

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/BJD/BKM/50-54/2017-18**

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

In respect of:

- 1. M/s Shreeyash Industries Limited (PAN : AALCS7768K)
(Now known as Nutricircle Limited)**
- 2. Manoj Kumar Saraogi (PAN : ASCPM4487B)**
- 3. Sumedha Saraogi (PAN : AXFPS3450A)**
- 4. Meena Agarwal (PAN : AHDPA8648N)**
- 5. Sunil Kumar Agarwal (PAN : ADNPA8277H)**

**In the matter of Shreeyash Industries Limited
(Now known as Nutricircle Limited)**

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to the complaint of one Dr. Anil Kumar Sharma conducted an investigation into the alleged irregularity in the trading in the shares of Shreeyash Industries Ltd. (hereinafter referred to as SIL) and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there under during the period from January 01, 2012 to September 30, 2012. (hereinafter referred to as the 'IP'). The shares of SIL are listed on Bombay Stock Exchange Ltd. (BSE).
2. The investigation, inter alia, revealed that SIL, Manoj Kumar Saraogi, Sumedha Saraogi and Meena Agarwal (hereinafter referred to as the 'Noticee 1-4' had failed to disclose regarding non execution of the orders bagged by the Company and allegedly violated Clause 36(7) of Listing Agreement r/w section 21 of Securities

Contract (Regulations) Act, 1956 (hereinafter referred to as SCRA), Clause 2.1 of Schedule II of Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as PIT 1992) and Sunil Kumar Agarwal (hereinafter referred to as the 'Noticee 5 had failed to disclose regarding non execution of the orders bagged by the Company and allegedly violated Clause 3.2 of Schedule II of Regulation 12(2) of PIT1992.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri SV Krishnamohan was appointed as the Adjudicating Officer vide Order dated December 01, 2015 under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of SEBI Act 1992 and Section 23 I of SCRA and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules 1995**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as "**Adjudication Rules 2005**") to inquire and adjudge under Section 23 A(a) of SCRA and Section 15 HB of the SEBI Act, for the alleged violations committed by the Noticees. Further, vide Order dated September 18, 2017 the undersigned has been appointed as Adjudicating Officer to inquire and adjudge the said matter.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD-5/ADJ/SVKM/HKS/OW/P/2360/1/2016 dated January 29, 2016 was issued to the Noticees under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 23 A(a) of SCRA and Section 15 HB of the SEBI Act for the violations alleged to have been committed by the Noticees. The Noticee 1 vide its letters dated February 23, 2016, June 09, 2016, July 11, 2016, and July 29, 2016, Noticee 2 vide letters dated April 19, 2016 and June 07, 2016, Noticee 3 vide letter dated February 23, 2016, Noticee 4 vide letter dated June 08, 2016 and Noticee 5 vide letter dated June 07, 2016 submitted their replies to the SCN.

5. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide notices dated April 04, 2016 and September 22, 2017 Noticees were granted an opportunity of personal hearing on April 21, 2016 and October 06, 2017 respectively. Based on the request received from the Noticees, the hearing was rescheduled to October 25, 2017.
6. During the hearing held on October 25, 2017 the Authorised Representatives (ARs) representing on behalf of Noticee 1, 4 and 5 reiterated the submissions made by the Noticees vide letters submitted earlier in reply to the SCN.

FACTS OF THE CASE

7. Shreeyash Industries Ltd. was incorporated in June, 1993. Name of the company was changed subsequently to “Nutricircle Limited”. The Company is engaged in the business of manufacturing, trading and exports of textiles, garments and made ups and its shares are listed on Bombay Stock Exchange Ltd. (BSE).
8. The Company made Major corporate announcements between January 01, 2012 & September 30, 2012 which included declaration of financial results, acquisition of three entities viz. SMM Paper Packaging Pvt. Ltd., M/s Rithvik Nurseries, M/s Agro Chemicals & Anu Traders, and receipt of four large orders for supply of shirts and hospital items from foreign companies and other forward looking announcements with regard to orders from Congo etc.
9. The Company was asked to submit the implementation status of various announcements made by it. The Company vide its letter dated 18th July, 2014 has submitted that due to inordinate delay in transaction for acquisition of the above said entities and considering the benefits arising out of the acquisition, the Board of the Company decided to withdraw the proposal for acquisition of these entities and accordingly disclosed its decision to the stock exchange on July 13, 2012. But silent with regard to the foreign supplies.

