BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SP/R/2021-22/15365]

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

In respect of
Future Enterprises Limited
(PAN: AAACP6317L)

In the matter of Future Enterprises Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), initiated adjudication proceedings under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') against Future Enterprises Limited (hereinafter referred to as **'Noticee/FEL**') for alleged violations of the provisions of regulations 4(1) (d), 4(1) (e), 30(3), 30(4)(i)(a), 30(4)(i)(b), 30(6), 30(7), 30(11) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as the '**LODR Regulations**'), SEBI Circular dated September 09, 2015 pertaining to Continuous Disclosure Requirements for Listed Entities (hereinafter referred to as **'SEBI Circular ')** and clause 4 of Schedule A of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer (hereinafter referred to as '**AO**') *vide* communique dated August 06, 2021 under section 19 of the SEBI Act read with sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Penalty Rules'**) to inquire into and adjudge under Section 15A (b) of the SEBI Act, the aforesaid alleged violations against the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. SEBI/LAD-1/SPV/R/SCN/23883/2021 dated September 14, 2021 (hereinafter referred to as '**SCN**'), was served upon the Noticee in terms of Rule 4 of the SEBI Penalty Rules to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 15A (b) of the SEBI Act for the aforesaid alleged violations committed by it.

4. The allegations levelled against the Noticee in the SCN are summarized as under:

(i) An Arbitration Proceedings had been initiated against Future Group by Amazon.com NV Investments Holdings LLC **(Amazon)** on October 05, 2020 before Singapore International Arbitration Centre **(SIAC)** wherein the promoters of the Noticee *inter alia*, were respondents. The Arbitration proceedings were inter *alia* with respect to the composite Scheme of Arrangement (**Scheme**) between Future Group and Mukesh Dhirubhai Ambani **(MDA)** Group. Amazon had sought for emergency relief with respect to the said Scheme and SIAC had passed an interim order dated October 25, 2020 in favour of Amazon, wherein

the respondents therein were injuncted from taking any further steps with respect to the Scheme.

(ii) The Noticee received the information for commencement of the said proceeding on October 5, 2020 and its group company i.e. Future Retail Limited had filed objection(s) before SIAC on October 6, 2020. However, the Noticee failed to disclose to the stock exchanges as required under the relevant provisions of LODR Regulations, SEBI Circular and PIT Regulations, the information regarding the initiation of the said arbitration proceedings and also the passing of Order dated October 25, 2020 in favour of Amazon.

(iii) The Noticee had already provided a disclosure on August 29, 2020 with regard to the composite scheme between Future group and MDA Group under the provisions of regulation 30 of LODR Regulations. The 'Scheme' which was inter-alia the subject matter of the arbitration proceedings was already disclosed by the Noticee as a material event and therefore the arbitration proceedings and its outcome having an effect of stay on scheme, ought to have been disclosed by the Noticee.

(iv) As per the relevant provisions of LODR Regulations and SEBI Circular, the initiation of the said arbitration proceedings on October 5, 2020 and also the passing of Order dated October 25, 2020 in favour of Amazon should have been disclosed to the stock exchanges as a material event, as soon as reasonably possible and not later than twenty-four hours. The Noticee should have also made prompt disclosure of the said information as per the provisions of clause 4 of Schedule A of the PIT Regulations.

(v) The Noticee made a disclosure of the initiation of arbitration proceedings and passing of order by SIAC granting interim relief to the stock exchanges only on November 01, 2020.

(vi) Based on the above facts, it was alleged in the SCN that that the Noticee, by not making required disclosure of the material events i.e. (i) disclosure of initiation of arbitration proceedings and (ii) disclosure of interim order of SIAC, has violated the provisions of regulations 4(1) (d), 4(1) (e), 30(3), 30(4)(i)(a), 30(4)(i)(b), 30(6), 30(7), 30(11) of the LODR Regulations, the relevant provisions of SEBI Circular and the provisions of clause 4 of Schedule A of the PIT Regulations.

(vii) The alleged violations, if established, make the Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act.

