

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/MG/2021-22/13051-13056]

**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

- 1. Le Waterina Resorts & Hotels Limited (PAN: AAACH2823H)**
- 2. Mr. Sanjay Jalan (PAN: AAWPJ2893G)**
- 3. Ms. Anila Jalan (PAN: AAIPA6667P)**
- 4. Ms. Rinku Jalan (PAN: AGBPJ8319E)**
- 5. Mr. R. K. Jalan (PAN: AAWPJ2892H)**
- 6. Mr. Kamlesh Shantilal Jain (PAN: AAFPJ2745J)**

In the matter of Le Waterina Resorts & Hotels Limited

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a complaint from an entity alleging Price and Volume manipulation in the scrip of Le Waterina Resorts & Hotels Limited (hereinafter referred to as '**Le Waterina/Company/by name/Noticee 1**'). Thereafter, SEBI conducted an investigation with respect to the alleged irregularities in the scrip of Le Waterina during the period from October 01, 2010 to March 05, 2012 (herein after referred to as '**Investigation Period/IP**'). The company is listed on BSE Limited (herein after referred to as '**BSE**'). SEBI observed that during the IP, entities, namely, (1). Mr. Sanjay Jalan, (hereinafter referred to as '**Noticee 2**'), (2). Ms. Anila Jalan, (hereinafter referred to as '**Noticee 3**'), (3). Ms. Rinku Jalan, (hereinafter referred to as '**Noticee 4**'), (4). Mr. R. K. Jalan, (hereinafter referred

to as 'Noticee 5'), (5). Mr. Kamlesh Shantilal Jain (hereinafter referred to as 'Noticee 6') and Noticee 1 (Noticees 1 to 6 are collectively also referred to as 'Noticees'), failed to make requisite disclosures in terms of SEBI (Substantial Acquisition Of Shares And Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations, 1997') read with SEBI (Substantial Acquisition Of Shares And Takeovers) Regulations, 2011 (hereinafter referred to as 'SAST Regulations, 2011') and SEBI (Prohibition Of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992') read with SEBI (Prohibition Of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations, 2015'). Therefore, SEBI initiated adjudication proceedings against Noticees and appointed Shri Jeevan Sonparote as Adjudicating Officer (hereinafter referred to as "erstwhile AO") to inquire and adjudge under the provisions of Section 15A(b) of Securities and Exchange Board of India Act, 1992 (herein after referred to as 'SEBI Act'), the aforesaid alleged violations by Noticees.

2. Show Cause Notices dated September 28, 2017, (hereinafter referred to as 'SCN') were issued to Noticees by the erstwhile AO under Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 to show-cause as to why an inquiry should not be initiated against Noticees and penalties, if any, not be imposed upon Noticees under the provisions of Section 15A(b) of SEBI Act, for the violations alleged in the SCNs as per details hereunder:

Table - 1

Noticee	Name of Noticee	Reference no. of SCN
1	Le Waterina Resorts & Hotels Limited	EAD-8/JS/VRP/OW/P/2017/23657/1
2	Mr. Sanjay Jalan	EAD-8/JS/VRP/OW/P/2017/23658/1
3	Ms. Anila Jalan	EAD-8/JS/VRP/OW/P/2017/23659/1
4	Ms. Rinku Jalan	EAD-8/JS/VRP/OW/P/2017/23660/1
5	Mr. R. K. Jalan	EAD-8/JS/VRP/OW/P/2017/23663/1
6	Mr. Kamlesh Shantilal Jain	EAD-8/JS/VRP/OW/P/2017/23661/1

3. The SCNs containing allegations against Noticees are summarized as under:

- a. SEBI observed that the total paid up equity share capital of the company (i.e. Rs. 6.66 crore) remained same during the Investigation period. However, on July 04, 2011, the face value of share was reduced from Rs. 10 to Rs. 1. Hence, there was change in total number of shares for the quarter ended September 2011 compared to the previous quarter from 66,62,840 shares to 6,62,84,000 shares. It is also observed that during the quarter ended December 2010, the number of promoters were reduced from two to one. The details of the promoter shareholding is as under:

Table - 2

Name of promoter	Quarter ended Sep-10		Quarters ended Dec-10 to Jun -11		Quarters ended Sep -11 to Mar -12	
	No of shares	% of shareholding	No of shares	% of shareholding	No of shares	% of shareholding
Mr. Sanjay Jalan	12,23,600	18.36	29,45,545	44.21	2,94,55,450	44.21
Mr. R K Jalan	17,21,945	25.84	-	-	-	-
Total Promoter Holding	29,45,545	44.21	29,45,545	44.21	2,94,55,450	44.21
Total no. of shares	66,62,840	100.00	66,62,840	100.00	6,66,28,400	100.00

- b. SEBI observed during the investigation period that, the Noticee Mr. R K Jalan (father of Mr. Sanjay Jalan) inter-se transferred 17,21,945 shares on December 13, 2010 to the Noticee Mr. Sanjay Jalan, thereby holding of the Noticee Mr. Sanjay Jalan went up from 18.36 % to 44.21% of total number shares. However, the obligation to make public announcement by the Noticee Mr. Sanjay Jalan was exempted u/r 3(3)(e) of SAST Regulations, 1997. The Noticee Sanjay had disclosed u/r 7(1) of SAST Regulations, 1997 and the same was disclosed to the stock exchange by the company. The acquirer submitted proposed acquisition report with SEBI on December 07, 2010. By virtue of inter-se transfer of shares (of 2% of total no. of shares), the Noticee Mr. Sanjay Jalan was required to disclose the change in shareholding under reg. 7(1A) r/w 7(2) of SAST Regulations, 1997 and u/r 13(4) r/w 13(5) of PIT Regulations, 1992 to the company & stock exchange. Further, the Noticee Mr. R. K. Jalan was also required to disclose the change in shareholding under reg. 7(1A) r/w 7(2) of SAST Regulations, 1997 to the company & stock exchange and u/r 13(3) r/w 13(5) of PIT Regulations, 1992 to the company. However, it was observed that the Noticees Mr. Sanjay Jalan and Noticee R K Jalan have not filed disclosures under reg. 7(1A) r/w 7(2) of SAST Regulations, 1997 to the company & stock exchange and u/r 13(3) r/w 13(5) of PIT Regulations, 1992 to the company.
- c. SEBI observed that the Noticee Anila Jalan was holding 12,35,855 shares (i.e. 18.55% of total no. of shares) as on October 01, 2010. It was observed that the Noticee Anila Jalan had transferred shares during the investigation period. Following are the list of transactions where the Noticee Anila Jalan had failed to comply with disclosure requirement under SAST Regulations and PIT Regulations:

Table - 3

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
											SAST	PIT
19/10/2010	12,35,855	18.55	(4,60,000)	7,75,855	11.64	6.91	Off market	Not made	Not made	Not made	7(1A)	13(3)
10/05/2011	7,75,855	11.64	(2,00,000)	5,75,855	8.64	3.00	Off market	Not made	NA	NA	-	13(3)
21/07/2011	57,58,550	8.64	(30,00,000)	27,58,550	4.14	4.50	Off market	Not made	NA	NA	-	13(3)
06/08/2011	23,58,550	3.54	(12,00,000)	11,58,550	1.74	2.40	Off market	Not made	NA	NA	-	13(3)

- d. SEBI observed from the above that the Noticee Anila Jalan was required to make disclosures under regulation u/r 7(1A) read with (r/w) 7(2) of SAST Regulations to the company and stock exchange and u/r 13(3) r/w 13(5) of PIT Regulations, 1992 to the company. SEBI observed that the Noticee Anila Jalan had not made disclosures under SAST Regulations, 1997 to the company and to the stock exchange and to the company under PIT Regulations, 1992.
- e. SEBI observed that, the Noticee Rinku Jalan, a non-promoter entity was holding 6,04,000 shares (i.e. 9.07% of total no. of shares) as on October 01, 2010. It is observed that the Noticee Rinku Jalan had acquired and sold shares during the Investigation period. Following are the list of transactions where the Noticee Rinku Jalan had failed to comply with disclosure requirement under SAST Regulations, 1997 and PIT Regulations, 1992:

