BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: EAD/KS/VB/AO/04/2017-18)

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

In respect of:

Shri Pravin Shah

PAN: AABPS9474P

In the matter of C Mahendra Exports Ltd

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') while conducting an examination in the scrip of C Mahendra Exports Limited (hereinafter referred to as "**CMEL" / "Company**") observed that Shri Pravin Shah (hereinafter referred to as "**Shri Pravin"/ "Noticee**"), who is one of the promoters of the Company, had failed to make timely disclosures pertaining to his sale of shares of the Company in the year 2015. It was therefore observed that the noticee has failed to comply with the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST, 2011**') and also SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT, 1992**').

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri Suresh Gupta was appointed as Adjudicating Officer (AO), vide Order dated February 07, 2017 under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act for the alleged failure on the part of the noticee to comply with the provisions of Regulation 29(2) of the SAST, 2011 and Regulation 13(4A) of the PIT, 1992. Subsequently, I have been appointed as the Adjudicating Officer vide Order dated August 07, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. A Show Cause Notice no. A&E/EAD/KS/VB/18821/1/2017 dated August 08, 2017 (hereinafter referred to as "**SCN**") was served on the noticee by Registered Post Acknowledgement Due (RPAD) and E-mail in terms of Rule 4 (1) of the Adjudication Rules, requiring the noticee to show cause as to why an inquiry should not be held against the noticee and why penalty, if any, should not be imposed on the noticee under the provisions of Section 15A (b) of the SEBI Act for his alleged violation of the relevant provisions of the SAST, 2011 and PIT, 1992, as mentioned in the SCN. The SCN issued to the noticee *inter alia* alleged the following :

(a) SEBI conducted an examination of transaction carried out by directors in the scrip of CMEL during the period March 01, 2015 to April 25, 2015. The transactions carried out by the noticee who being one of the promoters of the CMEL was also examined during the aforesaid period**.**

(b) It was alleged in the SCN that the noticee had sold 23,25,000 shares of CMEL (i.e 3.83% of the total paid up capital of CMEL) on April 08,2015**.** The total paid up capital of CMEL as on March 31, 2015 was Rs 60,56,77,800 represented by 6,05,67,780 shares @Rs 10 each. It is further observed that the noticee was holding 47,34,782 shares (i.e.7.82% of the total paid up capital of CMEL). Pursuant to the aforesaid sale of 23,25,000

shares, the shareholding of the noticee was 24,09,782 shares (i.e.3.98% of the total paid up capital of CMEL).

(c) It was alleged in the SCN that this sale of shares exceeded the benchmark limit for disclosures to be made by the noticee to the Stock exchange and to the company in the prescribed format (Form D) as stipulated in terms of the provisions of Regulation 13(4A) read with 13 (5) of PIT, 1992. As per Regulation 13(4A) read with Regulation 13 (5) of the PIT, 1992, any person who is promoter or part of promoter group of a listed company has to disclose in Form-D to the company and to the stock exchange the change in shareholding if the change from the last disclosure exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower within two working days of such sale.

(d) Further, in terms of the provisions of Regulations 29(2) read with 29(3) of SAST, 2011, The noticee was under an obligation to disclose both to the Company and to the Stock Exchange where scrip is listed in the prescribed format within two working days the disposal of shares exceeding 2% of the total shareholding or voting rights in the company. As already brought out above, the noticee had sold 23,25,000 shares of representing 3.83% of the total shareholding in the company held by the noticee as on April 08, 2015 and therefore, the noticee was under an obligation to disclose such disposal of shares of CMEL both to the Stock Exchange and also to the Company i.e CMEL as per the prescribed format within two working days of such sale.

(e) It was alleged in the SCN that the noticee has made delayed disclosure under the provisions of Regulation 29(2) (read with 29(3)) of the SAST, 2011 and Regulation 13(4A) (read with 13 (5)) of PIT, 1992. The details of which are given below

Name of the Seller	**Regulation**	**Due date for compliance**	**Actual date of compliance**	**Delay (in days)**
Pravin Shah	Regulation 29(2) r/w 29(3)	10.04.2015	27.04.2015	17

	of the SAST, 2011			
	Regulation 13(4) r/w 13(5) of PIT, 1992	10.04.2015	27.04.2015	17

4. The Noticee vide letter dated August 31,2017 submitted his reply to the SCN and *inter alia* made the following submissions:

(a) Due to resignation of Company Secretary coupled with my medical condition there may have caused an unintentional delay of 17 days in filing the disclosures under SEBI Takeover and PIT Regulation.

