

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER Nos. ASK/AO/84-88/2014]**

**UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 and UNDER SECTION 23-I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005**

**In respect of**

<b>Name of the entity</b>	<b>PAN</b>	<b>Order No.</b>
<b>1.M/s Surana Industries Limited</b>	<b>AAACS3123M</b>	<b>ASK/AO/84/2014</b>
<b>2. G R Surana</b>	<b>AACPS3237P</b>	<b>ASK/AO/85/2014</b>
<b>3. Dineshchand Surana</b>	<b>AACPS3233K</b>	<b>ASK/AO/86/2014</b>
<b>4. V M Swami</b>	<b>AYGPS7675D</b>	<b>ASK/AO/87/2014</b>
<b>5. Krishna Udupa</b>	<b>AABPU0478R</b>	<b>ASK/AO/88/2014</b>

In the matter of Surana Industries Limited

**Background**

1. A complaint was received on June 25, 2012 against Surana Industries Limited **(SIL)** in respect of preferential allotment of 77,00,000 of its shares. It was alleged in the said complaint that the funds for investment were SIL borrowed funds rotated back. Further, a news item appeared in Economic Times on June 21, 2012 in respect of this preferential allotment. Securities and Exchange Board of India **(SEBI)** conducted investigation into the matter.
2. The investigation revealed that SIL had allegedly not intimated the decision with regard to the preferential issue taken in the Board Meeting dated January 18, 2010

within 15 minutes of the closure of the meeting and also delayed dissemination of price sensitive information to the stock exchanges on an urgent basis. It was also revealed that SIL withdrew the proposed preferential allotment on two occasions citing reasons which in fact existed at the time of making the corporate announcement regarding those preferential allotments and hence it had no intention to proceed with the preferential issues. It was further observed that the modus operandi of SIL was an artifice employed by it to make the open offer by its promoters unattractive. It was thus alleged that the SIL and its non-independent directors namely G R Surana, Dineshchand Surana, V M Swami and Krishna Udupa (collectively **Noticees**) have violated the provisions of Regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (e), (f), (k) & (r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to securities market) Regulations, 2003 (**PFUTP Regulations**), the provisions of Clause 2.1 under Schedule II read with Regulation 12(2) of SEBI (prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations**) and the provisions of Clause 22(a) of Listing Agreement read with section 21 of the Securities Contracts (Regulation) Act, 1956 (**SCRA**).

3. SEBI, therefore, initiated adjudicating proceedings against the Noticees to inquire into and adjudge the alleged violations as mentioned above under sections 15HA & 15HB of SEBI Act, 1992 (**SEBI Act**) and under section 23E of SCRA.

#### **Appointment of Adjudication Officer**

4. The undersigned was appointed as Adjudicating Officer vide order dated June 06, 2014 under section 15-I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (**SEBI Adjudication Rules**) and under section 23-I of the SCRA read with Rule 3 Securities Contract (Regulation) (Procedure for Holding Inquiry and imposing Penalties by Adjudicating Officer) Rules, 2005 (**SCRA Adjudication Rules**) to inquire into and adjudge the aforesaid alleged violations committed by the Noticees.

### **Show Cause Notice, Reply and Personal Hearing**

5. A common Show Cause Notice dated June 13, 2014 (**SCN**) was issued to the Noticees under rules 4 of SEBI Adjudication Rules and SCRA Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed on the Noticees under sections 15HA, 15HB of SEBI Act and section 23E of SCRA for the alleged violations specified in the SCN.
6. In response to the SCN, the Noticees, vide letter dated July 25, 2014 requested time till August 31, 2014 for filing their reply. Thereafter, vide letter dated August 21, 2014, the Noticees filed reply to the SCN. It was inter alia mentioned in the said letter that Shri V M Swami, Noticee No.4 expired on September 19, 2014.
7. An opportunity of hearing was granted to the Noticees on August 27, 2014 when Shri Anil Gupta, Chief Financial Officer of SIL and Shri S Ganesh, Practicing Company Secretary appeared as authorized representatives on behalf of the Noticees. The ARs, while re-iterating the submissions made vide letter dated August 21, 2014 requested to take a lenient view in the matter.

