BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/PM-AA/AO/58/2017-18]

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

Karnavati Infrastructure Projects Limited

(PAN: AACCS1330A)

In the matter of

Scanpoint Geomatics Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (**SEBI**) observed that during the period September 2014 –October 2014, the promoters of Scanpoint Geomatics Ltd. (hereinafter referred to as "**Company/SGL**") increased their pledge from "*nil*" to 22.30% of the total issued capital without making requisite disclosure under Regulation 31(1) read with Regulation 31(3) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**"). Upon perusal of the holding and transaction statement of the promoters of the company, it was observed that the Karnavati Infrastructure Projects Ltd. (hereinafter referred to as "**Noticee**"), who is a promoter of SGL, had pledged 60,00,000 shares on October 21, 2014 representing 22.30% of the total issued capital of SGL to Rakhi Trading Pvt. Ltd. ("**Rakhi**").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter

referred to as **"SEBI Act"**) read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Adjudication Rules'**) to inquire into and adjudge under section 15A(b) of the SEBI Act the alleged violations of provision of Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice no. EAD/ADJ/PM/AA/OW/28157/2017 dated November 15, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticee under Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act, 1992 for the alleged violations specified in the SCN. Copies of the documents relied upon in the SCN were provided to the Noticee along with the SCN.

4. Vide letter dated November 28, 2017, Noticee filed its reply to the SCN. The summary of submissions are as follows:

   - *Noticee had pledged 60,00,000 shares with Rakhi Tading Pvt. Ltd. on October 21, 2014 and it is acknowledged that the disclosures required under Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011 were not made to the stock exchange within the time prescribed therefor under the regulation.*
   - *The above referenced disclosures with the stock exchange was made on July 11, 2016 and the same is now available on the BSE website.*
   - *Kindly consider the submissions made on July 11, 2016 as compliance for the requirement under Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011.*

5. Noticee was given opportunities of personal hearing on January 16 & 23 2018. Mr. Jaymeen Trivedi, Authorised Representative of the Noticee, attended the personal hearing on January 23, 2018. He reiterated the

submissions made in the reply to SCN and also submitted statement of Profit and Loss of the Noticee for the period ended March 31, 2017.

CONSIDERATION OF ISSUES AND FINDINGS

6. I have perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :
   a. Whether Noticee had violated Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011? and
   b. Does the violation, if any, attract monetary penalty under section 15A(b) of SEBI Act?

7. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 2011 which reads as under:-

SAST Regulations, 2011

"*Disclosure of encumbered shares.*
31(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.
(2) ……..
(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—
(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office."

Violation of Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011

8. Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011 requires that the promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified to the target

company and exchanges where the shares of the company is listed within seven working days from the creation or invocation or release of encumbrance.

9. Upon perusal of the documents available on record, I find that it is not in dispute that the Noticee was the promoter of SGL and it had pledged 60,00,000 shares on October 21, 2014 representing 22.30% of the total issued capital of SGL to Rakhi. It is also an admitted fact that the disclosure in respect of the said pledge transaction was not made by the Noticee within seven working days from the creation of encumbrance as stipulated under Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011 but was made only on July 11, 2016.

10. However, it was submitted by the Noticee that the disclosure made on July 11, 2016 may be taken as compliance for the requirement under Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011. I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance. Timeliness is the essence of disclosure under the SAST Regulations and delayed disclosure would not serve the purpose for which the obligation is cast in these Regulations.

11. In this context, I would also like to rely on observation of Hon'ble Securities Appellate Tribunal ("SAT") in *Premchand Shah and Others* V. *SEBI* dated February 21, 2011, wherein it was held that "…….*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.……Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments*…… "

12. In view of the aforesaid discussion, I find that the Noticee failed to make the requisite disclosures to the stock exchange within the timeline as stipulated under Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011 about creation of pledge of 60,00,000 shares on October 21, 2014 in favour of Rakhi.

Issue II - Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?

13. By not making the disclosures on time, Noticee failed to comply with their mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. 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."*

14. Further, in the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014 order dated October 14, 2014), Hon'ble SAT observed that *"……. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation.*

15. As the violation of Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011 is established, the Noticee is liable for monetary penalty under section 15A(b) of SEBI Act, 1992 which, at the time of violation, read as under:

"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,-*
(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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;"

16. While determining the quantum of penalty under section 15A(b), 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."

17. The amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default is not quantified in the material available on record. It is important to note here that Regulation 31(1) of SAST Regulations, 2011 was brought in specifically so that the investors and the public is aware of the shares of target company encumbered by the promoters or persons acting in concert with him, as these category of shareholders have significant shareholding and wield a strong influence on the company. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of any vital information. Hon'ble SAT in the case of *M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI* (Appeal No. 209 of 2014 order dated August 11, 2014), as regards the importance of

disclosure, observed *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* However, the Noticee, by not complying with the regulatory obligation of making the disclosures within the stipulated time, has deprived investors of the important information at the relevant point of time.

18. Noticee while admitting the non-compliance had requested for taking a lenient view in the matter in view of the weak financials. In this regard, I note that Hon'ble SAT has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the Takeover Regulations. In this context, I would like to refer the case of *M/s Vybra Automet Ltd. vs SEBI* (Appeal No. 69 of 2014 order dated June 20, 2014) wherein Hon'ble SAT observed that "*Fact that the financial position of the company was weak or that the trading in the shares during the relevant period were thin cannot be a ground for not making disclosures under regulation 8(3) of SAST Regulations, 1997*." Therefore, I do not find merit in this submission of the Noticee.

ORDER

19. After taking into consideration the nature and gravity of charges established and the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a

monetary penalty of ₹ 2,00,000/- (Rupees Two Lakh Only) on the Noticee i.e. Karnavati Infrastructure Projects Ltd. under section 15A(b) of SEBI Act, 1992 for violation of Regulation 31(1) read with Regulation 31(3) of SAST Regulations, 2011.

20. The amount of penalty shall be paid ***either by way of demand draft*** in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, ***or by e-payment*** in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

21. The Noticee shall forward the Demand Draft or the details / confirmation of penalty so paid through e-payment to "The Chief General Manager, Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." as per the following format.

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payments is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

22. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to Noticee and also to the Securities and Exchange Board of India.

Date: March 23, 2018 **Prasanta Mahapatra**
Place: Mumbai **Adjudicating Officer**