Table - 4

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode of transfer	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
											SAST	PIT
08/10/2010	5,53,795	8.31	(2,00,000)	3,53,795	5.31	(3.00)	off market	Not made	NA	NA	-	13(3)
19/10/2010	2,58,795	3.88	4,50,000	7,08,795	10.64	5.33	off market	Not made	Not made	NA	7(1)	13(3)
08/12/2010	5,58,795	8.39	(63,000)	4,95,795	7.44	(3.20)	off market	Not made	NA	NA	-	13(3)
16/12/2010	4,95,795	7.44	(2,00,000)	2,95,795	4.44	3.00	off market	Not made	NA	NA	-	13(3)
24/08/2011	7,10,450	1.07	31,58,550	38,69,000	5.81	1.37	off market	Not made	Not made	NA	7(1)	13(1)
21/09/2011	38,35,998	5.76	(27,00,000)	11,35,998	1.70	4.10	off market	Not made	NA	NA	-	13(3)

- f. SEBI observed from the above, that by virtue of transfer/acquisition of shares, the Noticee Rinku Jalan was required to make disclosures u/r 7(1) r/w 7(2) of SAST Regulations, 1997 to the company and to the stock exchange and u/r 13(3) r/w 13(5) of PIT Regulations, 1992 to the company. SEBI observed that the Noticee Rinku Jalan had not made disclosures under SAST Regulations, 1997 to the company and to the stock exchange and to the company under PIT Regulations, 1992.
- g. SEBI observed that the Noticee Kamlesh Shantilal Jain, a non-promoter entity had acquired shares from the Noticee Ms. Anila Jalan and Ms. Rinku Jalan during the Investigation period. Following are the list of transactions where the Noticee Kamlesh Shantilal Jain had failed to comply with disclosure requirement under SAST Regulations, 1997 and PIT Regulations, 1992:

Table - 5

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/(disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Mode of transfer	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
										SAS T	PIT
21/07/2011	0	0.00	30,00,000	30,00,000	4.50	off market	NA	NA	NA	-	-
21/07/2011	0	0.00	20,00,000	50,00,000	7.50	off market	Not made	Not made	Not made	7(1)	13(1)

- h. SEBI observed from the above, that by virtue of acquisition of shares, Noticee Kamlesh Shantilal Jain was required to make disclosures u/r 7(1) r/w 7(2) of SAST Regulations, 1997 to the company and to the stock exchange and u/r 13(1) of PIT Regulations, 1992 to the company. SEBI observed that Noticee Kamlesh Shantilal Jain had not made disclosures under SAST Regulations, 1997 to the company and to the stock exchange and to company under PIT Regulations, 1992.
- i. SEBI observed that Sangam Agro Agencies P. Ltd. and Miatru Agro Marketing P. Ltd both non-promoter entity had acquired and sold shares on many instances during the Investigation period.

Table – 6 – Transactions of Sangam Agro Agencies Private Limited

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode	Date of disclosure to company	Disclosure by Company to stock exchange
16/09/2011	8,94,013	1.34	38,00,000	46,94,013	7.05	5.70	On market	07/12/2012 29(1) &13(1)	Not made
27/02/2012	41,50,305	6.23	-22.21,486	19,28,819	2.89	3.33	On market	07/12/2012 29(2) & 13(3)	Not made

Table – 7 - Transactions of Miatru Agro Marketing Private Limited

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode	Date of disclosure to company	Disclosure by Company to stock exchange
16/12/2010	1,43,000	2.15	2,00,000	3,43,000	5.15	3.00	Off market	07/12/2012 29(1) & 13(1)	Not made
04/02/2011	3,43,000	5.15	3,00,000	43,000	0.65	4.50	Off market	07/12/2012 13(3)	Not made
21/09/2011	24,32,324	3.65	27,00,000	5,132,324	7.70	7.06	Off market	07/12/2012 29(1) & 13(1)	Not made
24/10/2011	42,32,324	6.35	5,00,000	3,732,324	5.60	2.10	Off market	07/12/2012 13(3)	Not made

- j. SEBI further observed that Noticee Le Waterina had failed to disclose to stock exchange u/r 13(6) of PIT Regulations, 1992 with regard to disclosures received from Sangam Agro Agencies P. Ltd and Miatru Agro Marketing P. Ltd u/r 13(1) and 13(3) of PIT Regulations, 1992.
- k. In view of the above mentioned facts, it is alleged that,
- i. The Noticee Le Waterina has failed to disclose to stock exchange u/r 13(6) of PIT Regulations, 1992 with regard to disclosures received from the Noticees namely Sangam Agro Agencies P. Ltd and Miatru Agro Marketing P. Ltd u/r 13(1) and 13(3) of PIT Regulations, 1992.
 - ii. The Noticee namely Mr. Sanjay Jalan has violated Reg. 7(1A) r/w Reg 7(2) of SAST Regulation, 1997 r/w Reg.35 of SAST Regulation, 2011 and Reg. 13(4) r/w 13(5) of PIT Regulation, 1992 r/w Reg 12(2) of PIT Regulations 2015.
 - iii. The Noticee namely Ms. Anila Jalan has violated Reg. 7(1A) r/w Reg 7(2) of SAST Regulation, 1997 r/w Reg.35 of SAST Regulation, 2011 and Reg. 13(3) of PIT Regulation, 1992 r/w Reg.12(2) of PIT Reg. 2015.
 - iv. The Noticee namely Ms. Rinku Jalan has Reg. 7(1) r/w Reg 7(2) of SAST Regulation, 1997 r/w Reg.35 of SAST Regulation, 2011 and Reg 13(1) and 13(3) of SEBI PIT Regulation, 1992 r/w Regulation 12(2) of SEBI (PIT) Regulation, 2015.
 - v. The Noticee namely Mr. Kamlesh Shantilal Jain has violated Reg. 7(1) r/w Reg 7(2) of SAST Regulation, 1997 r/w Reg.35 of SAST Regulation, 2011 and Reg 13(1) of PIT Regulation, 1992 r/w Reg. 12(2) of PIT Regulation, 2015.

vi. The Noticee namely Mr. R K Jalan has violated Reg. 7(1A) r/w Reg 7(2) of SAST Regulation, 1997 r/w Reg. 35 of Regulation, 2011 and Reg. 13(3) of PIT Regulations, 1992 r/w Reg 12(2) of PIT Regulations 2015.

4. The erstwhile AO, in his order dated March 20, 2019 (hereinafter referred to as '**Adjudication order**') concluded that Noticees had violated the respective provisions of PIT Regulations, 1992 and SAST Regulations, 1997 and imposed penalties on Noticees accordingly. The Adjudication order was challenged by Noticees in the Hon'ble Securities Appellate Tribunal (hereinafter referred as '**SAT**') in Appeal No.s 341, 342, 343, 399, 400 and 540 of 2019. The Hon'ble SAT, vide order dated February 23, 2021 (herein after referred to as '**SAT Order**'), set aside Adjudication order and directed as under:

"...we find that the AO has not considered the judgment of this Tribunal in Ravi Mohan and other connected Appeal No. 97 of 2014 decided on 16.12.2015 wherein it was held that for violation of Regulation 7(1A) and 7(2) of SAST Regulations, 1997, no penalty could be imposed. In Rakesh Kathotia and Ors in Appeal No. 7 of 2016, decided on 27.05.2019, this Tribunal held that decision in Ravi Mohan was duly accepted by SEBI.....In another appeal Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02, 2019, the same view was taken by this Tribunal and imposition of penalty was quashed."

