BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. ASK/AO/172-73/2014-15]

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

Sr. No.	Name of entity	PAN	Order No.
1	**PVP Energy Pvt. Ltd. (Now known as PVP Global Ventures Private Limited)**	**AAECP0807F**	**ASK/AO-172/2014-15**
2	**Prasad V. Potluri (Promoter- Director of PVP Energy Pvt. Ltd.)**	**AHZPP1406F**	**ASK/AO-173/2014-15**

In the matter of

PVP Ventures Limited

BACKGROUND IN BRIEF

1. Based on the report received from NSE, Securities and Exchange Board of India (**SEBI)** conducted investigation in the scrip of the PVP Ventures Ltd. (hereinafter referred to as '**PVP**') for the period from September 01, 2009 to October 30, 2009. It was observed from the quarterly results of PVP for the quarter ended September 30, 2009, published by the exchanges on October 31, 2009, that PVP suffered a net loss of ₹ 59912 lakh as against a net loss of ₹ 447.97 lakh for the quarter ending June 30, 2009. Investigation revealed that the net loss was mainly due to *Exceptional Items* of ₹ 59365.16 lakh representing write off in the value of investments in equity shares and debentures amounting to ₹ 54205 lakh made in and advances amounting to ₹ 5160.16 lakh extended to its subsidiary PVP Energy Pvt. Ltd. (hereinafter referred to as "**Noticee**

No.1") {*PEL was incorporated as PVP Enterprises Private Limited (PEPL) on November 20, 2006. Later on the name PEPL was changed to PVP Malaxmi Energy Ventures Private Limited (PMEVPL) w.e.f. July 15, 2008. Further, the name PMEVPL was changed to PEL w.e.f. October 23, 2009. The name PEL was changed to its current name PVP Global Ventures Pvt. Ltd (PGVPL) w.e.f December 22, 2012. Accordingly, reference to PEPL, PMEVPL and PGVPL in this order would refer to PEL*}. This increase in net loss was by 13274.27 per cent on quarter to quarter basis.

2. Investigation revealed that Noticee no. 1 was wholly owned subsidiary of PVP and it held 3,54,53,587 equity shares of PVP. Mr. Prasad V. Potluri (hereinafter referred to as "**Noticee no. 2**") is the Chairman and Managing Director (CMD) of PVP and also Director of Noticee no. 1. He is also the promoter of PVP and Noticee no. 1. Further, the Board of Directors of Noticee no. 1 had authorized Noticee no. 2 to operate and manage the share trading account of Noticee no. 1. Investigation further revealed that PVP through -

i. Journal Voucher - (JV) No. 231 dated September 30, 2009 had made "provision for diminution in value of investment" of Rs. 54205 lakh on account of investment in PVP Malaxmi Energy Pvt. Ltd., and
ii. JV No. 232 dated September 30, 2009 had made "Bad debts Provision" of Rs. 5160.16 lakh on account of advances to PVP Malaxmi Energy Pvt. Ltd.

3. It was observed that the price sensitive information (**PSI**) pertaining to negative financial results on account of write-off in the value of investment and advances to Noticee no. 1 came into existence on September 30, 2009. Since the financial results of PVP for the quarter ended September 2009 were published on NSE website on October 31, 2009, the period of September 30, 2009 to October 30, 2009 was taken as the period of unpublished price sensitive

information (**UPSI**). Investigation revealed that 1,89,09,881 (total sales 1,89,10,208 minus 327 bought on 21-10-2009) shares were sold during the period of UPSI by Noticee no. 1 and Noticee no. 2 traded on behalf of Noticee no. 1, during the period of UPSI.

4. In view of the aforesaid, it was alleged that

- Noticee no. 1, being 100 per cent subsidiary of PVP is an insider and had traded in the scrip of PVP while in possession of UPSI.
- Noticee no. 2, being the promoter and director of PEL which is 100 per cent subsidiary of PVP and also being the promoter and CMD of PVP, is an insider and had traded in the scrip of PVP on behalf of Noticee no. 1 while in possession of UPSI.

Noticees, were, thus, alleged to have violated Section 12A (d) and (e) of SEBI Act, 1992 and Regulations 3(i) and (ii) read with Regulation 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations**").

