

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. RA/JP/ 16-17/2015]**

**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:

1. United Breweries (Holding) Ltd. (PAN-AAACU2307D)
2. Kingfisher Finvest India Ltd. (PAN- AABCV9224B)

(In the matter of United Spirits Ltd.)

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') during the course of investigation in the trading activities of certain entities in the shares of United Sprits Ltd. (**USL**) had observed that the (1) United Breweries (Holdings) Ltd. (**UBHL**) and (2) Kingfisher Finvest India Ltd. (**KFIL**) (hereinafter referred to as "**the Noticee No. 1 - 2 or UBHL/ KFIL**") respectively or both may be called as '**the Noticees**' collectively) have failed to make disclosures regarding creation/ invocation / release of certain pledge transactions and thereby allegedly violated regulation 31 (1), 31(2) read with 31 (3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**').

**APPOINTMENT OF ADJUDICATING OFFICER**

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act**') read with rule 3 of the

SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide order dated April 24, 2015, to inquire into and adjudge under section 15 A (b) of the SEBI Act for the violation of aforesaid provisions of the SAST Regulations; and communication of order appointing the undersigned as Adjudicating Officer was forwarded vide communiqué dated August 05, 2015.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

3. Show Cause Notice No. E&AO/RA/JP/22157/2015 dated August 06, 2015 (hereinafter referred to as "**SCN**") was served upon the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed upon them under sections 15 A (b) of the SEBI Act for the alleged violation of regulation 31 (1), 31(2) read with 31 (3) of the SAST Regulations. The observations made under the investigation and the facts / allegations as levelled in the SCN against the Noticees are mentioned hereunder.

(a) The price of the scrip of USL was observed to have increased from ₹ 491.15 at BSE and ₹ 491.90 at NSE on December 30, 2011 and touched a high of ₹ 2149 at BSE and ₹ 2150 at NSE on November 29, 2012. The case was taken up *suomoto* for investigation by Investigation Department of SEBI for any possible violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations 2003 etc. in the trading/dealing in shares of USL during the period January 2, 2012 to November 30, 2012 (investigation period).

(b) During the course of investigation, it was *inter-alia* observed that the Noticees who are the promoter entities of USL, had undertaken 15 and 2 pledge transactions respectively with regards to some of their USL shareholding during investigation period. Details of pledge transactions and

date-wise summary of pledge transactions undertaken by the Noticees in the scrip of USL as were provided by them.

(c) From the details submitted by the stock exchange (s) and the details provided by the Noticees, it was revealed that the Noticees had failed to make disclosures regarding creation / invocation / release of their certain pledges transaction as required under regulation 31 of the SAST Regulations. The details of alleged failure on the part of the Noticees are given in table below –

Sr. No.	Transaction date	Entity	Transaction Nature	Shares	Disclosure date to BSE	Disclosure date to NSE	Disclosure filing due date	Violation	Remarks
1	15.2.12	UBHL	Invocation	34,528	-	-	Not filed	Regulation 31(2) and 31(3) of SAST Regulations	Not filed
2	24.3.12	UBHL	Invocation	2,20,000	-	-	Not filed	Regulation 31(2) and 31(3) of SAST Regulations	Not filed
3	26.3.12	UBHL	Invocation	50,000	-	-	Not filed	Regulation 31(2) and 31(3) of SAST Regulations	Not filed
4	26.3.12	UBHL	Creation	1,50,000	-	-	Not filed	Regulation 31(1) and 31(3) of SAST Regulations	Not filed
5	28.3.12	UBHL	Creation	1,86,000	-	-	Not filed	Regulation 31(1) and 31(3) of SAST Regulations, 2011	Not filed
6	28.3.12	UBHL	Release	11,69,000	11.4.12	-	10.4.12	Reg 31(2) and 31(3) of SEBI(SAST) Regulations, 2011	1 day delay in filing

Sr. No.	Transaction date	Entity	Transaction Nature	Shares	Disclosure date to BSE	Disclosure date to NSE	Disclosure filing due date	Violation	Remarks
7	28.3.12	KFIL	Creation	6,67,000	11.4.12	-	10.4.12	Reg 31(1) and 31(3) of SEBI(SAST) Regulations, 2011	1 day delay in filing
8	25.10.12	KFIL	Release	10,000	7.11.12	6.11.12	5.11.12	Reg 31(2) and 31(3) of SEBI(SAST) Regulations, 2011	1 day delay in filing

(d) In view of the aforesaid, it was alleged that the Noticees had failed to disclose / made delayed disclosure about their pledge transactions in the share of USL, and thereby allegedly violated regulation 31 (1), 31(2) read with 31 (3) of the SAST Regulations. The aforesaid provisions of law alleged to have been violated by the Noticees are mentioned below;

***Disclosure of encumbered shares.***

*31(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such forms as may be specified.*

*(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.*

*(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—*

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

*(b) the target company at its registered office.*

4. In response to the SCN, the Noticeesthrough letter dated August 28, 2015 had intimated that they are in the process of preparing reply towards the SCN and requested for an additional 14 days' time to file reply. Thereafter, the Noticees had filed their replies dated September 11, 2015 towards the SCN and also requested for an opportunity of hearing in the matter.