5. In response to the SCN, the Noticee filed its reply *vide* letter dated October 05, 2021. The contentions/submissions of the Noticee are summarized as under:-

i. That every listed entity is required to make the disclosure of any event or information which, in the opinion of the board of directors of the listed company is material in nature. The disclosure would only be required if the event/information is considered in the reasonable opinion of the listed company to be material in nature and if the said information is not available publicly.

ii. That the Noticee is neither a party to any agreement nor arbitration proceedings initiated by Amazon. Therefore, it was reasonable for the Noticee to determine and ascertain at the relevant point in time that the said Arbitration proceedings was not a material event / information, which required mandatory disclosures in terms of LODR Regulations.

iii. That the Noticee conveyed the same to the Stock Exchanges too at the relevant time consistent with the aforesaid understanding. However, as advised insistently by Stock Exchanges, the Noticee furnished the information as received from Future Retail Limited irrespective of the materiality criteria under LODR Regulations.

iv. That the LODR Regulations by itself does not require disclosure of litigation initiated against the promoter / key managerial person of a listed entity. However, the SEBI Circular provides guidance to listed entities to notify stock exchanges to disclose the details of its key management personnel, promoters arrayed as a party in any litigation, adjudication, arbitration including any ad-interim or interim orders are passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact upon the listed entity.

v. That the SEBI Circular will have to be conjointly read with the SEBI Act and LODR Regulations, which requires disclosures to be made in case of a material event and not otherwise. Additionally, it is well-settled position that circulars issued are not *per se* binding (and are at best instructive) and cannot impose a higher obligation than what is contained in the Regulations.

vi. That even if the SEBI Circular were to apply, it only requires disclosure of initiation of litigation / arbitration against the listed entity or *"its promoters" i.e.* it applies only where proceedings are initiated against the listed company or its promoters in the context of the listed company's operations.

vii. That assuming whilst denying that the initiation of arbitration is an "event' pertaining to the Noticee, the said event, would fall within the second category i.e. under Item 8 of Para B of Part A of Schedule III ("*litigation(s) / dispute (s)/ regulation action (s) with impact.")* and thus, its disclosure would be governed by Regulation 30(3) read with Regulation 30(4) of the LODR Regulations. It was a bona fide view that there is no possibility of an impact at the time the arbitration was initiated, and such view was valid and legitimate and the Noticee cannot be faulted with penalty being imposed.

viii. That since the Noticee was not even a party to the agreement which contained the arbitration clause, under which the arbitration was initiated, it would be fallacious to consider such a development as a material event warranting disclosure. Such a development (at the time of its occurrence) was not

considered likely to result in discontinuity or alteration of any information already in public domain or result in significant market reactions, if and when it came to light at a later date.

ix. That the detailed disclosure dated November 1**,** 2020 was made in response to the insistence of stock exchanges. A listed company faced with such a factual development has two options - one is to initiate litigation against the stock exchange and the other is to make disclosures without prejudice to its position. The Noticee chose the latter. To visit a listed company with penal proceedings for such reasonable conduct and to allege violation of LODR Regulations is arbitrary, unfounded and inappropriate.

x. That for the PIT Regulations and clause 4 of Schedule A of the PIT Regulations to apply, the information would necessarily have to be "unpublished price sensitive information', failing which the provisions of the PIT Regulations would not be attracted. "Unpublished price sensitive information" is defined under Regulation 2(1)(n) of the PIT Regulations. Information which is generally available is not “unpublished price sensitive information". As per regulation 2(1)(e) of the PIT Regulations, "generally available information” is defined to mean *"information that is accessible to the public on a non-discriminatory basis”*. The information regarding the initiation of the arbitration proceedings by Amazon and passing of the Order by SIAC was frequently reported in news articles as biggest / profound entities from the retail industry were involved and was therefore publicly available. In this regard, the Noticee has placed reliance on the order of Hon’ble Securities Appellate Tribunal (SAT) in the matter of Hindustan Lever Ltd v SEBI (Appeal Nos. 1 and 2 of 1998) wherein SAT observed that *“...For applying the test of ‘generally known', SEBI in its order, has not given due weightage to these market reports...”* and that"... *In the face of a large number of press reports indicating market speculation on the merger during that period, there are strong reasons* to *believe that the impending merger, though not formally*

acknowledged or published, was in one sense generally known and UTI's denial of knowledge cannot be implied to mean the market in general had no information in this regard…" The Noticee has also placed reliance on the order passed by the Whole-time Member SEBI, in the matter of Insider Trading in the Scrip of 63 Moons Technologies Ltd (dated 31.01.2018) wherein the Whole-time member observed that the... *The newspaper article was not speculative in nature as it published precise facts relating to the issuance of SCN..."*

6. An opportunity of personal hearing was granted to the Noticee on November 24, 2021. On account of the prevailing circumstances due to COVID-19, the hearing was scheduled through video conferencing on Cisco Webex platform. On the scheduled date of the hearing, the Authorized Representative/s of the Noticee appeared and made submissions. During the course of personal hearing, the Authorised Representative of the Noticee requested for time till December 6, 2021 to make additional submissions, and accordingly the Noticee filed the post-hearing written submissions vide email/letter dated December 6, 2021 wherein the submissions made vide letter dated October 05, 2021 and oral submissions made during personal hearing were reiterated.

