

**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. Mr. Pramod Kumar S (PAN: AFKPS0248F)
2. Mr. Sunil Jain (PAN: ABLPJ3324L)
3. Mr. Shantilal Bansilal (PAN: AFKPS0252H)

In the matter of Sunil Agro Foods Ltd for non-filing of disclosures under PIT Regulations, 1992

**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter, referred to as "**SEBI**") observed that certain disclosures which ought to have been made by Mr. Pramod Kumar S. bearing PAN: AFKPS0248F, Mr. Sunil Jain bearing PAN: ABLPJ3324L, and Mr. Shantilal Bansilal bearing PAN: AFKPS0252H (individually referred to by their **respective name** and combinedly referred to as "**Noticees**") in terms of the relevant provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter, referred to as "**PIT Regulations, 1992**") as mentioned in following table, were not made by the Noticees to Sunil Agro Foods Limited ( hereinafter, referred to as "**Company**") and to Stock Exchange as the case be. For each Noticee, nature of findings in brief along with alleged violations are provided in following table:

Sl	Noticee	Nature of findings in brief	Alleged violations
1	Mr. Pramod Kumar S (PAN: AFKPS0248F)	On June 9, 2014, Mr. Pramod Kumar S received / acquired 2,59,334 shares / 8.64% of total shareholding of company from Mr. Sunil Jain through off market route.  On said acquisition of shares, Mr. Pramod Kumar S had change (increase) in his holding in company by more than 25,000 shares / Rs 5 lakh in value/ 1% of total shareholding of company, however, being promoter of company, he failed to make the necessary disclosure of his change in holding to the Stock Exchange as well as to the company in Form D within two working days as required under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992	Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992
2	Mr. Sunil Jain (PAN: ABLPJ3324L)	On June 9, 2014 Mr. Sunil Jain transferred 2,59,334 shares / 8.64% of total shareholding of the company to Mr. Pramod Kumar S through off market route.  On said transfer of shares, Mr. Sunil Jain had change (decrease) in his holding in company by more than 25,000 shares / Rs 5 lakh in value/ 1% of total shareholding of company, however, being promoter of company, he failed to make the necessary disclosure of his change in holding to the Stock Exchange as well as to the company in Form D within two working days as required under	Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992

Sl	Noticee	Nature of findings in brief	Alleged violations
		Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992	
3	Mr. Shantilal Bansilal (PAN: AFKPS0252 H)	On May 20, 2014 Mr. Shantilal Bansilal received / acquired 2,88,300 shares / 9.6% of total shareholding of company from Ms. Kamala Bai through off market route.  On said acquisition of shares, shareholding of Mr. Shantilal Bansilal increased to more than 5% of the total shareholding of the company, however, Mr. Shantilal Bansilal failed to make the necessary disclosure of above fact to the company within two working days in Form A as required under regulation 13(1) of PIT Regulations, 1992	Regulation 13(1) of PIT Regulations, 1992

2. Thus, it has been alleged that the respective provisions as mentioned in the preceding table have been violated by the Noticees. SEBI initiated the adjudication proceedings against the Noticee to inquire and adjudge under section 15A(b) of SEBI Act, 1992 ( “**SEBI Act**”) the alleged violations as mentioned above.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

3. SEBI vide order / communique dated September 30, 2017 read with order / communique dated December 14, 2017, under Section 19 of the SEBI Act read with Section 15I(1) of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter, referred to as “**SEBI Adjudication Rules, 1995**”) appointed the Adjudicating Officer to conduct adjudication proceedings in the manner specified under rule 4 of SEBI Adjudication Rules read with section 15I(1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of SEBI Adjudication Rules read with Section 15A(b) of SEBI Act.