10. The Company made four announcements with respect to receipts of four large orders, were also disclosed to BSE. Details of the aforesaid announcements along with their impact on price/volume in the scrip of SIL are given hereunder:

Sr. No.	Date & Time of display on BSE	Announcement	Impact on Price/Share traded	Remarks																
1.	Feb 14, 2012 @ 14:09 PM (Tuesday)	Informed BSE that the Company has been able to bag a large order from Tradepoint, New Delhi for supply of Mens T-Shirts and Mens Vests aggregating to Rs. 695 lakhs (Rupees Six crores ninety five lakhs only) over a period of next 3 months.	14/02/2012 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>40.5</td><td>41.9</td><td>39</td><td>41.75</td></tr></table> No. of shares traded : 91985 15/02/2012 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>43</td><td>43</td><td>39.7</td><td>42.35</td></tr></table> No. of shares traded : 52050	O	H	L	C	40.5	41.9	39	41.75	O	H	L	C	43	43	39.7	42.35	The scrip closed on 15/02/2012 at 1.44 % above its previous day closing price. The trading volume decreased by 43.41% on 15/02/2012 as compared to previous day trading.
O	H	L	C																	
40.5	41.9	39	41.75																	
O	H	L	C																	
43	43	39.7	42.35																	
2.	June 25, 2012 @ 10:01 AM (Monday)	<p>Informed BSE that the Company is in the process of manufacturing 'Oxford Shirts' for an Italian Brand by the name of M/s. Vancini. The order has been issued to the Company by M/s. Colombo Trade, Brescia, Italy.</p> <p>The trial order of 5000 shirts is under production, after which the regular order is for 50,000 shirts per month. The price negotiated is Rs. 355 per shirt FOB Hyderabad, amounting to Rs. 21.30 Cr.</p>	25/06/2012 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>30</td><td>30.8</td><td>29.5</td><td>30.2</td></tr></table> No. of shares traded : 67009 26/06/2012 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>31.3</td><td>31.6</td><td>28.9</td><td>29.3</td></tr></table> No. of shares traded : 55887	O	H	L	C	30	30.8	29.5	30.2	O	H	L	C	31.3	31.6	28.9	29.3	The scrip closed on 26/06/2012 at 2.98 % below its previous day closing price. The trading volume decreased by 16.6% on 26/06/2012 as compared to previous day trading.
O	H	L	C																	
30	30.8	29.5	30.2																	
O	H	L	C																	
31.3	31.6	28.9	29.3																	
3.	July 09, 2012 @ 19:28 PM (Monday)	<p>Informed BSE that the Company is making a foray into made-ups and have secured an order from south Africa for Rs. 23.92 Crores in made-ups for Hospital supplies, mainly apparel related products.</p> <p>The Company is also in the process of trying to procure a similar order from The Democratic Republic of Congo. However that is yet to be confirmed.</p> <p>The Company feel that the markets of African countries is ripe and that made-ups from India have a great potential in those countries and the Company is exploring the untouched areas.</p>	09/07/2012 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>24.5</td><td>26.7</td><td>23.6</td><td>26.65</td></tr></table> No. of shares traded : 49073 10/07/2012 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>27.2</td><td>29</td><td>24</td><td>28.3</td></tr></table> No. of shares traded : 172622	O	H	L	C	24.5	26.7	23.6	26.65	O	H	L	C	27.2	29	24	28.3	The scrip closed on 10/07/2012 at 6.19 % above its previous day closing price. The trading volume increased by 251.77% on 10/07/2012 as compared to previous day trading.
O	H	L	C																	
24.5	26.7	23.6	26.65																	
O	H	L	C																	
27.2	29	24	28.3																	
4.	July 17, 2012 @ 11:57 AM (Tuesday)	<p>Informed BSE that the Company has bagged a large order amounting to Rs 24 Crores per annum.</p> <p>According to Shri Manoj Kumar Saraogi (promoter) they are exploring other African countries for similar orders while they manufacture cloths and accessories catering to all age groups in form of Italian brands, formals and ethnic ware fashion jewellery and have plans to establish multi city show rooms selling Eco-friendly products which have become a rage domestically and internationally.</p> <p>"We are in the final process of acquiring a Multi brand retail Company with existing outlets in metro cities and plan to multiply rapidly in the</p>	17/07/2012 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>31</td><td>31</td><td>27.55</td><td>28.6</td></tr></table> No. of shares traded : 35259 18/07/2012 <table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>29.25</td><td>29.25</td><td>27.5</td><td>28.4</td></tr></table> No. of shares traded : 91352	O	H	L	C	31	31	27.55	28.6	O	H	L	C	29.25	29.25	27.5	28.4	The scrip closed on 18/07/2012 at 0.7 % below its previous day closing price. The trading volume increased by 159.10% on 18/07/2012 as compared to previous day trading.
O	H	L	C																	
31	31	27.55	28.6																	
O	H	L	C																	
29.25	29.25	27.5	28.4																	