"... Since the aforesaid decision has not been considered, we are of the opinion that the impugned order has to be set aside on this short ground itself leaving it open to the AO to pass fresh order....."

....we direct the AO to decide the matter within six months from today. We also direct the appellants to appear before the AO on 8th March. 2021. "

5. In accordance with the aforesaid SAT order, SEBI, vide order dated February 26, 2021, appointed the undersigned as Adjudicating Officer under Section 19 read with Section 15I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to

as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15A(b) of SEBI Act, the aforesaid alleged violations by Noticees.

6. In view of the aforesaid SAT Order, Noticees 1 to 5 were granted an opportunity of personal hearing on March 08, 2021, vide hearing notices dated March 02, 2021 and a copy of SCN, issued to Noticee 6 by the erstwhile AO, was served upon Noticee 6 vide email and letter dated March 02, 2021. The aforesaid hearing notices and the copy of the SCN were duly served upon the respective Noticees. However, Noticees 1 to 5 requested for adjournment of hearing, due to difficulties on account of Covid-19 pandemic. Their request was acceded to and they were granted another opportunity of hearing on March 22, 2021 to be conducted through video conferencing. Authorised Representative of Noticees (hereinafter referred to as '**AR**'), M/s Interjuris, Advocates & Consultants, appeared in the online hearing and requested for another date for hearing which was acceded to and Noticees were granted hearing on April 01, 2021. The AR attended the hearing and requested for copies of certain documents and also requested for additional time for submitting replies. The request of AR was acceded to and Noticees were duly provided with the copies of requested documents and were advised to file replies to the SCN latest by April 19, 2021. Noticees filed replies to the SCN vide respective emails. Subsequently, hard copies of the replies were also filed by the AR on behalf of Noticees vide letter dated July 12, 2021. Thereafter, AR requested for another opportunity of hearing which was acceded to and vide hearing notice dated July 08, 2021, Noticees were granted final opportunity of hearing on July 15, 2021. In view of the difficulties posed due to Covid -19 pandemic and subsequent lockdown, hearing proceedings were conducted online through videoconferencing. The AR attended the online hearing and reiterated contents of their earlier submissions. AR also requested for time to file a compilation of judgments in support of their submissions which they submitted on July 16, 2021.
7. The common contentions made by Noticees 1 to 6 vide their aforesaid submissions/ replies are summarized hereunder:

- a. *That violation if any of provisions of the Securities and Exchange Board of India Act, 1992 and the rules made thereunder are inadvertent and due to ignorance of procedures by staff and consultants.*
- b. *That lack of disclosures or defects if any, may be technical in nature, which may have been due to oversight of staff and lack of their knowledge in handling matters pertaining to compliance of capital market regulations.*
- c. *That Noticees should be discharged from the proceedings without levy of any penalty.*
- d. *Not deliberate, intentional or with a view to cause offence or gained unfair advantage or caused loss to investors. It is sheer inability to garner resources, due to the precarious state of finances.*
- e. *That, as it is a very old matter and after diligent effort Noticees are not in a position to trace the old document to produce before the Adjudicating officer to show their bonafide in respect of the facts. They crave leave to refer to and rely upon documents and correspondences in regards proceeding before the AO in 2017 if required during the course of the present proceeding.*
- f. *That part of the records of the Company has been lost due to floods in December, 2015.*
- g. *That non-compliance was not deliberate, willful or with ulterior motive, hence had requested for condoning any alleged non-compliance which may be technical in nature.*
- h. *That charges levelled against Noticees may be dropped.*
- i. *That even if any penalty is to be imposed, the same ought to be imposed collectively.*

8. Additional submissions made by Noticee 2 vide his aforesaid letters / replies are summarized hereunder:

- a. *That he has not disposed of any shares, profited or attempted to make profit from the shares acquired by him from his father nor have engaged any transaction violative of the provisions of law.*
- b. *That he is the Promoter and Director of the Company, Le Waterina Resorts & Hotel Limited and Shareholder of 2,95,55,450 Equity Shares of Re. 1/- each of the said company which is incorporated under the Companies Act, 1956.*
- c. *That on 13th December, 2010 he have received gift of 17,21,945 equity shares of Le Waterina Resorts & Hotel Limited from his father, Mr. R.K. Jalan who was the Managing Director of M/s. Harrington Industries Limited (Now known as Le Waterina Resorts and Hotels) out of his natural love and affection towards him and also due to his old age he had wanted to move out from the day to day operations of the company.*
- d. *That he had duly intimated regarding aforesaid transaction of gift of equity shares by his father to him to the stock exchange vide letter dated 6th December, 2010*

intimating the proposed date of acquisition i.e. 13th December, 2010. Vide the said intimation he had also intimated before the gift that he was holding 18.36 % of equity shares of the said company and after the gift he would be holding 44.20% of equity shares of the said company.

- e. *That he had intimated SEBI about acquisition of the said shares by letter dated 6th December, 2010. It is also pertinent to note that letter dated 6th December, 2010 which was written by Company to Bombay Stock Exchange which was duly acknowledged by Bombay Stock Exchange.*
- f. *That the Company vide letter dated 12th April, 2011, also intimated to the Bombay Stock Exchange details of shareholding obtained u/s. 8(1) and 8(2) from acquirer/s by target company to Stock Exchange in terms of Regulation 8(3) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations 1997 as on 31st March, 2011.*
- g. *That the company and he vide even dated letter dated 6th Dec, 2010 have intimated to Bombay Stock Exchange with CC to SEBI under Regulation 3(3) of SAST Regulation, 1997 in regards to proposed transfer of equity shares from his father to him by gift.*
- h. *That as he had not made any violation and the transaction was with his own family member, being transfer by way of gift from his father, hence any violation if at all held could be technical in nature which should attract minimum penalty.*

9. Additional submissions made by Noticee 3 vide its aforesaid letters/ replies are summarized hereunder:

- i. *That she is a homemaker and senior citizen and have been in very poor health due to multiple ailments and am ignorant about the commercial operation of the company and do not have any knowledge about trading of shares in stock exchange*
- j. *That she was fully duped by a broker due to her ignorance and old age.*
- k. *That she had gifted shares to Rinku Jalan.*
- l. *That she had been cheated by various entities and suffered heavy losses.*
- m. *That violations if any, are inadvertent and technical in nature which may have been due to oversight and ignorance*
- n. *She has not committed any violations of PIT Regulations, 1992 and SAST Regulations, 1997*

10. Additional submissions made by Noticee 5 vide its aforesaid letters / replies are summarized hereunder:

- a. *That he was the Managing Director of M/s. Harrington Industries Limited (Now known as Le Waterina Resorts and Hotels Lirnited). Due to ill health he decided to give his shares in the said company, i.e., Le Waterina Resorts & Hotel Limited, to*

- his son Sanjay Jalan who was actively involved in the day to day affairs of the company and accordingly gifted all his shares to his son Sanjay Jalan on 13th December, 2010 without any consideration.*
- b. *That the acquirer of the said shares, had intimated SEBI and BSE about acquisition of the said shares by letter dated 6th December, 2010 and BSE acknowledged the receipt of said notice on 7th December, 2010.*
 - c. *That the Company vide letter dated 12th April, 2011, also intimated to the Bombay Stock Exchange details of shareholding obtained u /s. 8(1) and 8(2) from acquirer/s by Target Company to Stock Exchange in terms of Regulation 8(3) of SAST Regulations, 1997 as on 31st March, 2011.*

11. Additional submissions made by Noticee 4 vide its aforesaid letters / replies are summarized hereunder:

- a. *That she had incurred losses from the shares held by her. Violations if any are inadvertent and due to ignorance.*
- b. *That she was gifted these shares by Noticee 3.*
- c. *That she was approached by one broker to help her sell equity shares in the said company to various entities. She signed share transfer forms. However, she was cheated and never paid any money. She never disclosed it to anyone.*
- d. *That she had not made any gains or caused losses to the investors.*

