BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/PU/19/2013]

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.

Against

Shri G. Suresh

[PAN – ACGPS1465H]

In the matter of

CG – Vak Software & Exports Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received an examination report from the Bombay Stock Exchange (BSE), in the scrip of C G Vak Softwares & Exports Ltd. (hereinafter referred to as 'C G VAk') for the period from January 03, 2011 to February 04, 2011. The examination was based on the complaint received from one, Mr. K. Ramanathan. Upon examination of the BSE report, it was, inter alia, observed that Shri. G. Suresh (hereinafter referred to as 'the Noticee') had failed to make disclosures to the Stock Exchanges, within the stipulated time, as required under Regulation 13 (4) read with Regulation 13 (5) of the of SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the 'PIT Regulations') and also failed to make disclosures to the Stock Exchanges and the Company, within the stipulated time, as required under Regulation 7 (1) read with Regulation 7 (2) of the SEBI (Substantial

Acquisition of Shares and Takeovers) Regulations, 1997, (herein after referred to as the 'Takeover Regulations').

Appointment of Adjudicating Officer

2. I have been appointed as the Adjudicating Officer (AO), vide order dated August 26, 2013 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "said Rules") to inquire into and adjudge under 15A(b) of the SEBI Act, the alleged violation of the provisions of law by the Noticee.

Show cause Notice, Reply and Personal Hearing

3. A show cause notice dated September 20, 2013 (hereinafter referred to as "SCN") was issued to the Noticee under Rule 4(1) of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on him under 15A (b) of the SEBI Act for the alleged violation of the provisions of Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations and Regulation 7 (1) read with Regulation 7 (2) of the Takeover Regulations.

4. The Noticee submitted a reply to the SCN vide letter dated October 28, 2013. In order to conduct inquiry, an opportunity of hearing was granted to the Noticee on November 27, 2013. Shri G. Suresh, Managing Director along with an authorized representative appeared on behalf of the Noticee on the said date and reiterated the written submissions. He also submitted a copy of his Visa and a copy of a judgment by the Hon'ble Securities

Appellate Tribunal (SAT) in the case of Pitti Electrical Equipment Pvt. Ltd. and others Vs. SEBI, dated October 31, 2013.

Consideration of Issues, Evidence and Findings

5. I have carefully perused the charges made against the Noticee as mentioned in the SCN, written and oral submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

   a. **Whether the Noticee has violated Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations and Regulation 7 (1) and Regulation 7 (2) of the Takeover Regulations?**
   b. **Whether the Noticee is liable for monetary penalty prescribed under Section 15 A (b) of the SEBI Act for the aforesaid violation?**
   c. **If so, what should be the quantum of monetary penalty?**

6. Before proceeding, I would like to refer to the relevant provisions of the PIT Regulations and the Takeover Regulations, which read as under:

PIT Regulations

13. Disclosure of interest or holding by directors and officers and substantial shareholders in listed companies - Initial Disclosure.

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(4) Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) 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.

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(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."

TAKEOVER REGULATIONS

7. *(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*
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(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

7. It has been observed that the shares of CG-Vak are listed on both the BSE and the Coimbatore Stock Exchange (CSE). The Noticee is the Managing Director of CG-Vak and had acquired 25708 shares and 27985 shares on March 19, 2010 and September 22, 2010, respectively. It is alleged in the SCN that the Noticee was under an obligation to make disclosures to both the company and the stock exchanges, regarding the abovementioned acquisitions, within two working days as required under Regulation 13 (4) read with Regulation 13(5) of the PIT Regulations. The Noticee allegedly had failed to make the disclosures to both the company and the stock exchanges.

8. I find that the Noticee in his reply dated October 28, 2013 submitted as regards his acquisition of 25,708 shares of CG- Vak, there is no delay in making the disclosures to the company as well as the stock exchanges as alleged in the SCN. The limit of 25,000 was exceeded only when the Noticee purchased 900 shares of CG-Vak on March 19, 2010. Thereafter, the Noticee had made the disclosure to the Company on March 20, 2010 and in turn the Company disclosed the information to BSE on March 22, 2010. Therefore the disclosure was made within 2 working days to the Company and the stock exchange. Further, as regards the acquisition of 27,985 shares of CG-Vak, the limit of 25,000 was exceeded only when the Noticee purchased 3,850 shares of CG-Vak on September 22, 2010. Thereafter, the Noticee had made the disclosure to the Company on September 22, 2010 itself. Since the disclosure to the Company was made within two working days of the acquisition, there was no delay in making the disclosure on the Noticee's part. As regards the delay of 31 days in making disclosure to BSE, the same was unintentional, as the Noticee was abroad on a business trip during the relevant period and therefore the delay was unavoidable and beyond his control.