		near future and increase sale by launching our own online retail portal and looking around for garment, manufacturing units to expand our capacity."		
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11. During the course of investigations, with respect to implementation of the above orders, company has submitted vide its letter dated 18th July, 2014 wherein it was submitted that due to inability to secure working capital limit from its bankers and also as a result of the failure to complete the takeover of SMM Paper Marketing Pvt. Ltd., these orders could not be executed and therefore lapsed. While the Company had disclosed to the stock exchange on the bagging of the above four large orders, it failed to disclose regarding non execution of these orders to the stock exchange as required under Clause 2.1 of Schedule II of Regulation 12(2) of PIT 1992 and Clause 36(7) of Listing Agreement r/w section 21 of SCRA.

12. It was, therefore, alleged in the SCN that the Noticee 1 and its directors (Noticee No. 2 to 4) have violated the provisions of Clause 36(7) of Listing Agreement r/w section 21 of SCRA, Clause 2.1 of Schedule II of Regulation 12(2) of PIT, 1992 to be adjudged under Section 23A (a) of SCRA and Section 15HB of the SEBI Act and Noticee No. 5, its Compliance officer, has violated the provisions of Clause 3.2 of Schedule II of Regulation 12(2) of PIT 1992, to be adjudged under Section 15HB of the SEBI Act.

13. In reply to the SCN, the submissions made by the Noticee 1 vide letter dated June 09, 2016 submitted that all the orders received by the company were duly intimated to the stock exchange by the company and were also made available in public domain for easy accessibility of public and shareholders in general. Since the company was facing huge financial crunch and was not able to execute these orders on its own, which led the company to wait and explore the various other options of raising finance to fund its working capital requirements. Once the deal of takeover got cancelled, the company still continued to explore other possibilities also in order to keep the orders alive and that was the only reason for

not disclosing the closure of orders. But non- disclosure should not be construed as violation because the company was trying to and exploring all the means to raise the working capital finance in the larger interest of the company and its shareholders. But due to unfavourable circumstances prevailing in the market and inability of the company to get the required working capital as bank finance etc. due to heavy accumulated losses and negative networth, led the company give up hopes and forgo the orders. Finally when SEBI enquired about the status of the orders, the board further submit that as such the orders's as per the timeline was already expired and of no-use. For the enhancement of the wealth, the board has been trying all alternatives of finance so that the orders can be executed. On advice the corporate consultants, the board on July 18, 2014 intimated the Stock Exchange about closure or cancellation of the order even though the purchasers agreed to extent some more time.

14. The Noticee 1 further submitted that the price volume movement is negligible compare to the capital and volume during the period and thereafter. The promoter, compliance officer or any Board member have not benefitted neither from the disclosure of corporate announcements nor from the withdrawal of the announcement.
15. The Noticee 1 further submitted that the Listing Agreement clause 36(7) makes it clear that information of any sensitive nature required to be published, that the company did at the EGM for takeover of the company. The Board took the approval of the members and the uncertainty of the deal also was intimated to the members present at that time.
16. Further as the alleged violation of the provisions of Clause 3.2 of Schedule II of Regulation 12 (2) of PIT 1992 by the compliance officer Noticee 5 is concerned, it has been submitted by him vide letter dated June 7, 2016 as under:
 - (i) He was the compliance officer of Noticee 1 during the period of investigation.

