BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. JJ/AK/AO-139/2014]

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

M/s Custom Capsules Private Limited

(PAN No. AAACC6203G)

In the Matter of M/s Niraj Cement Structurals Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an examination in respect of buying, selling and dealing in the shares of M/s Niraj Cement Structurals Limited (hereinafter referred to as **'NCSL'/'Company'**) which is listed on Bombay Stock Exchange (hereinafter referred to as **'BSE'**).

2. The findings of the examination led to the allegation that M/s Custom Capsule Private Limited (hereinafter referred to as **"CCPL"/"Noticee"**) had violated the provisions of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'SAST Regulations, 2011'**) and regulations 13(1), & 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) and

therefore consequently, liable for monetary penalty under section 15A(b) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated January 16, 2014 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules'**) to inquire into and adjudge under section 15A(b) of the SEBI Act for the alleged violations of provisions of SAST Regulations and PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-5/JJ/AK/15867/2014 dated June 03, 2014 (hereinafter referred to as **"SCN"**) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act for the alleged violation specified in the said SCN. The said SCN was delivered to the Noticee.

Allegation with respect to the transaction on December 10, 2012

5. It was alleged in the SCN that the shareholding of the Noticee in NCSL prior to December 10, 2012 was 80,452 shares (i.e. 0.74% of total shareholding of NCSL). Upon invocation of 14,25,000 pledged shares on December 10, 2012, the shareholding of the Noticee had increased to 15,05,452 shares (i.e. 13.94% of total shareholding of NCSL). Noticee on crossing the threshold limit of 5% on December 10, 2012, was required to make the disclosures to the company i.e. NCSL and to the stock exchanges i.e. BSE as per regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 i.e. within two

days from the date of acquisition/transaction (December 10, 2012), which Noticee had failed to do.

6. It was also alleged in the SCN that Noticee while crossing the threshold limit of 5% specified under regulation 13(1) of PIT Regulations, was required to make the disclosures to the company i.e. NCSL as per regulation 13(1) of PIT Regulations i.e. within two working days from the date of acquisition/transaction (December 10, 2012), which Noticee had failed to do.

Allegation with respect to the transaction on December 20, 2012

7. It was alleged in the SCN that the shareholding of the Noticee in NCSL prior to December 20, 2012 was 15,05,452 shares (i.e. 13.94% of total shareholding of NCSL). Upon selling of 3,34,481 shares (3.10%) of NCSL by the Noticee on December 20, 2012 in market, its shareholding in NCSL had decreased to 11,70,971 shares (i.e. 10.84% of total shareholding of NCSL).

8. As the shareholding of the Noticee in NCSL was more than 5% and upon selling of 3,34,481 shares (3.10%) of NCSL, there was a change of more than 2% of shareholding of the Noticee in NCSL. Therefore, it was alleged in the SCN that the Noticee was required to make the disclosures to the company i.e. NCSL and to the stock exchanges i.e. BSE, in accordance with the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations 2011 i.e. within two working days from the date of transaction (December 20, 2012), which Noticee had failed to do. It was also alleged in the SCN that the Noticee was required to make the disclosures to the company i.e. NCSL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of transaction (December 20, 2012) which Noticee had failed to do.

Allegation with respect to the transaction on December 21, 2012

9. It was alleged in the SCN that the shareholding of the Noticee in NCSL prior to December 21, 2012 was 11,70,971 shares (i.e. 10.84% of total shareholding of NCSL). Upon selling of 4,39,000 shares (4.06%) of NCSL by the Noticee on December 21, 2012 in market, its shareholding in NCSL had decreased to 7,31,971 shares (i.e. 6.78% of total shareholding of NCSL).

10. As the shareholding of the Noticee in NCSL was more than 5% and upon selling of 4,39,000 shares (4.06%) of NCSL, there was a change of more than 2% of shareholding of the Noticee in NCSL. Therefore, it was alleged in the SCN that the Noticee was required to make the disclosures to the company i.e. NCSL and to the stock exchanges i.e. BSE, in accordance with the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations 2011 i.e. within two working days from the date of transaction (December 21, 2012), which Noticee had failed to do. It was also alleged in the SCN that the Noticee was required to make the disclosures to the company i.e. NCSL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of transaction (December 21, 2012) which Noticee had failed to do.