5. For the purpose of inquiry and as requested by the Noticees, an opportunity of hearing on October 21, 2015 was provided to the Noticees vide hearing notice dated October 01, 2015. In respect of said notice of hearing, the Noticees had vide their common letter dated October 07, 2015 requested for an adjournment of hearing attributing the reasons that several other cases against them were listed around the aforesaid scheduled date and their concerned official would be busy during that period.
6. Considering the grounds as stated by the Noticees and also taking into account the principle of natural justice, another final opportunity of hearing on October 30, 2015 was provided to the Noticees vide hearing notice dated October 15, 2015. The hearing on October 30, 2015 was attended by the authorised representatives of the Noticees namely- Mr. Sandeep Parekh Advocate, Mr. Kaushik Majumder (Sr. Vice President –Legal & Company Secretary of Noticee No. 1), Mr. Shashank M Patil and Ms. Radhika Venkatesh; and the submissions made by them were recorded. During the hearing, the authorized representatives of the Noticees agreed to file additional written submissions /arguments along with annexures if any, within a period of 10 days. Thereafter, the Noticees filed their additional written submission dated November 09 and 16 of 2015 along with annexures.
7. The core submissions made by the Noticees towards the SCN in their aforesaid reply dated September 11, 2015, during the course of hearing, supplementary reply dated November 09, 2015 and additional written submission dated November 16, 2015, are mentioned below;

*Reply of the Noticee No. 1 (UBHL)*

*(a) UBHL, in the ordinary course of its business, avails credit facilities from lenders for its working capital requirements and in order to provide support to its group companies. For these credit facilities, UBHL regularly provides pledge of shares from its portfolio as security to the lenders. The choice of securities being pledged*

*for a particular transaction depends upon the negotiation and agreement of the terms and conditions of the loan with respective lenders. Amongst the securities of other listed group companies, UBHL also provides the equity shares of USL as security.*

*(b) UBHL is disclosed as a promoter of USL. In accordance with the Takeover Regulations and other applicable regulations, UBHL regularly makes disclosures regarding any transactions involving the equity shares of USL as and when required. This includes disclosures pertaining to the creation, release or invocation of pledge involving equity shares of USL as required under regulation 31 of the Takeover Regulations.*

*(c) UBHL filed a consolidated disclosure dated April 04, 2012, in accordance with the format prescribed under regulation 31 of the Takeover Regulations, to the NSE, BSE and Bangalore stock Exchange Limited ("Bangalore Exchange") (each of these are attached herewith as Annexure I). The same were dispatched on April 04, 2012, and courier receipts were received from the courier service providers bearing airway bill nos. 30243055290 (NSE), 30243055301 (SSE), and 882115387 (Bangalore Exchange) (each of these are attached herewith as Annexure II). Further, these were delivered to the stock exchanges on April 09, 2012 (Refer to the delivery confirmation provided by the courier service providers attached herewith as Annexure III).*

*(d) On February 15, 2012, Yes Bank Limited, one of the lenders, invoked their right on 34,528 equity shares of USL pledged by us. We were made aware of the invocation of pledge by our depository participant when they communicated the 'Transaction Statement' for the period from February 9, 2012 to February 17, 2012 by e-mail dated February 18, 2012 (Attached herewith as Annexure II). On being informed of the invocation, we approached the lender in order to reverse the invocation and regain the equity shares of USL. We did not proceed to make the*

*disclosure stating that the shares were invoked would be incorrect in such a situation. However, the discussions failed to achieve the desired outcome. In this light, as discussed above, UBHL filed a consolidated disclosure dated April 04, 2012, which took into account the details of the shares that were invoked on February 15, 2012, and other transactions that took place in the interim, in accordance with the format prescribed under regulation 31 of the Takeover Regulations. We humbly submit that the SCN is incorrect in stating that the disclosure was not filed, but that the disclosure was delayed by 33 days. We submit that the delay in filing the disclosure was inadvertent, was neither deliberate nor willful on the part of UBHL and that there were no mala fide intentions at any point of time.*