- (ii) He is not a qualified company secretary and not designated as officer to look into the compliances of the company in respect of implementation of the code of conduct of the company.
- (iii) The information relating to the order were intimated to the stock exchange after proper board deliberation and at the time of AGM stock members meeting, members inquired about the future and prospect of the orders. The board to the satisfaction of each member informed the progress and status of the above order in detail.
- (iv) After proper due deliberation the board cancelled the orders. Each and every time he has intimated the outcome to the stock exchange and fully discharged his contractual obligations with the company hence under the aforesaid circumstances it could not be possible on his part to act like board.
- (v) In light of above detailed submissions and the reason behind such alleged non-disclosures regarding non-execution of four large orders, the compliance officer has discharged his duties fully in complying with the disclosure requirements and there were no overlapping in his part in discharge of duties.

CONSIDERATION OF ISSUES

17. The issues that arise for consideration are as under:

- (a) Whether the Noticee 1-4 have violated Clause 36(7) of Listing Agreement r/w section 21 of SCRA, Clause 2.1 of Schedule II of Regulation 12(2) of PIT, 1992 and Noticee No. 5 has violated the provisions of Clause 3.2 of Schedule II of Regulation 12(2) of PIT 1992,*
- (b) Does the violation, if any, attract monetary penalty under Section 23A (a) of SCRA and Section 15HB 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 SEBI Act?*

18. Before proceeding further, I would like to refer to the relevant provisions of law which read as under:

Regulation 12 of PIT 1992 states as under

Code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations 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 organisations recognised or authorised by the Board; (c) the recognised 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 procedures 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.

Clause 2.1 of code of Corporate Practices as specified in Schedule II of PIT 1992 states as under

Prompt disclosure of price sensitive information

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

Clause 36, (7) of the listing agreement, states that the company is required to keep the Stock Exchange "Any other information having bearing on the operation/performance of the listed entity as well as price sensitive information."

Section 21 of SCRA states as under

"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."

NOTICEE 1

19. The main charge against Noticee 1 is that it had failed to disclose regarding non execution of the orders bagged by the Company and allegedly violated Clause 36(7) of Listing Agreement r/w section 21 SCRA, Clause 2.1 of Schedule II of Regulation 12(2) of PIT 1992.

20. I note from facts on record that Noticee 1 received four Orders on different dates which were informed to Stock Exchange on various dates as mentioned in the table below.

Date of Order	Name of Buyer	Order Value (Rs in Crores)	Date of Intimation to stock exchange
13.02.2012	M/s Trade Point, New Delhi	Rs 6.96	14.02.2012
20.06.2012	M/s Colombo Trade, Italy	Rs 21.30	25.06.2012
06.07.2012	M/s Silver Solution, South Africa	Rs 23.92	09.07.2012
16.07.2012	Hapan Trade, South Africa	Rs 24	17.07.2012

21. In note that Noticee 1, on its own, intimated information to stock exchange immediately regarding bagging of large Orders as mentioned above. It clearly indicates that Noticee 1 had recognised the event of bagging of orders as price sensitive information and accordingly intimated to stock exchange. The price volume spurt, as mentioned in table above, after announcement corroborate the price sensitivity of said information. PIT regulations cases responsibility on company to continuously disclose price sensitive information. Any delay in reporting in such matters and matters incidental thereto, would deprive investors of information to take informed decisions.

22. During the course of investigations, Noticee 1 was advised to provide update on the status of Orders along with reasons for non-execution of Orders. Noticee 1,

vide letter dated July 18, 2014 submitted following reasons for non-execution of Order along with status of same.