12. Noticees 2 to 6 also quoted Judgments of Hon'ble SAT in the matters of Ravi Mohan and other connected Appeal No. 97 of 2014, Rakesh Kathotia and Ors in Appeal No. 7 of 2016, decided on 27.05.2019 and Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02, 2019, in support of their submissions. The extract of the judgment 2015 SCC Online SAT 112 in the matter of Ravi Mohan and other connected Appeal No.97 of 2014 is reproduced as under:

*"27. It is relevant to note that while inserting regulation 7(1A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1A) has to be made within two days of the events specified in regulation 7(2). **On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting***

rights in excess of the limits prescribed under regulation 7(1A). As a result, even though regulation 7(1A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Since regulation 7(2) **as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1A), the question of discharging that obligation arising under regulation 7(1A) read with regulation 7(2) does not arise at all.**

28. It was open to SEBI to make newly inserted regulation 7(1A) self operative, because regulation 7(1A) itself provides that the obligation set out therein has to be discharged within two days of purchase or sale specified therein. However, SEBI in its wisdom deemed it fit to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation specified under regulation 7(1) and 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Thus, by 2002 amendment it is made clear that although disclosure of purchase or sale referred to under regulation 7(1A) has to be discharged within two days of purchase or sale, of shares referred to therein, by amending regulation 7(2) it is provided that two days time to make disclosure under regulation 7(1A) shall commence on the happening of events specified under regulation 7(2). **Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1A), the question of complying with regulation 7(1A) within two days of sale of shares does not arise at all.**

29. It is not even the case of SEBI, that regulation 7(1A) is self operative and that the obligation there under has to be discharged independent of regulation 7(2). In fact, in the impugned order, it is held by the AO that by failing to make disclosure to the stock exchanges regarding aggregate sale of shares or voting rights in excess of 2% of the share capital of the target company, the appellants are guilty of violating regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. **Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the**

limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants."

13. The extract of the judgment 2019 SCC OnLine SAT 74 in the matter of Rakesh Kathotia and Others in appeal no. 7 of 2016 decided on 27th May, 2019 is reproduced as under:

"27. In view of our interpretation of Regulation 7(1A) read with Regulation 7(2) we differ with the view taken by this Tribunal in the case of Ravi Mohan and Others vs. SEBI in Appeal no. 97 of 2014 and other companion appeals decided on 15.2.2015 wherein the Tribunal held:

"Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have fail

ed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained. "

28. In our view, the sale made by the appellants which aggregated two percent or more of the share capital of the target Company was required to be disclosed by the acquirer / appellants of the target Company within two days under Regulation 7(1A). Thus, for non-disclosure of the sale of shares the appellants have violated the provisions of Regulation 7(1A).

29. However, the appellants cannot be faulted and penalised on this score at this stage. They have a decision in their favour in the case of Ravi Mohan (supra) which is still valid till date and has not been set aside by a superior forum... "

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

14. I have carefully perused the charges levelled against Noticees, replies/ submissions filed by Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

(a) Whether

- i. Noticee 1 violated provisions of 13(6) of PIT Regulations, 1992 with regard to disclosures received from entities under Regulations 13(1) and 13(3) of PIT Regulations, 1992.
- ii. Noticee 2 has violated Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 and Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.
- iii. Noticee 3 has violated Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 and Regulation 13(3) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.
- iv. Noticee 4 has violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 and Regulations 13(1) and 13(3) of SEBI PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.
- v. Noticee 5 has violated Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of Regulations, 2011 and Regulation 13(3) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.
- vi. Noticee 6 has violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011 and Regulation 13(1) of PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

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

(c) If so, what should be the quantum of monetary penalty(ies) to be imposed?

15. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 1997, SAST Regulations, 2011, PIT Regulations, 1992 and PIT Regulations, 2015, which are reproduced as under:

SAST Regulations, 1997

DISCLOSURES OF SHAREHOLDING AND CONTROL IN A LISTED COMPANY

Acquisition of 5 per cent and more shares or voting rights of a company.

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(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.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within 4[two days] of,—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Regulation 35 of SAST Regulations, 2011

Repeal and Savings.

35.(1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Regulation 13 of PIT Regulations, 1992

1[Disclosure of interest or holding in listed companies by certain persons – Initial Disclosure]

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

(2) Any person who is a director or officer of a listed company shall disclose to the company in Form B the number of shares or voting rights held and positions taken in derivatives by such person and his dependents (as defined by the company), within two working days of becoming a director or officer of the company.

(2A) Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.

Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C 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.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations ²[(3), (4) and (4A)] shall be made within two

¹ Substituted for the words “Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

working days of :

- (a) the receipts of intimation of allotment of shares, or
- (b) the acquisition or sale of shares or voting rights, as the case may be.

Disclosure by company to stock exchanges.

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations ³[(1), (2), (2A), (3), (4) and (4A)] in the respective formats specified in Schedule III.

Relevant provisions of PIT Regulations, 2015:

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.
- (2) Notwithstanding such repeal,—
- (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and
 - (b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
 - (3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

Issue No. 1: Whether Noticees have violated the aforesaid provisions of SAST Regulations, 1997 and PIT Regulations, 1992.

16. From the submissions of Noticees, I note that they have not disputed the impugned acquisitions/disposals made by them in the scrip of Le Waterina as mentioned in the SCN.

² Substituted for the symbols, numbers and word “(3) and (4)” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

³ Substituted for the symbols, numbers and word “(1), (2), (3) and (4)” by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

17. It is alleged that Noticee 1, a listed company, violated Regulation 13(6) of PIT Regulations, 1992 by failing to disclose to BSE, the information received from Sangam and Miatru under Regulations 13(1) and 13(3) of PIT Regulations, 1992, as depicted in Table 8 below:

Table – 8

Date	Entity name	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode	Date of disclosure to company
16/09/2011	Sangam	8,94,013	1.34	38,00,000	46,94,013	7.05	5.70	On market	07/12/2012 13(1)
27/02/2012	Sangam	41,50,305	6.23	(22.21,486)	19,28,819	2.89	3.33	On market	07/12/2012 13(3)
16/12/2010	Miatru	1,43,000	2.15	2,00,000	3,43,000	5.15	3.00	Off market	07/12/2012 13(1)
04/02/2011	Miatru	3,43,000	5.15	(3,00,000)	43,000	0.65	4.50	Off market	07/12/2012 13(3)
21/09/2011	Miatru	24,32,324	3.65	27,00,000	5,132,324	7.70	7.06	Off market	07/12/2012 13(1)
24/10/2011	Miatru	42,32,324	6.35	(5,00,000)	3,732,324	5.60	2.10	Off market	07/12/2012 13(3)

18. I observe from records that two entities viz. Sangam Agro Agencies Private Limited (hereinafter referred to as '**Sangam**') and Miatru Agro Marketing Private Limited (hereinafter referred to as '**Miatru**') had transacted in shares of Le Waterina, on two (2) days, i.e., September 16, 2011 and February 27, 2012 and four (4) days, i.e., on December 16, 2010, February 04, 2011, September 21, 2011 and October 24, 2011 respectively and filed disclosures w.r.t. the above transactions under Regulations 13(1) and 13(3) of PIT Regulations, 1992, with Noticee 1 on December 07, 2012. In terms of Regulation 13(6) of PIT Regulations, 1992, Noticee 1 was required to disclose the aforesaid information received from Sangam and Miatru to BSE within two working days from December 7, 2012. However, there is no evidence placed on record to show that Noticee 1 filed the requisite disclosures as required under Regulation 13(6) of PIT Regulations, 1992.

