BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[Adjudication Order: Order/VV/AS/2023-24/27927]

Under section 15-I of the Securities and Exchange Board of India Act, 1992 read with rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry & Imposing Penalties) Rules, 1995

In respect of –

Cyquator Media Services Pvt Ltd

(PAN: AAECP0069P)

In the matter of Zee Entertainment Enterprises Ltd

A. BACKGROUND

1. SEBI conducted an examination in the scrip of Zee Entertainment Enterprises Ltd ("**ZEEL**"/"**Company**"), to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**") and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations**") during January 01, 2019 to December 26, 2019 (hereinafter referred to as "**Examination Period**") by Cyquator Media Services Pvt Ltd ("**Noticee**"). During the examination period promoter shareholding is as follow:

Table No 1

S No	Promoter Name	Quarter ended March 2019		As on May 31, 2019	
		No. of shares held	% of shares held	No. of shares held	% of shares held
1	Cyquator Media Services Pvt Ltd	21,90,24,694	22.80	20,25,40,370	21.09
2	Essel Corporate I-LP	2,91 ,965	3.04	2,91 ,811965	3.04
3	Sprit Infrapower & Multiventures Pvt Ltd	400	0.00	400	0.00
4	Essel Infraprojects Ltd	100	0.00	100	0.00

S No	Promoter Name	Quarter ended March 2019		As on May 31, 2019	
		No. of shares held	% of shares held	No. of shares held	% of shares held
5	Essel Media Ventures Ltd	10,28,88,286	10.71	10,28,88,286	10.71
6	Essel International Ltd	1,40,96,000	1.47	1,40,96,000	1.47
7	Essel Holdings Ltd	17,18,518	0.18	17,18,518	0.18
	TOTAL	**36,69,09,963**	**38.20**	**35,04,25,639**	**36.49**

2. It was observed that Noticee being a promoter has made delayed disclosure with respect to creation of pledge and also failed/made delayed disclosures with w.r.t. invocation and sale of pledge to ZEEL and Exchanges and therefore, it was alleged that Noticee has violated regulation 7(2)(a) of the PIT Regulations and regulations 31(1) and 31(2) read with 31(3) of the SAST Regulations. Accordingly, SEBI has initiated adjudication proceedings under section 15A(b) of the SEBI Act against the Noticee. The said provisions of the PIT Regulations, SAST Regulations and SEBI Act read as under:

"SEBI Act

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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"

PIT Regulations

Disclosure by certain persons

7(2)(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified...

(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information.

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) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

(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. In view of the above, it was decided to inquire into and adjudicate upon the alleged violations as aforesaid and accordingly *vide* communique dated January 21, 2020, Mr K Saravanan was appointed as Adjudicating Officer ('**AO**') to conduct the adjudication proceedings in the manner specified under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) and impose such penalty on the Noticee, as deemed fit, in terms of Rule 5 of the Adjudication Rules and Section 15A(b) of the SEBI Act. Pursuant to transfers and internal structuring, following officials have been appointed as the AO one after another by the competent authority: Mr. Parag Basu (vide *communique* dated July 14, 2021) Mr. Prasanta Mahapara (vide *communique* dated March 11, 2022), Ms Asha Shetty (vide *communique* dated June 07, 2022). Accordingly, in terms of Rule 4(1) of the Adjudication Rules, the show cause notice dated July 15, 2022 (hereinafter referred to as "**SCN"**) was issued to the Noticee to show cause as to why an inquiry should not be held and penalty not be imposed against it under section 15A(b) of the SEBI Act for the aforementioned alleged violation. Thereafter, pursuant to internal re-allocation of cases, undersigned has been appointed as the Adjudicating Officer *vide* communique dated October 06, 2022. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect'*. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders'*.

4. The SCN was issued through SPAD/digitally signed email and duly delivered to the Noticee in terms of rule 7 of Adjudication Rules. Subsequently, Noticee vide letter dated September 12, 2022 has requested for inspection of documents relevant to the instant proceeding. Accordingly, the inspection has been scheduled on September 15, 2022 and the same has been availed by the Noticee. Subsequently, on considering material available on record, an opportunity of hearing granted to the Noticee on January 27, 2023. However, Noticee seek adjournment for the same. Thereafter, another hearing was scheduled on June 12, 2023. Though, due to some communication gap in respect of delivery of email, another hearing opportunity has been given to the Noticee on June 19, 2023 and accordingly, the hearing has been concluded on June 19, 2023. The authorized representative of the Noticee *i.e.* "Mr. Shubham Shree", appeared before me and reiterated the submission *vide* letter dated June 18, 2023. The whole process of the present adjudication proceeding has been tabulated below:

Table No 2

Noticee	SCN	Inspection	Reply	Hearing Concluded
Cyquator Media Services Pvt. Ltd.	July 15, 2022	September 15, 2022	June 18, 2023	June 19, 2023