Sr. No	Date of Announcement	Particular of Announcement	Reasons for Non Adherence
1	13.02.2012	Shreeyash Industries Limited Bags large order from New Delhi based company for men's T-shirts of value of Rs. 695/- lakhs. Order should be completed in 3 months.	During the said period our company though was running in losses has tried to get some working capital limits from its bankers to meet the requirement of the order. Unfortunately the time elapsed but because if the disturbed financial scenario our company could not get required working capital. Finally we had to forego the order.
2	20.06.2012	Our company could get an order worth Rs. 21.30Cr from an Italy based company.	During the period the takeover process between our company and SMM paper Marketing Pvt Ltd was under process, We thought that based on the huge assets the company is going to get the order by virtue of the take over, the company will be in a position to mortgage the same for raising working capital fund to meet the order . But because of the denial of the directors of SMM paper Marketing pvt Ltd,our company neither got the assets nor could raise the working capital funds as such the order could not be completed. Because of denial of takeover stated above all the major orders is which should have been performed during June & July by our company has a heavy negative impact.
3	06.07.2012	We made an announcement that our company got an order for supply of hospital apparels, the total worth of order was Rs. 23.92 Crs from SouthAfrica.	During the period the takeover process between our company and SMM paper Marketing Pvt Ltd was underway, We thought that based on the huge assets the company is going to get by virtue of the take over the company will be in a position to mortgage the same for raising working capital fund to meet the order . But because of the denial of the directors of SMM paper Marketing pvt Ltd, our company neither got the assets nor could raise the working capital funds as such the order could not be completed. Because of denial of takeover stated above all the major orders which should have been performed during June & July by

			our company has a heavy impact
4	16.07.2012	Our company had announced that were in receipt of an order of Rs. 24 Crs per annum.	While the transactions for acquisition of SMM Paper Marketing pvt. Ltd., was going on talks were held for supply orders which materialized in July 2012 and announcement was made accordingly. But .because of the denial of the directors of SMM paper Marketing Pvt Ltd, our company neither got the assets nor could raise the working capital funds as such the order could not be completed. Because of denial of takeover stated above all the major orders which should have been performed during June & July by our company has suffered and the order was lapsed,

23. From the above, I note that at time of making public announcements regarding high value Orders, Noticee 1 did not have working capital, plants, machinery and manpower to execute the Orders. However, it had intended to execute the Orders (serial number 2, 3 and 4) by using plants, machinery, manpower of proposed acquisition of SMM Paper Marketing Private Ltd (SMM). With respect to Order at serial number 1, it was submitted that since company was running in losses, it intended to get working capital limits from its bankers to execute the Order. However, Noticee 1 did not submit any documents to suggest that they approached bankers to get working capital.

24. From the submissions of Noticee 1 as mentioned above, I note that it had accepted large Orders in the backdrop of proposed acquisition of SMM which was in progress at the time of receipt such Orders. It is essential to note all the relevant events relating to acquisition of SMM. The chronology based on documents available on records are under.

- a) Noticee 1 entered into MOU with SMM on January 19, 2012 for purchase of entire shareholding of SMM at agreed valuation as decided by Independent Valuation expert. Similarly, on the same day, they also entered into MOU with Ritvik Nurseries and Agro Chemicals and Anu Traders. Copy of MOU's was also submitted as proof.

- b) Thereafter, Noticee 1 in its Board meeting held on February 1, 2012, considered and approved the acquisition of SMM, Ruthvik Nurseries and Agro Chemicals and Anu Traders for a valuation of Rs 23.66 crores, 48 lakhs and 1.30 crores respectively and decided to allocate shares on preferential basis to them.
- c) The said decision was informed to BSE on the same day which was also put on BSE website and available in public domain.
- d) Thereafter, Noticee 1 applied for in-principle approval to BSE for listing of preferential shares in the Month of March 2012.
- e) SMM, vide letter dated July 10, 2012 communicated termination of agreement citing market conditions besides various other reasons.
- f) Subsequently, Noticee 1, vide letter dated July 11, 2012 informed BSE regarding the termination of the acquisitions as mentioned above and withdrew its in-principle application for preferential offer pending with BSE.

25. From the above, I note that there Noticee 1 entered into MOU agreement for the purpose of acquisition and also decided to allot shares on preference basis at agreed price. The decision of the Board of Noticee 1 held on February 1, 2012 was also informed to BSE on the same day which was also available in public domain. Noticee 1 also applied for in-principle approval from BSE in the month of March 2017.

