.80% in a financial year) as on August 31, 2007. This increase in promoters' shareholding

triggered the mandatory obligation to make public announcement in terms of regulation 11(1) of read with regulation 14(1) the SAST Regulations. The provisions of regulation 11(1) and 14(1) of the SAST Regulations as applicable at the relevant time provided as under:-

SAST Regulations, 1997

Consolidation of holdings.

11. *(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.*

Timing of the public announcement of offer.

14. *(1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government or the State Government as the case may be, for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in regulation 10 or regulation 11 or the transfer of control over a target Public Sector Undertaking.

2. SEBI observed that the aforementioned acquisitions were made by the aforesaid three entities without making the public announcement in terms of regulation 11(1) of the SAST Regulations and thus, consequences provided under regulation 44 read with regulation 45 of the SAST Regulations would follow. Regulation 44 which provided consequences of breach of this obligation gave flexibility to SEBI to enforce regulation 11 by way of several directions

including making open offer for acquiring shares of the target company, disinvestment of shares acquired in breach of regulations; and adjudication etc.

3. With regard to above violation of regulation 11, SEBI, vide its order dated April 04, 2013, at first instance, issued following directions against Ms. Sangeeta Sethia, Mr. Swaminathan Rajendran and Mr. Prabhat Sethia (hereinafter jointly referred to as 'the Noticees'):

"12….I hereby direct Ms. Sangeeta Sethia, Mr. Swaminathan Rajendran and Mr. Prabhat Sethia to make public announcement to the shareholders of the target company, within 90 days of the date of this order, in terms of Takeover Regulations.

13. I note that in terms of Takeover Regulations the payment of consideration to the shareholders of Target Company is required to be completed within 90 days from the date of public announcement. In the present case, if the acquirers would have come out with the public offer on the date when they crossed the threshold limit prescribed under Regulation 11 of Takeover Regulations then the shareholders of the target company would have got the exit opportunity, if they wished so, much before.

14. Since no public announcement for acquisition of shares of the target company has been made, which has adversely affected the interest of the shareholders of the target company, it would be just and equitable to direct the acquirers to pay interest at the rate of 12% per annum on the offer price. The acquirers are hereby accordingly directed to pay the interest of 12% per annum to the shareholders or the loss of interest caused to the shareholders for the period of delay."

4. The appeal filed by Ms. Sangeeta Sethi and Mr. Prabhat Sethia before the Securities Appellate Tribunal (referred to as "SAT") against the aforesaid order of SEBI was dismissed by Hon'ble SAT, vide its order dated May 05, 2014, with observation that:-

"In view of clear violation of the mandate of Takeover Regulations, we do not find any substance in the present case to take a lenient view in relation to making public announcement as also interest by altering the impugned order dated April 4, 2013. In the facts and circumstances of the present case, we do not find it appropriate to interfere with the impugned order in exercise of powers conferred by Section 15 T (4) of the SEBI Act, 1992."

5. The Review Application filed before Hon'ble SAT was also dismissed as withdrawn vide order dated September 29, 2015 passed by Hon'ble SAT. Thus, the aforesaid direction

contained in the order dated April 04, 2013 attained finality and Ms. Sangeeta Sethia, Mr. Swaminathan Rajendran and Mr. Prabhat Sethia were bound to comply with aforesaid directions contained in SEBI's order dated April 04, 2013. It has been noted that as per SEBI's record and Corporate Announcements made by the target company as disseminated on BSE website, the Noticees have failed to make public announcement and have failed to comply with the order dated April 04, 2013.

6. In view of the above, SEBI felt satisfied that there are sufficient grounds to adjudicate upon the aforesaid violation of regulation 11(1) of the SAST Regulations and also to inquire and adjudicate upon the non-compliance of directions contained in SEBI order dated April 04, 2013 by Ms. Sangeeta Sethia, Mr. Swaminathan Rajendran and Mr. Prabhat Sethia. By a *communication-order* dated September 14, 2018 the matter has been referred for inquiry and adjuration of the following violations by them:

Sr. No.	**Entity Name**	**Violation of SEBI Act/Rules/Regulations**	**Proposed action under respective section of the SEBI Act, 1992**
1	Ms. Sangeeta Sethia	a. failure to make Public Announcements under regulation 11(1) of the SAST Regulations, and	a. 15H
2	Mr. Swaminathan Rajendran		
3	Mr. Prabhat Sethia	b. Non-compliance of SEBI order dated April 04, 2013	b. 15HB

7. Subsequently, the records of the instant proceedings were provided to me on October 22, 2018. After receipt of records, the notice to show cause no. EAD-2/SS/VS/30792/1-3/2018 dated November 06, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') read with section 15I of the SEBI Act. By the SCN the Noticees were called upon to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Sections 15H and 15HB of the SEBI Act for the aforesaid alleged failures/non-compliances.

