

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/PU/271/2014]

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

In respect of

Shri Prem Meiwal [PAN - ACGPM8652E]

In the matter of

Vakrangee Softwares Ltd.

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') carried out an investigation into the alleged irregularity in the scrip of Vakrangee Softwares Limited (hereinafter referred to as 'VSL'), a company listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE), for the period from June 01, 2009 to July 13, 2009 (hereinafter referred to as 'investigation period') and into the possible violation of provisions of the Securities & Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') and the various Rules and Regulations made there under. It was observed that during the period under investigation, the share price of the scrip moved from a close of ₹ 71.90 on June 29, 2009 to a low of ₹ 46.25 on July 13, 2009 i.e. registered a fall by 35.69% in 10 trading days.
2. The investigation, *inter-alia*, revealed that Shri Prem Meiwal (herein after referred to as the 'Noticee') was the Head of Finance at VSL. It was observed that the Noticee had traded in the shares of VSL for value exceeding ₹ 5,00,000/- which required him to make necessary disclosures to VSL and the stock exchanges as prescribed under Regulation 13(4) read with Regulation 13(5) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (herein after referred to as the

'PIT Regulations'). It was observed that the Noticee had made the necessary disclosures to the company, belatedly and further, had failed to make the requisite disclosures to the stock exchanges.

Appointment of Adjudicating Officer

3. SEBI has, therefore, initiated adjudication proceedings against the Noticee and I have been appointed as the Adjudicating Officer, in place of the previous Adjudicating Officer, vide order dated August 29, 2013 under Section 15-I of the 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 the 'Adjudication Rules') to inquire into and adjudge under Section 15 A (b) of the SEBI Act, the alleged violation of provisions of law by the Noticee.

Show Cause Notice, Reply and Personal Hearing

4. A Show Cause Notice dated August 16, 2012 (hereinafter referred to as 'SCN') was issued to the Noticee under Rule 4 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 Section 15 A(b) of the SEBI Act for the alleged violation of Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations.
5. The Noticee vide his letter dated September 03, 2012 sought two weeks' time to file his reply. However, no reply was submitted by the Noticee. Therefore, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the said Rules, an opportunity of personal hearing was granted to the Noticee by the then Adjudicating Officer (AO) on October 08, 2012. The Noticee attended the personal hearing on the scheduled date and further submitted his reply vide letter dated October 06, 2012. Further, vide letter dated November 19, 2012 the Noticee filed additional reply in the matter. Pursuant to my appointment as AO, another opportunity of personal hearing was granted to the Noticee on November 11, 2013. The Noticee, vide his letter dated November 09, 2013, sought an adjournment till December 12, 2013 as he was suffering from cancer and undergoing treatment supported by medical reports. Therefore, another

opportunity of personal hearing was granted to the Noticee on March 21, 2014. The Noticee attended the said hearing along with his authorised representative, Shri Vinay Chauhan, Advocate and reiterated the submissions made by him vide his earlier replies. Further, vide letter dated March 20, 2014, the Noticee filed additional submissions along with a copy of the order dated December 17, 2013, passed by AO, SEBI. Vide his letter dated April 02, 2014, the Noticee filed another set of submissions in the matter.

6. During the course of the proceedings, the Noticee vide his several replies had submitted that he held the position of 'Vice President - Corporate Affairs' at VSL during the relevant period i.e. April 01, 2006 to July 03, 2012 and not that of Head of Finance. Therefore, a supplementary show cause notice dated April 28, 2014 (SSCN) was issued to the Noticee, in addition to the previous SCN, mentioning therein the position of Vice-President Corporate Affairs which also falls within the definition of 'Officer' in terms of Section 2(30) of the Companies Act, 1956. The Noticee vide letter dated May 13, 2014 sought additional time to reply to the SSCN. Since, the Noticee did not file any reply to the SSCN even after lapse of one and a half months, vide letter dated June 27, 2014, the Noticee was advised to file the same on or before July 11, 2014. Subsequently, the Noticee submitted his reply vide letter dated May 10, 2014 to the SSCN.