#### **SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING**

4. Show Cause Notice dated January 8, 2018 (“**SCN**”) was issued to the Noticees, mentioning the respective allegations against the Noticees and to show cause within 14 days of receipt of the SCN, as to why an inquiry should not be held and penalty be not imposed under Section 15A(b) of SEBI Act for the aforesaid alleged violations against the Noticees.
5. SCN was delivered to the Noticees. However, since no reply was received within 14 days of receipt of SCN, a reminder was sent to Noticees vide e-mail dated January 30, 2018 requesting Noticees to submit their response latest before February 5, 2018.
6. Subsequently, vide hearing notice dated February 1, 2018 sent through speed post AD and e-mail, an opportunity of personal hearing was granted to the Noticees on February 15, 2018.
7. Mr. Pramod Kumar S, Mr. Sunil Jain and Mr. Shantilal Bansilal, vide their letters dated February 5, 2018 submitted their response / reply to the SCN, and the same were received through e-mail and post. Noticees made following key submissions in their said reply to SCN:

7.1 Mr. Pramod Kumar S and Mr. Sunil Jain made following common key submissions:

*"I deny all the allegations as against me.*

*I didn't make disclosure as required, under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations in Form D, under the mistaken belief that since I had received (Mr. Pramod Kumar S.) / transferred (Mr. Sunil Jain) the said 2,59,334 shares by way of an off-market transfer between Mr. Pramod Kumar S and Mr. Sunil Jain, as a gift on 09.06.2014, the same was exempt as transfers promoter inter se. I submit that though my understanding was correct in so far as exemption for the transfers promoter inter se was concerned, there was an inadvertent lapse in interpreting that I was not required to file the required disclosure for transfer / receipt by way of gift as otherwise too, the transfer / receipt was deemed exempt from the provisions of SEBI(SAST) Regulations, 2002. The facts that I wrongly interpreted the disclosure requirements under SAST Regulations and under the PIT Regulations is apparent from the filings that I have made to the Company. It is apparent that based on such disclosure the Company have in turn informed the BSE, NSDL and CDSL vide correspondence dated 09.06.2014. Copies enclosed as Annexure A1 to A3 colly. I submit that immediately on seeking legal advice, I have complied with the filing of disclosures on 31.01.2018 in form D under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, for the said transactions by way of gift.*

*Though the requisite filings remained to be done in the prescribed form, the intent and spirit of Regulation 13 was met stands established by publication and availability of the relevant information in public domain in time the Exchanges and the Depositories. It is therefore humbly submitted that the intent of Regulation 13 of PIT Regulations, 1992 was duly met in spirit.*

*I most humbly pray that no adverse inference may be drawn against me and the said technical lapse be viewed leniently and I repeat, reiterate and confirm my submissions made hereinabove.*

*As regards to alleged violation and relevant penal provisions quoted in SCN, reliance was placed upon the judgement of hon'ble Bombay High Court in SEBI vs. Cabot International Capital Corporation, 2004, wherein it was held as "25(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 the bonafides belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc. para 26: Now, the question, of the penalty, by the Adjudicating Authority, in the facts and circumstances of the case, was warranted or not. We find that the allotment in question was undoubtedly under the exemption provided in regulation 3(1). There could not have been insistence by the Appellants –SEBI to comply with the requirements of regulation 3(4). It is also clear that when an acquisition is covered under regulation 3(4) within the specified time, as referred above. In view of this undisputed position, merely because there was no report filed, that itself cannot be read as serious defect or non-compliances of the said provisions. The Appellate Authority, after considering the material on record, including the events, referred in the pleadings, found that the respondents-company had no intention to suppress any material information from the appellants or the shareholders.*

*I crave to rely on section 15J of the SEBI Act. I submit that there was no intention to suppress any material information from the shareholders, investors or the public. Further, in the interim there is no allegation of any disproportionate gain or unfair advantage attributed to me. Since the fact is deemed settled, as a corollary, the question of loss caused to an investor or group of investors as a result of the default cannot rise. This fact removes all doubt that there was a genuine effort to disclose and there was no defiance of law in the compliance albeit in a wrong format. It is further submitted that alleged lapse was totally inadvertent and non repetitive in nature.*

*I repeat, reiterate and state that on 31.01.2018 I have duly filed disclosures in Form D. I therefore pray that the said lapse of filing disclosure in in prescribed format be viewed leniently and that no penalty be imposed and the proceedings against me be dropped."*

7.2 Mr. Shantilal Bansilal made following key submissions:

*"I deny all the allegations as against me.*

*I didn't make disclosure as required, under Regulation 13(1) of PIT Regulations in Form D, under the mistaken belief that since I had received the said 2,88,300 shares by way of an off-market transfer from my wife late Ms. Kamala Bai as a gift on 20.05.2014, the same was exempt as transfers promoter inter se. I submit that though my*