Allegation with respect to the transaction on December 26, 2012

11. It is alleged that, the shareholding of the Noticee in NCSL prior to December 26, 2012 was 7,31,971 shares (i.e. 6.78% of total shareholding of NCSL). Upon selling of 7,31,971 shares (i.e. 6.78%) of NCSL by the Noticee on December 26, 2012 in off-market, its shareholding in NCSL had decreased to nil (i.e. 0.00% of total shareholding of NCSL).

12. As the shareholding of the Noticee in NCSL was more than 5% and upon selling of 7,31,971 shares (i.e. 6.78%) of NCSL, there was a change of more

than 2% of shareholding of the Noticee in NCSL. Therefore, it was alleged in the SCN that the Noticee was required to make the disclosures to the company i.e. NCSL and to the stock exchanges i.e. BSE, in accordance with the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations 2011 i.e. within two working days from the date of transaction (December 26, 2012), which Noticee had failed to do. It was also alleged that the Noticee was required to make the disclosures to the company i.e. NCSL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of transaction (December 26, 2012) which Noticee had failed to do.

13. The Noticee vide letter dated June 18, 2014 has requested time 30 days time to submit the reply to the SCN. Noticee vide letter dated July 16, 2014 submit the reply in the matter stating *inter alia* as under:

".....

We are a Private Limited Company, principally engaged in the business of manufacturing capsules. As and when the surplus funds are generated in the business awaiting redeployment, these temporary funds are parked in mutual funds as well as Inter Corporate Deposits (ICD) / short term loans.

- *At the outset, we humbly submit that in the month of December 2011, We gave financial assistance to M/s Niraj Cements Ltd.(NSCL) when they approached us for lending the ICD Rs.100 lacs against the security of shares of NSCL, worth 2 times the value of the ICD amount w.e,f. 08/11/2011 for 365 days upto 07/12/2012.*
- *In consideration, NSCL created security by way of pledge of unencumbered 14,25,000 equity shares held by its promoters, in Demat form in our favour on 10th of December ,2011 and 1,00,000 shares of NSCL by direct transfer to our DP account against the said ICD on 20th December 2011. We have been informed by the borrower that they had advised stock exchanges about pledge of said shares to us.*
- *Due to the decline in the share price of NSCL below required margin of 2 times, we had asked NSCL to return of ICD proportionately. On their failure to do so, we sold 19548 shares of NSCL on 10/05/2012 to restore the security margin.*
- *On due date i.e. on 07/12/2012, NSCL defaulted in the repayment of the ICD*

amount and there being erosion in the value of security, as a part of recovery measure, we were constrained to invoke the shares pledged with us. We invoked 14,25,000 equity shares of NSCL on 10/12/2012 which were transferred to our Beneficiary Account. Thus, we held total of 15,05,452 equity shares of NSCL as on 10112/2012 in our Beneficiary Account. Since the default continued we sold 3,34,481 equity shares on 19/12/2012; 4,39,000 equity shares on 20/12/2012. Further, once our ICD amount was recovered, on 26/12/2012, we released the balance 7,31,971 equity shares of NSCL by off market trade to the DP account of Mr. Vijaykumar Chopra (2,31,971 equity shares) and Mr. Gulshan Chopra (5,00,000 equity shares), the promoters of the Company.

- *Thus the sale of pledged shares was carried out in a short span of 10 days and the balance shares were released to the promoters with the sole intention of recovering our dues.*
- *It may please be noted that subsequent to invocation, statutory disclosures to the stock exchanges were made by the promoters of NSCL, Mr. Gulshan Chopra & Mr. Asha Vijakumar on 21st Dec.20l2 and Mr. Vijaykumar Chopra on 24th December 2012. It may be appreciated that by making the required disclosure by NSCL, the investors were not deprived of the important information at the relevant time and there was no disproportionate gain or unfair advantage made by us at the cost of investors at large.*
- *It is pertinent to note that though the shares have been invoked by us and immediately released in 16 days time, the same was not shown as an investment by us in the investment note to our Balance Sheet. It may be kindly considered that the purpose of transaction undertaken was not to acquire shares or gain voting rights in or control over NSCL but solely to recover the amount lent in the form of ICD.*
- *It is humbly submitted that after perusal of the facts, it is clear that the intention of our Company was neither substantial acquisition of NSCL shares nor Insider Trading with the intent to defraud anyone and make any unlawful gains to the disadvantage of the general public.*
- *We also humbly states and submit that looking at the object of the SAST regulations, 2011 and SEBI (Prohibition of Insider Trading) Regulations, 1992 , the said regulations are not applicable to our transactions and moreover the responsibility of compliance is on the NSCL which is listed on BSE and it has complied with the same by informing immediately after the sale.*

....."

14. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on August 22, 2014 vide notice dated August 07, 2014 at SEBI, Head Office, Mumbai. The said notice of hearing was delivered to the Noticee as

per the acknowledgement card received. Mr. Dilip Nagool, appeared as Authorized Representative, (hereinafter referred to as "**AR**") on behalf of the Noticee. During the course of hearing, AR reiterated the submissions made vide letter dated July 16, 2014 and requested time till August 28, 2014 to submit additional written submissions in the matter. Noticee vide letter dated August 27, 2014 submit the additional written submissions in the matter which *inter alia* stated as under:

"....."

1. *In the captioned SCN (Ref. Para 1), it is alleged against us that we are in violations of reg. 29(1) & reg. 29(2) r.w. reg. 29(3) and reg. 31(2) r.w. reg. 31(3) of SEBI (Substantial Acquisition of Shares & Takeover) Regulations, 2011 ("SAST Regulations, 2011") and regulatlon13(1) & 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations") as observed during the examination conducted by SEBI into the trading in the scrip of M/s Niraj Cement Structurals Limited("**NCSL**")*

2. *At the outset, we clarify that reg. 31 (2) r.w. 31 (3) of SAST regulation 2011 applies to the Promoters of NCSL and we are not the promoters of NCSL Company hence no disclosures are required to be made by us under the aforesaid regulation. Therefore the allegation of violation of aforesaid provision ought not to be levelled against us.*

3. *We understand that the aforesaid allegations are made against us since we had sold 3,34,481 shares (3.10%) on 19.12.2012 and 4,39,000 shares (4.06%) on 20.12.2012 of NCSL for and behalf of the promoters of NCSL company.*

4. *The facts of the present case in brief is as under:*
    i. *As a part of our prudent financial management, as and when surplus funds are generated in the business, awaiting redeployment, these temporary funds are parked in mutual funds as well as Inter Corporate Deposits (ICD)/ short term loans by us.*
    ii. *In the course of our aforesaid objectives, in the month of November/December 2011, we had given Inter Corporate Deposit (lCD) of Rs. 100 Lacs to NCSL company against collateral security of 15,25,000 shares of the promoters of NCSL.*
    iii. *Out of the aforesaid 15,25,000 shares, 1,00,000 shares were transferred on 10.12.2011 in our demat account maintained with Kotak Securities Ltd. [Kotak) and remaining 14,25,000 shares were marked as pledged to us in the respective demat accounts of the promoters of NCSL Company.*
    iv. *Out of 1,00,000 shares given to us, due to margin shortfall, as a risk management measure, on and around 10.05.2012, we were constrained to sell 19,548 of NCSL of one of the promoters viz. Shri Gulshan Chopra.*

Thus 80,452 shares (0.74%) of the promoters remained in our account as collateral security against aforesaid ICD.

v. *Incidentally on due date of repayment i.e. on 07.12.2012, NCSL Company could not repay ICD amount and therefore after long discussion and due deliberation, it was decided that we shall sell their shares in our account on their behalf and recover our dues.*

vi. *In pursuance thereto, on 10.12.2012, 14,25,000 shares were transferred in our demat account with an intention and for the specific purpose to sell the shares in the stock market on their behalf.*

vii. *After transfer of shares in our demat account, as aforesaid, we sold 3,34,481 shares and 4,39,000 shares on 19.12.2012 and 20.12.2012 respectively on behalf of the NCSL Company.*

viii. *On receipt of money on pay out day in our Bank account from our Broker Kotak, we credited the sell proceeds in the NCSL account maintained with us, thereby full amount of ICD was received by us.*

ix. *Lastly on 26.12.2012, i.e. after recovery of our money, we returned 7,31,971 shares lying with us on their behalf, in the respective Demat account of the promoter i.e. 5,00,000 shares and 2,31,971 shares in the demat account of Shri Gulshan Chopra and Vijaykumar Chopra respectively.*