(b) There was no *mensrea* for delay in filing the disclosure before investors / regulators. As soon as I was being made aware about the disclosure to be filed I immediately filed the same with the stock exchanges.

(c) I would like to put light on the Hon'ble Supreme Court's decision in the matter of Bharjatiya Steel Industries Vs. Commissioner, Sales Tax, Uttar Pradesh, has distinguished its judgment in Chairman, SEBI Vs. Shriram Mutual Fund [(2006) 5 SCC 36] it is inter alia clarified

"it is therefore, difficult to accede to the contention of Mr. Banerjee that under no circumstances absence of mensrea would not be a plea for levy of penalty. An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary implication, the authority may not levy penalty. If it has the discretion not to levy penalty, existence of mensrea becomes a relevant factor."

(d) I state that penalty should not be levied merely because there is default. I would like to cite SAT decision in Chandrakant Gandhi Stock Broker P. Ltd. Vs. Securities and Exchange Board of India [2000 (37) CLA 238] SAT.

(e) I state that non filing of disclosures as required to be filed under SEBI SAST is unintentional, and a mere default should not necessarily attract penalty. I would like to cite *Tribunal's view in Housing Development Finance Corporation [(2000) 28 SCL 289*

(SAT)], that "default per se is not dominant guiding principle for imposition of penalty. It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum".

(f) I further state that imposing of Penalty is discretionary power of the Adjudicating Officer which should be exercised based on facts and circumstances of the case. In this context, it is relevant to have a look at the clear-cut guidelines provided by the Supreme Court in Hindustan Steel's case (supra). Para 7 from the judgment considered relevant in this context is extracted below:

"An Order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute".

5. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, the noticee was granted an opportunity of personal hearing in the matter vide letter dated August 31,2017. The hearing on September 14, 2017 was attended by Shri Mithun Patel, Company Secretary on behalf of the noticee(hereinafter referred to as '**AR**'). The AR reiterated the submissions made in the reply to the SCN vide his letter dated August 31, 2017. In view of these facts and circumstances, I deem it appropriate to proceed further in the matter.

CONSIDERATION OF ISSUES AND FINDINGS:

6. I have carefully perused the written submissions of the noticee and the documents available on record. The issues that arise for consideration in the present case are :

a) Whether the noticee was required to make necessary disclosure under the provisions of Regulation 29 (2) read with Regulation 29 (3) of SAST, 2011 and Regulation 13(4A) read with Regulation 13(5) of PIT, 1992 ?

b) Does the violation, if any, attract monetary penalty under Section 15A (b) of the SEBI Act, 1992?

c) If yes, what should be the quantum of penalty?

7. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST, 2011 which read as under:-

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

Disclosure of acquisition and disposal*.*

29.(1) .....

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

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

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

(b) the target company at its registered office.

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies

Continual disclosure.

13(3)……..

13(4)…….

13. (4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.]

(5) The disclosure mentioned in sub-regulations [(3), (4) and (4A)] shall be made within [two] working days of:

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

8. I note that the noticee had sold 23,25,000 shares of CMEL (i.e 3.83% of the total paid up capital of CMEL) on April 08, 2015**.** It is further observed that the noticee was holding 47,34,782 shares (i.e.7.82% of the total paid up capital of CMEL). Pursuant to the aforesaid sale of 23,25,000 shares, the shareholding of the noticee became 24,09,782 shares (i.e.3.98% of the total paid up capital of CMEL). Since the noticee had sold more than 2% holding in the Company, he was required to make the necessary disclosures under Regulation 29 (2) read with Regulation 29 (3) of the SAST, 2011 to the Company and also to the Stock Exchanges within two working days from such change in the shareholding i.e the noticee was required to make the disclosure to the Company and to the Stock Exchanges latest by April 10, 2015.

9. I find from the material made available before me that the relevant disclosures under Regulation 29 (2) read with Regulation 29 (3) of the SAST 2011 were made by the noticee on April 27, 2015 (which was also acknowledged by the BSE vide it email dated July 10, 2015). I therefore observe that the noticee made the disclosures under Regulation 29 (2) read with Regulation 29 (3) of the SAST, 2011 with a delay of 17 days.