6. The submissions made by the Noticee in their replies are summarized below:

a) *It is submitted that the Noticee had informed to SEBI vide its email dated July 05, 2020 that it had not made any disclosure regarding creation of pledge of 4,70,388 shares. The extract of the letter is reproduced herein as follows:*

"Kindly note that the promoter company was not adequately informed about the pledge creation (as it was suo moto done by IFCI Ltd. long after loan was availed by group company). The Promoter Company made necessary disclosures (under SEBI PIT Regulations 2015 and Regulation 29(2) of SEBI (SAST) Regulations, 2011) for sale of such 4,70,388 shares, after it obtained necessary information and confirmations about the sale. It was only during the half yearly reconciliation in September 2019, the company became aware about such pledge creation. Since disclosure of sale of shares was already made in June 2019, any further disclosure about pledge creation and invocation would have resulted in mismatch in quantities of shares held by the promoter company. Therefore, disclosure pertaining to pledge creation and invocation w.r.t. 4,70,388 shares could not be made.

We would like to humbly submit that post January 2019, there were various instances of sale of shares by the various Lenders to whom listed equity shares of Zee Entertainment Enterprises Ltd. [ZEEL] were pledged by the company. The Company lost major chunk of its holding in ZEEL shares during January 2019October2019 due to such sale by Lenders. It was endeavour of the company to meet necessary compliances even during the tough times when its holding was being sold in open market due to invocations and sale of shares on multiple occasions.

The promoter company has been regularly complying with the extant regulations in letter and spirit and therefore it is our humble submission that this matter should be considered in a holistic manner in view of the overall past conduct of the company regarding compliances with extant regulations."

b) *That during the time period (from September 1, 2018 to January 25, 2019) i.e. immediately at the start of the investigation period, the share price of ZEEL saw a sharp fall of around 36.30% from Rs. 499.95 to Rs. 318.40. Consequently, due to the pursuance and pressure of the majority of lenders, the number of shares pledged of ZEEL increased by a huge figure of 3.63 crores i.e. from 22.10 crores to 25.73 crores. The margin calls were then being triggered on a daily basis and therefore we were compelled to create pledges to prevent the sale of shares due to margin shortfalls. The management and staff of the company was bombarded with more than 20 lenders on a daily basis.*

c) *The sudden and unprecedented increase in interactions with the lenders and the humongous volume of transactions led to slight operational shortcomings and delays in the reconciliation and compilation of the data, which in turn led to the delay in the filing of the disclosures.*

d) *That in view of the above we did not have any mala fide intention behind the alleged delayed disclosure of the said transactions to ZEEL and the Stock Exchanges. The information was in public domain as soon as the disclosures were filed and therefore no loss of any kind was caused to the investors or the markets in any manner whatsoever. We submitted the data in a bona fide manner to the stock exchanges and had no ulterior motives behind the same. We neither had an intention to reap any gains nor did we reap any gains out of the delayed disclosure.*

e) *As regards the non-disclosure pertaining to creation of pledge on 4,70,388 shares of ZEEL held by the Noticee (refer Table No. 4 of SCN at page 7), it is submitted that we were not aware about the creation of pledge upon the said shares. In this regard, it is submitted that the said shares were provided as security for the loan availed by group company in June 2014 and no pledge was marked on said shares at the time of availing loan. Since the shares were deposited with the IFCI ltd./its subsidiary, the pledge was marked suo-moto by the representatives of the IFCI Ltd. on February 11, 2019. Therefore, considering the fact that the pledge was marked without our knowledge and that the loan was intended for the group company, the disclosure for pledge creation could not be made under the provisions of law in this regard at the relevant time.*

f) *Moreover, it is submitted that we had already made necessary disclosures under the PIT Regulations 2015 (as noted under Table No. 2 of the SCN) and Regulation 29(2) of SEBI (SAST) Regulations, 2011) for sale of the aforesaid 4,70,388 shares on June 07, 2019, i.e., after we had obtained necessary information and confirmations about the sale on April 08 and 09, 2019. It was only during the due-diligence done subsequently that the Noticee realized that the disclosure regarding creation of pledge*

of the shares was not done. The aforesaid disclosure under regulation 29 of the SAST Regulations has been annexed herewith as "Annexure 1".