5. Investigation further revealed that Noticee no. 1 held 15.77 per cent shares of PVP during quarter ending June 2009 which decreased to 9.96 per cent during quarter ended September 2009 and further fell to 3.47 per cent during quarter ended December 2009. NSE and BSE vide emails dated January 24, 2013 and January 25, 2013 respectively informed that no disclosure was made by Noticee no. 1 under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**"). In view of the aforesaid, it was alleged that -

- Noticee no. 1 failed to make disclosure regarding sale of more than two per cent share capital of PVP to PVP and to the stock exchanges within

2 days of transaction and thereby violated Regulation 7(1A) of the SAST Regulations, and

- Noticee no. 2, despite being the director of Noticee no. 1 and being in charge and responsible for the conduct of its business, failed to get Noticee no. 1 to make disclosure regarding sale of more than two per cent of the share capital of the PVP to PVP and to the stock exchanges within 2 days of transaction and thereby violated Regulation 7(1A) of the SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

6. Shri Piyoosh Gupta was appointed as Adjudicating Officer vide order dated April 17, 2013 to inquire into and adjudge under sections 15A(b) and 15(G) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) the alleged violations of the provisions of the Section 12A (d) and (e) of SEBI Act, 1992, Regulations 3(i) and (ii) read with Regulation 4 of the PIT Regulations and Regulation 7(1A) of the SAST Regulations by Noticees. Subsequently, upon the transfer of Shri Piyoosh Gupta, I have been appointed as Adjudicating Officer, in the present matter, vide order dated November 08, 2013.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. Separate Show Cause Notices dated September 19, 2013 (herein after referred to as "**SCN**") were issued to Noticees under rule 4 of SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Rules read with section 15I of SEBI Act, 1992 and penalty be not imposed under sections 15G and 15A(b) of SEBI Act, 1992 for the violations specified in the SCN. The copies of the

documents relied upon in the SCN were provided to Noticees along with the SCN.

8. Noticees vide similar letters dated November 15, 2013 replied to the SCN and made the following submissions:

- *We have not been provided with copy of the complete investigation report and copies of all documents and records related to the subject matter on which the reliance has been placed by Adjudicating Officer in the captioned proceedings.*
- *It is submitted that a substantial portion of the money realised from the sale of shares of the Company by PEL was repaid to the Company as a part of repayment of outstanding loan. Further, the sale of shares by PEL was authorised by the board of directors of PEL at their meeting held on September 12, 2009. PEL suffered substantial losses by selling the shares at much below the cost price and therefore neither the promoters of the Company were enriched nor did PEL receive any undue advantage or avoid any substantial losses by such sale of shares.*
- *PEL held 15.77 per cent shares of PVP during the quarter ended June 2009, which subsequently declined to 9.06 per cent for the quarter ended September 2009 and further declined to 3.47 percent for the quarter ended December 2009. The aforementioned sale of shares was undertaken pursuant to an authority of the board resolution of PEL dated September 12, 2009. Further, shares of the Company were also sold in December 2009 and March 2010 even after the alleged price sensitive Information was made public. It is therefore submitted that PEL did not sell the shares in anticipation of a fall in the market prices of the shares pursuant to a disclosure of financial results. However, it is also pertinent to note that the Company continued to incur losses even in the previous quarter and therefore the consequent diminution in the value of investments, as were already disclosed, were already factored in the market price of the shares of the Company prior to the declaration of results*
- *PEL repaid about Rs.1,20,60,47,850 to the PVP as repayment of loan out of ₹1,28,72,51,561 received by PEL through sale of shares.*
- *Financial results for the quarter ended September 2009 refer to an exceptional item representing a write off to extent of Rs. 59365.16 lakh on*

account of diminution in value of investment (i.e. value in the form of shares and debentures amounting to Rs. 54205 lakh and advances amounting to Rs. 5160.16 lakh) made in and extended to its subsidiary, PEL. The write off has been properly recorded to reflect notional losses incurred by PEL on sale of its investment in the shares of the Company as at September 30, 2009. Moreover, the said information regarding these provisions had already been provided in the 'Notes to Accounts' of the Annual Report of the Company for the financial year 2008-09. Thus, it was evident that the information was already available in public domain and therefore cannot be considered to be "unpublished". Since the price sensitive Information was already published and available in the public domain, I cannot be alleged to have traded the shares while In the possession of the unpublished price sensitive information. It is therefore submitted that either myself or PEL did not gain any undue advantage by sale of such shares, nor were the investors of the company prejudiced in any manner, consequent to of negative financial results.

- *PEL had sold shares of the Company only after the alleged price sensitive information was already made available in the public domain not only by publishing it in the Annual Report of year ended March 31, 2009 but it was also reflected in the financial results for the quarter ended June 30, 2009. You will appreciate the fact that sale of such shares would have had a negative impact of a greater extent on the market price of the shares of the Company, had PEL sold all the shares in a single tranche. It is precisely because of this reason that the shares of the Company were not sold in one tranche but was spread over a period of time by effecting it in multiple transactions. Considering the Efficient Market Theory of stock markets, the alleged "unpublished price sensitive information" contained in the relevant financial statements had already been factored in the market price of the shares of the Company quoting on the stock exchanges much before declaration of results of the Company, because of the fact that the alleged sensitive information (diminution in value of investments) has already been captured in the financial statements made to public much earlier. The minimal fall in the market price of the shares after the declaration of the results add credence to the aforementioned submission.*

- *Company is engaged in the real estate sector, which has witnessed a steady erosion of market price of the shares of various companies in the sector. As already submitted, these factors coupled with the down trend persisting in the state of the economy had resulted in a decline in the*

market price of the shares of the Company at that time. The fall in the market price of the shares of the Company was in line with the decline of market price of shares in other companies in the real estate sector and also because of the downward trend persisting in the stock market in specific and the economy in general.