19. In their submission, Noticee 1 has stated that lack of disclosures or defects if any, may be technical in nature, which may have been due to oversight of staff

and lack of their knowledge in handling matters pertaining to compliance of capital market regulations. Noticee 1 further states that the company is not in an operational state and therefore unable to ascertain the facts relating to disclosures. Noticee 1 also submits that the alleged non-disclosure has been caused due to inadvertence and ignorance of procedure by staff and consultant employed for following due process. I note that Noticee 1 has not denied these allegations and has in fact admitted to the default, albeit calling it a technical one. Nevertheless, since Noticee 1 has not produced any evidence of the requisite disclosure being made under Regulation of 13(6) of PIT Regulations, 1992, I conclude that Noticee 1 has failed to comply with the provisions of Regulation 13(6) of PIT Regulations, 1992.

20. It is alleged that Noticee 2 violated the provisions Regulations 13(4) read with 13(5) of PIT Regulations, 1992, w.r.t. his acquisition of shares of Le Waterina as per details given hereunder in Table 9:

Table – 9

Name of promoter	Quarter ended Sep-10		Quarters ended Dec-10 to Jun -11		Quarters ended Sep -11 to Mar -12	
	No of shares	% of shareholding	No of shares	% of shareholding	No of shares	% of shareholding
Mr. Sanjay Jalan	12,23,600	18.36	29,45,545	44.21	2,94,55,450	44.21
Mr. R K Jalan	17,21,945	25.84	-	-	-	-
Total Promoter Holding	29,45,545	44.21	29,45,545	44.21	2,94,55,450	44.21
Total no. of shares	66,62,840	100.00	66,62,840	100.00	6,66,28,400	100.00

21. I note from Annual Reports of the company as available on the BSE website that Noticee 2 was a director of the company at the time of the impugned transaction.

22. I note that Noticee 2 acquired 17,21,945 shares of Le Waterina on December 13, 2010, because of which his holding in Le Waterina increased from 12,23,600, i.e., 18.36 % of total paid-up share capital of the company to 29,45,545, i.e., 44.21% of total paid-up share capital of the company.

23. I note that for the aforesaid transaction, Noticee 2, being a director of the company at the time of execution of the said transaction, was required to file requisite disclosures to BSE and the company within in terms of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992. However, there is no evidence placed on record to show that Noticee 2 filed the disclosures as required in terms of the aforesaid provisions of PIT Regulations, 1992, for the said acquisition of shares on December 13, 2010.

24. It is also alleged that w.r.t. the transaction in the shares of Le Waterina on December 13, 2010 as per details given in Table 9 above, Noticee 2 violated provisions of Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997. I observe that on December 13, 2010, the shareholding of Noticee 2 increased from 18.36% to 44.21% of total paid-up share capital of the company, on account acquisition of shares by him. A perusal of Regulations 7(1A) Regulation and 7(2) of SAST Regulation, 1997 shows that for the aforementioned acquisition, which was in excess of 2% of total paid-up share capital of the company, Noticee 2 was required to make requisite disclosures to the company and BSE within two days of aforesaid acquisition. However, there is no evidence placed on record to show that Noticee 2 filed the requisite disclosures as required in terms of Regulation 7(1A) Regulation read with 7(2) of SAST Regulation, 1997, for the aforesaid acquisition of shares on December 13, 2010.

25. In their submissions, Noticee 2 has denied the allegations and has contended that he had received the said shares by way of gift from his father, Noticee 5 and vide letter dated December 06, 2010, he had informed BSE in advance in respect of transfer of equity shares by way of gift from Noticee 5, proposed to take place on December 13, 2010. I note from the evidence placed in support of their contentions that Noticee 2 has filed disclosures under Regulation 3(3) of SAST Regulations, 1997, in respect of the proposed transfer of shares from Noticee 5 to him. Noticee 2 has also contended that such non-disclosure of change in shareholding under Regulation 7(1A) Regulation read with 7(2) of

SAST Regulation, 1997 and under Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 was only a technical defect.

26. In this regard, I note that Noticee 2 has made contradictory submissions, i.e., while on hand, he has denied the allegations in the SCN, on the other hand, he has accepted that there has been an omission on his part w.r.t. to complying with aforesaid disclosure requirements. I note that disclosure requirements in terms of Regulation 7(1) of SAST Regulations, 1997 and Regulation 13 of PIT Regulations 1992, are triggered on specific events and do not distinguish between manner or mode of transactions. In terms of requirement of aforesaid SAST Regulations, 1997 and PIT Regulations, 1992, requisite disclosures are to be made based on every event of either acquisition or disposal of shares/voting rights in excess of the limits specified therein in terms of number/value/percentage. In the instant matter, disclosure requirements were triggered because of changes in the shareholding of Noticee 2 beyond the threshold levels as specified in the aforesaid regulations. As admitted by Noticee 2, he had acquired shares of Le Waterina, for which necessary disclosures, as mandated under the respective provisions of SAST Regulations, 1997 as well as PIT Regulations, 1992, ought to have been made by him after the said acquisition. However, Noticee 2 has failed to furnish any proof of having made the requisite disclosures under the aforesaid provisions of PIT Regulations, 1992 and SAST Regulation, 1997. Therefore, I do not find any merit in this contention of Noticee 2.

27. In support of his contention, Noticee 2 has quoted Judgments of Hon'ble SAT in the matters of Ravi Mohan and other connected Appeal No. 97 of 2014, Rakesh Kathotia and Ors in Appeal No. 7 of 2016, decided on 27.05.2019 and Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02, 2019, However, I do not find the aforesaid judgments to be relevant for the allegations levelled against Noticee 2.

28. In his averment, Noticee 2 has also contended that change in shareholding were covered in the yearly disclosures filed by the Company in terms of Regulation 8(3) of SAST Regulations, 1997, as on March 31, 2011. In this regard, I note that every regulatory provision has to be complied with in the manner in which it is specified, in order to fulfill its specific purpose and such requirement cannot be substituted by some alternative means of compliance, as is being contended by Noticee 2. Therefore, I do not find merit in this contention of Noticee 2. In this context, I would like to rely on order of Hon'ble SAT in Premchand Shah and Others V. SEBI (Appeal no. 192 of 2010 dated February 21, 2011), wherein it was 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* "

29. Therefore, I find that Noticee 2 has failed to comply with the provisions of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992. I also find that Noticee 2 has failed to comply with the provisions of Regulation 7(1A) Regulation read with 7(2) of SAST Regulation, 1997.

30. It is alleged that Noticee 3 violated provisions of Regulation 13(3) of PIT Regulation, 1992 w.r.t. the transactions in the shares of Le Waterina as per details given hereunder in Table 10:.

Table – 10

Date	No of shares held - pre Acquisition/ disposal	% of share holding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
											SAST	PIT
19/10/2010	12,35,855	18.55	(4,60,000)	7,75,855	11.64	6.91	Off market	Not made	Not made	Not made	7(1A)	13(3)
10/05/2011	7,75,855	11.64	(2,00,000)	5,75,855	8.64	3.00	Off market	Not made	NA	NA	-	13(3)
21/07/2011	57,58,550	8.64	(30,00,000)	27,58,550	4.14	4.50	Off market	Not made	NA	NA	-	13(3)
06/08/2011	23,58,550	3.54	(12,00,000)	11,58,550	1.74	2.40	Off market	Not made	NA	NA	-	13(3)

31. I observe from available records that prior to the transaction on October 19, 2010, Noticee 3 was holding 12,35,855 shares of Le Waterina (i.e. 18.55% of total paid-up share capital of the company). On October 19, 2010, Noticee 3 sold 4,60,000 shares of the company resulting in decrease in her shareholding from 18.55% to 11.64%. Thereafter, her shareholding decreased from 11.64% to 8.64% on account of sale of 2,00,000 shares on May 10, 2011, from 8.64% to 4.14% on account of sale of 30,00,000 shares on July 21, 2011 and decreased from 3.54% to 1.74% on account of sale of 12,00,000 shares on August 06, 2011.

