SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/KG/2021-22/11971]

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

Amluckie Investment Company Ltd

(Address: 10, Princep Street, 2nd floor, Kolkata - 700072)

In the matter of Silicon Valley Infotech Limited

FACTS OF THE CASE IN BRIEF

1. The Securities and Exchange Board of India ("**SEBI**") had initiated an investigation in the scrip of Silicon Valley Infotech Limited ("**Company**"/ "**SVIL**") based on certain media reports published in April 2003. It was *prima facie* reported that prices of the shares of the company were manipulated by some of its shareholders who were also brokers. The investigation was initiated to look into possible violations of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 ("**PFUTP Regulations, 1995**") read with the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 ("**PFUTP Regulations, 2003**"), the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 ("**SAST**

Regulations") and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 ("**PIT Regulations"**). The period of investigation in the matter was from November 1, 2002 to April 23, 2003 ("**Investigation period**"). It was *prima facie* observed during the investigation that Amluckie Investment Company Ltd ("**Noticee**") who was a Promoter Related Entity of SVIL along with other Promoter Related Entities (herein after referred to as **'PRE'**) had colluded with the stock-broker Bubna Stock Broking Services Pvt. Ltd. (hereinafter referred to as **'Bubna'**) and the purchasers Rocky Marketing Pvt. Ltd ("**Rocky**") and Prince Securities ("**Prince**") in order to create artificial volumes and manipulate the price of the scrip SVIL in the Calcutta Stock Exchange.

APPOINTMENT OF THE ADJUDICATING OFFICER

2. Initially, Shri Biju S. was appointed as the Adjudicating Officer ("AO") in the present case. Thereafter, Shri D. Ravikumar was appointed as the AO under section 15I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by the Adjudicating Officer) Rules, 1995 ("Adjudication Rules") to inquire into and adjudge under section 15HA and 15A(b) of the SEBI Act, the violations of Regulation 4(a), (b), (c) and (d) of the PFUTP Regulations, 1995 read with Regulation 13 of the PFUTP Regulations, 2003; Regulation 7(1A) of the SAST Regulations, 1997 and Regulation 13(3) of the PIT Regulations, 1992.

Subsequent to his transfer, Shri Suresh B. Menon was appointed as the AO and upon his transfer, the undersigned has been appointed AO in the present case vide order dated April 12, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A show cause notice (hereinafter referred to as 'SCN') dated May 07, 2009 was served on the Noticee by the then AO, pursuant to which the Noticee was granted personal hearing on February 22, 2010 by the then AO. Thereafter an adjudication order was passed based on the material made available on record against the Noticee on May 31, 2010. The said adjudication order was challenged before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'). Hon'ble SAT remanded the matter to SEBI with liberty to initiate fresh proceedings against the Noticee. In compliance with the Hon'ble SAT direction, another SCN dated March 19, 2015 ("**present SCN**"), was issued to the Noticee by the then AO. I find that a list of related entities of SVIL (including the Noticee) and the shareholding in SVIL as on September 30, 2002 and March 31, 2003, have also been provided along with the present SCN to the Noticee.

4. It was alleged in the present SCN that the Noticee, as a Promoter Related Entity of SVIL along with other Promoter Related Entities (herein after referred to as **'PRE')** had colluded with the stock-broker Bubna Stock Broking Services Pvt. Ltd. (hereinafter referred to as **'Bubna')** and the purchasers

Rocky Marketing Pvt. Ltd. and Prince Securities in order to create artificial volumes and manipulate the price of the scrip SVIL in CSE.

5. The modus operandi adopted by PRE and the stock broker with the help of the buyers viz; Rocky Marketing and Prince Securities, as alleged in the present SCN was, as described in the subsequent paragraphs.

6. During the period January 17, 2003 to January 27, 2003, 19 lakh shares of SVIL were transferred by the PRE to the demat account of Bubna. On the recommendation of Bubna, Prince Securities started buying the scrip of SVIL through Bubna. The deals were executed as cross deals wherein Prince Securities was the buyer and PRE were the sellers. The deals were entered in random client code on the trading platform of Calcutta Stock Exchange Association Limited (hereinafter referred to as **'CSE'**) in order to avoid margins and the same had continued till February 3, 2003. During the process Prince Securities had acquired 8.75 lakh shares and the price of the scrip had moved from Rs. 7.00 to around Rs. 9.50 – Rs. 11.80. There was a debit balance of Rs. 70.75 lakh in the account of Prince Securities who had dealt only in the said scrip. Prince Securities had arranged for third party cheques to the tune of Rs. 15 lakh approximately. Even though there was a debit balance of Rs. 55 lakh in the account of Prince, 8.75 lakh shares were transferred to its account. Out of the said 8.75 lakh shares, 3.75 lakh shares were in turn transferred to the entities which were claimed to be the known

entities of Prince Securities and remaining 5 lakh shares were returned to Bubna.