5. *In the present facts and circumstances, as enumerated hereinabove, we state that we have merely acting on their behalf, to sell the shares and thereby recover our dues. Indeed, it is pertinent to mention that we never intended to acquire/purchase NCSL shares and that we had no voting rights or control over NCSL Company at any point of time. Hence under no circumstances, mere transfer of shares in our account for the purposes of selling in the market on their behalf for a specific purpose i.e. to recover our money owed by them to be considered as our acquisition/purchase of NCSL shares. For ready references, the definition of "acquirer" and "acquisition" as defined under reg. 2(1) (a) and (b) of SAST regulation 2011 is reproduced below:*

"Definitions

2. (1) . . . .

(a) "acquirer" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;

(b) "acquisition" means, directly or indirectly. acquiring or agreeing to acquire shares or voting rights in, or control over, a target company;"

Further the then existing relevant provisions of reg. 29(1) and 29 (2) of SAST regulation 2011 is reproduced below:

" Disclosure of acquisition and disposal"

29. (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held

by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such targetcompany, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(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).....

(4).....

6. *Indeed, it is pertinent to mention that the amendment in the aforesaid regulation was notified on 26.03.2013 whereby inter alia, the concept of "Any Person" was introduced in place of "Any acquirer" hence at the relevant time only acquirer and not any person was required to comply with the above referred regulation 29 (1) and (2) of SAST regulation 2011.*
7. *Further, we state and clarify that we have no other connection or relationship with NCSL Company and any of the promoters of NCSL Company, except as aforesaid. Hence the provisions of reg. 13(1) and 13 (3) of PIT regulations is not applicable to us.....*

8. *In the present case, it is pertinent to mention that we had not paid any consideration against transfer of shares by the promoter of NCSL company to our demat account and that the said transfer of shares in our account was only for the sole purpose of selling the shares in the market on their behalf without having any voting rights on the same hence we were never "Holder" or "Holder in due Course" of the aforesaid 14,25,000 shares.*

9. *With regard to our rights, title and status arising by virtue of "pledger-pledgee" relationship, with NCSL company, our attention is drawn on "The Contract Act, 1872" wherein under chapter - IX titled as "of bailment" under sub-title "Bailment of pledges" rights/relationship qua parties is defined. The relevant extract of Sec. 176 from the "Bare Act with Short Comments" is reproduced below:*

"176. Pawnee's right where Pawnor makes default. - If the pawnor makes default in payment of the debt, or performance, at the stipulated time, of the promise, in respect of which the goods were pledged, the pawnee may bring a Suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale.

If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the

proceeds of the sale are greater than the amount so due, the Pawnee shall pay over the surplus to the pawnor.

COMMENTS

Rights of pawnee. -There are no difference between the common law of England and the law With regard to pledge as codified in Ss. 172 to 176 of the Contract Act. S. 176 deals with the rights of a pawnee and provides that in case of default by the pawnor the pawnee has (l) the right to sue upon the debt and to retain the goods as collateral security, and (2) to sell the goods after reasonable notice of the intended sale to the pawnor. Once the pawnee by virtue of his right under S. 176 sells the goods the right of the pawnor to redeem them is of course extinguished. But the pawnee is bound to apply the sale proceeds towards satisfaction of the debt and pay the surplus, if any, to the pawnor: Lallan Prasad v. Rahmat Ali (1967) 2 SCR 233. See also Standard Chartered Bank v. Custodian A.l.R. 2000 S.C. 1488.