- *Journal entries in the accounts of the company with respect to diminution in the value of investment were properly reflected during the quarter ended September 30, 2009. Though, I am the Managing director of the Company, I was not involved directly in preparing the accounts of the company which is generally a functional work done by the Head of Finance and Accounts. However, I have not been provided with documents relied upon by the Adjudicating Officer, that indicate that I was directly Involved in the preparation of the financial results.*
- *None of the investors were aggrieved or prejudiced because of the disclosure results for the quarter ended September 2009, as the diminution in the value of the investments were already factored in the market price of the shares of the company and the erosion of the networth of the company has already been qualified by the Auditors in the Annual Report of the PVP Ventures Limited 2008-2009.*
- *PEL could not submit the disclosures required under the Erstwhile Takeover Code only because of inadvertence and therefore the said non-disclosure was neither wilful nor wanton. However the obligation of filing such a disclosure rests on PEL and not on Mr. Potluri in the individual capacity. As per market practices and in accordance with past practices of the Company, such disclosures were required to be made by the then Compliance Officer of the Company. In this regard, no liability can be attributed to Mr. Potluri in the capacity as Promoter-Director of PEL for the failure of PEL to file the requisite filings with the relevant Stock exchange.*
- *There was no existence of any Unpublished Price Sensitive Information during the alleged period, as the diminution in the value of investments were already available in the public domain as the same were already published in the relevant annual financial Statements and quarterly results.*
- *The market price of the shares of the Company quoting on the stock exchanges prior to declaration of results had already factored and discounted the diminution in the value of investments as was evidenced by the minor decrease in price pursuant to declaration of the financial*

results;

9. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, Noticees were granted an opportunity of personal hearing on February 21, 2014 at SEBI, Head Office, Mumbai, vide notices dated February 04, 2014. On the scheduled date of hearing Shri Amit Vyas, Advocate, appeared as Authorised Representative (AR) on behalf of Noticees and reiterated the submissions made in the reply to SCN. AR requested for extracts of the Investigation Report and another date of hearing. AR was given the extracts of Investigation Report and another opportunity of hearing on March 05, 2014. On the Scheduled date of hearing, when AR was asked as to how the price sensitive information regarding diminution in the value of investments held by Noticee no. 1 in PVP was in public domain, he submitted to file additional written submissions by March 15, 2014. AR was further asked to submit the financial statements of PVP and Noticee no.1 for the period of 2007-08, 2008-09 and 2009-10, and the value of investments held by the subsidiary company Noticee no. 1 in the holding company PVP as on March 31, 2009 and what was the accounting treatment given to these investments as per the applicable accounting standards in the books of Noticee no. 1 for the aforesaid period.

10. Vide letters dated March 14, 2014 and March 18, 2014 Noticees submitted financial statements of PVP and PEL for the period of 2007-08, 2008-09 and 2009-10 and also referred to certain paragraphs in the audited financial statements of PVP for the financial year ended March 31, 2009 and unaudited financial statements of PVP for the quarter ended June 30, 2009 showing that the noticee did not possess any UPSI and that the said information was already in the public domain. Noticees were given another opportunity of personal

hearing on November 12, 2014 which was rescheduled to December 03, 2014 on the request of the AR. On the scheduled date of hearing, Noticees were represented by Shri Amit Vyas, Advocate and Shri GSV Ranga, Head-Legal and Company Secretary of PVP and they reiterated the submissions made vide letters dated November 15, 2013, March 14 and 18, 2014 and requested time of 10 days for filing additional written submissions in the matter. Vide letter dated December 15, 2014 noticees submitted additional written submission which was by and large reiterations of their earlier replies. Additionally they submitted that the disclosure regarding investments of PVP in noticee no. 1 as well as disclosures regarding cost of acquisition of shares of PVP by Noticee no. 1 and the prevailing share price of PVP were made in the Financial Statements.

11. Though separate SCNs were issued to the noticees, in view of the fact that the case emanates from the common set of facts and both the noticees were represented by the common Authorized representative and were heard together, I proceed to deal with both the SCNs issued to both the noticees herein below.

CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the present case are :

a) Whether Noticees had violated the provisions of Section 12A(d) and (e) of SEBI Act, 1992, Regulations 3(i) and (ii) read with Regulation 4 of the PIT Regulations?

b) Whether Noticees had violated the provisions of Regulation 7(1A) of the SAST Regulations?

c) Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A(b) and 15G of SEBI Act?

d) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

Issue I- Whether Noticees had violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992, Regulations 3(i) and (ii) read with Regulation 4 of the PIT Regulations?

