BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: ORDER/AP/SK/2020-21/9431]

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:

Kritika Trust
P-27 Princep Street,
3rd Floor,
Kolkata – 700072.

In the matter of Unisys Softwares and Holding Industries Limited

1. Unisys Softwares and Holding Industries Limited (hereinafter referred as "Unisys" or "the company"), is a company having its shares listed on BSE Ltd. ('BSE') and The Calcutta Stock Exchange Limited ('CSE'). Securities and Exchange Board of India ("SEBI") conducted investigation in the affairs of the company during the period from January 19, 2010 to November 14, 2014. Pursuant to the investigation, SEBI observed the following with regard to disclosure requirements to be made by the promoter/promoter group of the company under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter also referred to as "PIT Regulations") read with SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter also referred to as "2015 PIT Regulations"):

Observations pertaining to disclosure requirements under Regulation 13(2A) of the PIT Regulations:

a) From the details obtained from Purva Sharegistry (I) Pvt. Ltd., the Registrar to an Issue and Share Transfer Agent ("RTA"), depositories i.e. NSDL and CDSL and Unisys vide its letter dated July 02, 2018, November 13, 2018 and email dated January 11, 2019, it was observed that Kritika Trust (hereinafter referred to as 'the Noticee') had become promoter or part of promoter group of Unisys on October 01, 2011. However, the Noticee had failed to make the requisite disclosures to Unisys within two working days i.e. on or before October 04, 2011 as required under Regulation 13(2A) of the PIT Regulations.

b) In view of the above, it was observed that the Noticee violated the provisions of Regulation 13(2A) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations.

Observations pertaining to disclosure requirements under Regulation 13(4A) read with 13(5) of the PIT Regulations:

c) From the share transfer forms provided by RTA, it was observed that the Noticee had acquired the shares of the company on October 01, 2011. Since the change in their shareholding on account of transfer of shares exceeded Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower, the Noticee was obligated to make disclosures to the company and the stock exchanges under Regulation 13(4A) read with 13(5) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations. While disclosures were made by the Noticee to Unisys on the date of acquisition itself, from the replies of the stock exchanges i.e. BSE and CSE, it was observed that the Noticee had not submitted the requisite disclosures to the stock exchanges. The details of such change in shareholding and failure in compliance of the disclosure obligations of the Noticee are summarized in the following table:

Date of acquisition	**Name of entity**	**Holding before transaction (number of shares and %)**	**Acquired/ disposal (number of shares)**	**Holding Post Transaction (number of shares and %)**	**Date of intimation to the company**	**Observation**
01/10/2011	Noticee	0	9,81,000	9,81,000 4.27%	01/10/2011	Failed to make disclosure to the exchange as the holding (in %) increased from 0 to 4.27% due to off-market transaction.

d) In view of the above, it was observed that the Noticee violated the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations for not submitting the requisite disclosures to the stock exchanges *viz*; BSE and CSE with regard to its acquisitions dated October 01, 2011.

2. The text of the aforementioned provisions alleged to be violated by the Noticee read as under:

PIT Regulations

13. (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.

(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 (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 May 13, 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/19918/1/2019 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. In order to proceed forward in the matter, the e-mail id of the Noticee was sought from the concerned department in SEBI. Vide email dated September 09, 2020, the concerned department in SEBI provided the e-mail id of the Noticee *viz.* KRITIKATRUST@REDIFFMAIL.COM. Thereafter, in the interest of natural justice and in terms of rule 4(3) of the Adjudication Rules, additional opportunity to file reply to the SCN was granted to the Noticee and an opportunity of personal hearing was granted on September 17, 2020. The same was communicated to the e-mail id of the Noticee vide e-mail dated September 10, 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 September 10, 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 given another opportunity to file reply to the SCN and was also granted an opportunity of personal hearing on October 09, 2020 and the same was communicated to the aforesaid e-mail id of the Noticee vide e-mail dated September 17, 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 SCN. 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 where the charges and allegations have been leveled based upon the information provided by RTA, depositories i.e. NSDL and CDSL, Unisys, BSE and CSE. 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. The first allegation is that the Noticee had failed to make disclosures as mandated under Regulation 13(2A) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations upon becoming promoter or person belonging to promoter group of Unisys on October 01, 2011. In this regard, it is noted that the Noticee, after becoming a promoter or part of promoter group of Unisys on October 01, 2011, was under an obligation to make disclosures to the company in Form B, as per the format prescribed in Schedule III to the PIT Regulations, the number of shares or voting rights held by it within two working days of becoming such promoter or person belonging to promoter group as prescribed under Regulation 13(2A) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations. The company i.e. Unisys vide its letter dated November 13, 2018 and email dated January 11, 2019 had confirmed that it had not received any disclosure from the Noticee in this regard. Thus, it is established that the Noticee had failed to make disclosure under Regulation 13(2A) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations upon becoming promoter or person belonging to promoter group of Unisys on October 01, 2011.

9. The second allegation is that the Noticee had failed to make disclosure to the stock exchanges i.e. BSE and CSE as mandated under Regulation 13(4A) read with 13(5) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations as the change in its shareholding on account of transfer of shares exceeded Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. In this regard, it is noted that shareholding of the Noticee changed by more than 1% i.e. 4.27% on account of its acquisition of shares of Unisys on October 01, 2011. Hence, it was under obligation to make requisite disclosures to the stock exchanges i.e. BSE and CSE and the company i.e. Unisys under Regulation 13(4A) 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. While disclosures were made by the Noticee to Unisys on the date of acquisition itself, it had failed to make requisite disclosures to the Stock exchanges i.e. BSE and

CSE. The Stock exchange i.e. BSE and CSE vide their respective replies have confirmed that they have not received disclosures from the Noticee for its aforesaid transaction. Thus, it is established that the Noticee had failed to make disclosure to the stock exchanges i.e. BSE and CSE as mandated under Regulation 13(4A) read with 13(5) of the PIT Regulations read with Regulation 12 of the 2015 PIT Regulations.

10. Thus, the failures of the Noticee, who is a promoter or person belonging to promoter group of Unisys, as found in this case shows defiance of binding obligations cast upon it under the PIT Regulations. 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;

11. The provisions of regulations of the 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."*

12. For the purpose of adjudication of penalty, it is relevant to mention that under section 15I of the SEBI Act imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer.

The words in the section that "*he may impose such penalty*" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. The factors stipulated in Section 15J of the SEBI Act are as follows:-

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

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 investor/+s 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."

13. Having regard to the factors listed in section 15J and the guidelines issued by Hon'ble Supreme Court of India in *SEBI Vs 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 PIT Regulations by the Noticee was on two occasions but it cannot be said to be repetitive in nature because there was only one acquisition which triggered two disclosure requirements. I also observe that the violation pertains to a period which is more than eight years old, which is a mitigating factor. However, I am of the view that non-adherence to the laid down obligations under the PIT Regulations by the Noticee as observed in this case would compromise the regulatory framework and should be dealt with by imposing monetary penalty.

14. 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 consolidated monetary penalty of ₹ 1,00,000/- (Rupees One Lakh Only) on the Noticee under 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.

15. 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

16. 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-II, 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)	

17. 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.

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

Date: October 22, 2020
Place: Mumbai

Amit Pradhan
Adjudicating Officer