8. The SCN was sent at the last known address of the Noticees through Speed Post Acknowledgment Due. The SCN was duly served upon Mr. Prabhat Sethia. By the said SCN Mr. Prabhat Sethia was advised to file reply within a period of 14 days. However, no reply has been received from Mr. Prabhat Sethia. Further, in the interest of natural justice and in terms of rule 4(3) of the Adjudication Rules, Mr. Prabhat Sethia was given additional opportunity to file reply to the SCN and was also granted an opportunity of personal hearing on January 24, 2019 and the same was communicated vide notice dated January 08, 2019. The said notice was duly delivered/ served upon him on January 18, 2019 as confirmed from records of Posts as available on India Post website at – https://www.indiapost.gov.in. However, he has chosen not to respond in these proceedings despite service of notices upon him.

9. The SCN sent to Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran was returned undelivered. Subsequently, efforts were made to deliver the SCN by way of affixture, howeve, the SCN could not be served through affixture either as these Noticees were not traceable at the address available on record. Therefore, in terms of rule 7(d) of Adjudication Rules Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran were notified about the issuance of the SCN by way of newspaper publication. In the said paper publication, Ms. Sangeeta Sethia and Mr. Swaminathan Rajendran were asked to file their reply to SCN and avail the opportunity of personal hearing on January 24, 2019. Vide the said SCN/notice of hearing/notice served through public notice as aforesaid, it was clearly advised that in case of failure to submit reply or to appear for the hearing, the case would be proceeded with *ex-parte* on the basis of the material available on record. However, no reply has been received from these Noticees as advised in the public notice issued and published in this regard.

10. It is noted that the Noticees have neither filed any reply nor have availed the opportunity of personal hearing despite service of notices upon them. In the facts and circumstances of this case, I am of the view that the Noticees have nothing to submit and in terms of rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record. In absence of any response from the Noticees, it is presumed that they have admitted the charge of provisions as alleged in the case. In this regard, the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Classic Credit Ltd. vs. SEBI (Appeal No. 68 of 2003 decided on December 08, 2006) are relevant to rely upon wherein it

has that- *"… 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"*. Further, the Hon'ble SAT in the matter of Sanjay Kumar Tayal & Others vs SEBI (Appeal No. 68 of 2013 decided on February 11, 2014), has, *inter alia*, observed that: *"… 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 levelled against them in the show cause notices..."*

11. I have carefully considered the allegations and charges levelled against the Noticees and relevant material relied upon in this case. It is noted that SEBI vide order dated April 04, 2013 established the fact that the Noticees were part of single group and were acting in concert and required to make the public announcement as per regulation 11(1) of SAST Regulations, which they failed to make and consequently, SEBI issued directions to Noticees to make public announcement to the shareholders of the target company, within 90 days of the date of the order dated April 04, 2013, in terms of SAST Regulations.

12. The failure of the Noticees to make the public announcement in accordance with regulation 11(1) read with 14(1) of the SAST Regulations has been established in view of aforesaid orders of Hon'ble SAT. Thus, the Noticees have contravened provisions of regulation 11(1) read with 14(1) of the SAST Regulations and are liable for penalty in terms of section 15H(ii) of the SEBI Act which reads as under :-

> ***Penalty for non-disclosure of acquisition of shares and takeovers.***
>
> ***15H.*** *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*
>
> *(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or*
>
> *(ii) make a public announcement to acquire shares at a minimum price; or*
>
> *(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or*
>
> *(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,*
>
> *he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