10. *Thus we state and submit that in view of the aforesaid interpretation of the relevant provision of law, we were under the bonafide impression and belief that the SAST regulations, 2011 and PIT regulations are not applicable to us for execution of the transactions in NCSL shares on behalf of the persons/entities as referred in SCN.*

11. *Moreover, we were advised that the responsibility of compliances with regard to disclosure requirements of SEBI on stock exchanges is on NCSL, being listed company, and we were informed that NCSL and its promoters had complied with the same by informing to BSE sale of their shares by us. Hence required disclosures were disseminated on the stock exchange website for the knowledge and benefit of the investors of the capital market.*

12. *<u>Mitigating factors</u>*

Besides as aforesaid, we state and submit that by virtue of carrying out the aforesaid transactions:

i. *There is no change in management and control of the company.*
ii. *There is no investor's complaint filed against us.*
iii. *No loss, damage or harm was caused to anyone including any shareholder and stake holder of NCSL Company.*
iv. *The alleged lapse, if any, is purely technical and non repetitive in nature.*

13. *We thereafter plead before your kindselves that no monetary penalty u/s 15A(b) of the SEBI Act, 1992 as contemplated under SCN be imposed on us.*

....."

CONSIDERATION OF ISSUES AND FINDINGS

15. 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 Noticee had violated the provisions of regulation 29(1) & regulation 29(2) read with regulation 29(3) and of SAST Regulations, 2011 and regulations 13(1) & 13(3) read with regulation 13(5) of PIT Regulations?
    b. Does the violations, if any, attract monetary penalty under section 15A(b) of the SEBI Act?
    c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

16. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 2011 and PIT Regulations, which reads as under:-

SAST REGULATIONS, 2011

Disclosure of acquisition and disposal.

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(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.

(4) For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

***Provided** that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledgee in connection with a pledge of shares for securing indebtedness in the ordinary course of business.*

PIT REGULATIONS

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.

(2)……..

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company

(4) .....

(4A) .....

(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.

Disclosure by company to stock exchanges

(6)……..

17. Upon perusal of the documents available on record and from the submissions of the Noticee, I find that in para 1 of the SCN, Noticee was alleged to have violated the regulation 31(2) read with regulation 31(3) of SAST Regulation, 2011. On perusal of regulation 31(2) read with regulation 31(3) of SAST Regulation, 2011, I find that the said regulations were applicable to promoters of the company. From the documents available on records, I find that Noticee was not a promoter of NCSL. Therefore, to this extent I find merit in the submissions of the Noticee and regulation 31(2) read with regulation 31(3) of the SAST Regulations, 2011 are not applicable to the Noticee.

18. Upon perusal of the documents available on records, I find that the shareholding of Noticee in NCSL prior to December 10, 2012 was 80,452 shares i.e. 0.74% of total shareholding of NCSL. Promoters of NCSL had pledged 14,25,000 shares with Noticee. Upon failure to repay the loan by the promoters of NCSL, Noticee had invoked 14,25,000 pledged shares on December 10, 2012 i.e. these 14,25,000 pledged shares were transferred in off market from the demat account of the promoters of NCSL to the demat account of the Noticee on December 10, 2012 and Noticee become the beneficial owner of these shares. Due to which the shareholding of the Noticee had increased to 15,05,452 shares i.e. 13.94% of total shareholding of NCSL. To meet its financial obligation Noticee had sold 3,34,481 shares (3.10%) and 4,39,000 shares (4.06%) in market on December 20, 2012 and December 21, 2012 respectively. After meeting its financial obligation Noticee on December 26, 2012 had transferred 7,31,971 (6.78%) shares off market in the demat account of the promoters of NCSL, thereby the shareholding of the Noticee had decreased to nil. From the submissions of the Noticee I find that

Noticee has not disputed the above transactions rather has accepted that the said transactions were done by it on December 10, 2012, December 19, 2012, December 20, 2012 and December 26, 2012 to recover the money owed by the promoters of NCSL.

19. The contention of the Noticee is that mere transfer of shares by way of pledge in its accounts for the purpose of selling in the market on behalf of the promoter to recover its money owed by the promoter of NCSL cannot be considered as acquisition /purchase of shares. Noticee also contended that in December 2012 the regulations 29(1) & 29(2) r/w regulation 29(3) of SAST Regulations, 2011 were applicable to only *"any acquirer"* and not to *"any person"*. However, I do not find any merit in the submissions of the Noticee. As regulation 29(4) of SAST Regulations, 2011 clearly states that for the purpose of disclosures to be made under regulation 29(1) & 29(2) of SAST Regulations, 2011 shares taken by way of encumbrance shall be treated as an acquisition and shares given upon release of encumbrance shall be treated as a disposal. As the shares received through encumbrance/pledge by the Noticee is an acquisition. Therefore, the Noticee is an acquirer.