CONSIDERATION OF ISSUES AND FINDINGS

7. Taking into consideration the facts and material available on record, I note that the issues that arise for consideration in the instant matter are:

I. Whether the Noticee has violated the provisions of regulations 4(1) (d), 4(1) (e), 30(3), 30(4)(i)(a) and (b), 30(6), 30(7), 30(11) of the LODR Regulations, the relevant provisions of SEBI circular and the provisions of clause 4 of Schedule A of the PIT Regulations?.

II. Do the violations, if any, attract monetary penalty under Section 15A (b) of the SEBI Act?

III. If the answer to Issue No. II above is in affirmative, then what should be the quantum of monetary penalty?

I. Whether the Noticee has violated the provisions of regulations 4(1) (d), 4(1) (e), 30(3), 30(4)(i)(a) and(b), 30(6), 30(7), 30(11) of the LODR Regulations, the provisions of SEBI circular and the provisions of clause 4 of Schedule A of the PIT Regulations?.

8. Before moving forward, it is pertinent to refer to the relevant provisions of the LODR Regulations, PIT Regulations and SEBI Circular alleged to have been violated by the Noticee. The said provisions are reproduced ereunder:

LODR Regulations, 2015

Principles governing disclosures and obligations.

4. (1) The listed entity which has listed securities shall make disclosures and abide by its obligations under these regulations in accordance with the following principles:

(a)……..

(b)……..

(c)……..

(d). The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

(e). The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

Disclosure of events or information.

30(3) The listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in sub-regulation (4).

30(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

(a)the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

(b)the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date.

30(6) The listed entity shall first disclose to stock exchange(s) of all events, as specified in Part A of Schedule III, or information as soon as reasonably possible and not later than twenty four hours from the occurrence of event or information:

Provided that in case the disclosure is made after twenty four hours of occurrence of the event or information, the listed entity shall, along with such disclosures provide explanation for delay:

Provided further that disclosure with respect to events specified in sub-para 4 of Para A of Part A of Schedule III shall be made within the timelines specified therein.

30(7) The listed entity shall, with respect to disclosures referred to in this regulation, make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations.

30(11) The listed entity may on its own initiative also, confirm or deny any reported event or information to stock exchange(s).

SEBI circular dated September 09, 2015 *Annexure I - part B-8*

"The listed entity shall notify the stock exchange(s) upon it or its key management personnel or its promoter or ultimate person in control becoming party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution ofany litigation, assessment, adjudication, arbitration or dispute

including any ad-interim or interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact."

PIT Regulations, 2015

Schedule A

[See sub-regulation (1) of regulation 8]

Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information

4. Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available

9. From the material available on record, I note that the Noticee is a listed company and its shares are listed at the BSE Limited (BSE) and the National Stock Exchange of India Limited (NSE). Undisputedly, the Noticee is a Future Group company and has common promoters. I note that an Arbitration Proceedings had been initiated by Amazon on October 05, 2020 before SIAC wherein the promoters of the Noticee *inter alia*, were respondents. The said Arbitration proceedings were *inter alia* with respect to the composite Scheme of Arrangement between Future Group and Mukesh Dhirubhai Ambani (MDA) Group. Amazon had also sought for emergency relief with respect to the said Scheme and SIAC had passed an interim order dated October 25, 2020 in favour of Amazon, wherein the respondents were *inter alia* injuncted from taking further steps to complete the disputed transactions with MDA group ~~i.e,~~ with respect to the Scheme. I also note that Future Retail Limited, a group company of the Noticee had filed its objections to the Arbitration Proceedings on October 06, 2020 before SIAC.

10. I note that the Noticee had not disclosed the initiation of said arbitration proceedings in spite of receiving the information for commencement of the said proceedings from SIAC

on October 05, 2020 and even after filing its objection before SIAC by its group company i.e. Future Retails Limited. I also note that the Noticee had not disclosed the information regarding passing of the order dated October 25, 2020 passed by SIAC granting interim relief to Amazon. I note that the Noticee had disclosed the initiation of arbitration proceedings and information with respect to passing of the order only on November 01, 2020 i.e. with a delay of 26 days with respect to initiation of the arbitration proceedings and a delay of 6 days with respect to passing of by SIAC. I also note that the said disclosure was done by the Noticee only after active intervention of the Stock Exchanges in this regard.