13. It is also admitted position that the Noticees have not complied with directions issued by SEBI vide order dated April 04, 2013. The complete failure as found in this case, had clearly defeated the purposes of the Regulations. Further, the gravity of this matter cannot be ignored as non-compliance of the directions is continuing till date after lapse of more than 5 years. Thus, the failure to comply with directions issued by SEBI vide order dated April 04, 2013 also deserves imposition of penalty under section 15HB of the SEBI Act which provides as under :

> ***Penalty for contravention where no separate penalty has been provided.***
>
> ***15HB.*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

14. For the purpose of adjudication under sections 15H and 15HB read with section 15J of the SEBI Act, in this case, it is gainsaying that evading the mandatory obligations by such wilful defiance as established in this case will definitely be profitable to the Noticees as they have avoided incurring costs of compliance of open offer obligations which entail appointment of a SEBI registered merchant banker, making public announcement, payment of consideration to the public shareholders who opt to exit in open offer at the price determined in terms of SAST Regulations. To this extent, it can be said that the Noticees (one of the Noticee being the Promoter of the target company) have definitely earned disproportionate gain or unfair advantage. Similarly, by not providing exit opportunity as mandated by law the Noticees have caused loss to the public shareholders who would have tendered their shares for acceptance, had the open offer been made by the Noticees.

15. The material available on record do not bring out the exact amount of disproportionate gain or unfair advantage to the Noticees or amount of loss caused to the shareholders of the target company at the relevant time. I have noted from the trading/price details of the FFL scrip during the period as available on BSE website that when the aforesaid 6,00,000 additional shares were acquired, the scrip was frequently traded on BSE and last traded price of the shares of the target company as on August 31, 2007 was ₹ 12.70 / per share. Had the Noticees made the mandatory open offer to acquire at 20% shares from the public shareholders in the target company as required under SAST Regulations, they would have to

pay to those shareholders for such acquisition at the minimum price of ₹ 12.70 / per share. However, for want of relevant details on record, it is not possible to ascertain exact financial obligations of the Noticees, possible profit to them and consequential loss to the public shareholders in this regard. Further, the case is more than 11 years old.

16. Apart from the above, despite dismissal of their appeal/ review application by Hon'ble SAT the Noticees have wilfully defied, disobeyed and disregarded the directions of SEBI as per order dated April 04, 2013. The brazen defiance shown by the Noticees towards enforcement directions of the Board cannot be viewed lightly. In my view, the non-compliance of directions in such cases is certainly a serious violation affecting the interest of investors. I also note that during these proceedings, the Noticees have shown obstinacy and indifference to respond to the notices. There conduct clearly shows a definitive stance on their part which signifies deliberate non co-operative intent. It is also a case, where SEBI has found fit to reopen the charge of original violations of provisions of regulation 11(1) of SAST Regulations for the purpose of adjudication under section 15H(ii) after the non- compliance of directions contained in the order dated April 04, 2013 occurred. The violation is, thus, perceived to be serious and sought be dealt with accordingly.

17. Considering all the facts and circumstances of the case and factors as above and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I am of the view that the findings as aforesaid support imposition of penalty upon Noticees with regard to the violations committed by them. I, therefore, hereby impose the monetary penalty upon Noticees as per following table under sections 15H and 15HB of the SEBI Act, payable jointly and severally by them. In my view, the said penalty is commensurate with the violation committed by these Noticees in this case.

Name of Noticee	**Failures**	**Amount of Penalty - Penalty under provision**
Ms. Sangeeta Sethia	Not making Public Announcements under regulation 11(1) of the SAST Regulations Non-compliance of SEBI order dated April 04, 2013	**₹ 1,00,00,000**/-(Rupees One Crore only) under section 15H of the SEBI Act **₹ 1,00,00,000**/-(Rupees One Crore only) under section 15HB of the SEBI Act
Mr. Swaminathan Rajendran		
Mr. Prabhat Sethia		

18. The Noticee shall remit / pay the aforesaid total amount of penalty i.e ₹ 2,00,00,000/- (Rupees Two Crore only) 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 as follows:

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

19. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052." And also to e-mail id :- tad@sebi.gov.in

1	Case Name	
2	Name of the 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 and legal charges along with order details)	

20. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: January 30, 2019
Place: Mumbai

Santosh Shukla
Chief General Manager &
Adjudicating Officer