26. Noticee 1 submitted that the information regarding cancellation of MOU with SMM was informed to stock exchange and therefore in public domain. I note that Noticee 1, vide letter dated July 11, 2012 had informed BSE, regarding the termination of MOU with SMM, in the context of withdrawal of its in-principle application pending before BSE. Noticee 1 did not separate disclosure to BSE as required under listing agreement and therefore it cannot be said that Noticee 1 had informed the details of termination of agreement to the public.

27. I note that the main charge alleged in the SCN relates to non-disclosure of

cancellation of Orders. However, I consider it relevant to note the events in entirety, in the context of submissions by Noticee 1, which lead to cancellation of Orders. Noticee 1 submitted that they were contemplating to use the plant, machinery and manpower of SMM for execution of Orders. However, I note from above that the main basis for execution of Order i.e. acquisition of SMM was terminated on July 11, 2012.

28. I will now examine the Chronology from receipt of Orders till execution of such Orders, in the context of acquisition and termination of agreement with SMM. I note that Noticee 1 received its first Order in the month February, 2012 and another Order in the month of June, 2012 and two Orders in the month of July, 2012. I note that all these Orders (except the last Order received on July 16, 2012) were received while the process of acquisition was in progress.

29. The copies of the purchase order received from all four clients were submitted along with correspondence made / received by / from noticee / clients regarding pending orders. I details of the purchase Orders are reproduced as under.

Sr. No	Name of client	Date of Order	Remarks
1	Trade Point	13.02.2012	There was no time mentioned.
2	M/s Colombo	20.06.2012	Order to be delivered within August 30, 2012
3	Silver Solution	06.07.2012	Delivery within 30 days from the date of purchase order.
4	Harpan Trade	16.07.2012	Orders to be delivered on month to month basis for a period of 36 months

OBSERVATION REGARDING THE PURCHASE ORDERS

- a) The Orders at serial number 2 and 3 were valid only for 30 days from the date of Order which means they would expire by the end of August 2012.
- b) Noticee 1, vide letter dated August 14, 2012, informed all clients about the termination of acquisition of SMM and also advised them to explore other supplier / vendors.
- c) In response to letter of Noticee 1, I note that all client have replied on same date i.e. August 23, 2012. Further, surprisingly, I also note that the contents

of the letter were also same in respect of two client i.e. Harpan Trade and Silver Solutions. Such coincidence casts suspicion on the credibility of the clients and authenticity of document. The para is reproduced.

“ We decided to continue to our regular supply for procurement of our goods. However, to keep the relationship alive we have decided to keep the order as pending without any penalty or legal course, once you are ready with supply of goods let us know we will forward the discussion and financial arrangement accordingly.”

- d) Noticee 1, made public announcement of July 17, 2017 regarding receipt of an Order worth Rs 24 crores from Silver Solution, Africa one week after receipt of intimation of termination of agreement with SMM. It clearly suggests that although it was aware that it could not execute the Order, it had disclosed to the public which was misleading information to investors.
- e) The company informed the buyer, vide letters dated November 14, 2014 its inability to execute the aforesaid orders and timely delivery of good and material. With mutual understanding with the buyer, company explores alternative to execute orders.
- f) Noticee 1 informed to BSE that Board in its meeting held on November 14, 2014 decided to cancel pending orders. It was also stated that companies earlier plan to take over SMM Paper Marketing Private Limited, which the company intended to use plant, machinery and manpower for execution of aforesaid Orders. However said takeover did not materialise.

30. I note that information regarding bagging of large Orders of large value, if executed would have had material effect on balance sheet of company and therefore considered as material price sensitive information and required to disclose to stock exchange as mandated in clause 36(7) of listing agreement. I note that Noticee 1 have promptly disclosed the information regarding bagging of Orders in public domain, without any delay. Further, the information regarding preferential offer to SMM was also in public domain. However, investors were not aware that plant, machinery and manpower of SMM would be used for execution of those Orders. In the absence of such information in public domain, investors would be curious to invest in the shares of company as the events in public

domain indicates the possibility of turnaround of company. Therefore, I conclude that all information relating to receipt and cancellation of Large Orders are price sensitive in nature and therefore provisions of PIT 1992 and clause 36(7) of listing agreement will be attracted.