*(e) In subsequent reply dated November 09, 2015 Noticee stated that, the delay in filing disclosures pertaining to the invocation of pledge dated February 15, 2012; has been entered incorrectly due to a typographical error. It is submitted that the due date for making disclosures in relation to this invocation is seven (7) working days from February 18, 2012 (date of intimation of invocation), i.e., February 29, 2012 (February 19, 20, 25, 26 were not working days). As the disclosure was made on April 04, 2012, we humbly submit that the SCN is incorrect in stating that the disclosure was not filed, but that the disclosure was delayed by 28 days (March 3, 4, 8, 10, 11, 17, 18, 24, 25, 31, and April 1, 2012 were not working days).*

*(f) For Invocation of Pledge on March 24 and 26 of 2012, we were made aware by depository participants e-mail dated March 28, 2012 only and accordingly we dispatched the consolidated disclosures on April 04, 2012 and was delivered to the stock exchanges on April 09, 2012 (delivery receipt provided by the courier service attached herewith as Annexure IV). The Pledge merely requires actions by the lender. In some situation, due to apprehensions, the borrowers may prevent/delay an invocation if they are given advance notice of invocation. However, a lender may choose to undertake an invocation without intimating the borrower. The borrower might be unaware of the invocation until it receives intimation of the same. The legal maxim "Lex Non Cogit Ad Impossibilia" can be*

*relied on in such situations, which translates to “the law does not compel a man to do that which he cannot possibly perform.” Please see the ruling of the Hon’ble Supreme Court in Manohar Joshi v. Nitin Bhaurao Patil and Anr., in support of the proposition. Further, Disclosure cannot be expected to be made on a day on which the exchange is closed*

*(g) For creation of pledge on March 26, 2012 for 1,50,000 shares, the due date for making disclosures was April 04, 2012 as March 31 and April 01, 2012 were not working days and we had dispatched the consolidated disclosures on April 04, 2012.*

*(h) On March 28, 2012 UBHL created a pledge on 1,86,000 shares and released the pledged 11,69,000 shares. The due date for making disclosures was April 10, 2012 as March 31 and April 01, 05, 06, 07, and 08 of 2012 were not working days. Accordingly, we dispatched the consolidated disclosures on April 04, 2012 and was delivered to the stock exchanges on April 09, 2012.*

*(i) In view of the above, we submit that the disclosures were made in accordance with regulation 31 of the Takeover Regulations. However, in the cases, viz. Rasesh Kanakia and Himanshu Kanakia in the matter of Cinemax India Limited, SEBI has imposed penalties in between Rupees one (1) lakh and Rupees two (2) lakh. We humbly request you to take a lenient view while taking any action against our clients.*

*Reply of the Noticee No. 2 (KFIL)*

*(a) KFIL, in the ordinary course of its business, avails credit facilities from lenders for its working capital requirements and in order to provide support to its group companies. For these credit facilities, KFIL regularly provides pledge of shares from its portfolio as security to the lenders. The choice of securities being pledged for a particular transaction depends upon the negotiation and agreement of the terms and conditions of the loan with respective lenders. Amongst the securities of*



other listed group companies, KFIL also provides the equity shares of USL as security.

(b) KFIL is disclosed as a promoter of USL. In accordance with the Takeover Regulations and other applicable regulations, KFIL regularly makes disclosures regarding any transactions involving the equity shares of USL as and when required. This includes disclosures pertaining to the creation, release or invocation of pledge involving equity shares of USL as required under regulation 31 of the Takeover Regulations.

(c) In March and October, 2012, portions of KFIL's equity shareholding in USL were pledged or pledged equity shares in USL were released. The specifics of the transactions relevant for the purposes of these written submissions have been detailed in the table below:

<i>Sl. No</i>	<i>Date of Transaction</i>	<i>Nature of Transaction</i>	<i>Number of Shares</i>
1	28.03.2012	Creation	6,67,000
2	25.10.2012	Release	10,000

(d) The SCN has alleged that disclosures in relation to transactions detailed in the table above were each delayed by one (1) day. Before proceeding with analysing whether disclosures pertaining to each of the transactions has been made within the stipulated due date, we submit that section 9 (1) of the General Clauses Act, 1897, is relevant while calculating the due date of disclosure under regulation 31 of the Takeover Regulations.