11. I note that the Noticee, in response to the allegations of violation the provisions of regulations 4(1) (d), 4(1) (e), 30(3), 30(4)(i)(a)and (b), 30(6), 30(7), 30(11) of the LODR Regulations, 2015 and the relevant provisions of SEBI circular, submitted that regulation 30 of the LODR Regulations stipulates listed entities to make disclosure of any event or information which, in the opinion of the board of directors of the listed company is material in nature and regulation 30 (4) of the LODR Regulations stipulates criteria for determining the materiality of events / information. It is the contention of the Noticee that the disclosure would only be required, if the event/ information is considered in the reasonable opinion of the listed company to be material in nature and if the said information is not available publicly. The Noticee further contented that as it was neither a party to any agreement nor to arbitration proceedings initiated by Amazon, it was reasonable on its part to determine and ascertain at the relevant point in time that the said proceedings were not material requiring mandatory disclosures in terms of LODR Regulations.

12. In this regard, I note that regulation 30 of the LODR Regulations mandates listed entities whose equity and convertible securities are listed on the Stock Exchanges to disclose events or information and sub-regulation (3) of regulation 30 stipulates disclosure by

listed entity of events specified in Para B of Part A of Schedule III, based on the application of materiality as specified in sub-regulation (4) of regulation 30. Sub-regulation (4) (i) (a) and (b) of regulation 30 which are relevant for the instant matter reads as under:

"(4) (i) The listed entity shall consider the following criteria for determination of materiality of events/ information:

(a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly; or

(b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date;……"

13. Para B of Part A of Schedule III, enumerates the events which shall be disclosed upon application of the guidelines for materiality as referred in sub-regulation (4) of regulation (30) and point 8 of Para B of Part A of Schedule III, which stipulates that the listed entity shall disclose the litigation/dispute/regulatory action with impact, upon application of the guidelines for materiality referred sub-regulation (4) of regulation 30 of LODR Regulations. Further, SEBI Circular issued with regard to regulation 30 of LODR Regulations, stipulates at Annexure I (B) (8) that the listed entity shall notify the stock exchange(s) upon it or its key management personnel or its promoter or ultimate person in control, becoming party to any litigation, assessment, adjudication, arbitration or dispute in conciliation proceedings or upon institution of any litigation, assessment, adjudication, arbitration or dispute including any ad-interim or interim orders passed against or in favour of the listed entity, the outcome of which can reasonably be expected to have an impact.

14. With respect to the contention of the Noticee that the commencement of the Arbitration Proceedings was not considered a material event by the Noticee and thus not disclosed, I note that the promoters and promoter group of the Noticee were respondents in the Arbitration Proceedings and a group Company of the Noticee, i.e. Future Retail Limited had filed its objection before SIAC on October 06, 2020. It is pertinent to note that the Noticee had already made a disclosure on August 29, 2020 with regard to the Scheme entered into between Future Group and MDA Group under regulation 30 of LODR Regulations and the said 'Scheme' was *inter alia* the subject matter of the arbitration proceedings. I also note that SIAC, vide its order dated October 25, 2020 had granted interim relief to Amazon, which has an effect of stay on the Scheme. Since the Noticee had already disclosed the information pertaining to the 'Scheme' as a material event, I note that the Arbitration Proceedings and its outcome would definitely have an impact on the scheme and the Noticee ought to have disclosed the same as per the provisions of LODR Regulations.

15. I further note that as per the provisions of regulation 30(4) (i), the listed entity has to consider the criteria for determination of materiality of events/information as provided in the said provision and as per sub-clause (a), "*the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly…"* is a criteria for materiality. I note that as the Noticee had chosen to disclose the event of entering into the Scheme between Future Group and MDA Group as a material event and merits disclosure, the Noticee ought to have disclosed the information regarding the initiation of Arbitration proceedings and passing of order granting interim relief and any further developments with respect to the same which will have an impact on the Scheme. I note that any omission to disclosure in this regard would result in discontinuity or alteration of the information already available publicly. Hence, the Noticee should have disclosed both of the events i.e, initiation of the arbitration proceedings and interim order of SIAC as required under regulation 30 of