9. I find that as regards the Noticee's acquisition of 25,708 shares of CG- Vak made on March 19, 2010, there is no delay in making the disclosures to the company. As regards making disclosures to the stock exchanges, I observe from BSE's e-mail dated September 06, 2011, that there has been a delay of 14 days in receiving the hard copy of the required disclosures, while the Noticee in his reply submitted that the disclosures were sent also through fax to BSE, on March 22, 2010, within the requisite two days. The copy of the disclosure made by the company to BSE through fax has been

enclosed as annexure A-2 vide Noticee's reply dated October 28, 2013. I further observe from the BSE Website that, the disclosure has been made on March 22, 2010. Therefore, I find that the Noticee had made the disclosure to the Company on March 20, 2010 and the Company in turn had disclosed the information to BSE on March 22, 2010. Therefore, the disclosure was made within 2 working days. Further, I note that as regards the acquisition of 27,985 shares of CG-Vak made on September 22, 2010, the Noticee had made the disclosure to the Company on September 22, 2010 itself. While, it is an admitted fact that there has been a delay of 31 days in making disclosure to BSE by the Noticee. In view of the above and based on the material available record, I find that the Noticee did not comply with Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations as regards the acquisition of 27,985 shares of CG-Vak made on September 22, 2010 for which he is liable for penalty under Section 15A (b) of the SEBI Act.

10. Further, the Noticee acquired 6884 shares (0.13%) on September 14, 2009 and crossed the 10 % limit and again acquired 6702 shares (0.14%) on March 30, 2010 and crossed the 14% limit as prescribed under Regulation 7 (1) of the Takeover Regulations and was therefore under an obligation to make disclosures to both the company and the stock exchanges, within two working days as required under Regulation 7 (2) of the Takeover Regulations

11. The Noticee submitted as regards his non-disclosure under Regulation 7(1) read with Regulation 7 (2) of the Takeover Regulations that the shareholding of the Promoters Group in the

company including the shares held by the Noticee has always been more than 15% and hence, the disclosure requirement was not applicable to him. Further, the Noticee cited the judgment dated October 31, 2013 of Hon'ble SAT – Smt. Madhuri s Pitti and others Vs. SEBI, in this regard. I have perused the said Judgment and found the same not relevant in the facts & circumstances of the instant case inasmuch as the said Judgment does not deal with Regulation 7 (1) and 7 (2) of the Takeover Regulations.

12. In view of the above and based on the material available on record, I find that the Noticee did not comply with Regulation 7 (1) read with Regulation 7 (2) of the Takeover Regulations for which he is liable for penalty under Section 15A (b) of the SEBI Act.

13. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund*** **[2006] 68 SCL 216(SC)** *inter alia* held: ***"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."***

14. Thus, the aforesaid violations by the Noticee makes him liable for penalty under Section 15 A (b) of the Act, which reads as under:

15A. Penalty for failure to furnish information, return, etc. - *If any person, who is required under this Act or any rules or regulations made thereunder,-*

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(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 37[a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less];

15. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

"15J - Factors to be taken into account by the adjudicating officer:

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

16. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss suffered by the investors as a result of the defaults cannot be computed. It is imperative to emphasize that the basic purpose of disclosure requirement is to bring about transparency in the securities market and to keep the investors informed about shareholdings in a listed company. It is observed that the violation is not repetitive vis a vis the acquisition of 27,985 shares of CG-Vak made on September 22, 2010 by the Noticee under Regulation 13 (4) read with Regulation 13 (5) of the

PIT Regulations. As regards Regulation 7 (1) read with Regulation 7 (2) of the Takeover Regulations, the default is repetitive in nature.

ORDER

17. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the said Rules, I hereby impose a penalty of ₹ 5,00,000/- (Rupees Five Lakh Only) on the Noticee i.e Shri G. Suresh under Section 15 A (b) of the SEBI Act. In my view, the penalty imposed on the Noticee is commensurate with the defaults committed by him.

18. The above penalty amount shall be paid by the Noticee through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to The Division Chief, Corporate Finance Department - DCR (CFD-DCR), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: December 17, 2013 **D. SURA REDDY**

Place: Mumbai **ADJUDICATING OFFICER**