(e) The Hon'ble Supreme Court, in *Tarun Prasad Chatterjee v. Dinanath Sharma*, has stated that "Section 9 of the General Clauses Act, 1897 gives statutory recognition to the well-established principle applicable to the construction of statutes that ordinarily in computing the period of time preserved, the rule

*observed is to exclude the first and include the last day. Regulation 31 (3) of the Takeover Regulations states that disclosures under Regulations 31 (1) and 31 (2) shall be made within seven (7) working days from the date of the creation, invocation or release of encumbrance. Based on section 9 of the General Clauses Act, 1897, and the Hon'ble Supreme Court's views, it is submitted that the usage of the word 'from' within Regulation 31 (3) indicates that the date on which the transaction involving encumbrance occurred must be excluded while determining the due date of making disclosures pertaining to encumbrance of shares.*

*(f) In regard to the creation of pledge of 6, 67,000 equity shares of USL on March 28, 2012, the due date for making disclosures in relation to this transaction is seven (7) working days from March 28, 2012, i.e., April 10, 2012 (as March 31, 2012, April 01, 05, 06, 07 and 08, 2012 were not working days). As the disclosures were dispatched on April 04, 2012, and were delivered to the stock exchanges on April 09, 2012, we submit that the SCN is incorrect as a matter of law in stating that the disclosures in regard to the creation of encumbrance on March 28, 2012, were delayed. The disclosures were made in accordance with regulation 31 of the Takeover Regulations without any delay.*

*(g) In regard to the release of 10,000 pledged shares of USL on October 25, 2012, the due date for making disclosures in relation to this transaction is seven (7) working days from October 25, 2012, i.e., November 05, 2012 (as October 27 and 28, 2012, and November 03 and 04, 2012, were not working days). Disclosures filed with the NSE and BSE were dispatched by courier on November 05, 2012, and were delivered on November 06, 2012 (the first working day after the date on which the disclosure was dispatched). Further, the disclosure filed with Bangalore Stock Exchange Limited ("Bangalore Exchange") was hand delivered on November 05, 2015, and the delivery of the same was acknowledged by the Bangalore Exchange on November 05, 2015. As the public shareholders of USL were made aware of the transaction undertaken by KFIL by virtue of it being disclosed to the Bangalore Exchange on November 05,*

2015, we submit that the SCN is incorrect as a matter of law in stating that the disclosures in regard to the release of encumbrance on October 25, 2012, were delayed. The disclosures were made in accordance with regulation 31 of the Takeover Regulations without any delay.

(h) In light of the above submissions, it is submitted that KFIL has complied with the requirements under regulation 31 of the Takeover Regulations in relation to all transactions including those mentioned in the SCN. We, therefore, request you to not to hold inquiry against our clients in terms of rule 4 of Inquiry Rules read with section 15 of the SEBI Act and not to impose penalty under section 15 A (b) of the SEBI Act.

8. After taking into account the allegations, replies of the Noticees and other evidences / material available on records, I hereby, proceed to decide the case on merit.

#### **CONSIDERATION OF ISSUES AND FINDINGS**

9. The issues that arise for consideration in the present case are :
  - a) Whether the Noticees had failed / delayed in complying with the provisions of regulation 31 (1), 31(2) read with 31 (3) of SAST Regulations?
  - b) If yes, then, whether said violation attracts monetary penalty under sections 15 A (b) of the SEBI Act?
  - c) If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (3) of the Adjudication Rules?

**ISSUE NO. 1- Whether the Noticees had failed / delayed in complying with the provisions of regulation 31 (1), 31(2) read with 31 (3) of SAST Regulations?**

10. I have carefully perused the allegations, submissions of the Noticees and the evidences / material available on records. The facts / details of pledge transactions viz. number of shares, date of creation / invocation / release of pledged shares etc. as alleged in the SCN, are not in dispute by the Noticees except certain explanations made by them which will be dealt below. The submissions / explanation of the Noticees towards the allegations are mentioned at para 7 above and same are not repeated for sake of brevity.
11. The details of allegation of non-disclosure / delayed disclosures about creation / invocation / release of pledged shares by the Noticees, are shown in the table at Para 3 (c) above. From the annexure III of the SCN which is the e-mail communications of the stock exchanges viz. BSE and NSE, it is observed that the Noticees had failed to disclose/ delayed in disclosing to the stock exchange (s) the details of creation / invocation / release of pledged transactions.