LODR Regulations. In view of the same, I am not inclined to accept the contention raised by the Noticee that it did not disclose the commencement of the Arbitration Proceedings as it had not considered it a material event. I note that as per the provisions of sub-regulation (6) of regulation 30, the listed entity is mandated to provide the information/event as soon as reasonably possible and not later than twenty four hours from the occurrence of the event or information. Sub-regulation (7) mandates that with respect to the disclosures referred to in regulation 30, the listed entity shall make disclosures updating material developments on a regular basis, till such time the event is resolved/closed, with relevant explanations and regulation 30 (11) states that the listed entity may on its own initiative confirm or deny any reported event or information to stock exchanges. Further, regulation 4 (1) (d) mandates the listed entity to provide adequate and timely information to stock exchanges and as per the provisions of 4(1)(e) such disseminations shall be adequate, accurate, explicit, timely and presented in a simple language.

16. With respect to the contention of the Noticee that the circulars issued by SEBI are not *per se* binding and are at best instructive and cannot impose a higher obligation than what is contained in the regulation, I note that SEBI issues Circulars in exercise of powers conferred under Section 11 (1) of the SEBI Act, 1992, to protect the interests of investors in securities and to promote the development of, and to regulate the securities market. The Circular dated September 09, 2015 (SEBI Circular) has been issued in the context of regulation 30 of LODR Regulations with the aim of attaining uniformity in disclosures made by listed entities and to ensure the compliance of disclosures in letter and spirit. Accordingly, the said circular needs to be read conjointly with regulation 30 of LODR Regulations. In this regard, it is reiterated that the Noticee had disclosed the information/event regarding entering into the Scheme between Future Group and MDA Group as a material event and it can be reasonably expected that any future material change in the status of the scheme will be disclosed by the Noticee.

Hence, disclosure of any information/event in furtherance of the said event would entail a disclosure as per the provisions of LODR Regulations read with the relevant provisions of SEBI Circular.

17. In regard to the contention of the Noticee that even if the SEBI Circular were to apply, it only requires disclosure of initiation of litigation / arbitration etc., against the listed entity or its promoters only where such proceedings are initiated against the listed company or its promoters *'in the context of the listed company's operations',* I note that on a conjoint reading of regulation 30 of LODR Regulations with the relevant provisions of the SEBI Circular, it is clear that the listed entity is mandated to notify the Stock Exchanges when the listed entity or its key management personnel or its promoters or ultimate person in control becomes party to any litigation, arbitration etc. In the instant matter, the allegation is that the Noticee being a listed entity had not disclosed information relating to an arbitration proceedings wherein its promoters and promoter group were parties. Hence, I am not inclined to accept the contentions of the Noticee in this regard.

18. In view of the above discussion, I find that the Noticee has violated the provisions of regulations 4(1) (d), 4(1) (e), 30(3), 30(4)(i)(a)and (b), 30(6), 30(7), 30(11) of the LODR Regulations, 2015 and the relevant provisions of SEBI circular.

19. With respect to the alleged violation of clause 4 of Schedule A of the PIT Regulations, the Noticee has contended that for clause 4 of Schedule A of the PIT Regulations to apply, the information would necessarily have to be "unpublished price sensitive information' and information which is generally available is not 'unpublished price sensitive information'. As per regulation 2(1)(e) of the PIT Regulations, "generally available information is *"information that is accessible to the public on a non-discriminatory basis*. It is Noticee's contention that the information regarding the initiation of the arbitration proceedings by Amazon and passing of

the order granting interim relief to Amazon by SIAC was frequently reported in news articles as biggest / profound entities from the retail industry were involved and was therefore publicly available. The Noticee has placed reliance on SAT order in the matter of Hindustan Lever Ltd v SEBI, wherein SAT observed that *"...For applying the test of 'generally known', SEBI in its order, has not given due weightage to these market reports..."* . The Noticee has also cited the order of Whole Time Member, SEBI, in the matter of 'Insider Trading in the Scrip of 63 Moons Technologies Ltd' (2018 SCC Online SEBI 193) wherein the Whole-time member has *inter alia* observed that the *"... The newspaper article was not speculative in nature as it published precise facts relating to the* issuance *of SCN..."*.

