BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/AP/SK/2020-21/9139]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Saral Mining Ltd.
(Formerly known as XO Infotech Ltd.)
6th Floor, B-Wing, B D Patel House,
Naranpura Road, Ahmedabad - 380014.

In the matter of Sun and Shine Worldwide Limited

1. Pursuant to the investigation conducted in the matter of Sun and Shine Worldwide Limited (hereinafter referred to as "SSWL" or "the company") during the period from October 01, 2012 to February 12, 2014, Securities and Exchange Board of India ("SEBI") observed the following:

   a) Saral Mining Ltd. (Formerly known as XO Infotech Ltd.), a company listed on BSE Ltd. ("BSE"), was holding 14% shares of the company as on March 31, 2014.

   b) Saral Mining Ltd. had received 4.77% shares (2386500 shares) through off market on May 06, 2014 and 3.32% shares (1658200 shares) through off market on May 13, 2014. As a result, its total shareholding increased to 18.77% on May 06, 2014 and 22.09% on May 13, 2014.

   c) Since the shareholding of Saral Mining Ltd. changed by more than 2% on two occasions i.e. firstly on May 06, 2014 and secondly on May 13, 2014, it was required to make requisite disclosures to:

      i) Stock exchange and the company under Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeover Regulations), 2011 (hereinafter referred as "SAST Regulations") within two working days of the acquisition of shares; and
      ii) The company under Regulation 13(3) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred as "PIT Regulations") read with Regulation 13(5) of the PIT Regulations read with Regulation 12 of the SEBI (Prohibition of

Insider Trading) Regulations, 2015 (hereinafter also referred to as " 2015 PIT Regulations") within two working days of the acquisition of shares.

d) BSE vide email dated October 30, 2018 and the company vide its email dated December 12, 2018 both confirmed that they had received disclosures from Saral Mining Ltd. on April 10, 2015 for its aforesaid transactions.

e) Further, vide email dated December 12, 2018, Saral Mining Ltd. had stated that - *"…we must have made the disclosures within required time limit. However, currently we do not have proof of the same available with us, as all the compliance part was handled by our Company Secretary, who is not associated with you since long."* It had further stated that – *"On perusal of BSE Limited website, we came to know that disclosures made by the company were not updated with BSE Limited website. Hence, we have again send disclosure to BSE Limited and company on April 10, 2015."*

2. However, the response of Saral Mining Ltd. has not been found acceptable by SEBI and it has been observed that Saral Mining Ltd. had made delayed disclosure on April 10, 2015 to the stock exchange on both the occasions of its acquisitions and thus, it had violated the provisions of:
   a) Regulation 29(2) read with Regulation 29(3) of the SAST Regulations; and
   b) Regulation 13(3) read with Regulation 13(5) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations.

   The text of the aforementioned provisions read as under:

SAST Regulations

Disclosure of acquisition and disposal.

29. (1) …..

(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

PIT Regulations

13. (1) …..

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) ….

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

2015 PIT Regulations

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.

3. Pursuant to submission of investigation report, the competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the aforesaid alleged violations by the Noticee and appointed Shri Santosh Kumar Shukla, Chief General Manager as Adjudicating Officer ('erstwhile AO') vide *communication order* dated June 14, 2019, to inquire and adjudge under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'the Adjudication Rules') the alleged violations by the Noticee under Section 15A (b) of the SEBI Act. Thereafter, vide a common *communication order* dated January 07, 2020, this case has been transferred to the undersigned with advise that except for the change of the Adjudicating Officer the other terms and conditions of the original orders *'shall remain unchanged and shall be in full force and effect'* and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*".

4. After receipt of records of these proceedings, it was noted that the erstwhile AO had issued the notice to show cause no. EAD-2/SS-SKS/OW/20005/1/2019 dated August 05, 2019 ('the SCN') to the Noticee in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act calling upon it to show cause as to why an inquiry should not be held against it in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations. The SCN was sent at the last known address of the Noticee through Speed Post with Acknowledgment Due and the same was duly served. In the said SCN, the Noticee was asked to reply within a period of 14 days, however, no reply was received from the Noticee.

5. Thereafter, in the interest of natural justice and in terms of rule 4(3) of the Adjudication Rules, the undersigned gave the Noticee an additional opportunity to file reply to the SCN and also granted an opportunity of personal hearing on August 24, 2020. The same was communicated to the e-mail id of the Noticee as available on BSE Website *viz.* xoinfotechlimited@yahoo.co.in vide e-mail dated August 14, 2020. The said notice was digitally signed in term of the requirement prescribed under rule 7 (b) of the Adjudication Rules. The second proviso to rule 7 (b) specifies that *"…a notice sent through electronic mail shall be digitally signed by the competent authority and bouncing of the electronic mail shall not constitute valid service;"*. The Notice sent vide e-mail dated August 14, 2020 was duly served in compliance with the said requirements under rule 7 (b) and proof of delivery report is on record. However, no reply / communication has been received from the Noticee despite service of notice upon it. In the interest of principles of natural justice, the Noticee was again given one more opportunity to file reply to the SCN and was also granted an opportunity of personal hearing on September 16, 2020 and the same was communicated to the e-mail id of the Noticee viz. xoinfotechlimited@yahoo.co.in vide e-mail dated September

09, 2020. However, no reply / communication has been received from the Noticee despite service of notice upon it. Vide the said SCN/notice of hearing, it was clearly indicated that in case of failure to submit reply or to appear for the hearing, the case would be proceeded with *ex-parte* on the basis of the material available on record. It is noted that the Noticee had neither filed any reply nor have availed the opportunities of personal hearing despite service of notices upon it. In the facts and circumstances of this case, I am of the view that the Noticee has nothing to submit and in terms of rule 4(7) of the Adjudication Rules the matter can be proceeded *ex-parte* on the basis of material available on record.

6. I have carefully considered the allegations and charges levelled against the Noticee and relevant material relied upon in this case. In absence of any response from the Noticee, it is presumed that the Noticee admitted the charge of provisions as alleged in the case. In this regard, the observations of Hon'ble Securities Appellate Tribunal ('SAT') in the matter of *Classic Credit Ltd. vs. SEBI* (Appeal No. 68 of 2003 decided on December 08, 2006) are relevant to rely upon wherein it has that- *"… the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them"*. Further, the Hon'ble SAT in the matter of *Sanjay Kumar Tayal & Others vs SEB*I (Appeal No. 68 of 2013 decided on February 11, 2014), has, *inter alia*, observed that: *"… appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices..."*

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

8. As the shareholding of the Noticee changed by more than 2% on two occasions i.e. firstly on May 06, 2014 and secondly on May 13, 2014, it was under obligation to make requisite disclosures to the Stock exchange i.e. BSE and the company under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations within two working days of the acquisition of shares and to the company under Regulation 13(3) of the PIT Regulations read with Regulation 13(5) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations within two working days of the acquisition of shares. The BSE and the company have confirmed that they had received disclosures from the Noticee on April 10, 2015 for its aforesaid transactions. Thus, it is established that the Noticee had made delayed disclosure for its aforesaid transactions

beyond a reasonable time frame. Thus, this is a case of complete failure on the part of the Noticee which itself is a listed company bound to set higher standards of compliance which is found missing in the present case. Therefore, in my view, the failures of the Noticee as found in this case deserves imposition of monetary penalty under section 15A (b) of the SEBI Act. The provisions of 15A (b) of the SEBI Act read as under:

Penalty for failure to furnish information, return, etc.

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

(a) …..

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

9. The provisions of regulations of the SAST Regulations and PIT Regulations are meant to ensure timely disclosures of significant change in shareholding; as such disclosures also enable the stock exchanges and regulators to monitor such material event. Such disclosures also bring about transparency and enable the investors in the scrip to take an informed investment or disinvestment decision. All stakeholders, including minority shareholders should be aware of the change in shareholding of the promoters. Any information asymmetry with regard to such transactions as in this case would defeat the purpose of disclosures. Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI* (Appeal No. 209 of 2014 order dated August 11, 2014), has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further in the matter of Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. vs. SEBI* – the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

10. I also note that Hon'ble Securities Appellate Tribunal ('SAT') in the matter of *Vitro Commodities Private Limited v SEBI* (Appeal no 118 of 2013 decision dated September 04, 2013) has held that *"… provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."* In this regard, I note that

in the matter before me is equally covered by the said ruling of SAT as both the disclosures requirements under Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(3) of the PIT Regulations read with Regulation 13(5) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations, are not substantially different. It is also pertinent to note that the intention of both the Regulations is dissemination of information. In view of the aforesaid order of Hon'ble SAT, since the first violation under SAST Regulations automatically triggers the second violation of PIT Regulations, there will be no justification for imposition of penalty for second violation when penalty for the first violation deserves to be imposed. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which are as under:

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.

11. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI V/s Bhavesh Pabari Civil Appeal No(S).11311 of 2013* vide judgement dated February 28, 2019, it is noted that from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the default in this case cannot be computed. Further, the material brought on record shows that the failure of making requisite disclosures under SAST Regulations PIT Regulations by the Noticee was on two instances and hence, it is repetitive in nature. Such nature of default with regard to non-adherence to the laid down obligations under the SAST Regulations and PIT Regulations by the Noticee, a company listed on BSE, as observed in this case would compromise the regulatory framework and should be dealt with by imposing monetary penalty so as to serve as an effective message.

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

13. The Noticee shall remit / pay the said total amount of penalty within 45 days of receipt of this order in either of the way of demand draft in favour of "*SEBI - Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using

the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in

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

1	Case Name	
2	Name of the 'Payer/Noticee'	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties along with order details)	

15. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: September 24, 2020
Place: Mumbai

Amit Pradhan
Adjudicating Officer