Issues, Evidence and Findings

7. I have carefully perused the charges leveled against the Noticee in the SCN, the written and oral submissions made by the Noticee 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?**
 - b. **Do the violations, if any, on the part of the Noticee make him liable for monetary penalty under Section 15 A (b) of the SEBI Act?**
 - c. **If so, what should be the quantum of monetary penalty?**

8. Before moving forward, I would like to refer to the relevant provisions of the PIT Regulations, which read as under:

“13 (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 ₹5lakh on value or 25,000 shares or 1% or total shareholding or voting rights, whichever is lower.”

13 (5)- The disclosure mentioned in sub-regulations (3) and (4) 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.”

9. I find that the Noticee was holding the position of Vice President - Corporate Affairs for the period from April 01, 2006 to July 03, 2012 in VSL. The company had also made disclosures of the quarterly shareholding patterns with the stock exchanges wherein, he appeared as the Promoter of VSL between March 2008 and September 2008.

10. During the relevant period the Noticee had carried out various trades in the shares of VSL for value exceeding Rs. 5,00,000/- and details of the same are as under:

S.No	Date of Transaction	No. of Shares	Type of transaction	Avg price/ share in ₹	Total value of transaction in ₹	Dt. of filing 13 (4) disclosure with Co.	Delay in disclosing to Co. (days)
1	8-Jun-09	18349	Sell	72.72	1334339	29-Nov-11	904
2	9-Jun-09	20000	Sell	68.94	1378800	29-Nov-11	903
3	10-Jun-09	36651	Sell	72.03	2639972	29-Nov-11	902
4	3-Aug-09	25000	Sell	61.38	1534500	29-Nov-11	848
5	14-Jan-10	8000	Buy	79.24	633920	29-Nov-11	684
6	22-Feb-11	7000	Sell	309.22	2164540	29-Nov-11	280
7	10-Aug-11	2000	Sell	398.9	797800	29-Nov-11	111
8	27-Sep-11	3500	Sell	359.1	1256850	29-Nov-11	63

11. I find that the Noticee being Vice President - Corporate Affairs in VSL, was alleged to be an '*officer*' of the company in terms of Section 2(30) of the Companies Act, 1956 and therefore, was under an obligation to make the requisite disclosures to the company and the stock exchanges where the shares of the company were listed within the prescribed timeline when his share holding changed beyond ₹ 5,00,000 in value as prescribed under Regulation 13(4) read with Regulation 13 (5) of the PIT Regulations. The Noticee, however, had made the disclosures to the Company belatedly i.e. on November 29, 2011 but had allegedly failed to make the necessary disclosures to the stock exchanges, thereby violating the above mentioned PIT Regulations.
12. The Noticee vide his reply dated October 06, 2012, inter alia, submitted that he was considered to be an '*Officer*' of the Company as per Section 2 (30) of the Companies Act, 1956, however, only a Director, or Manager, or Secretary or any person in accordance with whose directions or instruction, the Board of Directors or any one or more of the Directors, is or are accustomed to act will fall under the category of an officer and he is neither the Director of the company, nor the secretary nor the manager. His designation in the company was Vice President - Corporate Affairs and his main responsibility in the company was to monitor the administration of projects at their initial stage till the smooth functioning of the project, various property matters, its registrations with the registrars, hardware arrangement and set-up, assisting in staff hiring till rollover of the project, etc. He was also given the additional charge of Finance head on two occasions from August 15, 2009 to August 31, 2009 and from May 01, 2010 to May 31, 2010. The Noticee submitted that he does not have any role which has any say in the management of the company. None of the Directors or senior officials are accustomed to act based on his directions or instructions in any way. Further, the said additional charge was only for a limited period of time. The Noticee submitted that as he does not fall under the category of an officer of the company he was not required to file any disclosures as required under Regulation 13 (4) read with Regulation 13(5) of the PIT Regulations.