Thus, from the observations made above, I am convinced that the noticee had made the disclosures under Regulation 29 (2) read with Regulation 29 (3) of the SAST, 2011 belatedly. Therefore, I note that the noticee has violated the provisions of Regulation 29 (2) read with Regulation 29 (3) of the SAST, 2011.

10. I also find from the material available on record and the transactions of the noticee in the company, as brought out above that the noticee who belonged to the promoter/promoter group of the Target Company had sold shares of the Company on April 08, 2015 and further noted in detail in para 8 above, which has resulted in change in the noticee's shareholding or voting rights exceeding Rs 5 lakhs in value or 25,000 shares in terms of quantity of shares traded or 1 % of the total shareholding or voting rights, whichever is lower. The noticee was required to make the necessary disclosures as regard the change in his shareholding to the Company and also to the Stock Exchanges in the prescribed format (Form D) in terms of the provisions of Regulation 13 (4A) read with Regulation 13 (5) of the PIT, 1992 within two working days of the acquisition or sale of shares, as the case may be.

    Specifically, I observe from the transactions of the noticee in the scrip of CMEL, that the noticee had sold 23,25,000 shares of CMEL on April 08, 2015. The said quantity of shares sold were apparently in excess of 25,000 shares. Also such sale of shares resulted in change in shareholding exceeding 1 % of total shareholding of CMEL. Further, the said sale also exceeds Rs. 5,00,000 in value based on the market price on BSE on the date of transaction i.e April 08,2015. In view of the above, I note that the noticee has failed to make the disclosures within the prescribed time as required under Regulation 13 (4A) read with Regulation 13(5) of the PIT, 1992 (as per BSE website) and has therefore violated the provisions of the aforementioned Regulations.

11. The next issue for consideration is "Do the violations, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?" I note that the noticee in his reply dated August 31, 2017 submitted that there was no *mensrea* for delay in filing the disclosures and that the non filing of disclosures as required to be filed under SEBI SAST is unintentional. The Noticee has also cited reference to various judicial pronouncements. The noticee

has submitted that the Hon'ble Supreme Court's decision in the matter of *Bharjatiya Steel Industries Vs. Commissioner, Sales Tax, Uttar Pradesh,* has distinguished its judgment in *Chairman, SEBI Vs. Shriram Mutual Fund [(2006) 5 SCC 36]* it is inter alia clarified

"it is therefore, difficult to accede to the contention of Mr. Banerjee that under no circumstances absence of mensrea would not be a plea for levy of penalty. An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary implication, the authority may not levy penalty. If it has the discretion not to levy penalty, existence of mensrea becomes a relevant factor."

12. However, after having perused the Order of the Hon'ble Supreme Court in both the above cases, I am of the view that the judgment of Bharjatiya Steel does not state anything contrary to the finding in The Chairman, SEBI Vs. Shriram Mutual Fund. I find that in *M/s. Bharjatiya Steel Industries vs. Commissioner, Sales Tax, U.P*. on March 05, 2008, the Hon'ble Supreme Court had, *inter alia,* observed as follows:

"*Furthermore, the question as to whether mens rea is an essential ingredient or not will depend upon the nature of the right of the parties and the purpose for which penalty is sought to be imposed.*

A distinction must also be borne in mind between a statute where no discretion is conferred upon the adjudicatory authority and where such a discretion is conferred. Whereas in the former case the principle of mens rea will be held to be imperative, in the latter, having regard to the purport and object thereof, it may not be held to be so."

13. Further, I would like to refer to the judgment in the matter of ***SEBI Vs. Shriram Ram Mutual Fund [2006] 68 SCL 216(SC)***. In the said case the Hon'ble Supreme Court held that

"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. 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. In other words, the breach of a civil obligation which attracts penalty under the provisions of an Act would immediately attract the levy of penalty irrespective of the fact whether the contravention was made by the defaulter with any guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not"

14. Reliance is also placed on the summary of priniciples as mentioned by the **Hon'ble Bombay High Court in the matter of SEBI vs. Cabot International Capital Corporation (2004) 51 SCL 307 (BOM.),** which read as follows:-

25.Thus, the following extracted principles are summarised.

(A) Mens rea is an essential or sine qua non for criminal offence.

(B) Strait jacket formula of mens rea cannot be blindly followed in each and every case. Scheme of particular statute may be diluted in a given case.