14. The said provisions read as under**:**

SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly –
(a) .....
(b) .....
(c) .....
(d) engage in insider trading;
(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PIT Regulations

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. *No insider shall—*
(i) either on his own behalf or on behalf of any other person, deal in securities of a
company listed on any stock exchange when in possession of any unpublished price sensitive information; or
(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :

Provided *that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under*
any law.

Violation of provisions relating to insider trading.
4. *Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.*

15. The aforesaid provisions, among others, prohibits an insider, either on his own behalf or on behalf of any other person, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI and any person who deals in securities in contravention thereof is guilty of insider trading.

16. I am of the view that for proving the charge of insider trading the following questions needs to be answered in affirmative:

a. Whether the information was price sensitive information?
b. If so, whether the same was unpublished?
c. Whether noticee are insiders?
d. Whether noticees have dealt in the shares either on their own behalf or on behalf of any other person while in possession of /on the basis of UPSI.

17. Regulation 2(ha) of PIT Regulations defines 'price sensitive information' to mean any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of the securities of the company. In the instant case, information pertained to negative financial results of PVP arising out of write off in the value of investments in equity shares and debentures amounting to ₹ 54205 lakh made in, and advances amounting to ₹ 5160.16 lakh extended to, noticee no.1 revealed through financial results of PVP for the quarter ended September 2009 which were published on NSE website on October 31, 2009. As per PIT regulations, periodical financial

results of a company are deemed to be a price sensitive information and accordingly the said information relating to PVP was price sensitive information.

18. Noticees have contended that the market price of the shares of the PVP quoting on the stock exchanges prior to declaration of results had already factored and discounted the diminution in the value of investments as was evidenced by the minor decrease in price pursuant to declaration of the financial results. As per the definition of PSI in PIT Regulations, information is price sensitive if it is likely to materially affect the price of the scrip. It is not that the information must affect the price. It is so because various factors affect the price of a scrip of a company. It is not always possible to decipher whether a particular information did materially affect the price. Thus, what is relevant is whether the information is directly or indirectly related to the company and whether the information, if published, is likely to materially affect the price of securities of a company. If these two tests are met, the information would be construed to be price sensitive irrespective of actual prices witnessed post disclosure of that information. In the instant case, I find that the information pertained to PVP. Secondly, considering the fact that the information pertained to financial results of PVP and also considering the quantum of amount involved, it can be said without any doubt that the said information had all the ingredients to materially affect the price of the scrip of PVP. Thus, in my view the adverse financial results of PVP for the quarter ended September 30, 2009 on account of exceptional items, representing write off in the value of investment and advances to Noticee no. 1 was definitely PSI.

19. Moving on to the next question as to whether the PSI was 'unpublished', Regulation 2(k) of PIT Regulations defines ‘unpublished’ to mean information

which is not published by the company or its agents and is not specific in nature. I note that under PIT regulations for holding the information as 'unpublished', two conditions needs to be satisfied: a) information should not have been published by the company or its agents and b) information should not be specific in nature. To put it simply, an information shall be considered as published if the same has been published by the company or its agents and the same is specific in nature. Noticees in their replies have contended that the information pertaining to the diminution in the value of assets including the shares of the company was mentioned in the audited financial statements of the company for the financial year ended March 31, 2009 and also in the unaudited financial statements of the company for the quarter ended June 30, 2009. Further, they had also contended that disclosures regarding cost of acquisition of shares of PVP by Noticee no. 1 and the prevailing share price of PVP were made in the Financial Statements. Noticees, thus, contended that since the price sensitive information was already published and available in the public domain, they cannot be alleged to have traded the shares while in the possession of UPSI.

20. Noticees have pointed out that in the audited financial statements of PVP for the financial year ended March 31, 2009, it has been mentioned that "*The company has investments aggregating to Rs. 79,724.05 lacs in subsidiary and other companies (including in relation to Redeemable Fully Convertible Debentures), advances aggregating to Rs. 38,740.91 lacs extended to subsidiaries and Rs. 1390.96 lacs to other bodies corporate. Further as at March 31, 2009, the Company has goodwill amounting to Rs. 13,662.04 lacs representing the excess consolidation paid by the company over the net assets acquired at the time of amalgamation of PVP Ventures private Limited with the Company in the previous year. The management is of the opinion that the value*