7. Similar deals were entered wherein Rocky Marketing was the buyer and PRE were the sellers. Rocky Marketing had purchased around 2.50 lakh shares during the period January 16, 2003 to February 3, 2003. However, on February 6, 2003, Bubna transferred 6 lakh shares to Rocky Marketing. On February 10, 2003, 5 lakh shares were purchased by Rocky Marketing, the seller being Amluckie Investments Ltd (the Noticee) and the price being Rs. 14.97, almost 35% higher than the price on January 31, 2003. During the process Rocky Marketing had purchased 10.50 lakh shares approx. However, it was observed that 13 lakh shares had been delivered to Rocky Marketing, out of which 3 lakh shares were returned to Bubna, whereas 5 lakh shares were returned to Divya Dealers (PRE). Balance 5 lakh shares were sold by Rocky Marketing through another CSE stock broker viz Prakash Chand Nahata. The dues to Bubna on account of purchase of these shares were netted against sale of approx 13.5 lakh shares of Blue Chip India Ltd (a Group company of SVIL) through Bubna, buyer being Prince Securities who was not aware of the said purchases in its account. As a result of these purchases, the debit balance in the account of Prince shot-up to Rs. 2.13 crore. However, it appeared from the share holding pattern of Blue Chip that the shares sold and delivered by Rocky Marketing were held by Bubna. It

was also alleged that the Noticee had sold 10 lakh shares of SVIL in collusion with the stock-broker Bubna.

The table below illustrates the shares bought and sold by entities:

Serial No.	**Name of the Entity**	**Bought**	**Sold**
01	Ojas suppliers Ltd.		1,50,000
02	**Amluckie Investment Co. Ltd**		**10,00,000**
03	Prince Securities	8,75,000	
04	Divya Dealers		3,50,000
05	Savera TradeLinks Pvt. Ltd		2,50,000
06	Dhanafal Vyapaar Pvt. Ltd		2,10,000
07	Mantra Online Ltd.		1,50,000
08	Pramod Agarwal	3,00,000	
09	Casecade Dealcom P Ltd.		1,50,000
10	Hanurang Projects P Ltd.		1,50,000
11	Rocky Marketing	10,55,000	
	Total Qty reported by Stock Broker	**22,30,000**	**24,10,000**

8. The investigation had shown that the share price of SVIL at CSE was much at variance when compared to the price at BSE Ltd. This could be attributable to the cross deals executed at CSE wherein the price discovery as well as volumes were artificial and manipulated.

9. In view of what has been observed with respect to the trading in the scrip of SVIL, it was alleged that the Noticee had violated the provisions of Regulation 4 (a), (b), (c) and (d) of the PFUTP Regulations, 1995, read with the provisions of Regulation 13 of the PFUTP regulations, 2003. The text of the said provisions is as under:

PFUTP Regulations

Prohibition against Market Manipulation

4. No person shall -

i. effect, take part in, or enter into, either directly or indirectly, transactions in securities, with the intention of artificially raising or depressing the prices of securities and thereby inducing the sale or purchase of securities by any person;

ii. indulge in any act, which is calculated to create a false or misleading appearance of trading on the securities market;

iii. indulge in any act which results in reflection of prices of securities based on transactions that are not genuine trade transactions;

iv. enter into a purchase or sale of any securities, not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress, or cause fluctuations in the market price of securities;"

"Repeal and savings

13. (1) The Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995 is hereby repealed.

1. Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any violation of regulations 3, 4, 5 and 6 of the SEBI (Prohibition of Fraudulent and Unfair Trade

Practices Relating to Securities Market) Regulations, 1995 shall be investigated and proceeded against in accordance with the procedure laid down in these regulations.