*understanding was correct in so far as exemption for the transfers promoter inter se was concerned, there was as an inadvertent lapse in interpreting that I was also not required to file the required disclosure for transfer by way of gift as otherwise too, the transfer was deemed exempt from the provisions of SEBI(SAST) Regulations, 2002.*

*The facts that I wrongly interpreted the disclosure requirements under SAST Regulations and under the PIT Regulations is apparent from the filings that I have made to the Company. It is apparent that based on such disclosure the Company have in turn informed the BSE, NSDL and CDSL vide correspondence dated 09.06.2014. Copies enclosed as Annexure A1 to A3 colly.*

*I submit that immediately on seeking legal advice, I have complied with the filing of disclosures on 31.01.2018 in form A under Regulation 13(1) of PIT Regulations, 1992 for the said transactions by way of gift.*

*Though the requisite filings remained to be done in the prescribed form, the intent and spirit of Regulation 13 was met stands established by publication and availability of the relevant information in public domain in time the Exchanges and the Depositories. It is therefore humbly submitted that the intent of Regulation 13 of PIT Regulations, 1992 was duly met in spirit.*

*I most humbly pray that no adverse inference may be drawn against me and the said technical lapse be viewed leniently and I repeat, reiterate and confirm my submissions made hereinabove.*

*As regards to alleged violation and relevant penal provisions quoted in SCN, reliance was placed upon the judgement of hon'ble Bombay High Court in SEBI vs. Cabot International Capital Corporation, 2004, wherein it was held as "25(G): Though looking to the provisions of the statue, the delinquency of the defaulter may itself expose him to the penalty provision yeet despite, that in the statuete, minimum penalty is prescribed, the authority may refuse to impose penalty fof justifiable reasons like the default occurred due to the bonafides belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc. para 26: Now, the question , of the penalty, by the Adjudicating Authority, in the facts and circumstances of the case, was warranted or not. We find that the allotment in question was undoubtedly under the exemption provided in regulation 3(1). There could not have been insistence by the Appellants –SEBI to comply with the requirements of regulation 3(4). It is also clear that when an acquisition is covered under regulation 3(4) within the specified time, as referred above. In view of this undisputed position, merely because there was no report filed, that itself cannot be read as serious defect or on-compliances of the said provisions. The Appellate Authority, after considering the material on record, including the events, referred in the pleadings, found that the respondents-company had no intention to suppress any material information from the appellants or the shareholders.*

*I crave to rely on section 15J of the SEBI Act. I submit that there was no intention to suppress any material information from the shareholders, investors or the public. Further, in the interim there is no allegation of any disproportionate gain or unfair advantage attributed to me. Since the fact is deemed settled, as a corollary, the question of loss caused to an investor or group of investors as a result of the default cannot rise. This fact removes all doubt that there was a genuine effort to disclose and there was no defiance of law in the compliance albeit in a wrong format. It is further submitted that alleged lapse was totally inadvertent and non repetitive in nature.*

*I repeat, reiterate and state that on 31.01.2018 I have duly filed disclosures in Form A. I therefore pray that the said lapse of filing disclosure in in prescribed format be viewed leniently and that no penalty be imposed and the proceedings against me be dropped."*

- 8 Noticees in their said replies expressed their intent to avail hearing opportunity, and subsequently availed the opportunity of hearing granted to them on February 15, 2018 through their Authorised Representative (AR). AR of the Noticees made following common submissions on behalf of the Noticees viz, *"reiterated the submissions of the Noticees made in their reply dated February 5, 2018 and accepted that requisite compliance was not undertaken by the Noticees. It is requested that a lenient view may be taken in the matter considering the mitigating factors viz, earlier intimation on behalf of Noticees though not in requisite form, and now delayed compliance undertaken by the Noticees in January 2018"*.

## **CONSIDERATION OF ISSUES AND FINDINGS**

- 9 The allegations mentioned in the SCN, the reply of the Noticee to SCN, submissions made in the personal hearing, and other material, if any, on record, culminate in the consideration in the following:
- a) Whether Mr. Pramod Kumar S and Mr. Sunil Jain have violated the regulation 13(4A) read with regulation 13(5) of the PIT Regulations 1992?
  - b) Whether Mr. Shantilal Bansilala has violated the regulation 13(1) of PIT Regulations 1992?
  - c) If yes to a) and /or b), does the violations attract monetary penalty under Section 15A(b) of the SEBI Act?
  - d) If yes, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act t?