31. From the above events, I note that agreement with SMM was terminated on July 10, 2012 and the Orders valued Rs 45 crores (90% of total order value) expired by August, 2012 as they were required to be delivered within one month from date of Order, as per the terms of the purchase Order. Thus, I conclude that two Orders expired on August, 2012 and another two Orders were never executed by Noticee 1. Further, I also conclude that Noticee 1 was in possession of information regarding non-execution / cancellation of Orders in the month of July / August 2012. However, Noticee 1 failed to make disclose to public regarding till November 2014. Thus, there was considerable delay for more than 2 years in disclosing the information to public, which affected investors as is evident from item 1 of the Minutes of 18th Annual General Meeting of SIL held on December 31, 2012 that shareholders namely, Surendra Mishra, Praful Chavda and Mr Bhara Shah have raised question relating to acquisition of M/s SMM paper Marketing Pvt. Ltd, M/s Ruthvik Industries, M/s Agro Chemical and M/s Anu Traders along with the status of execution of various orders namely Tradepoint, Columbo etc.

32. In view of above, the charge of failure to disclose to public regarding non execution of the orders bagged by the Company stands established and therefore violated Clause 36(7) of Listing Agreement read with Section 21 of SCRA, Clause 2.1 of Schedule II of Regulation 12(2) of PIT 1992.

NOTICEE 2 TO 4

33. The main charge against Noticee 2-4 is that they had failed to disclose regarding non execution of the orders bagged by the Company and allegedly violated

Clause 36(7) of Listing Agreement r/w section 21 of SCRA, Clause 2.1 of Schedule II of Regulation 12(2) of PIT 1992.

34. I note from the Annual Report for 2012-13 that Noticee 2 was designated as Managing Director/Executive Director. Based on the submission of the Noticee 2, it is an admitted position that he was heading board meeting of company. Managing Director is responsible for the non-compliance of disclosure. Noticee 1 being an artificial person conducts its day to day operations through natural key management persons such as Managing Director / CEO, Compliance officer etc. I observe that during the period of violation. Noticee 2 was Managing Director of SIL. Therefore, MD being principal officer of company and responsible for day to day operating including ensuring prompt disclosure of material price sensitive information to investors through disclosure to stock exchange as mandated in the clause 36 of listing agreement. I note that Noticee 2 admittedly was actively involved and instrumental in getting large Orders and also signatories to various MOU with SMM other entities mentioned above. Further, Noticee 2 was also signatory of the letter dated August 14, 2012 and November 14, 2014 communicated to the clients regarding termination of the agreement with SMM and also termination of Orders respectively.

35. I note as per the shareholding pattern of SIL, for the period June 2012, Manoj Kumar Saraogi was holding 11,28,700 shares constituting 20.8 % of share capital of SIL under the category of Promoter and Promoter Group. Thereafter, his shareholding reduced to 3,749 shares constituting 0.07% of share capital of SIL for the Quarter ending March 2013. I note the SIL had communicated the details of the termination of Orders only on November 14, 2014, i.e after lapse of more than 2 years.

36. I note that Noticee 2 was fully aware that the Orders could not be executed due to termination of agreement in the month of July / August 2012 and yet failed to inform the same to the BSE immediately which adversely affected the interest of shareholders as mentioned at para 31 above. Thus I conclude that charge against

Noticee 2 stands established and therefore violated Clause 36(7) of Listing Agreement r/w section 21 of SCRA, Clause 2.1 of Schedule II of Regulation 12(2) of PIT 1992.

37. I note that Annual report for 2012-13 that Noticee 3 & 4 resigned from the Board on May 21, 2012. I note from Noticee letter dated July 11, 2012 that MOU with SMM was terminated. I also note that acquisition of SMM was essential for execution of the Orders. The event of termination of SMM and communication of termination of such acquisition to clients was made by Noticee 2 vide letter dated August 14, 2012. I note that Orders were terminated in the month of July / August 2012 during which Noticee 3 and 4 resigned from the Board. Therefore, the charge of non-disclosure of termination of Orders as against Noticee 3 and 4 does not stand established.