**Examination of case in respect of Noticee No. 1 (UBHL)**

12. In respect to the allegations, the Noticees No. 1 stated that it had made consolidated disclosures dated April 04, 2012 regarding entire alleged transactions of invocation of pledge on February 15, 2012, March 24 & 26 of 2012 and creation / release of pledge on March 26 & 28 of 2012. The Noticee No.1 enclosed as Annexure 1 (2 pages) to that effect. It was stated by Noticee No.1 that the said disclosures were delivered to the Stock Exchange(s) on April 09, 2012 and enclosed annexure IV (5 pages) the copy of delivery report provided by the courier services. The same documents were resubmitted by the Noticee No. 1 along with their additional submissions dated November 09, 2015.
13. Though as per stock exchange records, no disclosures were made by the Noticee No. 1 for transaction as shown in serial no. 1-5 of the aforesaid table and disclosure made with 1 day delay for the transaction of 'release of pledge" on March 28, 2012, however, keeping in view the delivery proof of so called

consolidated disclosures as claimed by the Noticee No. 1, the same is being examined as under.

14. I have perused the above documents / annexure 1 of the UBHL and observed that the plea of making consolidated disclosures in respect of creation/invocation/release of aforesaid pledged transaction, is not correct as the Annexure 1 (bearing 1<sup>st</sup> page a letter dated April 04, 2012 of the UBHL and 2<sup>nd</sup> page a disclosure format to Stock Exchanges), a letter dated April 04, 2012 of the UBHL addressed to stock exchange (s) merely furnishes the detail of “Release” and “Creation” of pledge of shares of USL and does not include the details of “Invocation” of pledged shares. Further, the plea of consolidated disclosures cannot be accepted as the second page of Annexure 1 (Format of submitting of disclosures) contains only two dates viz. March 28 & 29 of 2012 in the column of “details of events pertaining to encumbrance”, and again the details of “Invocation” dates i.e. February 15, 2012 and March 24 & 26 of 2012 and the details of “creation of pledge” on March 26, 2012 are not appearing therein. As no details for transactions dated February 15, 2012 and March 24 & 26 of 2012, appears at the disclosures made to stock exchanges (s), therefore, it cannot be held that the Noticee No.1 had made the consolidated disclosures in respect of said transaction.
  
15. Also the Noticee No. 1 in its reply dated September 11, 2015 admitted that there was 33 days delay in making disclosure about invocation of pledge transaction of 34,528 shares invoked on February 15, 2015. Though, in supplementary reply dated November 09, 2015, it had modified the delay as “28 days” removing some days as not working days viz. March 3,4,8, 10, 11, 17,18,24,25, 31 and April 1, 2012. The disclosure made by the UBHL / Noticee No. 1 at Annexure 1 is produced below which apparently does not display the disclosures of transactions of “invocation of pledge” dated February 15, 2012 and March 24 & 26 of 2012 and “Creation of pledges” dated March 26 of 2012.



## UNITED BREWERIES (HOLDINGS) LIMITED

April 4, 2012

The Executive Director  
Bangalore Stock Exchange Limited  
Exchange Towers, No.51,  
J C Road, 1 Cross,  
Bangalore 560027

The Bombay Stock Exchange Limited  
Department of Corporate Services  
1st Floor, New Trading Ring  
Rotunda Building, P J Towers  
Dalal Street, Fort, Mumbai 400 001

✓ The Secretary  
National Stock Exchange of India Limited  
Compliance Department  
Exchange Plaza, Bandra Kurla Complex  
Bandra [E], Mumbai 400 051

Dear Sirs,

**Sub: Disclosure of release /creation of pledge of shares**

In terms of Notification No. LAD-NRO/GN/2011-12/24/30181 dated September 23, 2011 issued by Securities and Exchange Board of India (SEBI), we hereby furnish the details of release and creation of pledge on shares held by us.

Kindly treat this as compliance under Regulation 31(1) and (2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and acknowledge receipt.

Thanking You,

Yours faithfully,  
For United Breweries (Holdings) Limited:

**Kaushik Majumder**  
Corporate Vice President-Legal &  
Company Secretary

Encl: as above

cc: United Spirits Limited  
UB Tower, Level 6, UB City,  
No.24, Vittal Mallya Road  
Bangalore 560 001

Disclosure by the Promoter(s) to the stock exchanges and to the Target Company for encumbrance of shares/invocation of encumbrance/release of encumbrance, in terms of Regulation 31(1) and 31(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Name of the Target Company(TC)	United Spirits Ltd
Name of the Promoter(s) on whose shares encumbrance was created/invoked/released ( tick the relevant one)	United Breweries (Holdings) Limited
Date of reporting	4.4.2012
Names of the stock exchanges where the shares of the Target Company	Bangalore Stock Exchange Limited, The Bombay Stock Exchange Limited and The National Stock Exchange of India Limited