## **FINDINGS**

- 10 Before going to findings it is important to refer to the provisions of PIT Regulations, alleged to have been violated by the Noticees. The same read as follows:

### **Disclosure of interest or holding in listed companies by certain persons – Initial Disclosure**

**13.** (1) *Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of:—*

- (a) *the receipt of intimation of allotment of shares; or*
- (b) *the acquisition of shares or voting rights, as the case may be.*

### **Continual disclosure.**

**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.*

**13(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.*

### **Issue a) - Whether Mr. Pramod Kumar S and Mr. Sunil Jain have violated the regulation 13(4A) read with regulation 13(5) of the PIT Regulations 1992?**

- 11 As per SCN issued to Noticees, in an inter-se promoter transfer, on June 9, 2014, Mr. Sunil Jain transferred 2,59,334 shares / 8.64% of total shareholding of the company to Mr. Pramod Kumar S through off market route. On said inter-se transfer of shares, Mr. Sunil Jain had decrease and Mr. Pramod Kumar S had increase in their respective shareholding in company by more than 25,000 shares / Rs 5 lakh in value/ 1% of total shareholding of company, however, being

promoter of company, they both allegedly failed to make the disclosures of their respective change in shareholding to the Stock Exchange as well as to the company in the prescribed Form D within two working days as required under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992.

- 12 In reply to SCN, Mr. Pramod Kumar S and Mr Sunil Jain inter-alia made the submission / contention that *they didn't make disclosure as required, under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations in Form D, under the mistaken belief that since they had inter-se transfer of 2,59,334 shares by way of an off-market transfer between Mr. Pramod Kumar S and Mr. Sunil Jain, as a gift on 09.06.2014, the same was exempt as transfers promoter inter se. The facts that they wrongly interpreted the disclosure requirements under SAST Regulations and under the PIT Regulations is apparent from their filings made to the Company. It is apparent that based on such disclosure the Company have in turn informed the BSE, NSDL and CDSL vide correspondence dated 09.06.2014. Further, immediately on seeking legal advice, they have complied with the filing of disclosures on 31.01.2018 in form D under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, for the said transactions by way of gift. Though the requisite filings remained to be done in the prescribed form, the intent and spirit of Regulation 13 was met stands established by publication and availability of the relevant information in public domain in time the Exchanges and the Depositories. It is therefore humbly submitted that the intent of Regulation 13 of PIT Regulations, 1992 was duly met in spirit.*
- 13 As per material on record, company vide its e-mail dated September 3, 2014 to SEBI provided scanned copy of letter dated July 22, 2014 from Mr. Pramod Kumar S and addressed to Board of Directors of the Company, informing that *"I, Pramod Kumar S hereby inform you that I have acquired / transferred 259334 equity shares of Rs. 10 each as gift from my brother Mr. Sunil Jain. Both of us are promoters of company and have held shares for more than 10 years; this transaction is off-market"*. Further, in reply dated February 5, 2018 to the SCN, Mr. Pramod Jumar S and Mr. Sunil Jain contended that the details about inter se transfer of shares between them was informed (though not in requisite form) by company to the BSE, NSE and CDSL vide letter dated June 9, 2014 and copy of such letters provided along with their said reply states that *"we have been informed 259334 shares fully paid up equity shares of Rs. 10 each have been gifted by Mr. Sunil Jain to Mr. Pramod Kumar, promoter of the company. The Donor Mr. Sunil Jain, brother of Mr. Pramod Jumar gifted 259334 fully paid up equity shares of Rs. 10/- each to his brother Mr. Pramod Kumar, Executive Director and Promoter of the Company who is Donee. Pursuant to this transfer there has been no change in the shareholding pattern of the promoters of the company. Thus this is a promoter inter se transfer. Please treat this as compliance with the Listing Agreement and other required under SEBI."* Conspicuously, the details of inter se transfer through off market transfer between Mr. Sunil Jain and Mr. Pramod Kumar S was informed by company to BSE, NSE and CDSL on the date of inter se transfer itself i.e, June 9, 2014, and whereas the Board of Directors of the company was informed about the said inter se transfer of shares vide letter from Mr. Pramod Kumar S dated July 22, 2014 i.e, after one and half month when company had already provided these details to BSE, NSE and CDSL. It is to mention that as per records, no other record of prior intimation to company has been provided and also no proof of delivery has been provided about the said letter dated June 9, 2014 to BSE, NSE and CDSL.
- 14 It is pertinent to note that BSE vide e-mail dated November 10, 2014 to SEBI confirmed that no disclosures have been received from Mr. Pramod Kumar S and Mr. Sunil Jain inter-alia under Regulation 13 of SEBI PIT Regulations for the period May 19, 2014 to July 8, 2014. Given the above findings, contention put forth by Noticees stating that the BSE, NSE, CDSL were