of the above mentioned investments, advances and goodwill is represented by the assets held by these entities, an independent valuation of which has not been carried out. Pending such independent valuation, provision that may be required for diminution in the value of such investments, non-recovery of such advances and impairment in the value of goodwill, if any, is not ascertainable at this stage.". Further, in the unaudited financial statements of PVP for the quarter ended June 30, 2009, it has been mentioned that "*The company has investments aggregating to Rs. 79,844 lacs (as at March 31, 2009 - Rs. 79,844 lacs) in subsidiary and other companies, advances aggregating to Rs. 34,622.49 lacs (as at March 31, 2009 - Rs.38,740.91 lacs) extended to subsidiaries and Rs. 1387.57 lacs (as at March 31, 2009 - Rs. 1390.96 lacs) to other bodies corporate. Further, as at 30 June, 2009, the company has goodwill amounting to Rs. 13,282.56 lacs (as at March 31, 2009 - 13,662.04 lacs) representing excess consolidation paid over the net assets acquired at the time of amalgamation of PVP Ventures private Limited with the Company in the previous year. The management is of the opinion that the value of the above amounts are represented by the assets held by these entities, an independent valuation of which has not been carried out. Pending such independent valuation, provision that may be required against their carrying values, if any, is presently not ascertainable. The auditors of the company have expressed their inability to express an opinion on the financial statements for the year ended March 31,2009 and in their review report for the quarter ended June 30, 2009, in view of the above."*.

21. Now the moot question is whether in the light of the afore-mentioned statements, PSI of PVP i.e. negative financial results of PVP arising out of write off in the value of investments in equity shares and debentures amounting to ₹ 54205 lakh made in and advances amounting to ₹ 5160.16 lakh extended

to noticee no.1 revealed through financial results of PVP for the quarter ended September 2009, can be treated as already published as contended by the noticees.

22. I am of the view that the negative financial results of PVP arising out of the write off made on September 30, 2009 cannot be considered as published information because the disclosures made in the audited financial statements for the financial year ended March 31, 2009 and in the unaudited financial statements for the quarter ended June 30, 2009 were very general in nature and not specific which is the fundamental requirement for treating any information as published. I find that in both the financial statements, disclosures pertained to investments in and loans and advances to subsidiary companies in general and it did not specifically pertain to noticee no. 1. To be specific, financial statements did not contain any disclosure quantifying the exact amount of diminution in the value of investments in equity shares and debentures made in and advances extended to noticee no.1 and the consequential loss. On the contrary, in the said financial statements, the management had given the positive assurances by making statements that it is of the opinion that the value of the investments and advances as mentioned in the financial statements are represented by the assets held by these entities and that independent valuation for the same has not been carried out which clearly shows that general public is expected to treat these investments in and loans and advances to subsidiaries as good investments. It is, thus, clear that the information contended by the noticees to be in public domain was not specific in nature vis a vis PSI and, therefore, cannot be treated as published information. In fact, I find that the exact quantification in this regard came into existence only through journal vouchers dated September 30, 2009 which came into public domain on October 31, 2009 through audited financial statement for the quarter ended September

30, 2009.

23. I note that the auditors of the PVP, M/s Price Waterhouse, in their audit report dated June 30, 2009 on the financial statements for the year ended on March 31, 2009 disclaimed their opinion with regard to carrying values of the PVP's long term investments, goodwill and advances to subsidiaries and other bodies corporate in the absence of independent valuation of the underlying real estate and other assets in the respective entities. Again they disclaimed their opinion in Limited Review reports dated July 31, 2009 and November 16, 2009 for the quarters ended June 30, 2009 and September 30, 2009 respectively as the matter had not been resolved by PVP. Further, since the PVP did not provide the auditors a concrete plan to address/rectify the matters reported by them, M/s Price Waterhouse resigned as auditors of PVP after submission of Limited Review Reports dated November 16, 2009. Despite the repeated adverse comments of auditors, the management of PVP maintained that the investments and advances were represented by the assets held by the subsidiaries. Analysing the facts of the case in that background, I am of the view that the transaction recording the exceptional items resulting in negative financial results, in fact, reflects the changed opinion of the management which had hitherto maintained that the investments and advances were backed by adequate assets of the subsidiaries. The investors would tend to believe in the assurance so given by the management and the fact that the transaction was now recorded in the books would only reflect that the assurance given all along by the management is no longer valid and the specific PSI as revealed now through audited financial statement for the quarter ended September 30, 2009 was not in existence earlier.

24. Moving on to the next question, Regulation 2(e) of PIT Regulations defines

'insider' to mean any person who is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company or has received or had access to such unpublished price sensitive information. Regulation 2(h)(i) of the PIT Regulations provides that a subsidiary company is deemed to be a connected person with the company of which it is a subsidiary. When I look at the facts of the present case with reference to the legal provisions discussed above, I find that the Noticee no.1, being the 100 per cent subsidiary of PVP, is deemed to be a connected person with PVP as per regulation 2(h)(i) of the PIT Regulations. Since director of Noticee no. 1 is also CMD of PVP, it can reasonably be expected to have access to UPSI related to PVP. Thus, Noticee no.1 falls within the definition of 'insider' under Regulation 2(e) of the PIT Regulations.