Details of the Promoters' Holdings (The term "event" indicates creation/invocation/release of encumbrance, as the case may be)							
Promoter(s) or PACs with firm	Pre-event holding		Details of events pertaining to encumbrance		Post event holding (encumbered shares to be excluded)		(*) Details of encumbrance (pledge/lien or others- give details)
	Number	% of total share capital	Type- creation/invocation/ release	Date(s)	Number	% of total share capital	
United Breweries (Holdings) Limited	23,881,821	16.26	Release/Creation	28.3.2012 29.3.2012	1,915,806	1.46	Release /Pledge of equity shares

For United Breweries(Holdings) Limited



Kaushik Majumder  
Corporate Vice President- Legal &  
Company Secretary

16. In light of the Stock Exchange (s) records and also considering the Annexure 1 of the Noticee No. 1, it is clear that the Noticee No. 1 had failed to make disclosures regarding the “invocation of pledge” transaction that took place on February 15, 2012 and March 24 & 26 of 2012 and also failed to make disclosure regarding the transaction of “creation of pledges” that took place on March 26 of 2012.
17. Though, no consolidated disclosures for the entire transactions as relied by the Noticee No. 1 is proved, but, even if it is so presumed, even then also, there is delay of 4 days in submitting the required disclosures regarding the invocation of pledge on March 24 and 26 of 2012 and creation of pledge on March 26, 2012 as the due date for such disclosures was April 04, 2012 (as admitted by the Noticee No. 1 in its reply dated September 11, 2015), but the same as claimed were delivered to stock exchange (s) only on April 09, 2012.
18. The plea of the Noticee No. 1 regarding invocation / creation of pledge that took place on March 24 & 26 of 2012 i.e. *(it came to know only on March 28, 2012 about the invocation of pledge transaction that took place on March 24 & 26 of 2012 when Depository Participant through De-mat Transaction Statement informed the same and being the borrower, it cannot come to know about action of lender of invocation until it is informed to it; and therefore, the calculation of due date of 7 working days must start only upon such intimation)*, do not necessarily warrants the examination of such transactions as the core ground of consolidated disclosures (Annexure 1 of the Noticee) in respect of invocation/creation of pledge on March 24 & 26 of 2012, is not proved in light of observations / conclusion made in above paras.
19. However, since this issue is raised in the matter, therefore, additionally, there would be no infirmity in dealing with the same. Here, I do not agree with the aforesaid plea / contention of “knowledge/intimation” of invocation of pledge transactions on the two following grounds. Firstly, as per the bare reading of regulation 31 (3) of the SAST Regulations, the disclosures are required to be made *“within seven working days from the creation or invocation or release of*



*encumbrance*”. The said regulation clearly stipulates the mandatory requirement of disclosures to be made from the day of creation / invocation / release of pledge and does not leave any scope of “*knowledge / intimation*” as prior condition for the person who is required to make such disclosures. Had the “*knowledge / intimation*” been the intent of the statute then, it would have been very well incorporated in the SAST Regulations itself. Secondly, while making / creating pledge of shares by the borrower, certain terms / condition as well as the timeline of invocation of pledged shares in case of breach in making payment/loan are pre fixed between the borrower and the lender. Needless to say that if such time line towards the pledged shares are there, then, the borrower (the Noticee No. 1) is supposed to know the last day after which invocation of pledged share may take place by the lender upon breach of payment.

20. Further, it is important to mention that if the arguments advanced by the Noticee No. 1 is accepted, then, the very purpose of aforesaid SAST Regulations (meant to stipulate such specific time lines of 7 working days from the date of transactions in the interest of investor to keep them well informed about stock decision / management etc.) would be defeated. Hence, the submission of the Noticee No. 1 regarding “*intimation / knowledge*” of invocation of pledge as a pre-condition is without any merit.

21. It is also worth to mention that manner of creation / invocation of pledge has been laid down in regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as ‘DP Regulations’). For the purpose of invocation, regulation 58 (8) and 58 (9) warrants hereunder;

*(8) Subject to the provisions of the pledge document, the pledgee may invoke the pledge and on such invocation, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.*

*(9) After amending its records under sub-regulation (8) the depository shall immediately inform the participants of the pledger and pledgee of the change who in turn shall make the necessary changes in their records and inform the pledger and pledgee respectively.*