g) *It is submitted that since the disclosure regarding the sale of 4,70,388 shares was already made, any further disclosure regarding creation/invocation of pleadge of those shares would have resulted in mismatch and also mislead the investors. Therefore, disclosure pertaining to pledge creation w.r.t. 4,70,388 shares was not made.*

h) *It is submitted that the SCN records that as per "Annexure J" of the SCN, the Noticee has submitted that it had made relevant disclosures regarding creation of pledge on October 04, 2019. In this regard, it is submitted that the said disclosure does not pertains to the impugned/alleged 4,70,388 shares which forms part of SCN and hence, the creation of pledge has not been disclosed.*

i) *Therefore, in light of the above, it is submitted that the knowledge pertaining to creation of pledge was always there in the market as the above-mentioned disclosures pertaining to invocation of pledge and subsequent sale were already in the public domain. Therefore, no adverse impact has been caused in the market because of the alleged non-disclosure and hence, no loss has been caused to any investor because of the alleged non-disclosure.*

j) *With regards to the alleged non-disclosure pertaining to sale of pledged shares under Reg. 31(2) r/w 31(3) of the SAST Regulations, as far as the three transactions dated April 08, 2019, and April 09, 2019, it is submitted that disclosures have already been made, in regards to the said transactions under reg. 29(2) of the SAST Regulations (already annexed as "Annexure 1" to this herein). It is submitted that had it been the intention to not disclose the said transactions, the Noticee would not have made these disclosures under reg. 29(2). Therefore, the Noticee should not be charged for the alleged nondisclosure.*

k) *With regards to the alleged delay in disclosure under the Regulations pertaining to sale of pledged shares, it is submitted that the same is merely technical in nature and was not at all intentional. It is submitted that as soon as we got to know about the alleged delay in respect of the five transactions as noted in Table No. 1 of the SCN, it made the appropriate disclosures under the relevant regulations on June 07, 2019 (as noted in Table No. 2 and Table No. 3 of the SCN) and hence, the delay caused was non-intentional only. It is submitted that all the subsequent disclosures made by the Noticee itself reveals that the delay in disclosure was non-intentional and that we had no intention to hide the said transactions from public. Therefore, it would not be justifiable to punish us for a mere technical delay which was not even intended.*

l) *In addition to the above, it is submitted that post January 2019, there were various instances of sale of shares by the various lenders to whom listed equity shares of ZEEL were pledged. The Noticee lost major chunk of its holding in ZEEL shares during January 2019-October2019 due to such sale by lenders. It had always been the endeavour of the Noticee to meet necessary compliances even during the tough times when its holding was being sold in open market due to invocations and sale of shares*

on multiple occasions. Therefore, it is requested that holistic view may be taken to recognize the circumstances of intense margin pressures, the efforts of the Noticee to make timely disclosures amidst such pressing circumstances and that reduction in promoter shareholding was being ultimately disclosed.

m) *In view of the above, it is submitted that the transactions w.r.t the delay or nondisclosures were never in the ambit of our control or involvement. We were never at either of the ends of the transaction. The execution of the transactions was not in our control and therefore the information related to the transactions were not in our possession, which in turn abundantly clarifies that we were in no position to the file the said disclosure as we did not have the information it the first place. Moreover, as submitted above many of the non-disclosures under SAST Regulations were disclosed under the PIT regulations and were therefore in the public domain. The fact that the disclosures were made under a different regulation and were already in the knowledge of the public in itself renders the violations as redundant and devoid of the nature of a non-disclosure.*

n) *That It may also be stressed upon that the SCN levies no allegation of wrongful gains or wrongful loss caused by us. we did not have any intention to conceal information and nor we have concealed any information as the same were in public domain as soon as the concerned disclosures were filed. Noticee submitted no unfair gain or advantage has occurred to us and also no harm or loss has been caused to retail investors, Further, the said violations were quite irrelevant to have any adverse effect on the market or the investors thereof. The alleged non-disclosure/delayed disclosures pertain to the loan transactions; of which we are not even the beneficiaries. This itself reveals that there was no intention on our part for any kind of non-disclosure/delay in disclosures.*

o) *That the principle of Course of Conduct and Point 4 of Notes to Table VII of Chapter VI under schedule II as enunciated in the Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018 ("**Settlement Regulations**"), should also be applied while arriving at penalty levied under the present proceedings while determining the repetitive nature of the default. As the regards the above it is submitted that if the instances of violations in the present case are taken individually, the same would result into a more prejudicial standard of arriving at a penalty amount.*

p) *That the Circulars of SEBI dated August 13, 2021 and September 09, 2020 for automation of continual disclosures under Reg. 7(2) of the PIT Regulations wherein the filing of disclosures has now become automated and system driven. This has eliminated the need to file manual disclosures altogether and now can be filed though automated systems. Therefore, it may be noted that the violations in the SCN are of such nature that the repetition of the said violations is not possible.*

q) *That there has been no substantial contravention of the said regulations by us. Admittedly, in all the instances of violation, except a few, there has been negligible delays in making certain disclosures. We have through this reply and previous communications also provided satisfactory explanations for the same. It is abundantly*

clear that we never had any intention for the violations to occur nor did we fail to cooperate in the investigation. This shows that we come to your kind self with a bona fide intent and thereby pray that your kind self will consider our submissions and levy no penalty upon us in the matter.