25. Regulation 2(c) of the PIT Regulations provides that a director is a connected person with the company of which it is a director. I find that Noticee no.2, being the CMD of PVP and also Director of Noticee no.1 is a connected person with PVP as per regulation 2(c) of the PIT Regulations and in that capacity he can reasonably be expected to have access to UPSI and thus, he also falls within the definition of 'insider' under Regulation 2(e) of the PIT Regulations.

26.I now move to find whether noticees dealt in the shares of PVP while in possession of/on the basis of UPSI. It is a matter of record that 1,89,09,881 (total sales 1,89,10,208 minus 327 bought on 21-10-2009) shares were sold by noticee no. 1 during the period of UPSI i.e. September 30, 2009 to October 30, 2009. Further, I find that the Board of Directors of Noticee no.1 vide resolution dated August 22, 2009 had authorized the Noticee no. 2 to operate and manage

the share trading account of Noticee no.1. I further find that vide Board resolution dated September 12, 2009, Noticee no.1 had authorised noticee no. 2 to sell the shares of PVP on the stock market. Thus, it is clear that the noticee no.2 has dealt in the shares of PVP on behalf of Noticee no.1.

27. In this context, I would like to refer to judgment of Hon'ble Securities Appellate Tribunal **(SAT**) in the case of *Mrs. Chandrakala vs The Adjudicating Officer, SEBI* (Appeal No. 209 of 2011 order dated January 31, 2012), wherein it was observed "*...The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations...*"

28. I note that, as per the Investigation Report, from March 01, 2009 to December 31, 2009 Noticee no. 1 traded in the scrip of PVP only during September 04, 2009 to October 21, 2009. Trading activity of Noticee no. 1 in PVP between September 01, 2009 and November 30, 2009 is as follows:

Date	Gr Buy Vol	Gr Sell Vol
Before existence of PSI (Sept. 01 – Sept. 29, 2009)		
04-09-2009	0	2350000
09-09-2009	0	1100000

14-09-2009	0	1400000
18-09-2009	0	3600000
During UPSI (Sept. 30, 2009 – Oct. 30, 2009)		
30-09-2009	0	3700000
01-10-2009	0	1776994
05-10-2009	0	200000
06-10-2009	0	4773214
07-10-2009	0	2600000
08-10-2009	0	900000
09-10-2009	0	2550000
14-10-2009	0	1230000
17-10-2009	0	5000
21-10-2009	327	1175000
Post announcement of PSI (Nov. 03 – Nov. 30, 2009)		
-	-	-

29. I note that Noticee no. 1 sold 2,73,59,881 shares - 84,50,000 before the existence of PSI and 1,89,09,881 during the period of UPSI. Noticee no.2 has contended that the Board of Noticee no. 1 vide resolution dated September 12, 2009 authorised him to sell 3,53,96,116 shares of PVP on the stock market. However, I find that the noticee no.2 started selling the shares of PVP much before the resolution dated September 12, 2009. In fact, 34,50,000 shares out of 84,50,000 shares sold before the before the existence of PSI were sold prior to Board resolution dated September 12, 2009. This itself is a strong pointer which makes me to believe that the noticee no. 2 being the CMD of PVP and director of Noticee no. 1, knew of the impending provisions to be made in the books of PVP to provide for diminutions in the value of investments in equity shares and debentures in and advances extended to Noticee no.1 and consequential loss arising therefrom, for the quarter ended September 30, 2009. Be that as it may, I find that substantial shares of PVP i.e. 1,89,09,881 shares were sold by the noticees only after the specific provision for write off was made on September 30, 2009 and that too during the period of UPSI. The conduct of noticees leaves no doubt in my mind that the shares of PVP were sold by the noticees only on

the basis of UPSI.

30. Noticees have also contended that they had traded in the shares of PVP in the month of December 2009 and also in March 2010 and have given monthwise details of shares of PVP sold by them as per which total no. of shares sold during the financial year 2009-10 was 3,45,37,881. However, I find that the very submissions of the noticees that they have sold shares of PVP post period of UPSI is far from the truth as revealed by the audited financial statements of Noticee no. 1 for the year ended March 31, 2010, as per which the total no. of shares sold by Noticee no. 1 of PVP during the financial year 2009-10 was 2,73,79,881 shares only which is more close to the total sales done by the Noticee no. 1 as revealed by the investigation. Even assuming that their submissions about sale of shares post UPSI period is correct, the same would provide no immunity to the noticees and can in no way give the benefit of legal sanctity to transactions done on the basis of UPSI which is clearly prohibited in law.