22. It is clear from the aforesaid provision of the DP Regulations that it is the duty of the Depository towards the Participant and in turn of Participants towards the pledger / pledgee, to **immediately** inform about such invocation. The intent of the statute in respect of word “immediately” should be construed in its true sense meaning thereby that it should be informed immediately or within the same day itself. Had the intent of the statute was different, then, it would have been otherwise incorporated in DP Regulation like the regulation 58 (3) specifying the timeline for creating record of pledge. The depository participants (who is in other words is like an agent /authorized entity of the Noticee in this behalf) should inform the person required to make disclosures without any delay.
23. In view of the above and also in view of the plea of Section 9 (1) of the General Clauses Act, 1897, taken by the Noticee in their support, it is clear that “intimation/Knowledge” of such invocation of pledge is not warranted under law.
24. As regards to the allegation of failure to make disclosure about “Creation” of pledge for 1,86,000 shares and “Release” of 11,69,000 pledged shares on March 28, 2012 by the Noticee No. 1, the NSE records reveals that the same were not disclosed; and BSE’s records reveals that creation of pledge was not disclosed but the release of pledge was disclosed by Noticee No.1 with 1 day delay as the Noticee was supposed to make disclosures by April 10, 2012 however, BSE received such disclosure only on April 11, 2012.
25. In respect to above, from the Annexure IV (delivery proof of disclosure) enclosed with reply of the Noticee No. 1, it is noted that disclosure for the date of March 28 and 29 of 2012 were made on April 04, 2012 and the same were delivered to the stock exchanges on April 09, 2012 i.e. before April 10, 2012. Therefore, no fault

can be found in making disclosures by the Noticee No. 1 for the transaction dated March 28, 2012.

26. In light of the exchange records and also considering the Annexure 1 of the Noticee No. 1, it is concluded that the Noticee No. 1 had violated regulation 31 (1), 31(2) read with 31 (3) of the SAST Regulations as it had failed to make the disclosures regarding the “invocation of pledge” that took place on February 15, 2012 and March 24 & 26 of 2012 and also failed to make disclosures regarding the “Creation of pledges” of shares that took place on March 26 of 2012.

**Examination of case in respect of Noticee No. 2 (KFIL)**

27. As regards to the allegation of failing to make disclosures / delay in making disclosure about “creation” of pledge transaction on March 28, 2012 for 6,67,000 shares by the Noticee No. 2, the NSE records reveals that the same were not disclosed; and BSE’s records reveals that same was disclosed with 1 day delay as the Noticee No. 2 was supposed to make such disclosure by April 10, 2012 however, BSE received such disclosure only on April 11, 2012.

28. Further, as regards to the allegation of making delayed disclosure about “release” of 10,000 pledged shares on October 25, 2012 by the Noticee No. 2, the BSE and NSE records reveals that the same were disclosed on November 07, 2012 and November 06, 2012 respectively, with a delay of 1 day as the Noticee No. 2 was supposed to make disclosure by November 05, 2012.

29. The Noticee No. 2 submitted that while calculating the due date of disclosure under Regulation 31 of the Takeover Regulations, section 9 (1) of the General Clauses Act, 1897, should be applied which states as :-

*"In any Central Act or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of*

*time, to use the word "from ", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to"."*

30. In respect to the allegation, the Noticee No. 2 submitted it had created a pledge on 6, 67,000 equity shares of USL on March 28, 2012 and the due date for making disclosures in relation to this transaction was April 10, 2012 from March 28, 2012 as March 31, 2012, April 01, 05, 06, 07 and 08, 2012 were not working days. The Noticee submitted that the disclosures were dispatched on April 04, 2012, and were delivered to the stock exchanges on April 09, 2012.
31. In regard to the release of pledge on 10,000 equity shares of USL on October 25, 2012, the Noticee submitted that the due date for making disclosures in relation to this transaction was November 05, 2012 from October 25, 2012 as October 27 and 28, 2012, and November 03 and 04, 2012, were not working days. The Noticee No. 2 stated that disclosures filed with the NSE and BSE were dispatched by courier on November 05, 2012, and were delivered on November 06, 2012 (the first working day after the date on which the disclosure was dispatched). Further, the Noticee No. 2 stated that the disclosure filed with Bangalore Stock Exchange Limited was hand delivered on November 05, 2015, and the delivery of the same was acknowledged by the Bangalore Exchange on November 05, 2015. The Noticee No. 2 stated that the public shareholders of USL were made aware of the transaction undertaken by KFIL by virtue of it being disclosed to the Bangalore Exchange on November 05, 2015.
32. In support of its submission, the Noticee No. 2 enclosed delivery proof of submission of said disclosures to stock exchanges. It was stated by the Noticee No. 2 that it is the sister concern of the Noticee No.1 and located at the same address, hence, the disclosures were made together with Noticee No.1 to stock exchanges and therefore the courier receipts were generated in name of UBHL only.