2. Notwithstanding repeal of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 1995, any investigation pending, at the commencement of these regulations shall be continued and disposed of in accordance with the procedure laid down in these regulations."

i. The violations as alleged above if proved attracts penalty under Section 15HA of the SEBI Act. The texts of the said provisions are stated below:

SEBI Act

15HA. Penalty for fraudulent and unfair trade practices.-

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.

10. It was also observed during the investigation that the Director of the Noticee, Shri Santosh Kumar Jain was the Managing Director of SVIL and another Director, Shri Shyam Sundar Chatterjee was a retainer of ATN International Limited which is one of the promoters of SVIL. Hence it was *prima facie* observed that the Noticee was under the same management as SVIL or its promoters and are as such persons acting in concert ("**PAC**") with the promoters. It was also observed during the investigation that the promoters of

SVIL along with their PACs were holding more than 60% of the share capital of SVIL as against 8.80% as disclosed by SVIL to the stock exchange. The cross holdings of these entities revealed that Divya Dealers Limited was holding more than 2% of the share capital of both SVIL and the Noticee. Therefore, these entities were deemed PACs in terms of Regulation 2(1)(e)(2)(x) of the SAST Regulations, 1997. The combined holding of the Noticee and Divya Dealers Limited was 20.61% of the shareholdings of SVIL. It was also observed from the Annual Report of SVIL that the Noticee held more than 2% of the paid up equity capital as on March 31, 2003, of Dhansafal Vyapar Limited (approximately 3.97%) and Ojas Suppliers Limited (approximately 7.53%). Also Ojas Suppliers Limited held more than 2% of the Noticee's paid up share capital as on March 31, 2003. This *prima facie* classified the Noticee as deemed PAC with Divya Dealers Limited, Dhansafal Vyapar Limited and Ojas Suppliers Limited as per Regulation 2(1)(e)(2)(x) of the SAST Regulations, 1997. The text of the said provision is reproduced herein below:

2. (1) In these Regulations, unless the context otherwise requires:—

…

(e) —"person acting in concert" comprises,—

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :

…..

(x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid-up capital of the latter company.

Note : For the purposes of this clause —"associate" means,—

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and

(b) family trusts and Hindu undivided families;

11. Hence, it was alleged that the Noticee as a deemed PAC with the promoters of SVIL had individually sold more than 2% of the share capital of SVIL without making any disclosures as required under Regulation 7(1A) of the SAST Regulations, 1997. The text of the said provision is reproduced herein below:

[7(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, [or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]

12. It was also *prima facie* observed from the shareholding pattern of SVIL for the quarters ending September 30, 2002 and March 31, 2003 (copy provided to the Noticee) that the Noticee was holding 12.59%, i.e., more than 5% shares of SVIL as on December 31, 2002 and the Noticee had sold more than 2% of its holdings without making any disclosures as required under Regulation 13(3) of the PIT Regulations, 1992. The text of the said provision as it stood at the relevant point in time is reproduced herein below:

> *13 (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

13. The violations of Regulations 7(1A) of the SAST Regulations, 1997 and 13(3) of the PIT Regulations, 1992, as alleged above, if established makes the Noticee liable for penalty under Regulation 15A(b) of the SEBI Act, 1992, the contents of which, as it stood at the relevant point in time, is reproduced herein below:

> *15A.If any person, who is required under this Act or any rules or regulations made thereunder,—*

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(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];

14. On resumption of the present proceedings by the undersigned, it was noted that the proof of service of the present SCN through post, on March 30, 2015, under the seal of the Noticee, is available in the records. However, no reply to the same was filed by the Noticee. Thereafter, vide a newspaper publication dated February 9, 2021, in an English daily (Times of India) and a vernacular daily (Ei Samay), having circulation at the place of business of the Noticee (Kolkata), the Noticee was informed of the present SCN and was also asked to file its reply to the same. Vide the said advertisement the Noticee was also provided an opportunity of personal hearing on February 23, 2021. It was also stated therein that if the Noticee failed to respond to the said advertisement, the matter shall be proceeded ex-parte on the basis of the available material. Till date, no response to the said advertisement has been received from the Noticee. In view of the fact that the present SCN was in fact received by the Noticee and a copy of the said SCN was also published, granting an opportunity of personal hearing in the case, I am of the opinion

that effective service of the present SCN is completed and principles of natural justice have been complied with.