r) *Also, as submitted above many of the non-disclosures under SAST Regulations were disclosed under the PIT regulations and were therefore in the public domain. The fact that the disclosures were made under a different regulation and were already in the knowledge of the public in itself renders the violations as redundant and devoid of the nature of a non-disclosure.*

s) *We request to your kind self that the principle of Course of Conduct and Point 4 of Notes to Table VIII, as enunciated in the Settlement Regulations should also be applied while arriving at penalty levied under the present proceedings while determining the repetitive nature of the default. It is submitted that if the principles in the settlement regulations can be applied to the Settlement without admission of guilt then in the present case, the penalty should be even less as our case is backed up by the absence of any mala fide intent on our part and also the assurance that the same will not be and cannot be repeated in future. Keeping in mind our submissions and bona fide intention, we humbly request you that the course of conduct as provided in the Settlement Regulations should also applied while arriving at a penalty amount. As the regards the above it is submitted that if the instances of violations in the present case are taken individually, the same would result into a more prejudicial standard of arriving at a penalty amount. In view of the same, it is requested that the principle of Course of Conduct and the provision of single count of disclosure should also be applicable while determining the repetitive nature of default in cases where the units of default is higher as in the present matter.*

t) *We submit that non- disclosure, if any, was technical in nature and due to inadvertence, devoid of any malafide intention. Further, no harm has been caused to any investor nor any loss has occurred due to our alleged non- disclosure.*

u) *Further, Noticee placed reliance on following orders/judgments*

6.u.1. ***Adjudicating Officer, SEBI vs Bhavesh Pabari*** *the Hon'ble Supreme Court expanded the scope of Section 15J of the SEBI Act, and stated the fact that the three factors mentioned in Section 15J have to be interpreted as illustrative and not exhaustive in nature; The court elaborated that the AO will no longer be restricted by the minimum penalty rule and can impose the penalty which is proportional to the gravity of the offense. The AO can impose less penalty than the minimum prescribed in the Section or completely waive it off, after comprehending the nature of the offense.*

"6. Insofar as the second question is concerned, if the penalty provisions are to be understood as not admitting of any exception or discretion and the penalty as prescribed in Section 15-A to Section 15-HA of the SEBI Act is to be mandatorily imposed in case of default/failure, Section 15-J of the SEBI Act would stand obliterated and eclipsed. Hence, the question referred. Sections 15-A(a) to 15-HA have to be read along with Section 15-J in a manner to avoid any inconsistency or repugnancy"

"7. Reference Order in Siddharth Chaturvedi & Ors. (supra) on the said aspect has observed that Section 15-A(a) could apply even to technical defaults of small amounts and, therefore, prescription of minimum mandatory penalty of Rs.1 lakh per day subject to maximum of Rs.1 crore, would make the Section completely disproportionate and arbitrary so as to invade and violate fundamental rights. Insertion of the Explanation would reflect that the legislative intent, in spite of the use of the expression "whichever is less" in Section 15-A(a) as it existed during the period 29th October 2002 till 7th September 2014, was not to curtail the discretion of the Adjudicating Officer by prescribing a minimum mandatory penalty of not less than Rs. 1 lakh per day till compliance was made, notwithstanding the fact that the default was technical, no loss was caused to the investor(s) and no disproportionate gain or unfair advantage was made."

6.u.2. ***Jagdish Kumar Arora vs. SEBI (Appeal No. 78 of 2020) decided on August 06, 2021:*** *In the recent order of, the Hon'ble SAT had specifically held that when the violations are venial in nature, excessive penalty should not be levied on the entity. The relevant para is reproduced as follows: -*

"5…..The AO in paragraph No. 23 found that the violation was venial in nature. But contended that since there was a statutory violation of the regulations and even though no undue profits or gains were made by the appellants, nonetheless, imposed a penalty of Rs. 10 lac"

…….

…….

"10. The AO itself has found that the violation is venial in nature. Venial means not very serious and the action which is pardonable or forgivable. Thus, imposition of a penalty of Rs. 10 lac in the circumstances of the case appears to be too harsh and excessive."

6.u.3. *Adjudication Order dated May 11, 2017 passed by Ld. Adjudicating Officer in the case of* ***Jindal Cotex Limited***

"Considering the facts and circumstances of the case the Ld. Adjudicating officer levied a nominal monetary penalty of Rs One (1) Lakh only under Section 15A(b) for alleged violation of Regulation 13(1) of SEBI (PIT) Regulations, 1992 and Regulation 29(1) read with 29(3) of SEBI (SAST) Regulations, 2011"

6.u.4. *In the case of* ***Refex Industries Limited*** *(formerly known as Refex Refrigerants Limited), the Ld. WTM vide order dated February 02, 2017, did not issue any directions against the promoter and director and inter-alia held that: "that the violation is un-intentional and not for consolidation that the violation is technical and venial in nature; and that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation".*

6.u.5. ***Akbar Badrudin Badrudin Jiwani vs Collector of Customs, Bombay*** *AIR 1990 SC 1579, and submitted that "61. We refer in this connection the decision*

of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd.., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established".