### **Consideration of Issues, Evidence and Findings**

8. I have carefully perused the material available on record and the submissions made by the Noticees.
9. The issues that arise for consideration in the present case are:
  - a. Whether the Noticees have violated the provisions of Clause 22(a) of Listing Agreement read with section 21 of SCRA?;
  - b. Whether the Noticees have violated the provisions of Clause 2.1 under Schedule II read with Regulation 12(2) of PIT Regulations?;

- c. Whether the Noticees have violated the provisions of regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (e), (f), (k) & (r) of PFUTP Regulations ?;
- d. Do the violations, if any, on the part of the Noticees attract penalty under section 15HA, 15HB of SEBI Act and section 23E of SCRA?
- e. If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act and section 23J of SCRA?

10. The relevant provisions of the aforementioned regulations are as under:

***PFUTP Regulations:-***

***“3. Prohibition of certain dealings in securities***

*No person shall directly or indirectly-*

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of provisions of the Act or the rules or the regulations made thereunder;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.”*

***“4. Prohibition of manipulative, fraudulent and unfair trade practices***

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following namely: -*
  - (a) indulging in an act which creates false or misleading appearance of trading in the securities market.*

- (b).....
- (c).....
- (d).....
- (e) *any act or omission amounting to manipulation of the price of a security.*
- (f) *publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*
- (g).....
- (h).....
- (i).....
- (j).....
- (k) *an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors.*
- .....
- .....
- (r) *planting false or misleading news which may induce sale or purchase of securities.”*

### ***PIT Regulations.***

*Regulation 12(1) All listed companies and organizations associated with securities markets including:*

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds:*
- (b) the self regulatory organizations recognized or authorized by the Board:*
- (c) the recognized stock exchanges and clearing house or corporations:*
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956 and*
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedure and conduct as near thereto the Model Code specified in Schedule I of these regulations without diluting it in any manner and ensure compliance of the same.*

*(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.*

*(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedure to enforce the codes specified under sub-regulations (1) and (2).*

*Schedule II of regulation 12 (1) of PIT Regulations:*

*Clause 2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.*

**SCRA :**

***Conditions for listing***

*21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.*

***Listing Agreement.***

*22. The Company will immediately on the date of the meeting of its Board of directors held to consider or decide the same, intimate to the Exchange within 15 minutes of the closure of the Board Meetings by Letter/fax (or, if the meeting to be held outside the City of Mumbai, by fax/telegram) –*

*(a) short particulars of any increase of capital whether by issue of bonus shares through capitalisation, or by way of right shares to be offered to the shareholders or debenture holders, or in any other way.*

11. Before proceeding on merits, I note that the company (Noticee No.1) has, vide letter dated August 21, 2014, submitted that Shri V M Swami (Noticee No. 4) had expired and subsequently vide e-mail/letter dated August 27, 2014 submitted certified copy of the death certificate of Shri V M swami. In this context, I would like to quote the observations of Hon'ble Supreme Court, in *Girijanandini Vs Bijendra Narain (AIR 1967 SC 2110)*, wherein the court observed that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply. I note that the SCN against him was issued on June 13, 2014 and the record shows that he passed away on

September 19, 2013. Thus, the proceedings were initiated against the personal acts of omission and commission of a person who was no more to face the said charges. In view of the above, I hereby abate the instant proceedings initiated against Shri V M Swami.