informed on time (though not in requisite form) and the information was published, is not correct and appears to be a mere afterthought, and hence cannot be accepted.

- 15 As per regulation 13(4A) of the PIT Regulations, 1992, Mr. Pramod Kumar S and Mr. Sunil Kumar were required to make the disclosure about the relevant change in their shareholding to both company and Stock Exchange within 2 working days from the date of said change i.e, June 9, 2014. However, submissions on record (reply to SCN) confirms that the requisite disclosure was not made to the company and stock exchange until January 31, 2018. Prior intimation from Mr. Pramod Kumar S to company dated July 22, 2014 and intimation of company to BSE dated June 9, 2014 are contradictory in nature and do not provide correct picture as found above, and the same also do not fulfil the requirements of requisite disclosures under regulation 13(4A) of PIT Regulations, 1992 for reasons viz, (a) the disclosures were not made in requisite form D which also cover important facts viz, prior shareholding, change in shareholding, shareholding post said change, value of shares, etc, (b) the disclosure didn't even carry information / disclaimer that the information is being provided under Regulation 13(4A) of PIT Regulations, 1992, and (c) As regards to claim of timely disclosure to Stock Exchange, BSE has confirmed non-receipt of any disclosure inter-alia under Regulation 13 of PIT Regulations, 1992 from Mr. Pramod Kumar S and Mr. Sunil Jain.
- 16 Given the above findings, it is established that Mr. Pramod kumar S and Mr. Sunil Jain by failing to make the requisite disclosure to the company and to Stock Exchange in two working days, violated the provisions of regulations 13(4A) read with regulation 13(5) of the PIT Regulations, 1992.
- 17 Based on submissions of Noticees to the SCN and as verified from the website of BSE, it is also matter of record that the disclosure under regulations 13(4A) of PIT Regulations, 1992 was made belatedly on January 31, 2018 i.e, after delay of more than three years.

**Issue b) - Whether Mr. Shantilal Bansilal has violated the regulation 13(1) of PIT Regulations 1992?**

- 18 As per SCN issued to Noticee, Mr. Shantilal Bansilal, on May 20, 2014 received / acquired 2,88,300 shares / 9.6% of total shareholding of company from Ms. Kamala Bai through off market route. On said acquisition of shares, shareholding of Mr. Shantilal Bansilal increased to more than 5% of the total shareholding of the company, however, allegedly Mr. Shantilal Bansilal failed to make the necessary disclosure of above fact to the company within two working days in Form A as required under regulation 13(1) of PIT Regulations, 1992.
- 19 In reply to SCN, Mr. Shantilal Bansilal made submission / contention that *I didn't make disclosure as required, under Regulation 13(1) of PIT Regulations in Form A, under the mistaken belief that since I had received the said 2,88,300 shares by way of an off-market transfer from my wife late Ms. Kamala Bai as a gift on 20.05.2014, the same was exempt as transfers promoter inter se. The fact is that I wrongly interpreted the disclosure requirements under SAST Regulations and under the PIT Regulations is apparent from the filings that I have made to the Company. It is apparent that based on such disclosure the Company have in turn informed the BSE, NSDL and CDSL vide correspondence dated 20.05.2014. Immediately on seeking legal advice, I have complied with the filing of disclosures on 31.01.2018 in form A under Regulation 13(1) of PIT Regulations, 1992 for the said transactions by way of gift. Though the requisite filings remained to be done in the prescribed*