6.u.6. ***Hindustan Steel Ltd, v State of Orissa**, (1970) 1 SCR 753; (AIR 1970 SC 2563) and submitted that "Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute".*

B. CONSIDERATION OF ISSUES AND FINDINGS

7. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, reply made by the Noticee and material available on record. The issues that arise for consideration in the present case are:

Issue No I Whether Noticee is liable under 15A(b) of the SEBI Act?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the Adjudication Rules?

Issue No I. Whether Noticee is liable under 15A(b) of the SEBI Act?

8. I note that PIT Regulations and SAST Regulations are meant to ensure timely dissemination of material and price sensitive information to enable investors to make well-informed investment decisions. I note that Regulation 7(2) of the PIT Regulations pertains to continuous disclosure requirements. As per the provisions of regulation 7(2)(a) of the PIT Regulations, every promoter is mandated to disclose to the 'Company' the number of securities acquired/ disposed of within two trading days of such transaction if the value of securities traded, whether in one or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees. The objective of continuous disclosure under

PIT regulation is to ensure that companies promptly disclose any material information that could potentially impact the price of their securities. This regulation aims to promote transparency, fairness, and equal access to information for all market participants. By requiring timely disclosure of material information, it helps prevent insider trading and ensures that investors have access to relevant information to make informed investment decisions.

9. Further, I note that the objective of Regulation 31 of SAST Regulation is to ensure transparency and provide timely information to shareholders, stock exchanges, and the target company regarding the encumbrance of shares by the promoter or persons acting in concert with the promoter. The regulation requires the promoter of a target company to disclose the details of shares encumbered by them or persons acting in concert with them. This includes information about the nature and extent of the encumbrance. Additionally, the promoter is also required to disclose any invocation or release of such encumbrance. These disclosures must be made within seven working days from the creation, invocation, or release of the encumbrance. The disclosures should be made to every stock exchange where the shares of the target company are listed and to the target company at its registered office. By mandating these disclosures, Regulation 31 aims to ensure transparency in the ownership and control of companies, provide relevant information to shareholders and the market, and prevent any potential misuse of encumbered shares.

10. I note that timely, adequate and accurate disclosure of information on an ongoing basis by listed entities is to ensure compliance in letter and spirit. It is one of the basic tenets of governance in the listed companies and are essential for maintaining the integrity of the securities market. Timely disclosures of the details of the abovementioned material events is of significant importance as such disclosures also enable the regulators to monitor such material events. Such disclosures also bring about transparency and enable the investors in the scrip to take an informed investment or disinvestment decision. 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 a 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. In the instant case, from the perusal of the letter dated June 21, 2019, I note that ZEEL provided the details of trades done by Noticee in the scrip of ZEEL during examination period, which are as follows:

Table No. 3 details of transactions

S. No.	Trading Date	Nature of Transaction	No of shares	Rate (₹)	Value (₹)
1	April 08, 2019	Invocation and Sale	423,103	408.6407	172,897,106
2	April 08, 2019	Invocation and Sale	38,826	407.8363	15,834,652
3	April 09, 2019	Invocation and Sale	8,459	405.5649	3,430,673
4	May 07, 2019	Invocation of Pledge	12,749,950	369.15	4,706,644,043
5	May 08, 2019	Invocation of Pledge	3,145,000	331.60	1,042,882,000

12. I further note that Noticee confirmed to ZEEL that:

a) The transactions in April 2019 was for an aggregate of 470,388 equity shares, which were sold by IFCI Limited (hereinafter referred to as '**IFCI**') on behalf of Noticee to satisfy promoters' obligations towards IFCI;

b) The transactions in May 2019 aggregating to 15,894,950 Equity Shares represent invocation of pledge by Catalyst Trusteeship Ltd (hereinafter referred to as 'CTL') (on May 7, 2019 - 9,962,000 shares and on May 8, 2019 - 3,145,000 shares) and Axis Trustee Services Ltd (hereinafter referred to as '**ATSL**') (on May 7, 2019 - 2,787,950 shares).

At the time of invocation of pledge:

13. In the instant case, from the table no 3, I note that disclosure requirement with respect to invocation of pledge as per Regulation 7(2)(a) of PIT Regulations was triggered on April 08, 2019 and thus, it is mandatory on the part of the Noticee to file the disclosure of the same on April 10, 2019. Similarly, all the remaining transactions were required to be disclosed within 2 trading days of each of the transactions as each of them were in excess of Rs 10 lakh. However, Noticee disclosed the entire aforementioned transactions to ZEEL vide letter dated June 07, 2019. Thus, I find that Noticee failed to comply with the disclosure requirements outlined in Regulation 7(2)(a) of the PIT Regulation.