12. Now I deal with the matter on merits as far the other Noticees are concerned.

**Findings:**

**Issue Nos. 1 & 2 :- Whether the Noticees have violated the provisions of Clause 22(a) of Listing Agreement read with section 21 of SCRA & the provisions of Clause 2.1 under Schedule II read with regulation 12(2) of PIT Regulations?**

13. I note that SIL is a listed company and its shares are listed on the BSE Limited **(BSE)**, the National Stock Exchange of India Limited **(NSE)** and Madras Stock Exchange **(MSE)**. I also note that the Board of Directors of SIL at their meeting held on September 02, 2009 had sought to issue up to 7,40,000 shares of Rs.10/- each at premium of Rs.490/- per share to select overseas investors on preferential basis. Pursuant to this, the shareholders vide postal ballot passed a resolution approving the same on October 21, 2009. Subsequently, SIL in its Board meeting dated January 18, 2010 had decided that the preferential allotment process stands deferred, in view of an ongoing open offer by promoters. The said decision to defer the preferential allotment was intimated by SIL to NSE, BSE and MSE vide letters dated January 22, 2010. It was alleged in the SCN that the decision taken in the Board Meeting held on January 18, 2010 was not intimated to the stock exchanges within 15 minutes of the closure of the Board meeting thereby violated the provisions of Clause 22(a) of Listing Agreement read with section 21 of SCRA. It was also alleged in the SCN that the information of cancellation/deferment of preferential issue was a price sensitive information and the same should have been disseminated to the stock exchanges on an immediate basis and the Noticees delayed in disseminating the price sensitive information thereby violated the provisions of Clause 2.1 under Schedule II read with Regulation 12(2) of PIT Regulations.

14. I note that the sequence of events related to the preferential allotment and disclosures/ letters submitted to exchange/ SEBI in relation to the said preferential allotment issue are as under:

<b>Date &amp; Time</b>	<b>Nature of event</b>	<b>Details</b>
12 Jan 2010 15:19	Corporate announcement on BSE	<b>Board Meeting on Jan 18, 2010</b> A meeting of the Board of Directors will be held on January 18, 2010, to take on record inter alia to issue and allotment of 740000 Shares to Select Group of Persons on preferential basis.
12 Jan 2010 15:30	Corporate announcement on NSE	<b>Board Meeting on Jan 18, 2010</b> Inter alia to issue and allotment of 740000 Shares to Select Group of Persons on preferential basis.
18 Jan 2010	Board meeting	The Board decided that the allotment proposal stands deferred, in view of the ongoing open offer.
19 Jan 2010	Letter to BSE with copy to MSE, NSE and SEBI	Letter by SIL informing that they are making a representation to BSE/NSE for granting extension of time for making the preferential allotment, and that in case BSE/NSE do not grant extension, SIL will treat the preferential issue as infructuous.
20 Jan 2010	Letter from SEBI to Manager to the Open Offer	Letter from SEBI advising to either go ahead with the preferential allotment and increase the open offer size, or treat the preferential allotment as infructuous; and issue a corrigendum giving details of preferential allotment, option availed, and increase the open offer period.
21 Jan 2010 18:57	Corporate announcement on NSE	<u>Corrigendum to Public Announcement</u> While giving updates/ corrigendum on the ongoing Open Offer by promoters of SIL in respect of shares of SIL, the



		MB to the offer has inter alia informed that SIL has not made the proposed preferential allotment till the due date i.e. January 20, 2010 and SIL has treated the aforesaid preferential allotment as infructuous.
21 Jan 2010 19:28	Corporate announcement on BSE	<u>Updates on Open Offer</u> While giving updates/corrigendum on the ongoing Open Offer by promoters of SIL in respect of shares of SIL, the MB to the offer has inter alia informed that SIL has not made the proposed allotment till the due date i.e. January 20, 2010 and SIL has treated the aforesaid preferential allotment as infructuous.
22 Jan 2010	Letters to NSE, BSE and MSE	Letters sent by SIL (with postal receipts for NSE and BSE) informing that its Board during meeting dated Jan 18, 2010 has decided that SIL will not proceed, at present, with the preferential allotment, and that the in-principle approval for preferential issue is now rendered infructuous.
27 Jan 2010 14:07	Corporate announcement on BSE	Outcome of Board Meeting Board of Directors at its meeting held on Jan 18, 2010, have decided that the Company will not proceed, at present, with the allotment of 7,40,000 Equity Shares of Rs. 10/- each at a premium of Rs. 490/- per equity shares, aggregating to Rs. 37 crores, in the proposed Preferential Issue.