*form, the intent and spirit of Regulation 13 was met stands established by publication and availability of the relevant information in public domain in time the Exchanges and the Depositories. It is therefore humbly submitted that the intent of Regulation 13 of PIT Regulations, 1992 was duly met in spirit.*

- 20 As per material on record, company vide its e-mail dated September 3, 2014 to SEBI provided scanned copy of letter dated July 22, 2014 from Mr. Shantilal Bansilal and addressed to Board of Directors of the Company informing that “I, Shantilal Bansilal hereby inform you that I have acquired 288300 equity shares of Rs. 10 each as gift from my wife Ms. Kamala Bai. Both of us are promoters of company and have held shares for more than 10 years; this transaction is off-market?”. Company, after receipt of disclosure under regulation under Regulation 13(1) of PIT Regulations, 1992, was responsible to further disclose the same to the Stock Exchange under Regulation 13(1) of PIT Regulations, 1992. In reply dated February 5, 2018 to the SCN, Mr. Shantilal Bansilal has contended that the information about inter se transfer between him and late Ms. Kamla Bai was informed (though not in requisite form) by company to the BSE, NSE and CDSL vide letter dated May 20, 2014 and copy of such letters provided along with the said reply states that “we have been informed that 288300 shares fully paid equity shares of Rs. 10 each have been gifted by one promoter to another promoter. The donors Ms. Kamala Bai, one of the promoters of the company gifted 288300 shares fully paid up equity shares of Rs. 10 each to her husband Mr. B. Shantilal, Managing Director and another promoter of the company who is Donee. Pursuant to this transfer there has been no change in the shareholding pattern of the promoters of the company. Thus this is a promoter inter se transfer. Please treat this as a Compliance with the Listing Agreement and other disclosures as required under SEBI”. Conspicuously, in reply to SCN it is contended that the details of the said inter se transfer (through off market transfer) between Mr. Shantilal Bansilal and Ms. Kamla Bai was informed by company to BSE, NSE and CDSL on the date of inter se transfer i.e, May 20, 2014, and whereas the Board of Directors of the company was informed about the said inter se transfer of shares by Mr. Shantilal Bansilal vide letter dated July 22, 2014 i.e, after two months when the company had already provided these details to BSE, NSE and CDSL. It is to mention that as per records, no other record of prior intimation to company has been provided and also no proof of delivery has been provided about the said letter dated June 9, 2014 to BSE, NSE and CDSL.
- 21 It is pertinent to note that BSE vide e-mail dated July 22, 2014 to SEBI confirmed that no disclosures were received inter-alia from Mr. Shantilal Bansilal inter alia under Regulation 13 of SEBI PIT Regulations for the period May 19, 2014 to July 8, 2014. Given the above findings, contention put forth by Mr. Shantilal Bansilal stating that the BSE, NSE, CDSL were informed on time (though not in requisite form) and the information was published, is not correct and appears to be a mere afterthought, and hence cannot be accepted.
- 22 As per regulation 13(1) of the PIT Regulations, 1992, Mr. Shantilal Bansilal was required to make the disclosure about increase in his holding to more than 5%, to the company in form A within two working days after acquisition of shares / increase in holding on May 20, 2014. Further, company within two days of receipt of disclosure under regulation 13(1) was in turn required to make the same disclosure to Stock Exchange under regulation 13(6) of PIT Regulations, 1992. However, submissions of Mr. Shantilal Bansilal on record (reply to SCN) confirms that the requisite disclosure was not made to the company and stock exchange until January 31, 2018. Prior intimation from Mr. Shantilal Bansilal to company dated July 22, 2014 and intimation of company to BSE dated May 20, 2014 are contradictory in nature and do not provide correct



picture as found above, and the same also do not fulfil the requirements of requisite disclosures under regulation 13(1) of PIT Regulations, 1992 for reasons viz, (a) the disclosures were not made in requisite form A which also cover important facts viz, prior shareholding, change in shareholding, shareholding post said change, value of shares, etc, (b) the disclosure didn't even carry information / disclaimer that the information is being provided under Regulation 13(4A) of PIT Regulations, 1992, and (c) As regards to claim of timely disclosure to Stock Exchange under regulation 13(6), BSE has confirmed non-receipt of any disclosure inter-alia under Regulation 13 of PIT Regulations, 1992 from Mr. Pramod Kumar S and Mr. Sunil Jain.