31.Moreover, I also note from the material on record as well as from the material available in public domain, that the shareholding of noticee no.1 in PVP for various quarter was as under:

For the quarter ended	**No. of shares held**
March 2008	3,54,53,587
June 2008	3,54,53,587
September 2008	3,66,53,587
December 2008	3,65,58,910
Mach 2009	3,65,28,116
June 2009	3,65,28,116
September 2009	2,30,78,116
December 2009	80,36,235

32. From the table above, I find that the Noticee no.1 continued to hold the substantial quantity of shares of PVP, without much change in their

shareholding, till August 2009. UPSI, as observed above, came into existence on September 30, 2009, if not before and they started selling the shares only during Sept-Oct 2009. This is yet another pointer suggesting that that noticees sold shares of PVP only on the basis of UPSI. Having considered the various facts of the present case, I am convinced that there is sufficient material on record to show that noticees dealt in the shares of PVP on the basis of UPSI.

33. Noticees have further contended that Noticee no. 1 suffered losses because of sale of shares of PVP and that such sale was authorised by its Board. It has been further submitted that the amount realised from the sale of shares of PVP was invested within the group itself including repayment of loan and so Noticees did not gain in any manner. I am of the view that these submissions are irrelevant in as much as charge of insider trading is complete when it is established that an insider traded in the scrips of the company when in possession of the UPSI.

34. Another contention of the noticee no.2 was that though he was CMD of PVP, he was not involved directly in preparing the accounts of the company which was generally a functional work done by the Head of Finance and Accounts. I am of the view that the transaction relating to exceptional items in the financial statement of PVP for the quarter ended September 30, 2009 representing write off of to the tune of ₹ 59365.16 lakh made in/extended to Noticee no. 1 was not a routine one but is of significant importance arising out of the changed opinion of the management of PVP about the adequacy of assets held by the subsidiaries. Noticee no.2, who was CMD of PVP, cannot disown knowledge to PSI by simply stating the he was not involved in the preparation of accounts. Recording of transaction of this significant nature in the books of account resulting in negative financial results, cannot take place without the

knowledge of or without a decision to that effect being taken, at the top management level. Noticee no.2 being CMD of PVP cannot feign ignorance of such PSI. Moreover, for violations related to insider trading the relevant question to ask is whether the noticee no.2 had access to UPSI rather than whether he was directly involved in preparing the accounts of the company. Noticee is the CMD of PVP and by virtue of this position he can reasonably be expected to have access to UPSI. In view of the same, I do not find merit in the submissions of the noticee no.2 that he was not involved directly in preparing the accounts of the company.

35. Here, I would like to rely upon the observation made by the Hon'ble SAT Tribunal in the case of *Mr. N. Narayanan v. The Adjudicating Officer, SEBI* (Appeal No. 29 of 2012 decided on October 5, 2012). In this case, commenting on the role of directors, Hon'ble SAT had observed that *"With the changing scenario in the corporate world the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company but taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company but also the failings thereto."*.

36. I have considered other contentions raised by the Noticees in their reply and find no merit in them in the context of the facts and circumstances of the matter in hand. In view of the forgoing discussions and findings, I hold that Noticees had violated provisions of Section 12A (d) and (e) of SEBI Act, 1992, Regulations 3(i) and (ii) read with Regulation 4 of the PIT Regulations.

Issue II- Whether Noticees had violated the provisions of Regulation 7(1A) of the SAST Regulations?

37. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 1997 which reads as under:-

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

7.(1)…
(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

38.Upon perusal of submissions of the Noticees and documents available on record, I find that it is not in dispute that Noticee no. 1 held 15.77 per cent shares of PVP during the quarter ended June 2009, which subsequently declined to 9.06 per cent for the quarter ended September 2009 and further declined to 3.47 percent for the quarter ended December 2009. I find from the material available on record that the Noticee no. 1 had failed to make disclosure regarding sale of more than two per cent of the share capital of the PVP to PVP and to the stock exchanges within 2 days of transaction as stipulated by Regulation 7(1A) of the SAST Regulations. The fact of this non-compliance has also been admitted by the noticees. However, the noticee no.2 has contended that the obligation of filing such a disclosure rests on Noticee no. 1 and not on the noticee no.2 in his individual capacity. Further, as per market practices and in accordance with past practices of the Company, such disclosures were required to be made by the then Compliance Officer of the Company. Here, I note that Noticee no.2, in his capacity as director of noticee no.1 was in charge of and was responsible to Noticee no. 1 for the conduct of

its business and therefore, cannot shirk his responsibility by putting the blame on the compliance officer.

39. At this juncture, I would like to also quote the order dated 22.12.2011 of the Hon'ble SAT in *M/s Alka Securities Ltd. Vs SEBI* wherein it observed: *".....Section 27 of the Act, inter alia, provides that when an offence under the Act has been committed by a company, every person who at the time the offence was committed was in-charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against. This provision also applies to the violation of the regulations framed under the Act...."* Keeping in mind the aforesaid observation of the Hon'ble SAT, I hold that the Noticee no. 1 and 2 by their failure to make disclosure regarding sale of more than two per cent of the share capital of the PVP to PVP and to the stock exchanges within 2 days of transaction have violated the provisions of Regulation 7(1A) of the SAST Regulations.