15. I find that SIL in its Board Meeting held on January 18, 2010 decided to defer the preferential allotment which was earlier approved by the shareholders through ballot on October 21, 2009. I further find that as shown in the above table, SIL intimated BSE, NSE and MSE that its Board during its Meeting dated January 18, 2010 had decided that SIL will not proceed, at present, with the preferential

allotment, and that the in-principle approval for preferential issue is now rendered infructuous. It is, thus, clear that the decision regarding preferential allotment taken in the Board Meeting held on January 18, 2010 was intimated by SIL to the Stock Exchanges only on January 22, 2010.

16. I find that the Noticee No.1, SIL is a listed company and was under an obligation in terms of section 21 of SCRA to comply with the conditions of Listing Agreement. Specifically, Clause 22(a) mandates a listed company to intimate to the Exchanges within 15 minutes of the closure of the Board meetings held to consider or decide the matter relating to any increase of capital. In the instant case, the Board of SIL in their Meeting held on January 18, 2010 considered the matter relating to preferential allotment earlier approved by the shareholders of SIL and decided to defer the said preferential allotment proposal for the reasons recorded in the minutes of the Board Meeting. SIL being a listed company ought to have intimated the stock exchanges about the decision of its Board regarding preferential allotment within 15 minutes of the closure of the Board meeting held on January 18, 2010. I find that the intimation in this regard was given by SIL to the stock exchanges only on January 22, 2010 i.e, after a delay of 4 days.

17. In this regard, the Noticees have made the following submissions:

- SIL was advised by the Manager to the open offer that SEBI may pursuant to Regulation 21(5) of SAST Regulations, 1997 require the cancellation of the preferential issue or increase in the offer size and on the basis of the advice of the Manager to the Issue, it wrote to SEBI for seeking extension of time for making preferential issue;
- SIL got the letter from SEBI advising either to go ahead with the preferential allotment and increase in the open offer size, or treat the preferential issue as infructuous;
- Immediately on receipt of the letter, the promoters took action to consult with the bankers on viability of obtaining enhanced Bank Guarantee;
- As the Bankers declined enhancement of Bank Guarantee they treated the preferential issue as infructuous;

- Thus SIL, its promoters, non-independent directors, Manager to Issue and other executives were in constant touch with SEBI, BSE and NSE to ensure that the matter is resolved promptly and satisfactorily.
18. From the submissions made by the company, I note that the SIL was only taking steps, subsequent to the Board Meeting held on January 18, 2010 wherein the decision to defer the preferential allotment was taken, so as to seek extension of time for making preferential allotment. These actions of SIL do not however justify the delay on the part of SIL in intimating the stock Exchange about the decision taken in the Board Meeting held on January 18, 2010. Having taken a decision to defer the preferential allotment in its meeting held on January 18, 2010, there was nothing which prevented SIL from intimating the same to the Stock Exchanges as required under the provisions of Listing Agreement cited above. Hence, I find that by not intimating the decision of the Board relating to preferential allotment to the exchanges within 15 minutes of the closure of the Board Meeting, the Noticees have violated the provisions of clause 22(a) of Listing Agreement read with section 21 of SCRA.
19. The second leg of allegation relates to delay in disclosing price sensitive information relating to deferment of the preferential allotment in violation of the provisions of regulation 12(2) read with clause 2.1 of Schedule II of PIT Regulations which mandates prompt disclosure of price sensitive information to the exchanges and dissemination of the same on a continuous and immediate basis.
20. In this regard, it was alleged in the SCN that SIL, on two occasions, delayed the dissemination of price sensitive information to the exchanges. The two occasions are as under:-
- I. As mentioned above, the decision taken in the Board Meeting dated January 18, 2010 to defer preferential allotment, being price sensitive information, was intimated to the stock exchanges on January 22, 2010 and there was a delay of 4 days in disseminating the price sensitive information to the stock exchanges.

