BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/AP/SK/2020-21/9443]

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:

Kailash Prasad Purohit
(PA No. AFQPP2675H)
2, Ganesh Chandra Avenue,
2nd Floor, Room No.- 5,
Kolkata – 700013.

In the matter of Unisys Softwares and Holding Industries Limited

1. Unisys Softwares and Holding Industries Limited (hereinafter referred as "Unisys" or "the company"), is a company having its shares listed on BSE Ltd. ('BSE') and The Calcutta Stock Exchange Limited ('CSE'). Securities and Exchange Board of India ("SEBI") conducted investigation in the affairs of the company during the period from January 19, 2010 to November 14, 2014. Pursuant to the investigation, SEBI observed the following with regard to disclosure requirements to be made under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SAST Regulations"):

   a) From the reply of Purva Sharegistry (I) Pvt. Ltd., the Registrar to an Issue and Share Transfer Agent ("RTA") and the pledgee – Nouveau Global Ventures Ltd., it was observed that Mr. Kailash Prasad Purohit (hereinafter referred to as "the Noticee"), promoter of Unisys, had pledged 50,000 shares of Unisys on April 23, 2014. In view of the same, the Noticee was obligated to make disclosures to the exchanges i.e. BSE and CSE and Unisys as required under Regulation 31(1) read with 31(3) of the 2011 SAST Regulations within seven working days i.e. on or before May 06, 2014. While the Noticee had made disclosures to Unisys on May 06, 2014, he had not made the requisite disclosures to the stock exchanges i.e. BSE and CSE.

2. Therefore, it has been alleged that the Noticee has violated the provisions of Regulation 31(1) read with 31(3) of the SAST Regulations. The text of the aforementioned provisions read as under:

SAST Regulations

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.

3. Pursuant to submission of investigation report, the competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the aforesaid alleged violations by the Noticee and appointed Shri Santosh Kumar Shukla, Chief General Manager as Adjudicating Officer ('erstwhile AO') vide *communication order* dated May 13, 2019, to inquire and adjudge under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') the alleged violations by the Noticee under Section 15A (b) of the SEBI Act. Thereafter, vide a common *communication order* dated January 07, 2020, this case has been transferred to the undersigned with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders".*

4. After receipt of records of these proceedings, it was noted that the erstwhile AO had issued the notice to show cause no. EAD-2/SS-SKS/OW/19991/1/2019 dated August 05, 2019 ('the SCN') to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act calling upon it to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The SCN was sent at the last known address of the Noticee through Speed Post with Acknowledgment Due and the same was duly served. In the said SCN, the Noticee was asked to reply within a period of 14 days, however, no reply was received from the Noticee.

5. In order to proceed forward in the matter, the e-mail id of the Noticee was sought from the concerned department in SEBI. Vide email dated September 09, 2020, the concerned department in SEBI provided the e-mail id of the Noticee *viz.* kailashpurohit2009@yahoo.com. Thereafter, in the interest of natural justice and in terms of rule 4(3) of the Adjudication Rules, additional opportunity to file reply to the SCN was granted to the Noticee and an opportunity of personal hearing was granted on September 17, 2020. The same was communicated to the e-mail id of the Noticee vide e-mail dated September 10, 2020. The said notice was digitally signed in term of the

requirement prescribed under rule 7 (b) of the Adjudication Rules. The second proviso to rule 7 (b) specifies that *"…a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service;"*. The Notice sent vide e-mail dated September 10, 2020 was duly served in compliance with the said requirements under rule 7 (b) and proof of delivery report is on record. However, no reply / communication has been received from the Noticee despite service of notice upon him. In the interest of principles of natural justice, the Noticee was given another opportunity to file reply to the SCN and was also granted an opportunity of personal hearing on October 09, 2020 and the same was communicated to the aforesaid e-mail id of the Noticee vide e-mail dated September 17, 2020. However, no reply / communication has been received from the Noticee despite service of notice upon him. Vide the said SCN/notice of hearing, it was clearly indicated 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. It is noted that the Noticee had neither filed any reply nor have availed the opportunities of personal hearing despite service of notices upon him. In the facts and circumstances of this case, I am of the view that the Noticee has 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.