NOTICEE 5

38. The main charge against Noticee 5 is failure to disclose regarding non execution of the orders bagged by the Company and therefore allegedly violated Clause 3.2 of Schedule II of Regulation 12(2) of PIT 1992.

39. Clause 3.2 of SCHEDULE II of Regulations 12(2) of PIT 1992 relates to Overseeing and co-ordinating disclosure. As per clause (3.1) "Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure". Further, clause (3.2) states that "This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure".

40. I note that Noticee 5 was designated as compliance officer as per Annual Report for 2012-13 and 2013-14. Based on the submission of the Noticee 5, it is an admitted position that he was coordinating with board meeting, minutes as instructed by Managing Director of company. As per the regulations, compliance

officer is responsible to ensure that company complies with continuous disclosure requirement and also coordinates disclosure of price sensitive information.

41. The role of Compliance Officer is independent in nature and should exercise due diligence while complying with various provisions of regulations. Compliance officer has to identify all events which are in the nature of price sensitive and guide the Board to ensure continuous disclosure. I note that the event of cancellation of the large orders was price sensitive in nature and required to be disclosed to stock exchange under PIT 1992. I note that Information regarding disclosure of cancellation of Orders was disclosed to BSE on November 11, 2014, which was signed by the Noticee 5. As mentioned above, the event of termination of agreement with SMM and cancellation of Orders were know in the month of July / August 2012. However, Noticee 5 failed to monitor such events and ensure compliance of same through its board. I note from the submission that Noticee 5 was merely taking instructions from Managing Director of Noticee 1 and executing carrying them without acting independently and exercising necessary due diligence required. I am of the view that any casual approach by a compliance officer adversely affects the interest of investors and as well as the markets and therefore compliance officer should at time be conscious of its regulatory obligations and discharge them accordingly.
42. Thus, I conclude that charge against Noticee 5 stands established and therefore allegedly violated Clause 3.2 of Schedule II of Regulation 12(2) of PIT 1992.
43. The Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216()** and **(2006) 131 Comp. Cas. 591 (SC)** held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant."*
44. In view of the aforementioned violation, the Noticees are liable for monetary penalty under Section 23A (a) of SCRA and Sections 15HB of SEBI Act which reads as follows:

Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made thereunder, –

(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefore in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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.

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.

45. While determining the quantum of penalty under Section 23A (a) of SCRA and Sections 15HB of SEBI Act, it is important to consider the factors stipulated in Section 15J of SEBI Act and Section 23J of SCRA which reads as under:- 15J Factors to be taken into account by the adjudicating officer: While adjudging quantum of penalty under 15J of SEBI Act and Section 23J of SCRA, 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."

46. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. I note that, in Appeal No. 66 of 2003 - **Milan Mahendra Securities Pvt. Ltd. Vs SEBI** , the Hon'ble SAT has observed that, "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."

ORDER

47. 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 of the SEBI Act r/s Rule 5 of Adjudication Rules 1995 and Section 23 I of SCRA r/w Rule 5 of Adjudication Rules 2005, I hereby impose a monetary penalties on the Noticees as under:

Sr. No.	Name of the Noticees	Penal provisions as per the SEBI Act/SCRA	Penalty Amount (in Rs)
1.	M/s Shreeyash Industries Limited (Now known as Nutricircle Limited)	Section 15 HB & Section 23A (a) of SCRA	7,00,000 /- (Rupees Seven Lakh Only)
2.	Manoj Kumar Saraogi	Section 15 HB & Section 23A (a) of SCRA	5,00,000 /- (Rupees Five Lakh Only)
3.	Sunil Kumar Agarwal	Section 15 HB	2,00,000(Rupees Two Lakh Only)
TOTAL			14,00,000 (Rupees Fourteen Lakh Only)

48. I am of the view that the said penalty would be commensurate with the violations committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors and markets.

49. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex

RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

50. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, Enforcement Department, SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	Penalty

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

Date: October 31, 2017

Place: Mumbai

B J DILIP
ADJUDICATING OFFICER