II. SIL had made another corporate announcement dated April 29, 2010 which appeared on BSE & NSE websites mentioning that a meeting of the Board of Directors of SIL will be held on May 08, 2010, inter alia, to take on the business relating to (i) To discuss and issue 7,40,000 shares on a preferential basis to Non - Resident Indians other than Promoters Group and (ii) To discuss and consider the Audited Financial Results for the year ended March 31, 2010.

21. Now, before moving further, it is to be determined as to whether the information relating to preferential allotment constitutes 'price sensitive information' within the meaning of provisions of regulation 2(ha) of the PIT Regulations. As per regulation 2(ha) of the PIT Regulations "price sensitive information" means *any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.*

Explanation.- The following shall be deemed to be price sensitive information:-(i) periodical financial results of the company;  
(ii) intended declaration of dividend (both interim and final);  
(iii) **issue of securities** or buy-back of securities;  
(iv) any major expansion plans or execution of new projects;  
(v) amalgamation, mergers and takeovers;  
(vi) disposal of the whole or substantial part of the undertaking; and  
(vii) significant changes in policies, plans or operations of the company".

I note that in the instant case the allegation pertains to non-dissemination of information regarding preferential allotment on both the occasions as mentioned at paragraph No. 20 above, which squarely falls under the definition of price sensitive information as per regulation 2(ha) of PIT Regulations as stated above.

22. Having concluded that the information regarding preferential allotment was a price sensitive information, the issue now remains to be determined is as to whether SIL had intimated the said price sensitive information to the stock exchanges on an urgent basis as required under the provisions of regulation 12(2) read with clause 2.1

of Schedule II of PIT Regulations which mandates prompt disclosure of price sensitive information to the exchanges and dissemination of the same on a continuous and immediate basis.

23. I find that in the first occasion as per the details given Paragraph Nos. 14-16 above, the decision taken in the Board Meeting dated January 18, 2010 to defer preferential allotment, being price sensitive information, was intimated to the stock exchanges on January 22, 2010 and there is a delay of 4 days in disseminating the price sensitive information to the stock exchanges.

24. As regards allegation of non-dissemination of price sensitive information on second occasion, I note that the details of corporate announcements available on BSE & NSE website in regard to the Board meeting dated May 08, 2010 and May 15, 2010 in respect of the said preferential allotment are as under:-

<b>Date &amp; Time</b>	<b>Nature of event</b>	<b>Details</b>
29 Apr 2010 19:07	Corporate announcement on BSE	<b>Board Meeting on May 08, 2010</b> A meeting of the Board of Directors will be held on May 08, 2010, inter alia, to discuss and issue 7,40,000 shares on a preferential basis to Non Resident Indians other than Promoters Group, and to discuss and consider the Audited Financial Results for the year ended March 31, 2010.
29 Apr 2010 20:20	Corporate announcement on NSE	<b>Board Meeting on May 08, 2010</b> A meeting of the Board of Directors will be held on May 08, 2010, inter alia, to discuss and issue 7,40,000 shares on a preferential basis to Non Resident Indians other than Promoters Group, and to discuss and consider the Audited Financial Results for the year ended March 31, 2010.
10 May 2010 17:58	Corporate announcement on BSE	<b>Board to consider Dividend</b> A meeting of the Board of Directors will be held on May 15, 2010, inter alia, to consider the approval of Annual Accounts and Consolidated Financial Statement for the financial year 2009-2010, to take on record the Audited Financial Results and Consolidated Financial Results for the Financial year 2009-10, and recommendation of Dividend, if any, for the

		financial year 2009-10.
10 May 2010 18:29	Corporate announcement on NSE	<b>Board Meeting on May 15, 2010</b> Board Meeting to be held on May 08, 2010 to discuss and issue 7,40,000 shares on a Preferential basis to Non Resident Indians other than Promoter Group, to discuss and consider the Audited Financial Results for the year ended March 31, 2010 and any other business with the permission of the chair, has been postponed to May 15, 2010, to discuss and consider the Audited Financial Results for the year ended March 31, 2010 and any other business with the permission of the chair.
14 May 2010 14:54	Corporate announcement on BSE	<b>Board Meeting postponed</b> With reference to earlier announcement regarding Board Meeting on May 08, 2010, Board of Directors meeting has been postponed to May 15, 2010, inter alia, to discuss and consider the Audited Financial Results for the year ended March 31, 2010.  Further the agenda relating to the issue of 7,40,000 shares on a preferential basis to Non Resident Indians other than Promoters Group, as mentioned in earlier Board Meeting intimation, will be considered at a later date.