6. I have carefully considered the allegations and charges levelled against the Noticee and relevant material relied upon in this case. In absence of any response from the Noticee, it is presumed that the Noticee admitted the charge of provisions as alleged in the SCN. 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 SEB*I (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..."*

7. While deciding the case, I cannot lose sight of settled position of law that the charge should be established with valid reasons and in accordance with law. I, therefore, deem it necessary to examine the charge. It is a case where the charges and allegations have been leveled based upon the information provided by RTA, pledgee - Nouveau Global Ventures Ltd, Unisys, BSE and CSE. The supporting material was provided to the Noticee along with the SCN. I have, therefore, considered the allegation leveled in the SCN and the relevant material brought on record.

8. The allegation is that the Noticee had failed to make disclosure to the stock exchanges i.e. BSE and CSE as mandated under Regulation 31(1) read with 31(3) of the SAST Regulations as he being a

promoter of Unisys had pledged 50,000 shares of Unisys on April 23, 2014, vide pledge agreement dated April 23, 2014. I note that the Noticee being a promoter of Unisys had pledged 50,000 shares of Unisys on April 23, 2014, and hence, he was under obligation to make requisite disclosures to the stock exchanges i.e. BSE and CSE and the company i.e. Unisys under Regulation 31(1) read with 31(3) of the SAST Regulations within seven working days i.e. on or before May 06, 2014 from the date of creation of pledge i.e. April 23, 2014. While disclosures were made by the Noticee to Unisys on May 06, 2014, he had failed to make requisite disclosures to the Stock exchanges i.e. BSE and CSE. The Stock exchange i.e. BSE and CSE vide their respective replies have confirmed that they have not received disclosures from the Noticee for his aforesaid pledge transaction. Thus, it is established that the Noticee had failed to make disclosure to the stock exchanges i.e. BSE and CSE as mandated under Regulation 31(1) read with 31(3) of the SAST Regulations.

9. Thus, the failure of the Noticee, who is a promoter of Unisys, as found in this case shows defiance of binding obligations cast upon him under the SAST Regulations. Therefore, in my view, the failure of the Noticee as found in this case deserves imposition of monetary penalty under section 15A (b) of the SEBI Act. The provisions of 15A (b) of the SEBI Act read 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, 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;

10. The intention of the SAST Regulations is to cover all types of encumbrances by whatever name called. The Noticee, being a promoter, has to understand the nature of encumbrance and that those encumbrances which entail a risk of the shares held by promoter being appropriated or sold by a third party, directly or indirectly, are required to be disclosed to the stock exchanges in terms of the SAST Regulations. All stakeholders, including minority shareholders should be aware of the detailed reasons for pledging of shares by the promoters, particularly for situations where promoters are holding a significant stake and have pledged their shares. In case of defaults, the shares of promoters can be invoked and sold by the lenders in large quantities which may lead to distress sale and fall in prices, affecting other investors, including minority shareholders. Further, the provisions of regulations of the SAST Regulations are meant to ensure timely disclosures of significant change in shareholding as such disclosures also enable the stock exchanges and regulators to monitor such material event. Such disclosures also bring about transparency and enable the investors in the scrip to take an informed investment or disinvestment decision. All

stakeholders, including minority shareholders should be aware of the change in shareholding of the promoters. Any information asymmetry with regard to such transactions as in this case would defeat the purpose of disclosures. Hon'ble Securities Appellate Tribunal ('SAT') in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI* (Appeal No. 209 of 2014 order dated August 11, 2014), has also held that "*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 particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further in the matter of Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. vs. SEBI* – the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

11. For the purpose of adjudication of penalty, it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "*he may impose such penalty"* are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. The factors stipulated in Section 15J of the SEBI Act are as follows:-

"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 investor/s 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 of an adjudicating officer 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."

12. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. Further, the material brought on record shows that the failure of making requisite disclosures under SAST Regulations by the Noticee was on one occasion and hence, it cannot be said to be repetitive in nature. I also observe that the violation pertains to a period which is more than six years old, which is a mitigating factor. However, I am of the view that non-adherence to the laid down obligations under the SAST Regulations by the

Noticee as observed in this case would compromise the regulatory framework and should be dealt with by imposing monetary penalty.

13. Taking into consideration all the facts and circumstances of the case including the aforesaid 15J factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a monetary penalty of ₹ 2,00,000/- (Rupees Two Lakh Only) on the Noticee under section 15A (b) of the SEBI Act. In my view, the said penalty is commensurate with the violation committed by the Noticee in this case.

14. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

15. The Demand Draft or details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-II, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in.

1	Case Name	
2	Name of the 'Payer/Noticee'	
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 along with order details)	

16. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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.

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

Date: October 26, 2020
Place: Mumbai

Amit Pradhan
Adjudicating Officer