(C) If, from the scheme, object and words used in the statute, it appears that the proceedings for imposition of the penalty are adjudicatory in nature, in contra-distinction to criminal or quasi criminal proceedings, the determination is of the breach of the civil obligation by the offender. The word "penalty" by itself will not be determinative to conclude the nature of proceedings being criminal or quasi-criminal. The relevant considerations being the nature of the functions being discharged by the authority and the determination of the liability of the contravenor and the delinquency.

(D) Mens rea is not essential element for imposing penalty for breach of civil obligations or liabilities.

(E) There can be two distinct liabilities, civil and criminal, under same act.

(F) Even the administrative authority empowered by the Act to adjudicate have to act judicially and follow the principles of natural justice, to the extent applicable.

(G) Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc.

26. Chapter VI-A of the SEBI Act deals with the penalties and the adjudication. Section 15-I of the SEBI Act envisage appointment of Adjudicatory Officer for holding an inquiry in the prescribed manner, after giving reasonable opportunity of being heard for the purpose of imposing any penalty. This section read with concerned Rules provide power to the Adjudicating Officer to summon and enforce the attendance of any person to give evidence or to produce relevant or useful document for an inquiry and, provides a sequence of the procedure to conduct the inquiry before

imposing any penalty. Furthermore, it is also provided in Section 15J to consider various factors while adjudging the question of penalty under Section 15-I, after taking into account, the amount of disproportionate gain or unfair advantage, whenever quantifiable, loss caused to an investor or group of investors, the repetitive nature of default. These twin sections basically deal with the procedure of monetary penalty under the Act. All these sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15HA and 15HB, provide monetary penalties for respective breaches or non-compliances of provisions of the SEBI Act and the Regulations. Default or failure, as contemplated under the Act includes : (15A) failure to furnish information, return, (15B) failure to enter into agreement with clients, (15C) failure to redress investors' grievances, (15D) default in case of mutual funds, (15E) failure to observe rules and regulations by an asset management company, (15F) default in case of stock brokers, (15G) for insider trading, (15H) non-disclosure of acquisition of shares and takeovers, (15HA) fraudulent and unfair trade practices, (15HB), penalty if not separately provided.

27. Therefore, for respective default or failure, penalty is provided under the Act. The scheme of the SEBI Act of imposing monetary penalty is very clear. This Chapter nowhere deals with criminal offence. These defaults for failures are nothing, but failure or default of statutory civil obligations provided under the Act and the Regulations made thereunder. It is pertinent to note that Section 24 of SEBI Act deals with the criminal offences under the Act and its punishment.

28. The adjudication for imposing penalty by the Adjudicating Officer, after due inquiry, is neither a criminal nor a quasi-criminal proceedings. The penalty leviable under this Chapter or under these sections, is penalty in cases of default or failure of statutory obligation or in other words breach of civil obligation. The provisions and scheme of penalty under SEBI Act and the Regulations, there is no element of any criminal offence or punishment as contemplated under criminal proceedings. Therefore, there is no question of proof or any mens rea by the Appellants and it is not essential element for imposing penalty under SEBI Act and the Regulations.

29. The penalty imposable under the SEBI Act and the Regulations under sections 15-I and 15J, is deterrent in nature to see that the parties or person concerned complies with the Regulations strictly. The imposition of the penalty under SEBI Act and Regulations is civil in nature and cannot be equated with penal in character as referred and submitted by the respondents and/or observed by the Appellate Authority. It is also clear that the word "penalty" has different colour and shades and facets and that has to be interpreted and imposed on the basis of particular act and policies or scheme. It is also clear that there can be two distinct liabilities under the same Act, i.e., civil and/or criminal. The Authorities or Regulatory Authority have ample power to initiate both proceedings, if case is made out, within the framework of the SEBI Act or the Regulations.

30. The SEBI Act and the Regulations, arc intended to regulate the Security Market and the related aspects, the imposition of penalty, in the given, facts and circumstances of the case, cannot be tested on the ground of "no mens rea, no penalty". For breaches of provisions of SEBI Act and Regulations, according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise or judicial discretion is a must, but not on a foundation that mens rea is an essential to impose penalty in each and every breach of provisions of the SEBI Act.

15. Thus, I note that motive or *mens rea* is not essential to establish the charge in a proceeding of this nature as the present proceedings are neither criminal nor quasi-criminal in nature. In view of the above, there is not merit in the contention of the noticees that there was no *mens rea* for delay in filing the disclosure.