25. From the above table, it is clear that SIL had originally scheduled the Board Meeting for May 08, 2010 to consider the preferential issue of 7,40,000 shares and had also made corporate announcements in that regard to the Exchanges on April 29, 2010. The said Board Meeting was later postponed to May 15, 2010 and the same was intimated by SIL to the Stock Exchanges through its corporate announcement dated May 10, 2010. Therefore, I find that there was a delay of 2 days in disseminating the information to exchanges.

26. Regarding the allegation of not disseminating the information of postponement of the Board meeting to consider the preferential allotment which was originally scheduled for May 08, 2010, the Noticees have contended that SIL had sent a letter dated May 04, 2010 to exchanges intimating postponement of the Board Meeting scheduled for May 08, 2010 and the new date of Board Meeting to be held on May 15, 2010. On perusal of the said letter, it is noted that the said letter was addressed to NSE

intimating that the Board meeting scheduled for May 08, 2014 is postponed to May 15, 2010. It is also contended by the Noticees that they are not aware as to why that letter had not appeared in the list of corporate announcements by the exchanges. I note that the Noticees have not produced any proof of delivery of the said letter to NSE. The fact remains that the corporate announcement relating to postponement of the Board meeting scheduled for May 08, 2010 was made only on May 10, 2010 as per information available on the websites of both BSE and NSE. In this context, reliance is placed on the judgment of Hon'ble Securities Appellate Tribunal (SAT), in the case of Kalindee Rail Nirman Engineers Limited vs SEBI (decided on 19.07.2010) wherein it was inter alia observed that ".....the agency through which the document is sent acts as an agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the facts by clear and cogent evidence in this regard.....". Hence, I find that the contention of the Noticees that they had intimated the exchange in advance is not tenable.

27. Thus, as mentioned in the foregoing paragraphs, SIL had on both the occasions delayed intimation regarding price sensitive information relating to preferential allotment to the stock exchanges. In the first occasion there was a delay of 4 days and in the second occasion there was a delay of 2 days. Thus, I hold that the Noticees have violated the provisions of regulation 12(2) & (3) read with clause 2.1 of Schedule II of PIT Regulations which mandates prompt disclosure of price sensitive information to the exchanges and disseminations of the same on a continuous and immediate basis.

**Issue No. 3 :- Whether the Noticees have violated the provisions of regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (e), (f), (k) & (r) of PFUTP Regulations ?.**

28. Another allegation leveled against the Noticees is that of violation of Regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (e), (f), (k) & (r) of PFUTP Regulations. It was alleged in the SCN that the preferential allotments proposed by SIL were deferred for reasons which existed at the time of making relevant corporate announcements in that regard and hence SIL had no intention to proceed with those preferential

allotments. In this regard, I find that in the first instance, the company made the corporate announcement on January 12, 2010 informing the stock exchanges that a meeting of the Board of Directors will be held on January 18, 2010 to take on record *inter alia* the issue and allotment of 7,40,000 shares on preferential basis. Further, the Board of SIL during its meeting dated January 18, 2010 had decided that SIL would not proceed with the proposed preferential allotment of 7,40,000 shares. I also find from the minutes of the said Board Meeting dated January 18, 2010 that the Board of SIL did not agree for the preferential allotment at that moment in view of regulation 21(5) of SAST Regulations, 1997. The Board of SIL observed that the date of closure of the ongoing open offer was January 20, 2010 and that the percentage in respect of open offer can be determined at the expiration of 15 days which will expire only around by February 05, 2010. Hence, the Board of SIL decided that the preferential allotment proposal stands deferred on account of ongoing open offer. I find that when SIL made the corporate announcement on January 12, 2010 regarding proposed preferential allotment, the open offer was on. I further find that the said open offer was made by G R Surana, Dineshchand chand Surana (Noticee Nos. 2 & 3) and others. The Noticees, therefore, cannot be said to be unaware of this ongoing open offer when SIL made the corporate announcement on January 12, 2010 regarding preferential allotment. Despite this, SIL made the corporate announcement only to decide to defer it in the Board Meeting held on January 18, 2010.