20. Noticee also contended that they have no connection or relationship with NCSL and any of its promoter accept with respect to aforesaid transaction . Therefore, the provisions of regulations 13(1) & 13(2) r/w regulation 13(5) is not applicable to them. However, I do not find any merit in this submissions because the requirement of regulation 13(1) of PIT Regulations is that disclosure by any person who holds more than 5% shares or voting rights in any listed company regarding the number of shares or voting rights held by such person on becoming such holder within two days to the company. Regulation 13(3) requires that any person who holds more than 5% of shares shall disclose to the company the change in shareholding exceeding 2% of the total shareholding or voting rights in the company.

21. Pledged shares are collateral for a loan. If the loan is not repaid, the pledgee/lender, after giving notice to the pledgor/borrower as per the terms of the agreement, may instruct its Depository Participant (DP) to invoke the pledge. On execution of this instruction, the securities are transferred into the pledgee's/lenders account. Invoking of pledged shares means that the lender has exercised his right on security and the shares have been actually transferred from the demat account of borrowers to the demat account of lenders. To that extent the borrowers holding has reduced and lender has the liberty to sell the shares at any time and sue the borrower for balance amount.

22. In the instant case, Noticee has invoked the pledge and got the shares transferred in its demat account on December 10, 2012. Consequent to invocation of pledge, Noticee has become the beneficial owner of the shares and those shares were held in its name in demat form. In short, the Noticee had acquired the shares and can no longer be said to be holding shares under encumbrance/pledge as pledgee.

23. Clearly, when Noticee invoked the pledge and got the shares transferred in its demat account on December 10, 2012, acquisition of shares by the Noticee has taken place. For the purpose of SAST Regulations, 2011 and PIT Regulations, what is relevant is acquisition/disposal of shares and once acquisition/disposal of shares exceeds the limits prescribed therein, the provisions of SAST Regulations, 2011 and PIT Regulations are triggered. In the instant case, since the said acquisition of shares by the Noticee constituted more than the benchmark limit specified in regulation 29 of SAST Regulations, 2011, it attracted the provisions of the said regulation, thereby Noticee is under obligation to file disclosures with the company and stock exchanges.

24. In this regard, reliance is also placed on the judgment of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Liquid Holdings Private Limited (Appeal No. 83 of 2010 decided on 11.03.2011) wherein it was held that *".....as long as the shares remained under pledge, the pledgors (the appellants) were their beneficial owners and the only effect of the pledge was that the shares under pledge could not be transferred any further or dealt with in the market without concurrence of the pledgees i.e, the banks. The pledge by itself did not bring about any change in the beneficial ownership of the shares pledged and there was no question of the provisions of the takeover code being attracted. It was somewhere in the year 2004 that default was committed in the repayment of the loans as a result whereof the banks invoked the pledges and* ***got the shares transferred from the demat accounts of the appellants (pledgors) to their own demat accounts****. On such invocation, the depository cancelled the entry of pledge in its records and registered the banks as beneficial owners of the shares of the shares in its accounts and made necessary amendments therein. .....Upon banks being recorded as beneficial owners of the shares in the records of the depository, they became members of the target company and they acquired not only shares but also the voting rights thereto".*

Disclosures with respect to the transaction on December 10, 2012

25. From the above, I am of the view that upon invocation of 14,25,000 pledged shares on December 10, 2012, the shareholding of the Noticee had increased from 80,452 shares (i.e. 0.74% of total shareholding of NCSL) to 15,05,452 shares (i.e. 13.94% of total shareholding of NCSL). Noticee on crossing the threshold limit of 5% on December 10, 2012, was required to make the disclosures to the company i.e. NCSL and to the stock exchanges i.e. BSE as per regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 i.e. within two days from the date of acquisition/transaction (December 10, 2012). Also Noticee while crossing the threshold limit of 5% specified under regulation 13(1) of PIT Regulations, was required to make the disclosures to the company i.e. NCSL as per regulation 13(1) of PIT Regulations i.e. within

two working days from the date of acquisition/transaction (December 10, 2012). However, Noticee has not submitted any evidence with respect to the said disclosures being made to BSE and NCSL. Therefore, till date Noticee has not made any disclosures to BSE and NCSL.