14. Further, I note that Noticee vide letter dated June 07, 2019 informed the Stock exchanges, *viz* BSE and NSE, and ZEEL regarding the transactions *w.r.t.* the invocation of pledges dated May 07 and May 08, 2019, thereby, resulting in a delay of several days. As regards invocation of pledges on April 08 and 09, 2019, I note that disclosure was not made by Noticee to the Stock Exchanges and to Company. The same has been confirmed by ZEEL and Noticee vide their email dated February 12, 2020 and July 05, 2020, respectively. The details regarding delayed disclosures and non-disclosures by Noticee, with respect to invocation of pledge under the provisions of regulation 31(2) read with 31(3) of the SAST Regulations, 2011 are given in the below mentioned table no 4.

15. The details pertaining to non-disclosure/delayed disclosures under both the PIT Regulations and SAST Regulations, has been tabulated below as follows:

Table No 4: Delay/failure in disclosures w.r.t. invocation of pledge under SAST Regulations and PIT Regulations

Transaction Details			Delay in disclosures w.r.t. invocation of pledge under 7(2)(a) of PIT Regulations			Delay in disclosures w.r.t. invocation of pledge under 31(2) of SAST Regulations		
S. No.	Trading Date	Value (Rs.)	Last date for disclosure	Date of disclosure	Delay	Last date for disclosure	Date of disclosure	Delay
1	April 08, 2019	172,897, 106	April 10, 2019	June 07, 2019	58	April 18, 2019	Not disclosed	Not disclosed

Transaction Details			Delay in disclosures w.r.t. invocation of pledge under 7(2)(a) of PIT Regulations			Delay in disclosures w.r.t. invocation of pledge under 31(2) of SAST Regulations		
S. No.	Trading Date	Value (Rs.)	Last date for disclosure	Date of disclosure	Delay	Last date for disclosure	Date of disclosure	Delay
2	April 08, 2019	15,834,652	April 10, 2019	June 07, 2019	58	April 18, 2019	Not disclosed	Not disclosed
3	April 09, 2019	3,430,673	April 11, 2019	June 07, 2019	57	April 22, 2019	Not disclosed	Not disclosed
4	May 07, 2019	4,706,644,043	May 09, 2019	June 07, 2019	29	May 16, 2019	June 07, 2019	22
5	May 08, 2019	1,042,882,000	May 10, 2019	June 07, 2019	28	May 17, 2019	June 07, 2019	21

At the time of creation of pledge

16. SCN mentioned Noticee had made relevant disclosures regarding creation of pledge of 4,70,388 shares on October 04, 2019. In response, Noticee submitted that the said disclosure does not pertains to the impugned/alleged 4,70,388 shares which forms part of SCN and hence, the creation of pledge has not been disclosed. In this regard, from the perusal of email dated November 08, 2019, I note that nothing in this email show that Noticee has disclosed the creation of pledge of the aforementioned share (*i.e*. 4,70,388 shares). The same has been confirmed by the Noticee in its reply dated June 18, 2023.

17. Further, from the perusal of the email dated September 18, 2019, I note that Noticee has disclosed the dates of pledge creation for two transactions that took place on May 07 and May 08, 2019. These transactions involved a total of 1,58,94,950 shares. It is further noted that the pledge was created in a series of 41 transactions spanning from July 05, 2017, to January 25, 2019. From the perusal of pledge creation date and the date of disclosure made under PIT Regulations and SAST Regulations, I note that Noticee made a delay in compliance with Regulation 7(2)(a) of PIT Regulations in 7 instances out of the 41 transactions. There was delay of 4 days in each of the 7 instances.

18. The details regarding delay/ non-disclosure, with respect to creation of pledge by Noticee with regards to provisions of Regulation 7(2)(a) of the PIT Regulations and Regulation 31(1) read with 31(3) of the SAST Regulations are given below:

Table No. 5: Delay in disclosures by Noticee w.r.t. creation of pledges

Sr No	Trading Date	Date of creation of pledge	Delay in disclosure as per provisions of Regulation 7(2)(a) of the PIT Regulations, 2015	Delay in disclosure as per provisions of Regulation 31(1) of the SAST Regulations, 2011
1	April 08, 2019	February 11, 2019	Not Disclosed	Not Disclosed
2	April 08, 2019	February 11, 2019	Not Disclosed	Not Disclosed
3	April 09, 2019	February 11, 2019	Not Disclosed	Not Disclosed
4	May 07, 2019	41 transactions during July 05, 2017 to January 25, 2019	Delay of 4 days in 7 instances*	No delay
5	May 08, 2019			

*Note- the details of 7 instances wherein delay has been made given as follow:

Sr No	Trading Date	Date of creation of pledge	Date on which disclosures relating to creation of pledge were made under SEBI PIT Regulation 2015
1	7 May 2019	25 January 2019	2 February 2019
2	7 May 2019	25 January 2019	2 February 2019
3	7 May 2019	25 January 2019	2 February 2019
4	7 May 2019	25 January 2019	2 February 2019
5	7 May 2019	25 January 2019	2 February 2019
6	7 May 2019	25 January 2019	2 February 2019
7	8 May 2019	25 January 2019	2 February 2019

19. Noticee submitted that, as far as the three transactions dated April 08, 2019, and April 09, 2019, disclosures have already been done under Regulation 29(2) of the SAST Regulations. In this regard, I note that in my view the information being in public domain through various disclosures made by the Company does not absolve the Noticee from making the relevant disclosure under the other relevant securities law. Further, I also placed reliance on Hon'ble SAT order in the matter of **Premchand Shah and Others vs SEBI** (order dated February 21, 2011), 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.*" Further, Noticee itself admitted that aforesaid disclosure has only been done on June 07, 2019 which is far from the due date of disclosure (refer table no 4 and table no 5). Considering the same, I reject such contention of the Noticee in this regard.

20. Noticee submitted that since the disclosure regarding the sale of 4,70,388 shares was already made, any further disclosure regarding creation/invocation of pleadge of those shares would have resulted in mismatch and also mislead the investors. Therefore, disclosure pertaining to pledge creation w.r.t. 4,70,388 shares was not made. In this regard, I note that as per regulation 31 of the SAST Regulations, the promoter of a target company is mandatorily required to disclose details of shares encumbered by them or persons acting in concert with them. This includes disclosing any invocation or release of such encumbrance. The disclosures should be made within seven working days from the creation, invocation, or release of the encumbrance. The disclosures should be made to every stock exchange where the shares of the target company are listed and to the target company at its registered office. Thus, such contention of the Noticee is not acceptable.

21. I note that regulation 32 of settlement regulation provides that Schedule-II of these regulations shall be relevant but not bind the Board or an Adjudicating Officer in any specified proceeding and the Board or the Adjudicating Officer may apply them to the extent possible. Thus, Noticee reliance on the settlement regulation is not acceptable.

22. Noticee submitted that it was not aware about the creation of pledge upon the said shares. it is submitted that the said shares were provided as security for the loan availed by group company in June 2014 and no pledge was marked on said shares at the time of availing loan. In this regard, I note that Noticee did not provide any document to substantiate the same. Further, being the owners of the shares it is

the reasonably presumed that they were aware about any creation/revocation of the shares held by them.

23. Further, I note that vide letter dated July 01, 2019 reasons for invocation of pledge and sale of shares was sought from IFCI Ltd, Catalyst Trusteeship Ltd and Axis Trustee Services Ltd. The responses of the said entities are mentioned below:
    a) Axis Trustee Services Ltd. (ATSL) vide letter dated July 05, 2019 inter-alia stated that Cyquator was advised about the invocation and sale of shares in terms of Debenture Trust Deed and Share Pledge Agreement vide letter dated April 12, 2019.
    b) IFCI Ltd vide letter July 10, 2019 inter-alia stated that Cyquator was given statutory notice u/s 176 of Indian Contract Act, 1872 for sale of shares/security on March 18, 2019.
    c) Catalyst Trusteeship Ltd (Catalyst) vide letter July 12, 2019 inter-alia provided the following response stated that Cyquator was given statutory notice u/s 176 of Indian Contract Act, 1872 for sale of shares/security on May 06, 2019, April 12, 2019, January 25, 2019, February 06, 2019 etc.

24. In view of the above facts and circumstances, I find that entities namely ATSL, IFCI and CTL have given intimation to the Noticee about the sale of security. Thus, Noticee's contention that pledge was marked without its knowledge is not tenable.

25. In view of above facts and circumstances, I find that Noticee has violated provisions of Regulation 7(2)(a) of the PIT Regulations and Regulation 31(1), Regulation 31(2) read with 31(3) of the SAST Regulations.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

26. Noticee contended that failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to it. In this regard, I note that it has already been established that Noticee has made delayed disclosure in defiance of mandatory requirements of PIT

Regulations and SAST Regulations. Further, I note that disclosures under PIT Regulations and SAST Regulations are mandatory irrespective of any loss caused to any of the public investors and irrespective of whether the insider gained any unfair advantage on account of such non-disclosure or not. The same has been reiterated by the appellate court in catena of the cases. At this stage, it is pertinent to refer the following orders:

a) **Akriti Global Traders Ltd. vs. SEBI**, [2014] 122 CLA 531

"… *Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

b) **Mr. Ankur Chaturvedi vs SEBI** (Appeal no. 434 of 2014 and Order dated August 04, 2015), Hon'ble SAT has held 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*"

c) **Virendra kumar Jayantilal Patel v. SEBI (Appeal No. 299 of 2014 dated October 14, 2014)** had observed that, "*obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make the disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make the disclosures.''*

d) **Annand Sarnaaik v. Securities & Exchange Board of India**, (decided on 23-07-2019):

"*The appellants were duty-bound to make the necessary disclosures within the stipulated period under the PIT and SAST regulations. Non-disclosures within the stipulated period violated the provisions of the aforesaid regulations and, consequently, the penalty became leviable. Thus, to that extent, the order of the AO holding the appellants guilty of violating the provisions of the PIT and SAST Regulations cannot be faulted and is upheld*."

