BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/KG/2020-21/9665]

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) RULES, 1995, IN RESPECT OF MODERN TRADING BUSINESS PRIVATE LIMITED (PAN - AABCH4502L) IN THE MATTER OF THE BYKE HOSPITALITY LIMITED

BACKGROUND:

1. The Securities and Exchange Board of India, (*hereinafter referred to as "**SEBI**"*) had observed alleged violation of the provisions of Regulation 29(1) read with Regulation 29(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011, (*hereinafter referred to as "**SEBI (SAST) Regulations, 2011**"*) on the part of Modern Trading Business Private Ltd. (Earlier known as Hot N Ice Entertainment) (*hereinafter referred to as the "**Noticee**"*) in the scrip of The Byke Hospitality Ltd, (*hereinafter referred to as "**company**"*).

2. It was *prima facie* observed by SEBI that that pursuant to certain off-market transactions in the scrip of the company, shareholding of the Noticee had exceeded 5% (5.66%) limit on December 31, 2016, thus mandating disclosure under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011. It was also *prima facie* observed that the requisite disclosures were not made by the Noticee as on the date of initiation of the present proceedings by the Noticee,. Therefore, the Noticee was alleged to be in non-compliance of Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

APPOINTMENT OF THE ADJUDICATING OFFICER

3. The undersigned has been appointed as the AO vide order dated May 18, 2020, conveyed vide communique dated June 22, 2020. The undersigned has been appointed as the AO under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 *(hereinafter referred to as **"SEBI Adjudication Rules"**)* read with Section 15-I of the Securities and Exchange Board of India Act, 1992 *(hereinafter referred to as **"SEBI Act"**)* to inquire into and adjudge under Section 15A(b) of SEBI Act, 1992, the alleged violation of the provisions of Regulation 29(1) read with Regulation 29(3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011, [*hereinafter referred to as "**SEBI (SAST) Regulations, 2011**"*] by the Noticee.

SHOW CAUSE NOTICE AND REPLY OF THE NOTICEE

4. A show cause notice (hereinafter referred to as the "SCN") dated August 10, 2020, was issued to the Noticee, inter alia levelling the following allegations:

    a. That the summary of transaction undertaken by the Noticee for the period from 01/12/2016 to 31/12/2016 on the basis of statement of account received from CDSL vide email dated 19/11/2019, is as under-

Date	**Transaction Particulars**	**Equity shares transacted**	**Balance**	**Applicable Regulation triggered**
01/12/2016	Opening Balance	-	19,62,372 (4.98%)	NA

08/12/2016	Off Market	(288500)	16,73,872	NA
09/12/2016	Off Market	(80000)	15,93,872	NA
12/12/2016	Off Market	(70000)	15,23,872	NA
17/12/2016	Off Market	(400000)	11,23,872	NA
20/12/2016	Off Market	(60000)	10,63,872	NA
23/12/2016	Off Market	18152	10,82,024	NA
28/12/2016	Off Market	97000	11,79,024	NA
30/12/2016	Off Market	98576	12,77,600	NA
31/12/2016	Off Market	150000	14,27,600	NA
31/12/2016	Off Market	290000	17,17,600	NA
31/12/2016	Off Market	550000	22,67,600 (5.66%)	Regulation 29(1) read with Regulation 29(3)

The statement of account received from the CDSL along with the covering email dated November 19, 2019, was annexed to the SCN.

b. That it was observed from the aforesaid statement of account that pursuant to the off-market transactions on 31/12/2016, the shareholding of the Noticee breached 5% limit and reached 5.66%, thus mandating disclosure under Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011.

c. That it was observed that vide email dated 21/11/2019, BSE had informed that it is not in receipt of any disclosure under SEBI (SAST) Regulations, 2011 with respect to shareholding of the Noticee breaching 5% in the company. In this regard, a copy of the email dated 21/11/2019 received from BSE was annexed to the SCN.

d. That it was observed that vide email dated 02/12/2019, the company has informed SEBI that they had not received any disclosures under the said regulations from the Noticee. In this regard, a copy of the email dated 02/12/2019 received from the company was annexed to the SCN.

e. That it was also observed that SEBI vide letter dated 05/12/2019 and emails dated 05/12/2019 and 20/12/2019, had advised the Noticee to provide the details of disclosures made along with documentary evidence including the copy of the disclosures, proof of acknowledgment by the stock exchange etc. However, till the date of initiation of the present proceedings neither the response has been received from the Noticee nor were the requisite disclosures made. In this regard, copy of the letter of SEBI dated 05/12/2019 and emails dated 05/12/2019 and 20/12/2019 were also annexed to the SCN.

f. In view of the *prima facie* conduct of the Noticee as stated above, it was alleged that the Noticee was in non-compliance of Regulation 29(1) read with Regulation 29(3) of SEBI (SAST) Regulations, 2011. Further it was also informed that the aforesaid alleged contravention of the provisions of Regulation 29(1) read with Regulation 29(3) of SEBI

(SAST) Regulations, 2011, make the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992, if established.