***Disclosures with respect to the* transaction on December 20, 2012**

26. The shareholding of the Noticee in NCSL prior to December 20, 2012 was 15,05,452 shares (i.e. 13.94% of total shareholding of NCSL). Upon selling of 3,34,481 shares (3.10%) of NCSL by the Noticee on December 20, 2012 in market, its shareholding in NCSL had decreased to 11,70,971 shares (i.e. 10.84% of total shareholding of NCSL).

27. As the shareholding of the Noticee in NCSL was more than 5% and upon selling of 3,34,481 shares (3.10%) of NCSL, there was a change of more than 2% of shareholding of the Noticee in NCSL. Therefore, the Noticee was required to make the disclosures to the company i.e. NCSL and to the stock exchanges i.e. BSE, in accordance with the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations 2011 i.e. within two working days from the date of transaction (December 20, 2012). Noticee was also required to make the disclosures to the company i.e. NCSL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of transaction (December 20, 2012). However, Noticee has not submitted any evidence with respect to the said disclosures being made to BSE and NCSL. Therefore, till date Noticee has not made any disclosures to BSE and NCSL.

***Disclosures* with respect to the transaction on December 21, 2012**

28. The shareholding of the Noticee in NCSL prior to December 21, 2012 was 11,70,971 shares (i.e. 10.84% of total shareholding of NCSL). Upon selling of

4,39,000 shares (4.06%) of NCSL by the Noticee on December 21, 2012 in market, its shareholding in NCSL had decreased to 7,31,971 shares (i.e. 6.78% of total shareholding of NCSL).

29. As the shareholding of the Noticee in NCSL was more than 5% and upon selling of 4,39,000 shares (4.06%) of NCSL, there was a change of more than 2% of shareholding of the Noticee in NCSL. Therefore, Noticee was required to make the disclosures to the company i.e. NCSL and to the stock exchanges i.e. BSE, in accordance with the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations 2011 i.e. within two working days from the date of transaction (December 21, 2012). Noticee also was required to make the disclosures to the company i.e. NCSL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of transaction (December 21, 2012). However, Noticee has not submitted any evidence with respect to the said disclosures being made to BSE and NCSL. Therefore, till date Noticee has not made any disclosures to BSE and NCSL.

***Disclosures* with respect to the transaction on December 26, 2012**

30. The shareholding of the Noticee in NCSL prior to December 26, 2012 was 7,31,971 shares (i.e. 6.78% of total shareholding of NCSL). Upon selling of 7,31,971 shares (i.e. 6.78%) of NCSL by the Noticee on December 26, 2012 in off-market, its shareholding in NCSL had decreased to nil (i.e. 0.00% of total shareholding of NCSL).

31. As the shareholding of the Noticee in NCSL was more than 5% and upon selling of 7,31,971 shares (i.e. 6.78%) of NCSL, there was a change of more than 2% of shareholding of the Noticee in NCSL. Therefore, Noticee was required to make the disclosures to the company i.e. NCSL and to the stock exchanges i.e. BSE, in accordance with the provisions of regulation 29(2)

read with regulation 29(3) of SAST Regulations 2011 i.e. within two working days from the date of transaction (December 26, 2012). Noticee was also required to make the disclosures to the company i.e. NCSL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of transaction (December 26, 2012). However, Noticee has not submitted any evidence with respect to the said disclosures being made to BSE and NCSL. Therefore, till date Noticee has not made any disclosures to BSE and NCSL.

32. By not making the disclosures on time, the Noticee failed to comply with its statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. There can be no dispute that compliance of regulations is mandatory and it is duty of SEBI to enforce compliance of these regulations. In this connection, it may be noted that the Hon'ble Securities Appellate Tribunal **(SAT)** in Appeal no. 66 of 2003 in the case of Milan Mahendra Securities Pvt. Ltd. vs. SEBI, by its order dated November 15, 2006, has observed that "*the Regulations were framed on the basis of the input provided by a committee headed by Justice P. N. Bhagwati which had recommended that substantial acquisition of shares and takeovers should operate principally to ensure fair and equal treatment to all shareholders in relation to substantial acquisition of shares and takeovers. The object of the Regulations is to give equal treatment and opportunity to all shareholders and protect their interests. To translate these principles into reality measures have to be taken by the Board to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. It is with this end in view that the Regulations require the making of disclosures on pre-acquisition and post-acquisition stages and the requirement in Regulation 7 at post acquisition stage is one among them. As observed, the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature*".