13. The Noticee further submitted that there was neither any financial impact caused on the larger shareholders due to his non-disclosure nor did he accrue any undue benefit as a result of his delayed disclosure. The Noticee sold shares of VSL as he was in financial distress and consequently, incurred a loss of ₹ 87,00,000/- owing to the sale of the subject trades.
14. Further, vide letter dated March 20, 2014, the Noticee submitted his additional reply in the matter stating that he joined the company, VSL as a Tax Consultant with effect from June 01, 2004, where he was confined to handling certain tax matters of VSL. Subsequently, he was designated as the Vice President - Corporate Affairs with effect from April 01, 2006, reporting to the Chief Operating Officer of VSL, who in turn reported to the Group President and Chief Executive Officer, who in turn reported to the Chairman and Managing Director of VSL. The Noticee had resigned from VSL on July 03, 2012 due to his ill health. Further, the Noticee stated that he was never involved in preparation of accounts, nor was he a part of any audit committee/ financial committee and he never signed any Contracts/Financial Documents/Loan Documents of VSL etc.,
15. The noticee submitted that the definition '*Officer*' is functional and not conceptual and has to be taken in the context of the functions of the employee. The Noticee contended that his role as the VP-Corporate Affairs, did not give him any authority, position or power to influence or direct the decisions or affairs of VSL or its directors. In this regard, the Noticee relied on an Adjudication Order dated December 17, 2013, against Shri Mahendra Pandey in the matter of Alka Securities Ltd. Further, the Noticee submitted that even if he is construed to be an 'officer' of the company, the alleged violations were not deliberate and intentional. Further, the quantum of shares involved in the impugned transactions were very insignificant and did not create any impact in the price/volume/shares of VSL. On becoming aware of the alleged breach, the Noticee stated that he immediately furnished the required disclosures, as a matter of abundant caution and has a clean track record except this instance.