5. The SCN was sent by speed post, which had returned undelivered from the address of the Noticee with the remarks "item returned insufficient address". Thereafter, contact details of the Noticee was obtained from the database of Unique Client Codes ("UCC") maintained by the BSE and a scanned copy of the SCN along with the annexure thereto was sent to three email addresses of the Noticee obtained from the UCC details vide email dated October 16, 2020. The Noticee was *inter alia* advised to reply to the SCN within fourteen days from the date of the receipt of the said email communication. Except from one email address of the Noticee, the said email had not bounced back from the other two email addresses. On receiving no response from the Noticee, vide email dated November 12, 2020, an opportunity of personal hearing was provided to the Noticee on November 20, 2020. The said email too had not bounced back from two of the three email addresses of the Noticee. The Noticee however has failed to respond to the said notice of hearing. As per the rules of Registry of the Hon'ble Supreme Court and Delhi High Court, service of notice/ documents through email, when the same has not bounced back, is a valid service. Accordingly, I hold that valid service of SCN and hearing notice has been done qua the Noticee, in compliance of the principles of natural justice.

ISSUES AND FINDINGS

6. The issues for consideration of the present case are:

a. Whether the Noticee has failed to make the requisite disclosure under Regulation 29(1) read with Regulation 29(3) of the SEBI (SAST) Regulations, 2011?

b. If the answer to the aforesaid question is in the affirmative, does that make the Noticee liable for penalty under Section 15A(b) of SEBI Act, 1992?

c. If the answers to the aforementioned questions are in the affirmative, what should be the quantum of penalty in the present case under section 15J of the SEBI Act?

7. The contents of Regulations 29(1) and 29(3) of the SEBI (SAST) Regulations, 2011 and section 15A(b) of the SEBI Act is reproduced herein below:

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.

(2)…

(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. [emphasis supplied]

SEBI Act, 1992

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,—*

(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]];

8. On a perusal of the records, I find that the details of the transactions undertaken by the Noticee for the period from December 1, 2016 to December 31, 2016, on the basis of statement of account received from CDSL vide email dated 19/11/2019, to be authentic. The details of the said transactions have already been reproduced in the preceding paragraphs in this order. Therefore, it is beyond any dispute that the Noticee had exceeded the limit of acquisition of 5% of the shareholding in the company on December 31, 2016, which necessitated requisite disclosures under Regulations 29(1) read with Regulation 29(3) of the SEBI (SAST) Regulations, 2011, to the company and the stock exchanges where the shares of the company are listed, within two working days from the date of receipt of the allotment of shares. As informed by BSE and the company vide communications referred to above, such disclosure was not made either to the company or the BSE. I note that the Noticee had not responded to the communications of SEBI addressed to it during the investigation, nor did it respond to any of the communications made during the present adjudication proceedings. Hence, the aforesaid facts of the breach of the acquisition limit by the Noticee, the non-disclosure of such acquisition to the company and the stock exchanges, stands established as uncontested. Therefore, I hold that the Noticee had failed to comply with Regulation 29(1) read with

Regulation 29(3) of the SEBI (SAST) Regulations, 2011. The said non-compliance makes the Noticee liable for monetary penalty under section 15A(b) of the SEBI Act, the contents of which have already been reproduced above.

9. While determining the quantum of penalty under Sections 15A(b) of the SEBI Act as aforesaid, provisions of Section 15 J of SEBI Act would be applicable, which read as under:-

> [**Factors to be taken into account while adjudging quantum of penalty.]**
>
> ***15J.*** *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.]*

10. With regard to the above factors to be considered while determining the quantum of penalty, it is noted that the disproportionate gain made by the Noticee through such non-compliance, is not known. As regards the repetitive nature of the default, no prior non-compliance of the Noticee is available on record. It is noted that the Noticee has not responded to

communications from SEBI, which cannot be taken lightly as irreverence towards a statutory regulator and the regulatory process is prejudicial to the integrity of the securities market.

ORDER

11. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 3,00,000/- (Rupees Three Lacs only)** under Section 15A(b) of the SEBI Act on **Modern Trading Business Private Limited**, which will be commensurate with its non-compliances.

12. 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

13. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity (Noticee)

    b) Name of the case / matter

    c) Purpose of Payment – Payment of penalty under AO proceedings

    d) Bank Name and Account Number

e) Transaction Number

14. 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, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties

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

Date: November 25, 2020 **G. Ramar**

Place: Mumbai **ADJUDICATING OFFICER**