Issue III- Does the violation, if any, on the part of Noticees attract monetary penalty under Section 15A(b) and 15G of SEBI Act?

40. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI v.. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

41. As the violation of the statutory obligation under Regulation 7(1A) of the SAST Regulations has been established, I hold that the Noticees are liable for monetary penalty under section 15A(b) of SEBI Act, which reads as under:-

"15A. Penalty for failure to furnish information, return, etc. - *If any person, who is required under this Act or any rules or regulations made there under, -*
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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less"

42. Similarly, as the violation of provisions of Section 12A (d) and (e) of SEBI Act, 1992 and Regulations 3(i) and (ii) read with Regulation 4 of the PIT Regulations have been established, I hold that Noticees are liable for monetary penalty under section 15G of SEBI Act, which reads as under:-

"15G.Penalty for insider trading. - *If any insider who,-*
(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
(ii) communicates any unpublished price- sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,
shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."

Issue IV - What would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

43. While determining the quantum of penalty under section 15A(b) and 15G, 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."

44. As regards violation of Regulation 7(1A) of the SAST Regulations, I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' default. Also there is no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default. However, it is pertinent to mention here that our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Regulation 7(1A) of SAST Regulations, 1997 was brought in specifically so that the investors and the public is aware of the change in shareholding of the persons having significant shareholding as change in their shareholding would usually wield a strong influence on the company. The Noticees by their failure to make requisite disclosure have deprived investors of the important information at the relevant point of time. I further note that that the noticees have committed the default on more than one occasion and the default on the part of the noticees was thus repetitive in nature.

45. As regards the violation of provisions of Section 12A(d) and (e) of SEBI Act, 1992 and Regulations 3(i) and (ii) read with Regulation 4 of the PIT Regulations, I note that as per the Investigation Report, PEL sold 2,73,59,881 shares (84,50,000 before the existence of PSI and 1,89,09,881 during UPSI) and received gross sale value of ₹ 1,29,48,27,250/-. Post announcement i.e. on

November 03, 2009 the scrip closed at ₹ 38.35. Had PEL sold the shares after disclosure of UPSI at an average price of ₹ 38.35, it would have incurred a difference of ₹ (-) 24,55,75,813.40/- and, therefore, PEL has gainfully sold the shares / avoided the loss. Here, I find that the Investigation Report has calculated the aforesaid amount of difference by taking into account all the shares sold by PEL. I am of the view that for calculating the loss which PEL had avoided by indulging in insider trading, we should consider only the shares sold during the period of UPSI. I find that PEL sold 1,89,09,881 shares of PVP during the period of UPSI for a gross sale value of ₹ 83,46,22,931/- and had these 1,89,09,881 shares of PVP were sold by PEL at an average price of ₹ 38.35, it would have incurred a loss of ₹ 10,94,12,571 which they have gainfully avoided by indulging in insider trading.

ORDER

46. After taking into consideration all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose following penalty on the noticees:

Name	**Penalty Amount**	**Violation**
PVP Energy Pvt. Ltd. (Now known as PVP Global Ventures Private Limited)	₹ 15,00,000/- (Rupees Fifteen Lakh Only)	Under section 15A(b) of SEBI Act, 1992 for violation of Regulation 7(1A) of SAST Regulations
	₹ 15,00,00,000/- (Rupees Fifteen Crore Only)	Under section 15G of SEBI Act, 1992 for violation of Section 12A (d) and (e) of SEBI Act, 1992 and Regulations 3(i) and (ii) read with Regulation 4

			of the PIT Regulations
	Total -	₹ 15,15,00,000/- (Rupees Fifteen Crore Fifteen Lakh Only)	
Prasad V. Potluri (Promoter- Director of PVP Energy Pvt. Ltd.)	₹ 15,00,000/- (Rupees Fifteen Lakh Only)		Under section 15A(b) of SEBI Act, 1992 for violation of Regulation 7(1A) of SAST Regulations
	₹ 15,00,00,000/- (Rupees Fifteen Crore Only)		Under section 15G of SEBI Act, 1992 for violation of Section 12A (d) and (e) of SEBI Act, 1992 and Regulations 3(i) and (ii) read with Regulation 4 of the PIT Regulations
	Total	₹ 15,15,00,000/- (Rupees Fifteen Crore Fifteen Lakh Only)	

47. I am of the view that the aforesaid penalty imposed is commensurate with the violations committed by the Noticees. The amount of penalty shall be paid 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 The Division Chief (IVD-ID10), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C– 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

48. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: March 27, 2015 **A. Sunil Kumar**

Place: Mumbai **Adjudicating Officer**