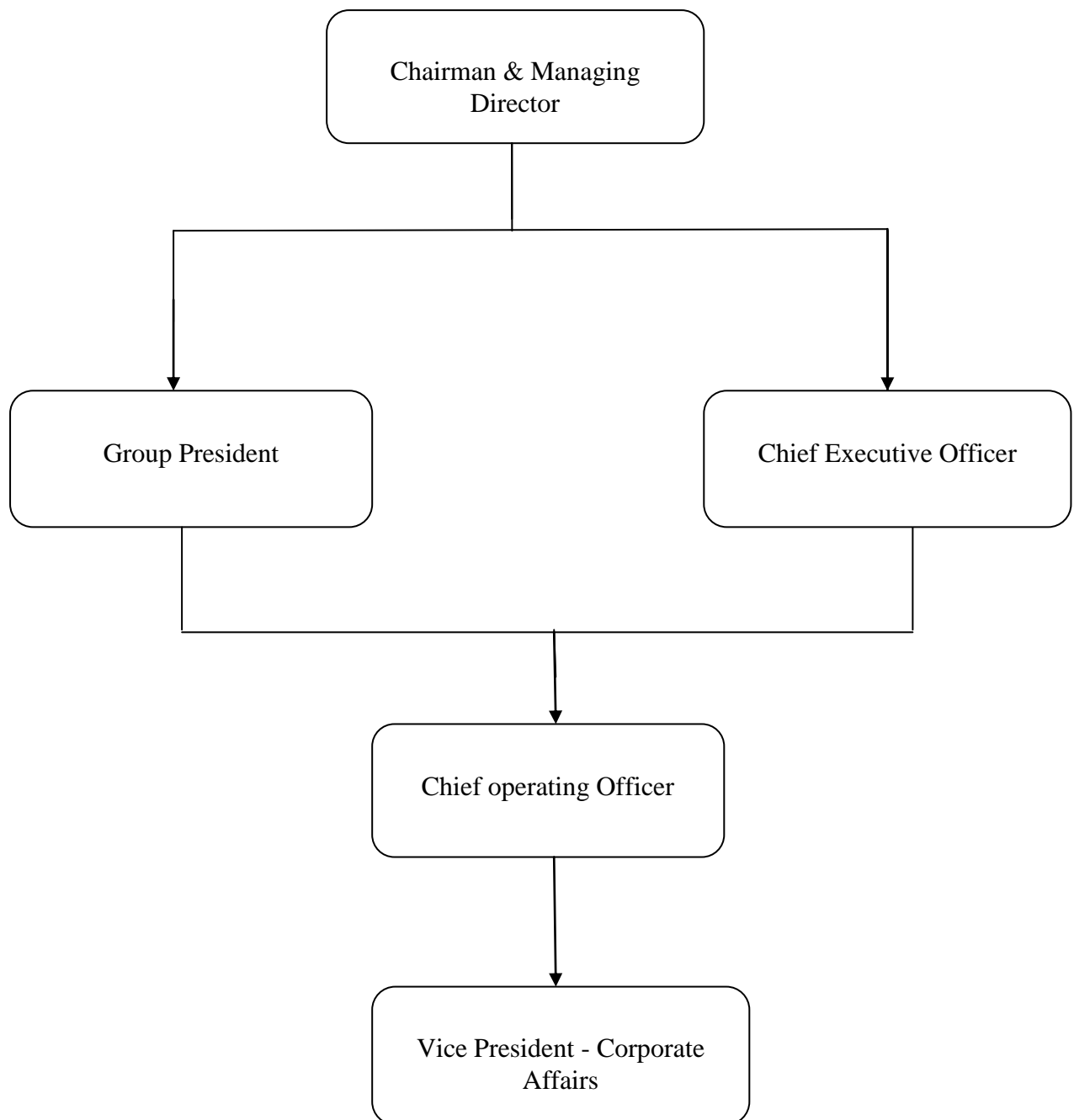
16. Vide letter dated April 02, 2014, the Noticee submitted another reply in the matter and stated that to be regarded as a '*Manager*' of the company as per the definition of '*Officer*', one must be subject to the superintendence, control and direction of the Board of Directors and/or must have the management of the whole or substantially the whole affairs of the company in order to fall within the ambit of the definition. Since, the Noticee had no direct interface with the Board of Directors of VSL, there could not have been any instance that shows that there was any superintendence, control and direction of the Board of Directors of VSL over the Noticee directly. Further, the extent of his role at VSL was limited and cannot be construed as having the management of the whole or substantially the whole of VSL. Therefore, the Noticee submitted that he cannot be construed as a '*Manager*' as defined under Section 2(24) of the Companies Act, 1956. The Noticee also relied on few case laws including the Adjudication order dated December 17, 2013 passed against Shri Mahendra Pandey in the matter of Alka Securities Limited.
17. Upon perusal of the various replies submitted by the Noticee wherein he had elucidated on the fact that he only held the position of Vice President- Corporate Affairs at VSL, which did not satisfy any of the criteria to be an '*Officer*' as defined under Section 2 (30) of the Companies Act, 1956, a SSCN was issued to the Noticee stating that even if the Noticee held the position of Vice President- Corporate Affairs at VSL, he still falls within the ambit of the definition of the term '*Officer*' and therefore, was alleged to have violated the provisions of the PIT Regulations. Vide letter dated May 10, 2014 (received on July 11, 2014), the Noticee submitted his reply to the SSCN and denied that the position of Vice President-Corporate Affairs falls within the definition of '*Officer*'. In view of the same, the Noticee stated that he was not required to make the necessary disclosures under Regulation 13 (4) read with 13 (5) of the PIT Regulations.

18. I have carefully perused the charges leveled against the Noticee in the SCN and the SSCN and also the replies submitted by the Noticee. Here, I would like to refer to certain relevant definitions which read as under;

i. **Regulation 2 (g) of PIT Regulations** - "*Officer of a company' means any person as defined in Clause (30) of Section 2 of the Companies Act, 1956 (1 of 1956) including an auditor of the company*".

ii. **Section 2 (30), Companies Act, 1956- Definition of 'Officer'** - "*Officer includes any director, manager or secretary or any person in accordance with whose directions or instructions the Board of directors or any one or more of the directors is or are accustomed to act*".