32. I observe that prior to the sale of shares on August 06, 2011, Noticee 3 was holding 3.54% of total paid-up share capital of the company, i.e., less than 5%. Therefore, I find that for this transaction, disclosure requirements as specified under Regulation 13(3) of PIT Regulations, 1992 would not be attracted. For disposal of shares on October 19, 2010, May 10, 2011 and July 21, 2011, which were in excess of 2% of total shareholding in the company, Noticee 3 was required to make requisite disclosures to the company in terms of Regulation 13(3) of PIT Regulations, 1992. However, there is no evidence placed on record to show that Noticee 3 filed the disclosures, as required in terms of the aforesaid regulation.

33. Noticee 3 in her submissions has stated that, violations if any, are inadvertent and technical in nature which may have been due to oversight and ignorance. The Noticee 3 further states that she had gifted the shares to Noticee 4 without receiving any consideration. Further, in her submission Noticee 3 goes on to deny the allegations in the SCN and states that she has not committed any violations of PIT Regulations, 1992 and SAST Regulations, 1997.

34. In this regard, I note that Noticee 3 has made contradictory submissions, i.e., while on hand, she has denied the allegations in the SCN, on the other hand, she has accepted that there has been an omission on her part w.r.t. to

complying with aforesaid disclosure requirements. I note that disclosure requirements in terms of Regulation 13 of PIT Regulations 1992, are triggered on specific events and do not distinguish between manner or mode of transactions. In terms of requirement of aforesaid PIT Regulations, 1992, requisite disclosures are to be made based on every event of either acquisition or disposal of shares/voting rights in excess of the limits specified therein in terms of number/value/percentage. In the instant matter, disclosure requirements were triggered because of changes in the shareholding of Noticee 3 beyond the threshold levels as specified in the aforesaid regulations. As admitted by Noticee 3, she had disposed of shares of Le Waterina, for which necessary disclosures, as mandated under the provisions of PIT Regulations, 1992, ought to have been made by her. However, Noticee 3 has not furnished any evidence of complying with the provisions of Regulation 13(3) of PIT Regulations, 1992. Therefore, I do not find any merit in this contention of Noticee 3.

35. In support of her contention, Noticee 3 has also quoted Judgments of Hon'ble SAT in the matters of Ravi Mohan and other connected Appeal No. 97 of 2014, Rakesh Kathotia and Ors in Appeal No. 7 of 2016, decided on 27.05.2019 and Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02, 2019, However, I do not find the aforesaid judgments to be relevant for the allegation in respect of Regulation 13(3) of PIT Regulations, 1992, levelled against Noticee 3.

36. Therefore, I find that Noticee 3 failed to comply with the provisions of Regulation 13(3) of PIT Regulations, 1992 on the aforesaid three occasions.

37. It is also alleged that Noticee 3 violated provisions of Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 w.r.t. the transactions in the shares of Le Waterina on October 19, 2010 when the shareholding of Noticee 3 reduced from 18.55% to 11.64% of total paid-up share capital of the company,

on account sale of shares by her. This aspect has been dealt with in subsequent paragraphs of this order.

38. It is alleged that Noticee 4 has violated Regulations 13(1) and 13(3) of SEBI PIT Regulations, 1992 w.r.t. the transactions in the shares of Le Waterina as per details given hereunder in Table 11: :-

Table – 11

Date	No of shares held - pre Acquisition/ disposal	% of share holding held - pre Acquisition/ disposal	No of shares Acquired/ (disposed off)	No of shares held - post Acquisition/ disposal	% of shareholding held - post Acquisition/ disposal	Change in shareholding from previous disclosure as % of paid up capital	Mode of transfer	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
											SA	PIT
08/10/2010	5,53,795	8.31	(2,00,000)	3,53,795	5.31	(3.00)	off market	Not made	NA	NA	-	13(3)
19/10/2010	2,58,795	3.88	4,50,000	7,08,795	10.64	5.33	off market	Not made	Not made	NA	7(1)	13(3)
08/12/2010	5,58,795	8.39	(63,000)	4,95,795	7.44	(3.20)	off market	Not made	NA	NA	-	13(3)
16/12/2010	4,95,795	7.44	(2,00,000)	2,95,795	4.44	3.00	off market	Not made	NA	NA	-	13(3)
24/08/2011	7,10,450	1.07	31,58,550	38,69,000	5.81	1.37	off market	Not made	Not made	NA	7(1)	13(1)
21/09/2011	38,35,998	5.76	(27,00,000)	11,35,998	1.70	4.10	off market	Not made	NA	NA	-	13(3)

39. I note that Noticee 4 was holding 5,53,795 shares (i.e. 8.31% of total paid-up share capital of the company) prior to her transaction on October 08, 2010. On October 8, 2010, Noticee 4 sold 2,00,000 shares of the company resulting in her shareholding decreasing to 5.31% of the total paid up capital of the company from 8.31%. Further, on account of sale of 2,00,000 shares on December 16, 2010, her shareholding reduced from 7.44% to 4.44 % of total paid-up share capital of the company. Similarly, her shareholding reduced from 5.76% to 1.70% on account of sale of 27,00,000 shares of Le Waterina on September 21, 2011.

40. I note that on these three occasions, i.e., on October 8, 2010, December 16, 2010 and September 21, 2011, when Noticee 4 was holding more than 5% of shares of Le Waterina, and had disposed of shares in excess of 2% of total

shareholding in the company, she was required to make requisite disclosures to the company in terms of Regulation 13(3) of PIT Regulations, 1992. However, there is no evidence placed on record to show that Noticee 4 filed the disclosures, as required in terms of the aforesaid regulation. Therefore, I find that Noticee 4 did not comply with the provisions of Regulation 13(3) of PIT Regulations, 1992 for the aforesaid three transactions.

41. I observe that prior to the acquisition of shares on October 19, 2010, Noticee 4 was holding 3.88% of the total paid up share capital of the company, i.e. less than 5%. Further, the sale of 63,000 shares on December 8, 2010 did not cause the change in her shareholding to exceed 2% of total shareholding. Therefore, for the aforesaid two (2) transactions on October 19, 2010 and December 8, 2010, I find that Noticee 4 would not be required to make any disclosures in terms of Regulation 13(3) of PIT Regulations, 1992.

42. Further, I note that post acquisition of 7,10,450 shares by Noticee 4 on August 24, shareholding of Noticee 4 breached 5% of total shareholding for which she was required to file requisite disclosures to the company within 2 working days of such acquisition in terms of Regulation 13(1) of PIT Regulations, 1992. However, there is no evidence placed on record to show that Noticee 4 filed the disclosures, as required in terms of the aforesaid regulation. Therefore, I find that Noticee 4 has failed to comply with the provisions of Regulation 13(1) of PIT Regulations, 1992 for the aforesaid transaction.

43. It is also alleged that Noticee 4 violated provisions of Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 w.r.t. the transactions in the shares of Le Waterina on October 19, 2010 and August 24, 2011 as per details given in Table 11 above. I observe that on October 19, 2010 and on August 24, 2011, the shareholding of Noticee 4 increased from 3.88% to 10.46% (on account of acquisition of 4,50,000 shares) and from 1.07% to 5.81% (on account of acquisition of 31,58,550 shares) of total paid-up share capital of the company, respectively. For the aforesaid transactions, Noticee 4 was required to make

requisite disclosures to the company and BSE within two days of aforesaid events, in terms of Regulation 7(1) read with 7(2) of SAST Regulations, 1997. However, there is no evidence placed on record to show that Noticee 4 filed the disclosures, as required in terms of the aforesaid provisions of SAST Regulations, 1997.