29. In the second instance, the Board Meeting scheduled for May 08, 2010 to consider the proposed preferential issue was postponed to May 15, 2010. Further, the agenda relating to the said preferential allotment was withdrawn from the Board Meeting dated May 15, 2010 as an open offer was yet to be on. In this regard, I find from the Public Announcement dated June 14, 2010 made by acquires including Mr. G R Surana (**Noticee No.2**) who is the chairman of the company and Mr. Dineshchand Surana (**Noticee No. 3**) who is the Managing Director of SIL that an open offer was triggered on February 28, 2010 pursuant to conversion of 70,00,000 warrants to equity shares which was prior to the date of corporate announcement dated April 29, 2010. Here again, the proposal for preferential issue was withdrawn on account of an open offer which was yet to be on. It is a matter of few days between the dates of two corporate announcements i.e, between the date i.e, April 29, 2010 when the SIL



made the corporate announcement regarding the Board meeting to consider the proposed preferential allotment and the date i.e, May 14, 2010 when SIL made another corporate announcement stating that the agenda relating to preferential allotment would be considered at a later date on the ground that an open offer was yet to be on. At the time when SIL made corporate announcement on April 29, 2010, SIL cannot be said to be oblivious of the ground i.e, "open offer was yet to be on" based on which the agenda relating to the preferential allotment was withdrawn from the Board Meeting. This is because, from the public announcement dated June 14, 2014, it is evident that the said open offer was made by none other than Mr. G R Surana who is the chairman of the company, Mr. Dineshchand Surana who is the Managing Director of SIL and others.

30. In response to the allegation of violation of PFUTP Regulations, the Noticees have contended that the preferential issue did not take place due to provisions of Regulation 21(5) of SAST Regulations, 1997. I find that the reply of the Noticees is not acceptable for the reasons stated in the foregoing paragraphs. I find that SIL had no intention to proceed with the preferential allotments on both the occasions and allotments were withdrawn for reasons which existed even at the of making the corporate announcements in that regard. I am of the view that making repeated corporate announcements regarding preferential allotments to the exchanges for wider dissemination will induce investor interest in the scrip. Such kind of corporate announcements when made especially at the time when an open offer by the promoters was on/ going to be on would induce the existing shareholders to hold on to their shares and not to participate in the open offer. Therefore, the act of the SIL in making repeated corporate announcements regarding preferential allotments and thereafter deferring/dropping agenda items relating to such allotment proposals without justifiable reasons will definitely constitute fraud and is nothing but an artifice used by the Noticees to make the open offer by the promoters unattractive . In this regard reliance also is placed on the observations of Hon'ble Securities Appellate Tribunal (SAT) in the matter of Rich Capital & Financial Services Limited (decided on November 14, 2012). In the said case SAT observed that ".....by putting the item of rights issue on the agenda note and informing stock exchange about it, surely creates interest in the investors in the shares of the company and thereafter by not taking up the issue at all and not furnishing any reasons therefor and not informing

stock exchange about the outcome of the board meeting, in our view, will fall within the definition of fraud under the regulations...".

31. On the basis of the foregoing, I hold that the Noticees have violated the provisions of regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (f), (k) & (r) of PFUTP Regulations. Regarding the charge of regulation 4(2) (e) of PFUTP Regulations.

32. I find that there is no material on record to show that the acts of the Noticees have amounted to manipulation in the price of the scrip. Hence, I find that the charge of violation of regulation 4(2) (e) of PFUTP Regulations does not stand established.