19. I note from the documents available on record that the Noticee had joined VSL as a Tax Consultant with effect from June 01, 2004, wherein he was confined to handling only certain tax matters of VSL. Subsequently, he was designated as the Vice President - Corporate Affairs with effect from April 01, 2006, reporting to the Chief Operating Officer of VSL, who in turn reported to the Group President and Chief Executive Officer, who in turn reported to the Chairman and Managing Director of VSL. A flow chart of the structural hierarchy as submitted by the Noticee is reproduced hereunder:



20. Further, I find that the Noticee's main responsibility in the company was to monitor the administration of projects at their initial stage till the smooth functioning of the project, various property matters, its registrations with the registrars, hardware arrangement and set-up, assisting in staff hiring till rollover of the project, etc. I note that he was also given the additional charge of assisting the company's finance from August 15, 2009 to August 31, 2009 and from May

01, 2010 to May 31, 2010, which included assistance in short-term fund arrangement and liasoning with clients. I further note that the Noticee had resigned from VSL on July 03, 2012 as he was suffering from Mouth Cancer.

21. From the above, I find that the Noticee is number four in the hierarchy of VSL. Further, I find from the very position of Vice President - Corporate Affairs held by the Noticee and the responsibilities given to him at VSL that there are several officers in the hierarchy who are working at a subordinate level which clearly shows that the Noticee holds a higher position capable of giving directions to his subordinates.

22. It is relevant to refer to the Judgment of the Hon'ble Securities Appellate Tribunal (SAT) in Sundaram Finance Ltd. V. SEBI [2010] SAT 286, (decided by 3 member bench) wherein it was observed that "*....A reading of the aforesaid definition makes it clear that it is an inclusive definition. Apart from what the word 'Officer' means, it includes all that is stated therein. In other words, the definition does not exhaust all persons who otherwise come within its ambit or scope. While the definition says that it includes the persons specified therein, it doesn't say who are all the persons who will come within the term. We are of the view that an 'Officer' means a person holding an appointment to an office which carries with it an authority to give directions to other employees. Thus, an 'Officer' as distinct from a mere employee is a person who has the power of directing any other person or persons to do anything whereas an employee is one who only obeys. Any person who occupies a position of responsibility in a company will be an 'Officer' and this has been clarified by the Department of Company Affairs, government of India as per its letter dated October 7, 1963.*"

23. It is trite law that a judgment has to be read in the context of the facts in which it is delivered and cannot be applied in isolation. Here, I note that the facts and circumstances in the Adjudication order dated December 17, 2013 (passed against Shri Mahendra Pandey in the matter of Alka Securities Limited) stand on a different footing and therefore, cannot be applied in the present case

mechanically. A decision is a precedent on its own facts (Government of Karnataka & Ors V. Smt. Gowramma & Ors (2007) 1 SCC 482 .

24. In view of the above findings, I conclude that the Noticee is an 'Officer' of the company within the meaning of the definition of Section 2(30) of Companies Act read with Regulation 2 (g) of the PIT Regulations. I note that the Noticee transacted in the shares of VSL during the months of June-August 2009, January 2010 and February-August and September, 2011 which were in excess of Rs. 5,00,000 in value and therefore, was required to make the necessary disclosures as prescribed under Regulation 13 (4) read with Regulation 13 (5) of the PIT Regulations. However, I find that the Noticee had made disclosures to the Company belatedly i.e. on November 29, 2011 and further, failed to make the disclosures to the stock exchanges, thereby violating the PIT Regulations. Thus, the Noticee is liable for monetary 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,-

.....

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

25. 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."

26. The Hon'ble SAT in the matter of **Komal Nahata Vs. SEBI** (Order dated January 27, 2014) has observed that :

“ Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”

27. 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)**, wherein, the court, 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.*

28. 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.*

29. I observe, from the material available on record, that 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 of the Noticee cannot be computed. It is observed that the defaults are repetitive in nature.

ORDER

- 30.** 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 the Adjudication Rules, I hereby impose a penalty of ₹ 5,00,000 /- (Rupees Five Lakh Only) on the Noticee viz., Shri Prem Meiwal, under Section 15 A (b) of the SEBI Act. In my view, the penalty is commensurate with the default committed by the Noticee.
- 31.** 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, Enforcement Department, DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
- 32.** In terms of the Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to Securities and Exchange Board of India.

**D. SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER**

Date: October 30, 2014

Place: Mumbai