44. In her submissions, Noticee 4 has admitted that violations, if any, were inadvertent and due to ignorance of procedures. Noticee 4 has further admitted that lack of disclosures may have been technical in nature due to oversight and lack of knowledge in this regard. Noticee 4 further submitted that she had received the shares from Noticee 3 by way of gift without payment of any consideration and had also incurred losses from the shares held by her.

45. In support of her contention, Noticee 4 has also quoted Judgments of Hon'ble SAT in the matters of Ravi Mohan and other connected Appeal No. 97 of 2014, Rakesh Kathotia and Ors in Appeal No. 7 of 2016, dated on 27.05.2019 and Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02, 2019. However, I do not find the aforesaid judgments to be relevant for the allegations levelled against Noticee 4.

46. In view of the foregoing, I find that Noticee 4 has failed to comply with the provisions of Regulation 7(1) read with 7(2) of SAST Regulations, 1997

47. It is alleged that Noticee 5 violated the provisions of Regulation 13(3) of PIT Regulations, 1992 w.r.t. the transactions in the shares of Le Waterina as per details given in Table - 12 hereunder:-

Table - 12

Name of promoter	Quarter ended Sep-10		Quarters ended Dec-10 to Jun -11		Quarters ended Sep -11 to Mar -12	
	No of shares	% of shareholding	No of shares	% of shareholding	No of shares	% of shareholding
Mr. Sanjay Jalan	12,23,600	18.36	29,45,545	44.21	2,94,55,450	44.21
Mr. R K Jalan	17,21,945	25.84	-	-	-	-
Total Promoter Holding	29,45,545	44.21	29,45,545	44.21	2,94,55,450	44.21
Total no. of shares	66,62,840	100.00	66,62,840	100.00	6,66,28,400	100.00

48. I note from available records that Noticee 5 was holding 17,21,945 shares (25.84% of total paid-up share capital) of the Company during the quarter ended September, 2010. On December 13, 2010, Noticee 5 disposed off his entire shareholding, due to which the shareholding of Noticee 5 reduced from 25.84% of total paid-up share capital of the Company to 'nil'.
49. For the aforesaid sale, which was in excess of 2% of total paid-up share capital of the company, Noticee 5 was required to make requisite disclosures to the company in terms of Regulation 13(3) of PIT Regulations, 1992. However, I find no evidence on record to show that Noticee 5 filed the requisite disclosures, as required in terms of the aforesaid regulation.
50. In his submissions, Noticee 5 has denied the allegations levelled in the SCN. However, he goes on to state that violations if any, were inadvertent and lack of disclosures were technical omissions due to oversight of staff. Noticee 5 further states that the shares were transferred by him to Noticee 2 by way of gift and disclosures, if any, were required to be made by the acquirer and by the company.
51. In the instant matter, disclosure requirements were triggered because of changes in the shareholding of Noticee 5 beyond the threshold levels as specified in Regulation 13(3) of PIT Regulations, 1992. As admitted by Noticee 5, he had disposed of shares of Le Waterina, for which necessary disclosures, as mandated under the provisions of PIT Regulations, 1992, ought to have been made by him. However, Noticee 5 has not furnished any evidence of having complied with the provisions of Regulation 13(3) of PIT Regulations, 1992. Therefore, I do not find any merit in this contention of Noticee 5.
52. In support of his contention, Noticee 5 has also quoted Judgments of Hon'ble SAT in the matters of Ravi Mohan and other connected Appeal No. 97 of 2014, Rakesh Kathotia and Ors in Appeal No. 7 of 2016, decided on 27.05.2019 and Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02,

2019, However, I do not find the aforesaid judgments to be relevant for the allegation in respect of Regulation 13(3) of PIT Regulations, 1992, levelled against Noticee 5.

53. Therefore, I find that Noticee 5 failed to comply with the provisions of Regulation 13(3) of PIT Regulations, 1992.

54. It is also alleged that Noticee 5 violated provisions of Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 w.r.t. the transactions in the shares of Le Waterina on December 13, 2010 when the shareholding of Noticee 5 reduced from 25.84% of total paid-up share capital of the Company to 'nil', on account sale of shares by him. This aspect has been dealt with in subsequent parts of this order.

55. It is alleged that Noticee 6 has violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 w.r.t. the transactions in the shares of Le Waterina as per details given in Table - 13 hereunder:-

Table – 13

Date	No of shares held - pre Acquisition/ disposal	% of shareholding held - pre Acquisition/ disposal	No of shares Acquired / (disposed off)	No of shares held post Acquisition/ disposal	% of shareholding held post Acquisition/ disposal	Mode of transfer	Date of disclosure to company	Date of disclosure to stock exchange	Disclosure by Company to stock exchange	Violation of Regulation(s)	
										SAST	PIT
21/07/2011	0	0.00	30,00,000	30,00,000	4.50	off market	NA	NA	NA	-	-
21/07/2011	0	0.00	20,00,000	50,00,000	7.50	off market	Not made	Not made	Not made	7(1)	13(1)

56. I observe from available records that on July 21, 2011, Noticee 6 acquired 50,00,000 shares of Le Waterins due to which his shareholding increased from 'nil' to 7.5% of total paid-up share capital of the Company. Therefore, in terms of Regulation 13(1) of PIT Regulations, 1992, he was required to make requisite disclosures to the company within two working days of aforesaid transaction and in terms of Regulation 7(1) read with 7(2) of SAST Regulations, 1997, he

was required to make requisite disclosures to the company and BSE within two days of the aforesaid transaction. However, I observe from available records that there is no evidence of Noticee 6 having filed the requisite disclosures to the company and BSE as required under the aforesaid provisions of PIT Regulations, 1992 and SAST Regulations, 1997.

57. In his submissions Noticee 6 has denied the allegations levelled in the SCN. However, he goes on to state that violations if any, were inadvertent and lack of disclosures were technical omissions due to oversight of staff. Noticee 6 further states that the shares were acquired by him from Noticee 3 and 4 and he was under the belief that disclosures, if any, were required to be made by the sellers or by the company.

58. I note from the submissions by Noticee 6 that he has not disputed the impugned transactions but he has denied the allegation levelled against him. Thereafter, Noticee 6 goes on to contradict the statement by saying that such non-disclosure of change in shareholding under Regulation 7(1) Regulation read with 7(2) of SAST Regulation, 1997 and under Regulation 13(1) of PIT Regulations, 1992 was only a technical defect due to oversight of staff and the aforesaid disclosures were not made due to inadvertence and lack of knowledge of process. I note that he admits to the omissions made by him in this regard.

59. In support of his contention, Noticee 6 has also quoted Judgments of Hon'ble SAT in the matters of Ravi Mohan and other connected Appeal No. 97 of 2014, Rakesh Kathotia and Ors in Appeal No. 7 of 2016, decided on 27.05.2019 and Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02, 2019. However, I do not find the aforesaid judgments to be relevant for the allegations levelled against Noticee 4.

60. Therefore, I find that Noticee 6 failed to comply with the provisions of Regulation 13(1) of PIT Regulations, 1992 and Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997.

61. Noticees have further contended that lack of disclosures or defects if any, may be technical in nature, which may have been due to oversight of staff and lack of their knowledge in handling matters pertaining to compliance of capital market regulations. Noticees also submitted that non-disclosures are not deliberate, intentional or with a view to cause offence or loss to investors and they have not gained any unfair advantage because of non-disclosures. In this regard, I place my reliance on the order of the Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 order dated October 14, 2014), wherein Hon'ble SAT held that *"..... obligation to make 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 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 disclosures."*

62. In view of the foregoing, I find that the allegations of violations of following Regulation by the Noticee 1 to 6, stand established-

Noticee	Violations
1	Regulation 13(6) of PIT Regulations, 1992 read with PIT Regulations, 2015.
2	Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 read with PIT Regulations, 2015 and Regulation 7(1A) Regulation read with Regulation 7(2) of SAST Regulation, 1997
3	Regulation 13(3) of PIT Regulations, 1992 read with PIT Regulations, 2015.
4	Regulations 13(1) and 13(3) of PIT Regulations, 1992 read with PIT Regulations, 2015 and Regulation 7(1) read with Regulation 7(2) of SAST

	Regulations, 1997.
5	Regulation 13(3) of PIT Regulations, 1992 read with PIT Regulations, 2015.
6	Regulation 13(1) of PIT Regulations, 1992 read with PIT Regulations, 2015 and Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 199

63. As has been stated in paragraphs 37 and 54 of this order, it is alleged that Noticee 3 and Noticee 5 violated provisions of Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 w.r.t. the transactions in the shares of Le Waterina on October 19, 2010 when the shareholding of Noticee 3 reduced from 18.55% to 11.64% of total paid-up share capital of the company, on account sale of shares by her and on December 13, 2010 when the shareholding of Noticee 5 reduced from 25.84% of total paid-up share capital of the Company to 'nil', on account sale of shares by him.

64. A perusal of Regulation 7(1A) of SAST Regulation, 1997 shows that for the aforementioned sale, which were in excess of 2%, Noticee 3 and Noticee 5 were required to make requisite disclosures to the company and BSE within two working days of aforesaid events. However, I note that Regulation 7(2) mentions the timelines for disclosures in case of acquisition of shares only, not disposal of shares.

65. The question that arises here is that when the aforesaid two regulations are read together, whether such disposal/sale of shares need to be disclosed to the company and BSE. On this question, I place reliance on the judgments of Hon'ble SAT in the matters of Ravi Mohan and other connected Appeal No. 97 of 2014, Rakesh Kathotia and Ors in Appeal No. 7 of 2016, decided on 27.05.2019 and Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02, 2019, which have also been quoted by Noticee 3 and 5 in support of their contentions. The relevant extract of the judgment 2015 SCC Online SAT 112 in the matter of Ravi Mohan and other connected Appeal No.97 of 2014 is reproduced as under:

"27. It is relevant to note that while inserting regulation 7(1A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1A) has to be made within two days of the events specified in regulation 7(2). **On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting rights in excess of the limits prescribed under regulation 7(1A).** As a result, even though regulation 7(1A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Since regulation 7(2) **as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1A), the question of discharging that obligation arising under regulation 7(1A) read with regulation 7(2) does not arise at all.**

28. It was open to SEBI to make newly inserted regulation 7(1A) self operative, because regulation 7(1A) itself provides that the obligation set out therein has to be discharged within two days of purchase or sale specified therein. However, SEBI in its wisdom deemed it fit to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation specified under regulation 7(1) and 7(1A) has to be discharged within two days of the events specified under regulation 7(2). Thus, by 2002 amendment it is made clear that although disclosure of purchase or sale referred to under regulation 7(1A) has to be discharged within two days of purchase or sale, of shares referred to therein, by amending regulation 7(2) it is provided that two days time to make disclosure under regulation 7(1A) shall commence on the happening of events specified under regulation 7(2). **Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1A), the question of complying with regulation 7(1A) within two days of sale of shares does not arise at all.**

29. *It is not even the case of SEBI, that regulation 7(1A) is self operative and that the obligation there under has to be discharged independent of regulation 7(2). In fact, in the impugned order, it is held by the AO that by failing to make disclosure to the stock exchanges regarding aggregate sale of shares or voting rights in excess of 2% of the share capital of the target company, the appellants are guilty of violating regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants."*

66. The facts and circumstances related to disclosure requirement under Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 for the transactions of disposal of shares by Noticee 3 and 5 are similar to the context of the aforesaid judgments of Hon'ble SAT. Therefore, I find merit in the contentions of Noticee 3 and 5 in this regard and conclude that disclosure requirement under Regulation 7(1A) read with Regulation 7(2) of SAST Regulations, 1997 would not apply to disposal of shares in respect of transactions executed by Noticee 3 and 5, in the instant proceedings, as per the aforesaid decisions of Hon'ble SAT.

67. I note that the aforesaid matter is under appeal before the Hon'ble Supreme Court and no stay has been granted. Considering the situation and also considering the fact that Hon'ble SAT had directed in its order dated February 23, 2021, that the aforesaid judgments, viz. in Ravi Mohan and other connected Appeal No. 97 of 2014 decided on 16.12.2015, Rakesh Kathotia and Ors in Appeal No. 7 of 2016, decided on 27.05.2019 and Shilpa Amit Kotia & Ors. V/s SEBI, Appeal No. 308 of 2017, decided on July 02, 2019, be considered, I am of the view that the allegation relating to violation of Regulation 7(1A)

Regulation read with Regulation 7(2) of SAST Regulation, 1997 in respect of Noticees 3 and 5 should be disposed of as per the extant legal position laid down by Hon'ble SAT in the aforesaid judgements.

68. However, since the matter is pending before the Hon'ble Supreme Court this order is without prejudice to right of SEBI to initiate Adjudication proceedings depending on the judgement of the Hon'ble Supreme Court. As directed by Hon'ble SAT, the matter in respect of violation of Regulation 7(1A) Regulation read with Regulation 7(2) of SAST Regulation, 1997 by Noticees 3 and 5 is being disposed off considering the Hon'ble SAT Order as narrated above as well as the attending circumstances.

Issue No. 2: Do the violations attract monetary penalty under Section 15A(b) of SEBI Act.?

69. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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....."*. Therefore, the above violations, as brought out in the foregoing paragraphs, make Noticees liable for monetary penalty under Section 15A(b) of the SEBI Act. The text of Section 15A(b) of the SEBI Act is reproduced below:

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 there under,—*

- (b) *to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may*

extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Issue No. 3: What should be the quantum of monetary penalty to be imposed?

70. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J - *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

71. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee in making disclosures or the consequent loss caused to investors as a result of the default. I note that

Noticees have also contended that no disproportionate gain or unfair advantage have been obtained by them as a result of failure in making disclosures and also there is no loss caused to the investors..

72. However, with respect to the disclosure violations by Noticee, I note that the purpose of these disclosures is to bring about transparency in the transactions of Directors/ Promoters/Acquirers/ employees and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of **M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014)**, has 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."* Hon'ble SAT, in the aforesaid order, has articulated the importance of true and timely disclosures. I further note that there are repeated defaults by Noticees 1, 3 and 4. However, the impugned transactions are more than ten years old and Noticees have stated that they were not in possession of all details on account of such lapse of time.

ORDER

73. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticee and also the factors mentioned in Section 15J of the SEBI Act as well as the mitigating factors, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby

impose following penalties upon Noticees, under the provisions of Section 15A(b) of SEBI Act.

Sr. No.	Name of the Noticee	Penalty
1	Le Waterina Resorts and Hotels Ltd.	Rs. 2,00,000/- (Two Lakh only)
2	Mr. Sanjay Jalan	Rs. 1,00,000/- (One Lakh only)
3	Ms. Anila Jalan	Rs. 1,50,000/- (One Lakh Fifty Thousand only)
4	Ms. Rinku Jalan	Rs. 1,50,000/- (One Lakh Fifty Thousand only)
5	Mr. R. K. Jalan	Rs. 1,00,000/- (One Lakh only)
6	Mr. Kamlesh Shantilal Jain	Rs. 1,00,000/- (One Lakh only)

I am of the view that the aforesaid penalties are commensurate with the lapses/ omissions on the part of Noticees.

74. Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through 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, Noticee may contact the support at portalhelp@sebi.gov.in.

75. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	
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76. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties of Noticees.

77. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees viz. Le Waterina Resorts & Hotel Limited Mr. Sanjay Jalan, Ms. Anila Jalan, Ms. Rinku Jalan, Mr. R. K. Jalan, Mr. Kamlesh Shantilal Jain and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: August 13, 2021

SOMA MAJUMDER

ADJUDICATING OFFICER