33. I have perused the available records and observed that the case against the Noticee No. 2 is that it had delayed disclosures by mere 1 day. It is noticed that in respect of creation of pledge of 6, 67,000 equity shares on March 28, 2012, the due date for making disclosures was April 10, 2012 and as per the annexures provided by the Noticee No. 2 in its aforesaid replies including disclosures delivery proof, it is observed that the said disclosure was dispatched by the Noticee No. 2 on April 04, 2012, and were delivered to the stock exchange (s) on April 09, 2012 i.e. within the due date. Therefore, no fault can be found with the disclosures made for the transaction done on March 28, 2012.

34. In respect to the "release" of 10,000 pledged shares transacted on October 25, 2012, the due date for making disclosures was November 05, 2012 and as per the annexures provided by the Noticee No. 2 in its aforesaid replies including disclosures delivery proof, it is observed that the said disclosure was dispatched by the Noticee No. 2 on November 05, 2012, and were delivered to NSE and BSE on November 06, 2012 and to Bangalore Stock Exchange on November 05, 2012 itself. I cannot ignore the material fact that the Noticee No. 2 had taken efforts to dispatch the required disclosures to all the 3 stock exchanges before the due date of disclosures, and even though it reached to NSE and BSE with mere one day delay, but it reached to Bangalore stock exchange on the due date itself. It is relevant to mention that the disclosure in this respect were filed with Bangalore Stock Exchange within due date and therefore shareholding under USL were made aware to public of the transaction undertaken by KFIL.

35. Therefore, keeping in view the various mitigating factors viz. mere 1 day delay that too for one transaction only, involvement of small number of shares of 10,000, efforts made by the Noticee No. 2 to dispatch the disclosures within the due date, delivery to one of the stock exchange (Bangalore stock exchange) on time, no repetitive nature of irregularities were shown on records to have been committed by the Noticee No. 2, considering the case holistically/judiciously in the given facts and circumstance of the case and in the interest of justice, I am of the

view that this is not a fit case for making the Noticee No. 2 liable for imposition of monetary penalty.

**ISSUE No. 2 - whether said violation attracts monetary penalty under sections 15 A (b) of the SEBI Act?**

36. As the violation of regulation 31 (1), 31(2) read with 31 (3) of the SAST Regulations stood established against the Noticee No. 1 (UBHL) as observed in Para 13 to 26 above, and after taking into account the facts and circumstance of the case, I am of the view that this is the fit case to impose monetary penalty against the Noticee No. 1 for the aforesaid violations.

37. Thus, the aforesaid violation by the Noticee No. 1 makes it liable for penalty under Section 15 A (b) of SEBI Act, 1992 which read as follows:

**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;*

**ISSUE NO. 3- What would be the monetary penalty that can be imposed upon the Noticee No. 1 taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (3) of the Adjudication Rules?**

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

***“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 investors as a result of the default;*

*(c) the repetitive nature of the default.”*

39. Before arriving to the quantum of penalty in the matter, it is necessary to refer the importance of such disclosures. The main objective of the SAST Regulations is 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.

40. No specify disproportionate gains or unfair advantage made by the Noticee No. 1 or the specific loss suffered by the investors due to such non / delayed disclosures is available on records; and no repetition of the default is shown on records to have been committed by the Noticee No. 1. However, taking into consideration the facts and circumstance of the case (non disclosures of total 4 transactions viz. “invocation of pledge” that took place on February 15, 2012 and March 24 & 26 of 2012; and also the non disclosures regarding the “Creation of pledges” that took place on March 26 of 2012), I am of the view that a justifiable penalty needs to be imposed upon the Noticee No. 1 to meet the ends of justice.

41. The case of Rasesh Kanakia and Himanshu Kanakia in the matter of Cinemax India Limited, as relied by the Noticee No. 1 in respect of imposition of penalties, do not hold good in its favour keeping in view the facts and circumstance of this case and also keeping in view the penalty provision under section 15 A (b) whereby rupees one lakh can be imposed for each day failure.

## **ORDER**

42. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of ₹15,00,000/- (Rupees Fifteen Lakh only) under section 15 A (b) of the SEBI Act upon the Noticee No. 1 / United Breweries (Holding) Ltd. I am of the view that the said penalty would be commensurate with the violations committed by the Noticee No.1.

43. The Noticee No. 1 / United Breweries (Holding) Ltd, shall pay the said amount of penalty by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Chief General Manager, Enforcement Department at the address:- SEBI Bhavan, Plot No. C4A, G Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051.

44. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee No. 1 and also to the Securities and Exchange Board of India.

**Date: November 27, 2015**

**Place: Mumbai**

**RACHNA ANAND**

**ADJUDICATING OFFICER**