20. With respect to the above contentions of the Noticee, I note that that as per the provisions of regulation 2 (e) of PIT Regulations, "generally available information" means information that is accessible to the public on a non-discriminatory basis and it is clarified in the "NOTE" given in the said provision that *"*...it is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. *Information published on the website of a stock exchange, would ordinarily be considered generally available*". Thus, the said regulation itself indicates the intention of the legislature as to the kind of information that can be treated as for the purpose of generally available information. In the context of the matter in hand, without necessarily going into the question whether reporting about an event / information in newspapers makes it 'generally available information', I find it pertinent to emphasize on the purpose that the disclosure under clause (4) of the *"Schedule A - Principles of Fair Disclosure for purposes of Code of Practices and Procedures for Fair Disclosure of Unpublished Price Sensitive Information"* seeks to serve. In my view, the said clause (4) aims at "prompt" disclosure of unpublished price sensitive information by the company itself so that speculative or incomplete publication of the said information in

public media may be minimized. That is why, the listed companies are required to include and adhere to this principle in their 'Code of fair disclosure'. In the present case, the initiation of arbitration proceedings and passing of order by SIAC ought to have been disclosed by the Noticee under its *Code of Fair Disclosure to* ensure compliance with the provisions of clause (4) of Schedule A of the PIT Regulations, which it failed to do. Accordingly, I find that the orders/Judgments cited by the Noticee in this regard are not relevant in the context of the instant matter. In this regard, it is pertinent to note the observation of Hon'ble SAT in the matter of B Renganathan vs. SEBI (Appeal no 272 of 2020 decided on March 24, 2021) wherein it was observed that "*...A disclosure-based regulatory regime is founded on timely and adequate disclosure of all events material to a company or to its securities in any manner. Further hair-splitting will result in confusion; so the best way to deal with the event is to disclose without doing further analysis*". Further, in the matter of Ankur Chaturvedi vs. SEBI (Appeal no. 434 of 2014 decided on August 04, 2015), the Hon'ble SAT observed that "*As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty...".*

21. In view of the above discussion, I am not inclined to accept the contentions of the Noticee and I find that the Noticee has violated the provisions of clause 4 of Schedule A of the PIT Regulations.

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

22. I note that the Apex Court in the case of The Chairman, SEBI vs. Shriram Mutual Fund and Ors. (Civil Appeal Nos. 9523-9524 of 2003), decided on May 23, 2006, has 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.*"

23. In view of the fact and circumstances of the matter as discussed above, I note that the Noticee has violated the provisions of regulations 4(1) (d), 4(1) (e), 30(3), 30(4)(i)(a), 30(4)(i)(b), 30(6), 30(7), 30(11) of LODR Regulations, the relevant provisions of SEBI Circular and the provisions of clause 4 of Schedule A of the PIT Regulations, and hence, I am of the view that a monetary penalty needs to be imposed upon the Noticee under section 15A(b) of the SEBI Act, which reads as under:

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, or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, 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.

III. If the answer to Issue no. II is in affirmative, then what should be the quantum of monetary penalty?

24. While determining the quantum of monetary penalty under section 15A(b)of the SEBI Act, I have considered the factors stipulated in section 15J of the SEBI Act, which reads as under:

Factors to be taken into account while adjudging quantum of penalty

While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 the removal of doubts, it is clarified that the power 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.

25. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the failure of the Noticee in submitting timely disclosures or the consequent loss caused to investors as a result of the aforesaid default. It is noted that the Noticee was obliged to make adequate disclosure when arbitration proceedings were initiated before SIAC on October 5, 2020 and also when SIAC passed an interim order on October 25, 2020. The Noticee failed to make adequate and timely disclosures both the times and therefore, default committed by the Noticee is considered as repetitive in nature.

ORDER

26. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Penalty Rules, I hereby impose a penalty of Rs 5,00,000/-(Rupees Five lakh Only) on the Noticee, Future Enterprises Limited under section 15A(b) of the SEBI Act. I am of the view that the penalty imposed on the Noticee is commensurate with the violation committed by it.

27. 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 favor 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.** In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

28. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, Division of Regulatory Action-4 (EFD-1 – DRA-4) SEBI Bhavan, Plot No. C4-A,'G' Block, Bandra Kurla Complex, Mumbai -400051 and also send an email to tad@sebi.gov.in with the following details:

Case name	

Name of Payee	
Date of Payment	
Amount paid	
Transaction No.	
Bank Details in which payment is made	
Payment is made for	Penalty

29. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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 of Noticee.

30. In terms of rule 6 of the SEBI Penalty Rules, copies of this order are sent to the Noticee and SEBI.

DATE: March 14, 2022 **SAKKEENA PV**

PLACE: MUMBAI **ADJUDICATING OFFICER**