33. As mentioned above, Noticee No. 1 is the company and other Noticees are its non-independent directors. I am of the view that a company being a legal entity cannot act by itself, rather it acts through its directors and officers. As such directors of the company are expected to exercise utmost care, skill and diligence in all the activities of the company. I note that the Securities Appellate Tribunal, in the case of N. Narayanan vs Adjudicating Officer, SEBI (Appeal No. 29 of 2012 decided on October 05, 2012) has observed as under:

*".....with the changing scenario in the corporate world, the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company, but, taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running approach in the running of the company and take up responsibility not only for the achievements of the company, but, also failings thereto".*

**Issue No. 4: - Do the violation, if any, on the part of the Noticees attract penalty under sections 15HA and 15HB of SEBI Act and Section 23E of SCRA?**

34. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** 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."*

35. Thus, the violation of 3 (a), (b), (c), (d), 4(1), 4(2) (a), (f), (k) & (r) of PFUTP Regulations make the Noticees liable for penalty under 15HA of the SEBI Act, the violation of regulation 12(2) read with clause 2.1 of Schedule II of PIT Regulations make the Noticees liable for penalty under section 15HB of the SEBI act and the violation of the provisions of Clause 22(a) of Listing Agreement read with section 21 of SCRA by the Noticees make them liable for penalty under section 23E SCRA which read as under:

**SEBI Act.**

***"15HA. Penalty for fraudulent and unfair trade practices.***

*If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."*

*15HB. Penalty for contravention where no separate penalty has been provided. -*

*"Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees"*

**SCRA**

***Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds. 23E.*** *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

36. While determining the quantum of penalty under sections 15HA, 15HB of SEBI Act & under section 23E of SCRA, it is important to consider the factors stipulated in section 15J of SEBI Act and 23J of SCRA which read 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.”*

***23J -Factors to be taken into account by the adjudicating officer.***

*While adjudging quantum of penalty under S.23-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.”*

37. In the instant matter, it is not possible to quantify the gains made by the Noticee or the loss caused to investors as a result of the acts and omissions of the Noticees. I note that securities market is based on free and open access to information, the integrity of market is predicated on the quality and the manner on which information regarding the company is made available to the market. An informed investor is always in an advantageous position and can always make wise decisions while investing. The Noticees, by their default have deprived the investors of important information at the relevant point of time. In fact, SIL has delayed dissemination of price sensitive information as mandated under the PIT

Regulations on two occasions. Similarly, SIL after having made corporate announcements on two occasions dropped /deferred preferential allotment proposal. In view of the same, the default committed by the Noticees is repetitive in nature.

## **Order**

38. After taking into consideration all the facts and circumstances of the case, I am convinced that this is a fit case for imposing monetary penalty on the aforesaid Noticees. I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act and under section 23-I of SCRA, hereby impose the following penalty on the Noticees namely (1) Surana Industries Limited (2) G R Surana (3) Dineshchand Surana and (4) Krishna Udupa jointly and severally:

i) ₹ 5,00,000/- (Rupees Five Lakhs only) in terms of section 15HA of SEBI Act for violation of provisions of regulations 3 (a), (b), (c), (d), 4(1), 4(2) (a), (f), (k) & (r) of PFUTP Regulations;

(ii) ₹ 3,00,000/- (Rupees Three Lakhs only) in terms of section 15HB of SEBI Act for violation of regulation 12(2) read with clause 2.1 of Schedule II of PIT Regulations; and

(iii) ₹ 2,00,000/- (Rupees Two Lakhs only) in terms of section 23E of SCRA for violation of provisions of Clause 22(a) of Listing Agreement read with section 21 of SCRA respectively.

39. As mentioned in paragraph 11. above, I conclude that the present Adjudication Proceedings against Shri V M Swami stands abated.

40. The above Noticees shall jointly and severally pay the aforesaid amount of penalty totaling ₹ 10,00,000/- (Rupees ten Lakhs Only) by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Division Chief, Enforcement Department, EFD- DRA-IV, Securities

and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

41. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to SEBI.

**DATE: September 26, 2014.**  
**PLACE: Mumbai**

**A SUNIL KUMAR**  
**ADJUDICATING OFFICER**