15. Since, I find that no reply to the present SCN has been submitted by the Noticee, I consider it as fit to take into account the earlier written submissions made by the Noticee (dated May 22, 2009, March 1, 2010 and March 15, 2010) in response to the earlier SCN dated May 7, 2009). The following submissions were made by the Noticee vide the said replies:

    a. It had never indulged in any act which was calculated to create false or misleading appearance of trading on the securities market.

    b. It had never taken part in nor entered into any transactions in securities with the intention of artificially rising or depressing the prices of securities.

    c. It had never indulged in any act, which resulted in reflection of prices of securities based on transactions that were not genuine trade transactions.

    d. The noticee submitted that it was listed and had its separate legal entity. The noticee was not under the same management of SVIL as defined under the Companies Act though Shri Shyam Sunder Chatterjee, Director of the noticee, was a retainer and Shri Santosh Kumar Jain, Director of the noticee, was Managing Director of SVIL. Since the shareholding of the noticee was 12.59% in SVIL, it was not within the limit of more than 15% and less than 55% disclosure requirement under Regulation 7 (1A) of

the Takeover Regulations and hence was not applicable to the noticee.

e. The requirement to make disclosure to the Company about the change of more than 2% under Regulation 13(3) of the Insider Trading Regulations was applicable if the holding was more than 5%. It was submitted that the noticee had made timely disclosure vide its letter dated January 29, 2003 and February 22, 2003.

f. Regulation 7(1A) of the Takeover Regulations was not applicable to the noticee as the shareholding pattern of the noticee was less than 15% of the paid-up equity & voting rights of the share capital of SVIL.

g. The noticee was holding more than 5% equity shares of SVIL as on 31/12/2002 and it had sold more than 2%, since the holding of the noticee as on 31/03/2003 was 1.6%. Since the requirement of Regulation 13(3) of the Insider Trading Regulations, is to make disclosure about the change of more than 2% shareholding at any point of time, to the target company, if the holding is more than 5%, the noticee had made timely disclosures to the target company, i.e. SVIL, vide letters dated 29/01/2003 and 22/02/2003 in compliance with the regulation.

h. As per Section 370(1B) of the Companies Act, 1956, the noticee does not fall under any of the sub-clauses which detail the nature of the companies which fall under the purview of 'companies under the same management'. Therefore, the noticee was not a company under the same management with SVIL.

i. The noticee submitted that persons falling under the category of

'Person Acting on Concert' has been defined under Regulation 2(i)(e) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

j. The details of all the shares purchased and sold by the noticee during the investigation period was also submitted.

CONSIDERATION OF ISSUES AND FINDINGS

16. The issues which arise for consideration in the present case, are as follows:

i. Whether the Noticee has violated the provisions of Regulation 4 (a), (b), (c) and (d) of the PFUTP Regulations, 1995, read with the provisions of Regulation 13 of the PFUTP regulations, 2003? If so, whether the same is liable for penalty under section 15HA of the SEBI Act?

ii. Whether the Noticee has violated the provisions of Regulation 7(1A) of the SAST Regulations, 1997 and Regulation 13(3) of the PIT Regulations, 1992? If so, whether the same is liable for penalty under section 15A(b) of the SEBI Act?

iii. If the answer to the issues raised above is in the affirmative, what should be the quantum of penalty under section 15J of the SEBI Act?

17. I have perused the material available on record, the documents/ information provided to the Noticee and those which have been received from the Noticee. On a perusal of the 'Annexure-1' to the present SCN, I find that the Noticee through its Directors Mr. Shyam Sunder Chatterjee and Mr. Santosh Kumar Jain is undeniably connected to ATM International Limited and SVIL, for the reasons as already stated in the present SCN (as well as in the earlier SCN), a fact which has not been denied by the Noticee in its responses to the earlier SCN. Also, SVIL itself had admitted vide its letter dated December 18, 2006, that ATN International Limited was one of its promoters and "a company under the same management" as that of SVIL itself. Thus, the Noticee is irrefutably related to SVIL, even if the Noticee itself may not be qualified as "a company under the same management" as that of SVIL. I also note that the noticee's registered office address at 10, Princep Street, 2nd Floor, Kolkata -700072 is the same as the registered office address of ATN International Ltd., Arihant Ltd., Blue Chip India Ltd. and SVIL. By the admission of SVIL itself, Arihant International Limited is one of the promoters of SVIL and both ATN International Ltd and Blue Chip India Limited are "a company under the same management" as that of SVIL. Also, the noticee shared the same phone number and fax number with ATN International Ltd., Blue Chip India Ltd. and Arihant Ltd. From the 'Annexure 1' to the present SCN, I also note that all the entities who were sellers of the shares of SVIL during the period of investigation through the same stock broker Bubna and to the same purchasers Rocky and Prince (including the Noticee), were also