16. I also note that the notice in his reply dated August 31, 2017 has submitted that as soon as he was made aware about the disclosure to be filed he had immediately filed the same with the Stock Exchange is not acceptable as it is a well accepted legal principle that ignorance of law is not an excuse (***Ignorantia juris non excusat).***

17. The noticee has cited reference to the decision of the **Hon'ble Supreme Court in the matter of *Hindustan Steel Ltd vs State of Orissa (1970 AIR 253, 1970 SCR (1) 753)*** and has argued that imposing penalty is a discretionary power of the Adjudicating Officer which should be exercised based on facts and circumstances of the case. From the cited judgement I note that the Hon'ble Supreme Court has mentioned, inter alia, that

"even if a minimum penalty is prescribed the authority competent to impose the penalty will be justified in refusing to imose penalty when there is a technical or venial breach of the provisions of the Act…"

18. The noticee has also cited reference to the decision of the Hon'ble SAT in the matter of ***Housing Development Finance Corporation[(2000) 28 SCL 289(SAT)]*** that "*default per se is not dominant guiding principle for imposition of penalty It is the consequence of the default that weighs in taking the decision to impose penalty and its quantum"*

19. With regard to para 17 & 18 above, I note that disclosure requirements as per laws under reference serve a purpose and are not mere technical obligations. The purpose is to make investors aware of the changes in the shareholding of persons enabling them to take informed investment decisions. Thus, the disclosures requirments prescribed in the provisions in question cannot be termed as non consequential. I further note that the disclosures are required to be made on a timely basis and time is the essence of disclosures. The consequence of delayed disclosure might have effect on the informed investment decisions of investors.

20. Futher, the noticee has also cited SAT decision in the matter of ***Chandrakant Gandhi Stock Brokers P Ltd vs Securities and Exchange Board of India [2000(37)CLA 238] SAT***. I note that the facts and circumstances of the case in the said matter are completely different from the instant case.

21. I also rely on the decision of the Hon'ble SAT in the matter of ***Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010)***, wherein it had observed *"Once it is established that the mandatory provisions of Takeover Code was violated the penalty must follow."*

22. In view of the foregoing, I am convinced that the noticee has violated the provisions of Regulation 29(2) read with Regulation 29 (3) of the SAST, 2011 and also the provisions of Regulation 13(4A) read with Regulation Regulation 13(5) of the PIT, 1992. Therefore, I am of the view that it is a fit case to impose monetary penalty under the provisions of Section 15 A (b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return, etc

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

……

(b)to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

23. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under :

***Factors to be taken into account by the adjudicating officer**.*

15J. 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.

***Explanation:** For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

24. From the material available on record, the amount of disproportionate gain or unfair advantage to the noticee or the loss caused to the investors as a result of the noticee's default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default committed by the noticee, the details of the change in the shareholding of the promoters/ promoter- group and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. From the documents available on record, it is noted that the default is not repetitive in nature. In the instant case, the noticee being a promoter of the Company, the timely disclosures by him under the relevant provisions of SAST, 2011 and PIT, 1992, were of significant importance from the point of view of the shareholders who were holding the shares of the Company. Further, another purpose

of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the securities market. In view of the violations committed by the noticee i.e making delayed disclosures under Regulation 29(2) read with Regulation 29(3) of the SAST 2011 and Regulation 13 (4A) read with Regulation 13(5) of the PIT 1992, as mentioned above, the investors were deprived of the important information at the relevant point of time.

ORDER:

25. Having considered all the facts and circumstances of the case and also the factors mentioned in Section 15 J of the SEBI Act above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of **Rs. 2,00,000 /-** (**Rupees Two Lakh only**) on the noticee i.e. Shri Pravin Shah having PAN: AABPS9474P under the provisions of Section 15A(b) of the SEBI Act for his failure to make timely disclosures under Regulation 29(2) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992. I am of the view that the said penalty is commensurate with the default committed by the noticee.

26. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI -Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.".

1. Case Name:	
2. Name of payee:	
3. Date of payment:	

4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

27. In terms of the provisions of Rule 6 of Adjudication Rules, a copy of this order is being sent to the noticee viz. Shri Pravin Shah and also to the Securities and Exchange Board of India.

Date: September 19, 2017

Place: Mumbai

K SARAVANAN

GENERAL MANAGER &

ADJUDICATING OFFICER