BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: EAD/PM-RR/AO/80/2018-2019)

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 BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Pakoba Finance & Trades Pvt. Limited (PAN: AACCP3581E)

In the matter of Shalimar Productions Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as "SEBI") conducted an investigation in the scrip of Shalimar Productions Limited (hereinafter referred to as "the Company") during April 1, 2014 to September 1, 2014 (hereinafter referred to as "investigation period"). During the investigation period, SEBI had observed violation of Regulation 13(1) of SEBI (Prevention of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations, 1992") and Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter referred to as "SAST Regulations, 2011") by Pakoba Finance & Trades Pvt. Limited (hereinafter referred to as "Noticee").

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (AO) vide Order dated June 18, 2018 which was communicated vide communique dated June 25, 2018 under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under the provisions of Sections 15A(b) of the SEBI Act for the abovementioned

alleged violations of PIT Regulations, 1992 and SAST Regulations, 2011 by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice dated July 10, 2018 (hereinafter referred to as 'SCN') was issued to the Noticee at its latest address available on record. The SCN was issued to the Noticee under the provisions of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty should not be imposed on the Noticee under the provisions of Sections 15A(b) of the SEBI Act, for the aforesaid alleged violations.

4. SCN dated July 10, 2018 was issued to the Noticee at its latest address available on record. However, the same could not be served. Subsequently, the undelivered SCN was uploaded on the SEBI website under the head "unserved orders/show cause notices".

5. In addition, the SCN was published in English in Times of India on September 7, 2018 and in Marathi in Loksatta on September 7, 2018. In the said public notice, the Noticee was granted hearing opportunity on September 27, 2018. However, the Noticee neither replied to the said SCN till date nor availed the hearing opportunity.

6. Facts of the case and allegations made in the SCN is as under:
   i. During the investigation period, it was observed that on August 25, 2014, the individual holding of the Noticee increased beyond 5% i.e., increased from 9,30,209 (0.09%) to 5,79,04,353 (5.88%)
   ii. The aforesaid change in holding beyond 5% required disclosures to be made by the Noticee under Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) of SAST Regulations, 2011.
   iii. Information was sought from BSE and the Company vide e-mail dated September 29, 2014 and October 21, 2014 respectively in order to verify

the status of compliance of aforesaid disclosure requirements by the Noticee.

iv. However, from the replies received from the Exchange (BSE) and the Company, it was observed that no disclosures were made by the Noticee as required under the aforesaid Regulations.

v. The aforesaid non-compliance by the Noticee resulted in violation of Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011.

7. As specified in the forgoing at para 4 to para 5, attempts were made to serve the SCN through various modes of service of notice. In addition, hearing opportunity was also provided to the Noticee. However, the Noticee neither replied to the SCN till date nor availed the opportunity of personal hearing. Therefore, I am of the view that principle of natural justice has been followed with respect to the Noticee in the instant matter and I am compelled to decide the matter on the basis of facts/material available on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and material available on record wherein it is alleged that the Noticee has violated Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011.

After perusal of the material available on record, I have the following issues for consideration, viz.

a. *Whether the Noticee has violated Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011?*

b. *Does the violation, if any, attract monetary penalty under Section 15A(b) 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?*

ISSUE I: Whether the Noticee has violated Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011?

9. Before moving forward, it is pertinent to refer to the relevant provisions which reads as under:

Relevant provisions of PIT Regulations, 1992:

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company [in Form A] the number of shares or voting rights held by such person, on becoming such holder, within [2 working days] of: -
(a) the receipts of intimation of allotment of shares, or
(b) the acquisition of shares or voting rights, as the case may be.

Relevant provisions of 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.

29.(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.

10. From the facts available on record, I observe that the Noticee was required to make disclosures under Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011. However, from the information received from Exchange and the Company, I find that no disclosures were made by the Noticee. It may be noted that, till date, I have not received any submissions from the Noticee countering the allegations made against it in the SCN.

In the above context, it is pertinent to refer to the Order of the 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) wherein, it was, inter alia, held 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".

The Hon'ble SAT also made such proposition in case of Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. ".....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. Therefore, in view of the above and in the absence of any written reply from the Noticee, I am compelled to decide the matter based on the material available on record.

12. In my view, the Noticee failed to make required disclosures under Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011 and therefore, violated the said provisions of law.

ISSUE II: Does the violation, if any, attract monetary penalty under Section 15A(b) of SEBI Act.?

13. As regards the imposition of monetary penalty, I would like to quote 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,

> *".....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, ...once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

14. In view of the foregoing, I am convinced that the Noticee is thus liable for monetary penalty under Section 15A(b) of SEBI Act for violation of Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011. The text of the said Section is as follows:

SEBI Act 15A - "Penalty for failure to furnish information, return, etc. –

If any person, who is required under this Act or any rules or Regulations made there under-

(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".

ISSUE III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

15. The provisions of Section 15J of the SEBI require that while adjudging the quantum of penalty, 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.

16. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failure. I note that the Noticee by failing to make required disclosures, has violated the provisions of Regulation 13(1) of PIT Regulations, 1992 and Regulation 29(1) read with Regulation 29(3) of SAST Regulations, 2011.

ORDER

17. In view of the above, after considering all the facts available on record, and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose Rs 2,00,000/- (Rupees Two Lakh Only) on Pakoba Finance & Trades Pvt. Limited in terms of the provisions of Sections 15A(b) of the Securities and Exchange Board of India Act, 1992.

In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticee.

18. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into Bank Account, the details of which are given below:

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

or by way of demand draft in favour of "SEBI-Penalties Remittable to Government of India", payable at Mumbai.

19. The Noticee shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI, Mumbai.

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:	Penalty

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

Date: March 29, 2019
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER