BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/AS/2020-21/9295-9296/139-140]

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

In respect of

Entity name	PAN no.	Order no.
Shri Subash Menon	**AATPM5809J**	**Order/SR/AS/2020-21/9295/139**
Kivar Holdings Private Ltd.	**AACCS7712C**	**Order/SR/AS/2020-21/9296/140**

In the matter of Subex Limited

BACKGROUND

1. A department (in short **OD**) of Securities and Exchange Board of India (in short **SEBI**) conducted an investigation in the scrip of Subex Limited (herein after referred to as **Subex / company**) OD observed that Shri Subash Menon (herein after referred to as **Noticee 1**) and Kivar Hoding Private Ltd. (herein after referred to as **Noticee 2**) (collectively known as Noticees) made an off-market inter-se transfer in the scrip of Subex without obtaining pre-clearance from the designated compliance officer and also failed to make disclosure in this regard. OD observed that Noticee 1 and Noticee 2 violated the provision of clause 6 of Code of Conduct under Schedule B of regulation 9(1) SEBI (Provision of Insider Trading) Regulations, 2015 (in short **PIT Regulations, 2015**) and regulation 7(2)(a) of PIT Regulations, 2015. Further, OD observed that Noticee 1 made contra trades during the period August 08, 2018 to October 01, 2018 and hence violated the provision of clause 6 of the Code of Conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the examination, OD initiated adjudication proceedings against the Noticees. The adjudication proceedings were approved by the Competent Authority and the undersigned has been appointed as Adjudicating Officer (in short AO), under section 15-I of The Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) r/w rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **Adjudication Rules, 1995**), to inquire into and adjudge, under sections 15A(b) and 15HB of the SEBI Act, 1992, the alleged violations of provisions of regulations 7(2)(a) of PIT Regulations, 2015 and clauses 6 and 10 of the Code of Conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 and the same was conveyed to me vide communique dated June 16, 2020.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice no. SEBI/HO/EAD-10/E&AO/SR/SM/OW/11050/1-2/2020 dated June 24, 2020 (hereinafter referred to as **SCN**) was issued to the Noticees in terms of rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against him for the alleged violations of provisions under regulations 7(2)(a) of PIT Regulations, 2015 and clauses 6 and 10 of the Code of Conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 and why penalty be not imposed on the Noticee under sections 15A(b) and 15HB of the SEBI Act, 1992 for the alleged violations as specified in the SCN. The SCNs were sent to the Noticees e-mail sent to email ids on record ie subash.menon@subexworld.com, subash.menon@Pelatro.com, rajini.dixit@gmail.com, rajini.dixit@kivar.com through digitally signed emails. Further, vide email dated August 12, 2020, Noticees were advised to reply to the said SCN by August 21, 2020. Shri Subash Menon i.e. Noticee 1 vide e-mail dated August 12, 2020 informed that the said SCN was not received and requested to

provide the same. Accordingly, earlier e-mail dated June 24, 2020 was forwarded to the Noticees and same was acknowledged by Noticee 1. Noticee 1, vide e-mail dated August 19, 2020 replied to the SCN for and on behalf of the Noticees. Vide e-mail dated August 28, 2020, undersigned granted an opportunity of hearing to the Noticees scheduled on September 08, 2020 and the same was acknowledged by Noticee 1. On the same day, Noticee 1 requested the said hearing on September 11, 2020 and the same was acceded to. On the scheduled date of hearing i.e. September 11, 2020, Noticee 1 attended the hearing on behalf of the Noticees through webex, an online platform. Noticee 1 reiterated the submissions made vide e-mail dated August 19, 2020 and requested for time to submit additional information/documents. Acceding to the request, Noticees were given time till September 18, 2020. Hearing minutes are on record. Noticee 1 vide e-mail dated September 14 and 16, 2020 submitted reply to the SCN on behalf of the Noticees. Proof of delivery of all the outgoing e-mails mentioned herein from the Adjudicating Officer, is available on record.

4. The allegations in the said SCN as follows:

"*The Company was listed at Bombay stock Exchange (BSE) and National Stock Exchange (NSE) during investigation. During investigation, OD observed that Noticee 1 and Noticee 2 were the promoters of the Company. OD observed the from the NSDL e-mail dated March 07, 2019 that Noticee 1 and Noticee 2 made an off-market inter-se transfer of 5,00,000 shares of Subex between them on August 08, 2018 and the said shares were transferred from Noticee 2 to Noticee 1. Copy of the NSDL e-mail dated March 07, 2019 placed at Annexure II. Further, Noticee 1 entered into contra trades as 5,00,000 shares i.e acquired on August 08, 2019 through off-market sold by him within the six (6) months from the date of such acquisition. OD also sought comments from the Company and reply of the Company dated March 18, 2019 and March 21, 2019 placed at Annexure- III. OD observed the following transactions made by the promoter entities i.e. Noticees in the scrip of Subex during the period August 08, 2018 to October 01, 2018:*

Noticee	***Date of transaction***	***Off market /on market***	***Buy/sell/ Acquisition/ Disposal***	***Volume of transactions***
Noticee 1	*08/08/2018*	*off market*	*Acquisition*	*5,00,000*
Noticee 2	*08/08/2018*	*off market*	*Disposal*	*5,00,000*
Noticee 1	*25/09/2018*	*on market*	*sell*	*5,000*
Noticee 1	*26/09/2018*	*on market*	*sell*	*2,95,000*
Noticee 1	*27/09/2018*	*on market*	*sell*	*25,000*
Noticee 1	*28/09/2018*	*on market*	*sell*	*1,25,000*
Noticee 1	*01/10/2018*	*on market*	*sell*	*50,000*

Further, OD observed from the internal code of conduct of the Company that all the designated persons are required to obtain pre-clearance from the Compliance officer for a transaction or series of transaction if the threshold limit (Rs. 10 lakh in one calendar quarter) is likely to be executed by the transactions. Further, every promoter, employee and director of the Company had to disclose to the Company the number of such securities acquired or disposed of within two trading days of such transactions if the value of the securities trades, whether in one transaction or a series of transactions over a calendar quarter, aggregated to a traded value in excess of ten lakh rupees. All Designated Persons who trade in any number of shares of the company shall not execute contra trade during the next six months following the prior transaction.

Also, it was observed by OD that the value of transaction executed between the promoter entities was Rs. 27,20,000/- (at WAP of Rs. 5.44 on 08/08/2018 at BSE). OD observed that in compliance with the code of conduct of the Company, the promoter entities had to seek pre-clearance from the compliance officer for the aforesaid transaction undertaken on August 08, 2018. Further, OD observed that Noticee 1 and Noticee 2 had to disclose the said transaction to the company within two working days of the said transaction. It is alleged by OD that both the Noticees being the promoter of the Company failed to take pre-clearance from the Company for the said off-market transaction and also no disclosure made by the promoter entities in accordance with regulations. Therefore, OD alleged that Noticee 1 and Noticee 2 violated the provisions of

clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 and regulation 7(2)(a) of PIT Regulations, 2015.

It was observed by OD that, Noticee 1 executed contra trades within six months of his off-market transaction on August 08, 2018 shares through the said transaction were sold during September 25, 2018 to October 01, 2018. Clause 10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015 is as follows:

"10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act."
Therefore, it is alleged by OD that by executing contra trades, Noticee 1 violated the provision of clause 10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015.

In view of the above, it is alleged that Noticee 1 and Noticee 2 violated the provisions of clause 6 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015 and regulation 7(2)(a) of PIT Regulations, 2015. Further, Noticee 1 alleged to have violated provisions of clause 10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015."

5. Reply of the Noticees vide e-mails dated August 19, 2020, September 14 and 16, 2020 are as follows:

Noticee 1 replied that Kivar Holdings Pvt. Ltd. (KHPL) i.e. Noticee 2 is managed and controlled by him and so, both Noticees are one as Noticee 1 controls KHPL. Noticee 1 provided a copy of the Articles of Association of KHPL in which Noticee 1 is one of the First Directors of the company. With respect to possession of Unpublished Price Sensitive Information (UPSI) or any information for that matter both KHPL and Noticee1 are one as he controls KHPL.

Noticee 1 replied that he exited from day to day operations of Subex Limited on 27th September 2012 and since that day, he has not engaged in any of the activities such as attending Board Meetings of the company, being part of any business meeting related to the company, attending any General Meeting of the company, voting in the matter related to the company or any action related to the business interests of Subex. Being part of any group or action thereby making me privy to any non-public information about the company. Neither he nor KHPL

have had any un-published information, either price sensitive or otherwise, about Subex since September 2012. Promoter stake in Subex from 2015 was less than 0.5% and post 2017 it was less than 0.12%. He requested Subex to remove me and KHPL from the role of Promoters as they have not been functioning as promoters since September 2012. The company failed to do so due to reasons best known to them. The off-market inter-se transfer of 8th August 2018 was for no consideration. The sale in the market was undertaken after obtaining approval from the Compliance Officer of Subex, the company.

Noticee replied that in the PIT Regulations, 2015 an "insider" is defined as follows:
An "insider" means any person who is:
i) a connected person; or
ii) in possession of or having access to unpublished price sensitive information

In the PIT Regulations, 2015, a "connected" person is defined as follows:

It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

As per SEBI regulations, a "promoter" is defined as "promoter" shall include: i) who has been named as such in a prospectus or is identified by the issuer in the annual return referred to in section 92 of the Companies Act, 2013; or ii) who has control over the affairs of the issuer, directly or indirectly whether as a shareholder, director or otherwise; or iii)in accordance with whose advice, directions or instructions the board of directors of the issuer is accustomed to act.

The PIT Regulations, 2015 are intended to ensure that no person or corporate body that has inside information or unpublished price sensitive information should trade in the securities of the company as that will be prejudicial to the interests of the counter party in particular and to the stock market in general. So, the very spirit of the regulations is to ensure that transactions take place only between parties who are on exactly the same level with regard to information in general and price sensitive information particular. The provisions of the PIT Regulations, 2015 like pre-clearance, disclosure, pre-approval etc. have been designed solely to ensure this equality among the counter parties. That is the spirit of the law. As the first point in our defence, Noticees would like to state that when an off market inter-se transaction takes place, it is merely a transfer

between two concert parties are have exactly the same knowledge. So, the transaction is not prejudicial to either of them or to the stock market. Thus, the objective of the law is amply met. As the second point of defence, Noticees would like to state that the transaction happened on 08.08.2018 when the trading window was open as Subex had declared its results on 31.07.2018. Thus, while a pre-clearance does not seem to be necessary as per the details given above, had a pre-clearance been requested, it would have been accorded. Given that, the fact that no pre-clearance was taken is merely a technicality and did not prejudice anybody or contravene the provisions of the PIT Regulations, 2015 in spirit. As the third point of defence, Noticees would like to state that, in the special circumstances of our case, applying the PIT Regulations, 2015 is not appropriate as the very basis on which the regulations were formulated and applied do not exist.

The PIT Regulations, 2015 is fundamentally intended to prevent insider trading. Such insider trading is deemed to be possible for those who have direct access to unpublished price sensitive information and to those who are connected to those who have direct access. Promoters have been brought under the ambit of the regulations as it is implicitly understood that Promoters will have unpublished price sensitive information. However, in the current instance, such is not the case and so, the question of applicability of PIT Regulations, 2015 arises.

In the current instance, as stated while listing the facts of the matter, the Promoters have not had any opportunity to receive unpublished price sensitive information for the past eight years. Further, the Promoters have not even remotely been in control of the affairs or operations of Subex. Finally, the shareholding of the promoters has been below 0.5% for that entire period and below 0.12% while the inter-se transaction took place. Given all of these facts, he and KHPL continuing as promoters is a mere "mockery" of the system perpetrated by Subex. Despite their repeated requests, they have ignored conventions and norms and have failed to act. Copies of these requests were sent to the Stock Exchanges and SEBI as well and yet, there has been no action whatsoever. The Company should have been hauled up long ago for such failure. In fact, if one were to go by the Listing Obligations and Disclosure Requirements Regulations, 2015 and the relevant clause 31A, it becomes quite obvious that we easily qualify to be re-classified as "public". As per clause 31A 9b) (i) of the said regulation, the shareholding threshold for re-classification is "less than 10%". In the current situation, it is 0.12% and yet we are called as Promoters, merely for the convenience of the Company.

Going by the definition of a Promoter given above, the only reason why Noticees are still called as promoters is because Noticees are mentioned as such in the Annual Return by Subex. By all other measures, Noticees are absolute outsiders and do not qualify as promoters or insiders. Given all of that, Noticees are not promoters in spirit nor are promoters in any practical sense of the term. Noticees continue to be promoters merely on technical grounds and so, applying PIT regulations, 2015 is unfair and against the very reason for which the regulations were enacted.

With regard to alleged violation of regulation 7(2)(a) of PIT Regulations, 2015, regulation 7(2)(a) states that every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

Noticee submitted that the first point of defence, he would like to state that the inter-se transaction under question was consummated without any consideration. Statements of the bank accounts of the two parties will establish this fact and they are willing to submit the same, should SEBI seek those. In view of that fact, Regulation 7(2)(a) does not apply.

Further, Noticee submitted that the PIT Regulations, 2015 was modified w.e.f. 1st April 2019. Thus, the PIT Regulations, 2015 that applies to this case is the version that was current in 2018. In the latter, clause 4(1)(i) states that No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information: Provided that the insider may prove his innocence by demonstrating the circumstances including the following : –the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision. Noticees submitted that it is clear that if two entities are part of a Promoter Group and hold unpublished price sensitive information, an inter-se trade at that time will not contravene PIT regulations. 2015 if they can prove that both parties had the same information and the trade was a conscious and informed one. In the current instance, he is the sole person controlling KHPL and so, both he and KHPL always have the same information. Given that, any inter-se trade between them at any point in time is perfectly legal and no culpability can be attached. This is the second point of defence. Most importantly, a mere perusal of the 2018 and 2019 versions of PIT Regulations, 2015 establishes the fact that the following language was added to clause 4 (1) (i) w.e.f. 01.04.2019.

It is clear from the above that the provision for disclosure of inter-se trades was absent in 2018 and was made effective only on 01.04.19, and that too for trade while in possession of unpublished price sensitive information. In the current instance, the trade happened in 2018 when this provision did not exist and that too when neither of the parties were in possession of unpublished price sensitive information and further when the trading window was open. Given all of that, the need for disclosure does not arise. This is the third point of defence.

Pre-clearance and disclosure are two sequential acts that form a series with the same objective to ensure that no party in a trade is prejudiced. In view of that, when disclosure is not even envisaged by the regulations, the need for pre-clearance naturally fails to exist. This is the fourth point of defence for the first alleged violation.

With regard to alleged violation of Clause 10 of the Code of Conduct under Schedule B of Regulation 9(1) of PIT regulations, 2015 – contra trade within 6 months, it is quite clear that an off market inter-se transaction is viewed very differently from a regular on market trade. In view of that, it cannot be considered as a first trade to apply the provision concerning contra trade within 6 months. Be that as it may, he had taken pre-approval from the Compliance Officer of Subex prior to selling on the market. The Compliance Officer was well aware of the inter-se transaction when he accorded the approval to sell on the market. Thus, I am absolved of any responsibility related to contra trade. As can be seen from the above details, there was no intention to contravene or circumvent any regulation and all actions were bonafide. None of the parties involved in particular or the investors in the stock market in general were prejudiced by these actions. In view of that, I most humbly request you to take all the points mentioned in this letter in the true spirit and interpret and apply relevant regulations in the spirit of the law.

The PIT Regulations, 2015 are intended to ensure that no person or corporate body that has inside information or UPSI should trade in the securities of the company as that will be prejudicial to the interests of the counter party in particular and to the stock market in general. So, the very spirit of the regulations is to ensure that transactions take place only between parties who are on exactly the same level with regard to information in general and price sensitive information particular. The provisions of the PIT Regulations, 2015 like pre-clearance, disclosure, pre-approval etc. have been designed solely to ensure this equality among the counter parties.

Notices submitted that they are the promoters since September 2012 only due to the irresponsible behaviour of and breach of agreement, by Subex. Had they fulfilled their commitments to him and to KHPL we would have ceased to be Promoters in 2012 and the PIT Regulations would not even be applicable to us. The underlying assumption of the PIT Regulations, 2015 is that Promoters are insiders and that they possess inside information and hence the need for pre-clearance and disclosure. But the current situation is very different and unique.

Noticee provided copy of the Minutes of the Meeting of the Board of Directors held on 27.09.12, wherein, Noticees refer to the last two paras of point no. 3 that he and KHPL requested to be removed from the role of Promoters and the Board of Directors of Subex started the process to accede to this request. Thus, the Board had no objection to us being removed from the role of Promoters which clearly shows that we need not be treated as Promoters going forward as will not be playing that role in any practical sense.

Noticees requested the company to remove them as Promoters on 09.10.12 and a copy of that letter provided. Also, Noticees intimated the stock exchanges and SEBI through a letter and a copy of the same provided.

Noticee replied that in spite of the agreement at the Board Meeting of 27.09.12, the company did not act on this matter. Instead, in the Board Meeting dated 21.05.13, the Board unilaterally decided not to remove us from the role of

Promoters solely due to the fact that the company and Noticee 1 had entered into Arbitration. Noticee provided a copy of letter of Subex dated July 06, 2020. The existence of Arbitration proceedings (which were initiated due to breach of Employment Agreement by the company) has no bearing on re-classification as non Promoters. However, the company decided to take that course out of sheer spite and malevolence. Subsequently, the Arbitration was settled in his favour in January 2020 and a copy of the Settlement Agreement is enclosed in the reply. Post the said settlement, both he and KHPL again wrote to the company for re-classification as non Promoters and that is when we received the letter enclosed, from the company. The company is now referring to the pending matter between him and SEBI as the reason for further delay in the matter and have stated that once this matter is settled, they will move forward with the re-classification process. This makes it further clear that their continuance as promoters has nothing to with the role being played by as conventionally understood as "promoters". On the basis of the evidence presented herein, it is clear that the company and self were engaged in litigation from 2012 to 2020 and so, they had no role at all in the affairs of the company, much less that of a controlling role or that of receiving any information that is not public.

Noticees replied that they are not promoters in spirit nor are promoters in any practical sense of the term. They continue to be promoters merely on technical grounds and so, applying PIT regulations, 2015 is unfair and against the very reason for which the regulations were enacted.

With regard to contra trade Noticee 1 submitted that despite the fact that he did not possess any non public information, much less any UPSI, he sought pre clearance from the company to sell the shares of the company in the market. The total number of shares held by me at that time was 580,601. The company approved the sale of 580,601 shares within a period of 7 days, on 24.09.18. On the basis of this approval, he sold 500,000 shares. E-mail copy of the approval of the company provided by the Noticee. Also, he disclosed the entire sale to the company by sending Form C on each day of sale. He provided the copy of the same.

6. After taking into account, the allegations levelled in the SCN, reply of the Noticee and other evidences available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

7. The issues arising for consideration in the instant proceedings before me are:-

a. Whether the Noticees violated the provisions of regulation 7(2)(a) of PIT Regulations, 2015 and clauses 6 and 10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015?

b. Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992 for the alleged violations by the Noticee?

c. If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995?

8. Before proceeding further, I would like to refer to the relevant provisions of PIT Regulations, 2015:

PIT Regulations, 2015
Disclosures by certain persons.
Continual Disclosures.

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

***SCHEDULE* B**
[under sub-regulation (1) and sub-regulation (2) of regulation 9]
Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

6. When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

FINDINGS:

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under:

Issue (a): Whether the Noticees violated the provisions of regulation 7(2)(a) of PIT Regulations, 2015 and clauses 6 and 10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015?

a) It is alleged in the said SCN that Noticees are the promoters of the company and an off-market inter-se transfer of 5,00,000 shares of Subex between them on August 08, 2018 and the said shares were transferred from Noticee 2 to Noticee 1. The value of transaction executed between the promoter entities was Rs. 27,20,000/- and hence, in compliance with the code of conduct of the Company, the promoter entities had to seek pre-clearance from the compliance officer for the aforesaid transaction undertaken on August 08, 2018. Further, it is alleged that Noticee 1 and Noticee 2 had to disclose the said transaction to the company within two working days of the said transaction. Noticees being the promoter of the Company failed to take pre-clearance from the Company for the said off-market transaction and also no disclosure made by the promoter entities in accordance with regulations. Therefore, it is alleged that Noticee 1 and Noticee 2 violated the provisions of clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 and regulation 7(2)(a) of PIT Regulations, 2015. Further, it is alleged that Noticee 1 executed contra trades within six months of his off-market transaction on August 08, 2018 shares through the said transaction were sold during September 25, 2018 to October 01, 2018. By executing contra trades, Noticee 1 violated the provision of clause 10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015.

b) It is noted from record that the SCNs were sent to Noticees at distinct email ids, as per the record provided by the OD. The SCNs were sent by digitally signed email and the proof of delivery is on record. Upon receipt of the said SCNs only Noticee 1 has replied and as per his reply, he represents both the Noticee 1 and 2. Noticee 2 has not sent any separate reply. Hence, I am inclined to accept the submissions of Noticee 1 that he has replied on behalf of the Noticees.

c) Before moving forward, it will be appropriate to note various contentions of the Noticees regarding being promoters of Subex. Noticees contended that inspite of repeated follow up with Subex in the year 2012 to remove Noticees' names as promoters of Subex, it did not do and cited reasons of the then pending Arbitration Proceedings. Subsequently, the Arbitration the said arbitration proceedings was settled in his favour in January 2020. Further, Noticee 1 stated that "*the Company and self engaged in litigation from 2012 to 2020 and so, they had no role at all in the affairs of the Company….".* Post settlement of the said arbitration proceedings, Noticees again wrote to the Company to remove their names from the promoter list. In this regard, the Company referred to the instant SEBI proceedings as the reason for further delay for reclassification of Noticee's names as non promoter. Further, *Noticees contended that "we are not promoters in spirit nor are we promoters in any practical sense of the term. We continue to be promoters merely on technical grounds and so, applying PIT regulations, 2015 is unfair and against the very reason for which the regulations were enacted".* In this regard, I am of the view that my role within contours of Adjudication Rules, 1995, is to adjudge the alleged violation by the Noticees which is mentioned in the AO communique shared with the Noticees, I shall therefore deal with the charges levelled against Noticees by the OD taking into consideration all the material on record. Having clarified above said contentions of the Noticees, the matter is now being dealt with on merits of the case as discussed hereinafter.

d) Further Noticee contended that the PIT Regulations, 2015 is fundamentally intended to prevent insider trading. Such insider trading is deemed to be possible for those who have direct access to unpublished price sensitive information and to those who are connected to those who have direct access. In the current instance, Noticees have not had any opportunity to receive unpublished price sensitive information for the past eight years and not even remotely been in control of the affairs or operations of Subex. Also, the shareholding of the promoters has been below 0.5% for that entire period and below 0.12% while the inter-se transaction took place. Noticees continue to be

promoters merely on technical grounds and so, applying PIT regulations, 2015 is unfair and against the very reason for which the regulations were enacted. Thus, the PIT Regulations, 2015 that applies to this case is the stated that if two entities are part of a promoter Group and hold unpublished price sensitive information, an inter-se trade at that time will not contravene PIT Regulations, 2015. Further, the PIT Regulations, 2015 was modified w.e.f. 1st April 2019 and accordingly, clause 4(1)(i) states that the transaction is an off-market inter-se shall be reported to the Company within two working days. In this regard, I am of the view that in the instant matter Noticees have to make the disclosure under regulation 7(2)(a) of PIT Regulations, 2015. So the contention of the Noticee regarding regulation 4(1)(i) of the PIT Regulations, is acceptable to me.

e) From the material available on record, I note that Noticees are the promoters Subex and they made off-market transactions on August 08, 2018. Noticees made transactions i.e Noticee 1 bought 5,00,000 shares from Noticee 2 and the value of transaction executed between the promoter entities was Rs. 27,20,000/-. The same was also admitted by the Noticees. It is alleged that being the promoter of Subex, for the said transactions, Noticees were required to make pre-clearance from Subex as the value of the transactions crossed Rs. 10 lakh as per the code of conduct of Subex. As per clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015, when the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed. Further, it is observed from the internal code of conduct of Subex that when the trading window is open, all designated persons can trade in the securities of company after obtaining pre-clearance from the Compliance officer for a transaction or series of transaction, if the threshold limit exceeded Rs. 10 lakh. Further, it is also noted from record, that as per internal code of conduct of Subex, the designated persons had to report to Subex within two trading days from the date of such transactions. It is also noted from said

code of conduct of Subex that the trading window shall be closed for 48 hours after the information becomes generally available. As per the BSE website, I note that Subex disclosed its unaudited standalone and consolidated financial results of Subex for the quarter ended June 30, 2018 and the same was disseminated on the BSE website on July 31, 2018 at 13:50:58. In this regard, as per code of conduct, the window closing time will be from July 31, 2018 at 13:50:58 to August 02, 2020 13:50:57. As seen from record and also alleged in SCN the transactions made by the Noticees on August 08, 2018, for which Noticees have to take pre-clearance from Subex and also report to Subex after the said acquisition. However, Noticees allegedly failed to take pre-clearance for the said transactions and also failed to report to Subex after the execution of the said trade. In this regard, Noticees replied that the said transfer is interse transfer, there is no consideration for the said transactions and both promoters are considered as one as Noticee 1 controls Noticee 2. It is an admitted fact that Noticees made the transactions in the capacity of the promoters of Subex i.e. they are not single entity rather than different entities. So, reply of the Noticees is not acceptable to me that Noticees are considered to be one. Therefore, allegations against the Noticee regarding violations of provisions of clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 as alleged in SCN stands established.

f) Further, it is alleged that for the transaction made on August 08, 2018, Noticees violated the provisions of regulation 7(2)(a) of PIT Regulations, 2015. As per regulation 7(2)(a) of PIT Regulations, 2015, every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified. It is noted that Noticees being the promoter of Subex, executed the said trades and the trade value is more than 10 lakh rupees as prescribed in the said regulation, hence Noticees were required to make disclosures for the said transactions. By not making the disclosures to Subex within the prescribed time for the said

transactions, allegation against the Noticee regarding violations of of regulation 7(2)(a) of PIT Regulations, 2015 as alleged in SCN stands established.

g) Further, it is alleged that Noticee 1 executed contra trades within six months of his off-market transaction on August 08, 2018 shares through the said transaction were sold during September 25, 2018 to October 01, 2018 and by executing the said contra trades, Noticee 1 violated the provision of clause 10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015. As per clause 10 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015, the code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. The code of the conduct of the Company stated that *"all Designated Person who trade in any number of shares of the company shall not execute a contra trade during the next six months following the prior transactions".* It is noted that Noticee 1 made transactions on August 08, 2018 and then September 25, 2018, September 26, 2018, September 27, 2018, September 28, 2018 and October 01, 2018. The said transactions are within the six month of the earlier transaction i.e. on August 08, 2018 and hence became contra trade. For the said transactions, it is noted that Noticee 1 vide e-mail dated September 24, 2018, requested the company for pre-clearance and accordingly, on the same day the Compliance officer approved the request of the Noticee 1. In the said e-mail of the Compliance Officer, it is mentioned that the approval is valid for 7 trading days from September 25, 2015. As seen from the available record, the transactions of Noticee 1 is coming under the 7 trading days from September 25, 2015. As per the code of conduct of the Company, the designated persons shall not execute the contra trades, however the company approved his request of pre-clearance for the said transaction knowing that the Noticee made transaction on August 08, 2018 as seen from the e-mail dated August 22, 2018 and allowed to make the inter-se transfer. As the Noticee made the transactions within the

period of the approval of the Company, the alleged violation of provision of clause 10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015 does not stand established.

h) In view of the above, it is concluded that Noticees failed to take pre-clearance for the transactions made on August 08, 2018 and also failed to make disclosures to the Company for the said transactions made by the Noticees. Therefore, the alleged violations of regulation 7(2)(a) of PIT Regulations, 2015 and provisions of clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 against the Noticees stand established.

Issue (b): Do the violations, if any, on the part of the Noticees attract monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992 for the alleged violations by the Noticee?

Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and other material available on record, I am of the view that the said failure to take pre-clearance from the Company and then to make disclosure for the said transactions as prescribed in Regulations at the time of creation and invocation of pledge on the part of the Noticees attract the imposition of monetary penalty under sections 15A(b) and 15HB of the SEBI Act, 1992, respectively which is reproduced below:

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue (c) - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995?

a) While determining the quantum of penalty under section 15J of SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, 1992 r/w rule 5(2) of the Adjudication Rules, 1995 , which reads as under:-

The SEBI Act, 1992

15J*: "Factors to be taken into account by the adjudicating officer-*

While adjudging quantum of penalty under section 23 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."

b) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors due to such failure on the part of the Noticees. Material on record does not show that failure is repetitive in nature. I find that the Noticees failed to take pre-clearance under the provision of clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 and also to make required disclosures as specified under the provision of regulation 7(2)(a) of PIT Regulations, 2015.

c) The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd. vs. SEBI–, *"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."*

d) It is noted from the various contentions of the Noticees that Noticees did not have substantial holdings in Subex, further Noticees were practically requesting to be a non-promoter, if the said requests were acceded to in time by Subex, then raison d etre of violation would not have arose, however as depicted in preceding paras violation is already established. As a mitigating factor, while imposing penalty I also take note of the contention of the Noticee regarding arbitration proceedings, and Noticee's long pending request for removal of names from the promoter list of the Company. This stand is validated as seen from the copy of the Board minutes dated September 27, 2012 placed on received by the Noticees which mentioned that "*Mr. Subash Menon also requested the board that Kivar Holdinds Private Limited and himself would like to cease to be promoter/promoter group of the Company……..The Board of Directors discussed the matter and asked the Company Secretary to find out the legal process to accede the request of Mr. Subash Menon and……"* read with the reasoning that Company was using the pending arbitration proceedings as a reason to not remove the names of the Noticees from promoters list. Therefore, taking into account the facts and circumstances of this matter and the above mentioned case laws, I am taking lenient view in the matter and hereby impose a monetary penalty Rs. 2,00,000/- (Rupees Two Lakh only) jointly severally for both Noticees will be commensurate with the violations of regulation 7(2)(a) of PIT Regulations, 2015 and provisions of clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 under sections 15A(b) and 15HB of the SEBI Act, 1992 committed by the Noticees.

ORDER

10. In exercise of the powers conferred under section 15-I of the SEBI Act, 1992 and rule 5 of the Adjudication Rules, 1995, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) jointly severally on Noticee 1 and Noticee 2 under sections 15A(b) and 15HB of the SEBI Act, 1992 for violations of regulation 7(2)(a) of PIT Regulations, 2015 and provisions of clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015.

11. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

a. By using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html
b. By way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai

12. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051.” and also to e-mail id :- tad@sebi.gov.in

a) Case Name
b) Name of the ‘Payer/Noticee’
c) Date of Payment
d) Amount Paid
e) Transaction No.
f) Bank Details in which payment is made
g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

13. 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.

14. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of rule 6 of the AO Rules, 1995.

Date: September 29, 2020 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**