33. In terms of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and in terms of regulations 13(1) & 13(3) read with regulation 13(5) of PIT Regulations disclosures are required to be made to the company. "Disclose to the company and to the stock exchange" is the clue. According to Black's Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus, the requirement is that complete information should reach the person for whom it is meant.

34. In terms of SAST Regulations, 2011 and PIT Regulations, the acquirers upon acquiring specified percentage of shareholding of a company / change in specified percentage of shareholding of a company are required to disclose the same to the company and to stock exchanges within a prescribed time frame. The holding pattern of shareholding of a company is an important information for all investors. The investors should know who are the major shareholders of a company. Any change in this regard (whether shareholding percentage or the holders thereof) is an important information which can have a bearing on the investment decision of the investors. Failure to make timely disclosures of major changes in shareholding pattern cannot be considered as trivial or of no consequence to be overlooked.

35. The Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of Arun Kumar Bajoria v/s SEBI – Order dated March 27, 2001, made the following observations:-

> *"……the object of Regulation 7 is to inform the investors that an individual has acquired 5 percent shares in the company concerned. If the acquisition has been made by more than one individual in association with each other, it is also obligatory on the part of such individuals to disclose their identity. This can only*

be done when the information is given to the company. If after the company has received the information, its officer do not read the information and in consequence thereof no information is given to the investors through the concerned stock exchanges, the company is to be blamed but unless the company receives the information, the question of the officers of the company reading the information and then transmitting such information to the investors through the stock exchanges concerned does not, nor can at all arise. Therefore, it is obligatory on the pat of the person so acquiring to inform the company….."

36. I have noted the submissions of the Noticee, however, I do not find any merit in its submissions. Therefore, in view of the above, I hold that the allegation with respect to the violation of provisions of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulations 13(1) & 13(3) read with regulation 13(5) of PIT Regulations by the Noticee on four occasions stands established.

37. The provisions of section 15A (b) of SEBI Act is reproduced hereunder:

15A. ***<u>Penalty for failure to furnish, information, return etc.</u>***

If any person, who is required under this Act or any rules or regulations made thereunder, -
(a)……
(b) to file any return or furnish any information, books or other documents within the time specified 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.
(c)……

38. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation*

and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow".

39. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section15A (b) of the SEBI Act.

40. While determining the quantum of monetary penalty under section 15A (b), I have considered 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."*

41. The object of the SAST Regulations, 2011 and PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the Noticee by not making the specified disclosures on the due dates. Further it is also not possible to ascertain the loss to the investors in monetary terms. By virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other

words, by not complying with the regulatory obligation of making the disclosures, the Noticee had not provided the vital information within the prescribed time which is detrimental to the interest of investors in securities market. Our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Hence, the violation of the Noticee cannot be viewed lightly.

42. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose following monetary penalty under Section 15A(b) of the SEBI Act on the Noticee for the violations committed by it.

Sl.No.	Date of Violation	Regulations Violated	Penalty Imposed
1	10.12.2012	Regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 & regulation 13(1) of PIT Regulations	₹ 12,00,000
2	20.12.2012	Regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 & regulation 13(3) read with regulation 13(5) of PIT Regulations	₹ 3,00,000
3	21.12.2012		₹ 3,00,000
4	26.12.2012		₹ 7,00,000

The said penalty is appropriate in the facts and circumstances of the case.

ORDER

43. In exercise of the powers conferred under Section 15 I of the SEBI Act and Rule 5 of the Rules, I hereby impose a total monetary penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakhs only) under section 15A(b) of the SEBI Act and Rule 5(1) of the Rules, on M/s Custom Capsules Private Limited, for the violation of provisions of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulations 13(1) & 13(3) read with regulation 13(5) of PIT Regulations. In the facts and circumstances

of the case, I am of the view that the said penalty is commensurate with the violations committed by the Noticee.

44. The Noticee shall pay the said amount of penalty by way of demand 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 Deputy General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: September 24, 2014 **Jayanta Jash**

Place: Mumbai **Adjudicating Officer**