related to SVIL either directly or through Arihant International Limited/ Blue Chip India Limited/ ATN International Ltd. Moreover, all of these "selling entities" (including the Noticee) as mentioned in the 'Annexure-1' to the present SCN, were also linked to each other through common directors. Out of these 'selling entities', Udgam Commercial Ltd., Acme Resources Ltd. (formerly Mantra Online Ltd.) and Hanurang Projects Ltd. were also observed to have the same address as the noticee's registered office address. The Noticee has not refuted the contents of 'Annexure-1". Therefore, it is clearly established that the Noticee was related to the promoters of SVIL and was also related to other PREs of SVIL through such linkages as already detailed above.

18. The dealings of the Noticee in the scrip of SVIL in the CSE, as detailed in the present SCN is based upon the trading data of the Noticee itself. It is noted therefrom that the Noticee along with other PREs of SVIL had sold significant quantities of the shares of SVIL through the same broker, namely Bubna and during the same period that was investigated by SEBI. Further, all the shares sold by the Noticee and the other PREs were bought mainly by two purchasers, namely, Rocky and Prince. The Table provided at paragraph no. 7 in this order shows the number of shares bought and sold by the PREs through Bubna during the period of investigation. The Noticee has not refuted these facts and figures.

19. It has been brought out in the present SCN that there were significant differences in the number of shares bought/sold and the number of shares delivered by Bubna to the PREs (including the Noticee), details whereof has been reproduced in the present SCN as well as in the preceding paragraphs in this order.

20. I observe from the findings of investigation that on February 10, 2003, 5 lakh shares were purchased by Rocky Marketing, the seller being the Noticee and the price being Rs. 14.97, almost 35% higher than the price on January 31, 2003. The Noticee had sold 10 lakh shares through Bubna and there was an increase in the price of the shares from Rs. 8.60/- on November 1, 2002 to Rs. 65.75/- on April 23, 2003, when the Noticee along with other PREs were transacting in the scrip of SVIL through Bubna with Prince and Rocky. As submitted by the noticee, it had sold approx. 37.76 lakh shares from January 2003 to March 2003 between the price range of Rs.5.23/- to Rs.37.09/- for a total value of approximately Rs.4,41,32,712/-. It has been brought out in the present SCN that Prince was one of the major buyers on CSE for the sale transactions entered into by the Noticee along with other PREs, through the broker Bubna. In this regard, it is noted that Prince had dealt only in the scrip of SVIL during the entire period under investigation. In this context, I note that during the personal hearing before one of the erstwhile AOs in this case, the Noticee was advised to submit if it was in any manner related to the purchasers, viz. Rocky and Prince. The Noticee, I find, has failed to make any

submission on this issue. The said two purchasers had kept buying the shares of SVIL sold by the Noticee and other PREs, through the broker Bubna.

21. In view of the pattern of transaction entered into by the Noticee and other PREs with Prince and Rocky through Bubna, as already detailed in the preceding paragraphs, I conclude that Prince and Rocky were related/ connected to the Noticee and other PREs and Bubna. As observed from the details brought out in the present SCN, all the PREs sold huge quantities of shares of SVIL through the same stock-broker, namely Bubna and during the same period. Also, all these shares sold by the PREs including the noticee have been bought mainly by the two purchasers namely, Rocky and Prince Securities. All these events could not have been a mere coincidence. Also, in view of what has been observed in the immediately preceding paragraph, i.e., the difference in the number of shares bought/sold and the number of shares delivered by Bubna to its clients (the Noticee and other PREs), it can be reasonably concluded that there was a prior understanding between the Noticee and other PREs with Bubna and the buyers viz. Rocky and Prince to create artificial volumes and manipulate the price of the scrip of SVIL through a huge amount of trading by the PREs. The aforesaid concerted activities of the Noticee with other PREs in collaboration with Bubna (the broker), Prince and Rocky (the purchasers of the shares), had resulted into the artificial surge in the volume of the trading in the shares of SVIL creating a false and

misleading appearance of trading in the scrip and the same had artificially increased the price of the said scrip.