27. In view of the above, I note that violation of mandatory disclosure requirement under PIT Regulations and SAST Regulations cannot be termed as merely technical and venial. Thus, I note that orders cited by the Noticee *viz* Jindal Cotex Limited (supra), Refex Industries (supra), Jagdish Arora (supra) can be factually distinguishable from the present case.

28. I note that Noticee contended that while imposing penalty the requisite mens rea has to be established. In this regard, I note that in the matter of **Securities & Exchange Board of India v. Cabot International Capital Corporation** decided on 3rd March, 2004, Hon'ble Bombay High Court held that *the adjudication for imposing penalty by Adjudicating Officer, after due inquiry, is neither a criminal nor a quasi-criminal proceeding. The penalty leviable under this Chapter or under these Sections, is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the Regulations, there is no element of any criminal offence or punishment as contemplated under criminal proceedings*. Further, Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which 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...*"

29. In view of the above, I note that cases cited by the Noticee {Akbar Badrudin Badrudin Jiwani (supra)} stand distinguished from the instant adjudication proceeding.

30. Further, I note that Noticee placed reliance on Hindustan Steel (supra), wherein it has been held that even if minimum penalty is prescribed, the authority competent to impose penalty will be justified in refusing to impose the penalty, when there is technical or venial breach of the provision of act. However, in the instant case it has already been stated that securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Further, mandatory disclosure needed to be done under the timeline stipulated under the relevant provision, since other shareholder/investors were deprived of the information and this interfere with market integrity and idea of fair play in security market. In fact, delayed disclosure w.r.t. mandatory disclosure as stipulated under PIT Regulation and SAST Regulation undermines the investors interest relating to the effectiveness of the purpose of such disclosures. Further, I note that Noticee has placed reliance on the Supreme Court's judgment **Adjudicating Officer, SEBI vs Bhavesh Pabari** (supra). In this regard, I note that it is the settled law that it is statutory mandate that while imposing penal liability under 15I of SEBI Act, Adjudicating Officer guided by the factors as prescribed under 15J for the purpose of deciding the penalty. Further, I also note that Securities Laws (Amendment) Act, 2014 prescribes a mandatory minimum penalty in case the violations have been established under the 15A(b) of SEBI Act. The said amendment has come into effect from the September 08, 2014. At this stage, it is pertinent to refer the following judgment of Supreme Court: **SEBI vs Sandip Ray** (dated February 13, 2023)

"Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/- is not permissible under Section 15HB of the SEBI Act, 1992. After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992. Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we

modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/- as inflicted upon noticee no. 5 (Mr. Sandip Ray) and noticee no. 6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of.(emphasis supplied)

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the Adjudication rules?

31. I note that while determining the quantum of penalty under sections 15A(b) SEBI Act, I have considered factors listed in section 15J of SEBI Act read with Rule 5(2) of the Adjudication Rules which provides that factors while adjudging quantum of penalty. Further, Supreme Court in its judgment **SEBI vs Bhavesh Pabari** (2019) 18 SCC 246 held that "*We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15•J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15•J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty*." Therefore, in the light of Bhavesh Pabri (Supra) judgment, I note that material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee. I find that the examination period of the relevant disclosure is January 01, 2019 to December 26, 2019. Thereafter, wherein the filling of disclosure has now become automated and system driven. Thus, considerable amount of time has been elapsed and significant changes has been introduced *i.e* automatic disclosure under 7(2) of PIT Regulations by SEBI Circular dated August 13, 2021 and September 09, 2020. Thus, the same has been considered as a mitigating factor. I also note from above paras that Noticee has not disclosed the creation of pledges of share and subsequently, made delayed disclosures with respect to the invocation of pledge and the same has been considered for imposing penalty.

C. Order

32. 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 Adjudication Rules, I hereby impose the following penalty on Noticee:

Penalty	Penalty under	Violation established in aforesaid paras	Penalty Amount
Cyquator Media Services Pvt Ltd	15A(b) of SEBI Act	Regulation 7(2)(a) of the PIT Regulations and	₹4,00,000 (Rupees Four Lakhs only)
		Regulations 31(1) and 31(2) read with 31(3) of the SAST Regulations	

33. I find that aforementioned penalty is commensurate with the violation committed by the Noticee as mentioned in the above paras to meet the ends of justice in the present matter.

34. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order 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**

35. 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.

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

Date: June 30, 2023
Place: Mumbai

Vijayant Kumar Verma
Adjudicating Officer