- 23 Given the above findings, it is established that Mr. Shantil Bansilal by failing to make the requisite disclosure to the company and to Stock Exchange in two working days, violated the provisions of regulations 13(1) of the PIT Regulations, 1992.
- 24 Based on submissions of Mr. Shantil Bansilal to the SCN and as verified from the website of BSE, it is also matter of record that the disclosure under regulations 13(1) of PIT Regulations, 1992 was made **belatedly** on January 31, 2018 i.e, after delay of more than three years.

**Issue c) - If yes to a) and /or b), does the violations attract monetary penalty under Section 15A(b) of the SEBI Act?**

- 25 Given the established violation as above, it is now to be determined whether the present matter is fit case for imposing monetary penalty.
- 26 Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established....."*.
- 27 As regards the contention that due to non-disclosures no loss has been caused to the investors, Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI dated January 27, 2014 held that: *"Argument that no investor has suffered on account of non-disclosure .....is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure."*
- 28 Noticees have relied on judgement of Hon'ble Bombay High Court in SEBI vx. Cabot International Capital Corporate, 2004 which inter-alia states that *.....Adjudicating Authority may refuse to impose minimum penalty as prescribed for justifiable reasons like the default occurred due to the bonafide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach etc.....* In this regard, from the material available on record, it is noted that though the initial default was made, however, Noticees had opportunity to submit the required disclosure belatedly when their attention was drawn by SEBI towards the requirement, twice viz, through e-mail communication in September 2014 with the company (in which Noticees were Directors and Promoters) inquiring about filing of disclosures under question, and subsequently issue of non-compliance was highlighted in the notice of approved enforcement action dated June 6, 2016 sent to the Noticees. Noticees have failed to take cognizance of the continuing default and the belated disclosure were made after lapse of more than three years and only after issuance of SCN under present proceedings. Hence, contention that penalty may not be imposed as default including continuing default was on account of some other bonafide belief, is not tenable.

29. Thus, it is determined that the Noticee is liable for monetary penalty under Section 15A(b) of SEBI Act which reads as follows:

**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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;*

**Issue d) - If yes, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?**

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

***Factors to be taken into account by the Adjudicating Officer***

*While adjudging quantum of penalty under section 15-I of SEBI Act / section 23-I of SCR Act, 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.”*

30. The material made available on record neither reveals nor specify disproportionate gains/ unfair advantage made by the Noticees, the specific loss suffered by the investors due to violations by the Noticee. It is also on record that Noticees informed the company in prior period about their acquisition / transfer of shares through inter se promoter transfer, though not at all in requisite form and stipulated time provided under relevant provisions of PIT Regulations, 1992. It is also taken into account that the relevant disclosures were made belatedly on January 31, 2018 after delay of more than three years.
31. There is no material on record to suggest that the act of the Noticees are repetitive in nature.
32. It is important to note that timely disclosure of information, as prescribed under the relevant provisions of PIT Regulations, 1992, is an important regulatory tool intended for proper functioning of the securities market as it enables investors and other stake holder to take cognizance of relevant information, and failure to do so results in preventing investors from taking well informed decision. Therefore, taking into consideration the facts / circumstance of the case and above mitigating factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

**ORDER**

33. In view of the above, after taking into consideration all the facts and circumstances of the case, and after considering the factors enumerated in section 15J of the SEBI Act, under provisions of section 15A(b) of SEBI Act impose following penalty upon the Noticees:

- a) Rs. 3,00,000/- (Rupees Three Lakh only) on Mr. Pramod Kumar S for violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992;
  - b) Rs. 3,00,000/- (Rupees Three Lakh only) on Mr. Sunil Jain for violation of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations, 1992; and
  - c) Rs. 3,00,000/- (Rupees Three Lakh only) on Mr. Shantilal Bansilal for violation of Regulation 13(1) of PIT Regulations, 1992
34. The Noticee shall remit / pay the said amount (total amount Rs. Nine Lakh only) of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
Bank Name	State Bank of India
Branch	Bandra Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

35. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - I [ EFD1-DRA-I ], SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;
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)
36. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order is being sent to the Noticee and also to the SEBI.

**Date: February 21, 2018**  
**Place: Mumbai**

**Jeevan Sonparote**  
**Adjudicating Officer**