22. In view of all these events as discussed in preceding paragraphs in this order, it can be concluded that the noticee had indulged in artificially creating volumes and manipulated the price of the scrip of SVIL in violation of the provisions of the Regulation 4 (a), (b), (c) and (d) of the PFUTP Regulations, 1995, read with the provisions of Regulation 13 of the PFUTP regulations, 2003. The said violations make the Noticee liable for penalty under section 15HA of the SEBI Act, 1992, contents whereof have already been discussed in one of the preceding paragraphs in this order.

23. With respect to the allegation against the noticee in the SCN that it had violated Regulation 7(1A) of the SAST Regulations, 1997, I note that the noticee had submitted that it could not be classified as a PAC with the promoters of SVIL as per Regulation 2(i)(e) of the SAST Regulations, 1997. However, it is observed from the documents made available and brought out in the present SCN, that Divya Dealers Limited, an investment company and one of the PREs as shown in 'Annexure-1' to the present SCN, held more than 2% of the share capital of the noticee which is also an investment company. This makes both the entities, (i.e. the noticee and Divya Dealers Limited) as deemed PACs under Regulation 2(1)(e)(2)(x) of the Takeover Regulations. Also, it is observed from the available Annual Reports, that the noticee, an investment company held more than 2% of the paid up equity

capital as on March 31, 2003, of the entities, Dhansafal Vyapaar Ltd. (approx 3.97%) and Ojas Suppliers Ltd. (approx 7.53%) (where both Dhansafal Vyapaar Ltd. and Ojas Suppliers Ltd. are investment companies). Also Ojas Suppliers Ltd. held more than 2% of the noticee's paid-up equity capital as on March 31, 2003. This classifies the noticee as PAC with Divya Dealers Ltd., Dhansafal Vyapaar Ltd. and Ojas Suppliers Ltd. as per Regulation 2(1)(e)(2)(x) of the SAST Regulations, 1997 (contents of which has already been reproduced in one of the preceding paragraphs). Further all these companies are PREs as already established in the preceding paragraphs from a scrutiny of the 'Annexure-1' to the present SCN. These entities were also related to each other inter alia through common directorship/address etc. as already discussed in preceding paragraphs. Hence, the noticee's submission that it is not a PAC with the promoter related selling entities cannot be accepted.

24. In this context, the judgment of The Hon'ble Securities Appellate Tribunal in the matter of *Mr. Ranjan Verghese Vs. Securities Exchange Board of India* in the Appeal No. 177 of 2009 dated April 08, 2010 can be referred to wherein it has been observed that-

> *"The fact that the appellants acting in concert with each other had made the acquisitions which triggered the Takeover Code, it was incumbent upon them to make a public announcement which, admittedly, they have*

failed to do so. This failure has seriously prejudiced the public investors / shareholders of the company who have been deprived of their valuable right to exit by offering their shares to the acquirer. We cannot lose sight of the fact that one of the primary objects of the Takeover Code is to allow the public shareholders an exit route when the target company is either taken over by an acquirer or an acquirer makes a substantial acquisition therein. Since the public shareholders were deprived of this valuable right, we do not think that this is a fit case where penalty should be reduced."

25. Further, the Hon'ble Securities Appellate Tribunal in the matter of *Mr. Ranjan Verghese Vs. The Adjudicating Officer, SEBI* Appeal No. 152 of 2009 dated September 22, 2009 has observed that-

"*Once it is established that the mandatory provisions of the Takeover Code were violated, the penalty must follow"*

26. Hence the noticee can be classified as PAC with Divya Dealers Limited, Dhansafal Vyapaar Ltd., and Ojas Suppliers Ltd. under Regulation 2(1)(e)(2)(x) of the SAST Regulations, 1997. If the combined shareholding in SVIL of all these 4 entities (i.e. the noticee and its PACs) is taken into consideration, it totaled to 23.31% (as per the shareholding pattern of SVIL for the quarters ending September 30, 2002 and December 31, 2002), which is more than 15% of the paid - up capital. Hence, when the noticee

individually sold more than 2% of the shareholding at the relevant point in time, it had triggered Regulation 7(1A) of the SAST Regulations, 1997. However, the noticee has admittedly not made the necessary disclosures to SVIL and to the stock exchanges on which the shares of SVIL were listed, as required under Regulation 7(1A) of the SAST Regulations, 1997. Therefore, I find that the noticee has violated Regulation 7(1A) of the SAST Regulations, 1997, too by not disclosing the sale of the shares of more than 2% to the target company i.e. SVIL and to the stock exchanges on which the shares of SVIL were listed.

27. With respect to the allegation against the noticee in the SCN that it had violated Regulation 13(3) of the PIT Regulations, 1992, the noticee has submitted that as per the PIT Regulations, 1992, the noticee had submitted letters to the target company (SVIL), upon its change in the shareholding pattern.

28. On a perusal of the disclosures made by the noticee to SVIL, I find that the disclosures made does not match with the actual number of shares sold by the noticee as per the details submitted by the noticee itself. As per the noticee's letter of disclosure to the Company dated January 29, 2003, the noticee had sold 6,00,000 shares on January 27, 2003 and January 28, 2003 through the system and through off market. However, the sale volumes of the

said days are only 3,56,000 shares as per the details furnished by the noticee. Thus, there is a discrepancy in the disclosure made by the noticee.

29. Similarly, in the letter of disclosure to SVIL dated February 22, 2003 the date of sale was mentioned as February 21, 2003 and the number of shares sold were 5,00,000 shares. However, from the details submitted by the noticee, it is observed that NO SALE occurred on February 21, 2003. Therefore, there is again a discrepancy in the disclosure made by the noticee itself.

30. Considering all of the above, the noticee can be held liable for not making full and complete disclosure of the change in shareholding pattern to SVIL as per the requirement of Regulation 13(3) of the Insider Trading Regulations.

31. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely;

> **"***a. the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default;*
>
> *b. the amount of loss caused to an investor or group of investors as a result of the default;*
>
> *c. the repetitive nature of the default*"

32. In this case, it also becomes necessary to consider the judgment of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216 (SC) dated May 23, 2006 where it was held that :

> "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow"*.

33. Considering the above facts and findings, it can be concluded that the noticee has violated Regulation 4 (a), (b), (c) and (d) of the PFUTP Regulations, 1995 read with Regulation 13 of the PFUTP Regulations, 2003, Regulation 7(1A) of the SAST Regulations, 1997 and Regulation 13(3) of the PIT Regulations, 1992. It is also to be noted that the investigation has not been able to quantify the profit / loss for the nature of violations carried out by the Noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the fraudulent trade practices. I also note that substantial time has passed since the present case was sent back for a fresh adjudication by the Hon'ble SAT before the present SCN was issued. There is also a significant lapse of time since the present SCN was issued and this order. This would serve as a mitigating factor while quantifying the amount of penalty to be levied upon the Noticee.

34. Considering the violations committed by the Noticee and the factors discussed herein above, I hereby impose a penalty of **Rs. 5,00,000/- (Rupees Five Lakhs only)** under Section 15HA of the SEBI Act and **Rs. 1,00,000/- (Rupees One Lakh only)** under Section 15A(b) of the SEBI Act on the Noticee, aggregating to. **Rs. 6,00,000/- (Rupees Six Lakhs only)**, which is appropriate in the facts and circumstances of the case.

ORDER

35. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I impose a penalty of **Rs. 6,00,000/- (Rupees Six Lakhs only)** on **Amluckie Investment Company Limited** (PAN – AACCA6749H), having its address at 10 Princep Street, 2nd Floor, Kolkata – 700072, in terms of the provisions of Sections15HA and 15A(b) of the Securities and Exchange Board of India Act, 1992 for its violations of the provisions of Regulation 4(a), (b), (c) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 read with Regulation 13 of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003, Regulation 7(1A) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and

Takeovers) Regulations, 1997 and Regulation 13(3) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992.

36. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., 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, the Noticees may contact the support at portalhelp@sebi.gov.in.

37. The Noticee shall forward said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department-Division of Regulatory Action-4 of SEBI. The Noticees 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

38. In terms of the provisions of rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai **G. RAMAR**

Date: May 25, 2021 **ADJUDICATING OFFICER**