BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 52 /2015]

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

In respect of

Ms. Anju Innani (PAN No. AAHPI1233L)

In the matter of

M/s. Apollo Finvest (India) Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) observed that as per the shareholding pattern filed by M/s Apollo Finvest (India) Limited (hereinafter referred to as **'the company'/ 'Apollo'**) with the Bombay Stock Exchange (hereinafter referred to as **'BSE'**), the shareholding of the promoter group of the Company increased from 58.69% in June 2009 to 64.85% in June 2010. The Company vide letter dated November 11, 2013 submitted that none of the persons in the promoter group except Managing Director, Ms. Anju R. Innani (hereinafter referred to as **'the Noticee'**) had made purchases / sales during the period. Further, from the details of increase/ decrease in holding of shares/ voting rights of the promoter group annexed to the said letter, it was observed that the shareholding of the Noticee had increased from 15,30,202 shares (40.90%) on July 10, 2009 to 17,59,853 shares (47.04%) on May 21, 2010.

2. The cumulative promoter shareholding was observed to have changed in the following manner:

Quarter ending	% Promoter shareholding	No. of shares held by the Noticee	Total equity capital
Jun, 2009	58.69	15,30,202	37,41,008
Sep, 2009	61.33	16,28,756	37,41,008
Dec, 2009	62.70	16,79,906	37,41,008
Mar, 2010	63.66	17,16,205	37,41,008
Jun, 2010	64.85	17,60,648	37,41,008

3. It was observed that disclosures under Regulation 7(1A) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations'**) and Regulation 13(4) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the **'PIT Regulations'**) were not filed by the Noticee for transactions covered during the captioned period.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated February 20, 2014 under Rule 4 of the Rules read with Section 15 I of the Securities and exchange Board of India Act (hereinafter referred to as '**SEBI Act'**) and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violations of Regulation 13(4) read with 13(5) of the PIT Regulations and Regulation 7(1A) read with 7 (2) of the Takeover Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Accordingly, a show cause notice (hereinafter referred to as 'SCN') EAD-6/AK/VG/13813/2014 dated May 13, 2014 was issued to the Noticee under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'the Rules'**). The Noticee was advised to show cause as to why an inquiry should not be held against her and penalty be not imposed under Section 15A (b) of the SEBI Act for the alleged violations specified in the SCN.

6. The Noticee vide letter dated June 05, 2014 *inter alia* sought extension of time in order to file a reply to the SCN. Vide hearing notice dated June 13, 2014, the Noticee was advised to file the reply at the earliest. Also, in the interest of natural justice and in terms of rule 4(3) of SEBI Rules, the Noticee was granted an opportunity for personal hearing on July 1, 2014. The Noticee vide letter dated June 25, 2014 *inter alia* again requested for extension of time up to July 25, 2014 to reply to the SCN and further requested that personal hearing may be fixed anytime thereafter.

Accordingly, vide hearing notice dated July 02, 2014, the hearing was rescheduled to July 25, 2014.

7. The Noticee replied to the SCN vide letter dated July 24, 2014. The Noticee *inter alia* submitted as under:

   i. That the requirement to make disclosure under regulation 7(1A) of Takeover Regulations is attracted when a acquirer holding shares between 15% to 55%, purchases or sells shares aggregating 2% or more of the target company's share capital. The term 'acquirer' under the Takeover Regulations means the acquirer himself along with persons acting in concert (PACs) with him. In the instant case, while the Noticee's individual holding of 40.90% in the Company went up to 47.04%, the shareholding of the promoter group (of which the noticee is a part) went up from 58.69% to 64.85% during the period June 2009 to June 2010;

   ii. That in October 2008, SEBI inserted second proviso to Regulation 11(2), *inter alia* permitting an acquirer holding shares more than 55% in a target company to acquire additional shares or voting rights entitling him up to 5% shares/voting rights in the target company subject to certain conditions stipulated therein. However, the requirement to make disclosures regarding such acquisitions did not arise until SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulation 2009, came into force from November 06, 2009 (i.e. when amendment to regulation 7(1A) was made to this effect);

   iii. That it was only pursuant to November 2009 amendment that an acquirer (holding more than 55% shares) acquiring shares exceeding 2% of the target company's share capital was required to make disclosure under Regulation 7(1A);

   iv. That after November 06, 2009 i.e. the date on which 2009 amendment came into force, the Noticee / promoter group has breached the acquisition limit of 2% or more shares of the Company on February 09, 2010. Therefore, the Noticee was under an obligation to make a disclosure only at one occasion on February 09, 2010. The Noticee has made such disclosure belatedly on July 21, 2014. Thereafter, the Noticee / promoter group has not crossed further limit of 2% shareholding of the Company and

hence there has been only one instance of non-disclosure under Regulation 7(1A) of the Takeover Regulations;

v. That the Noticee has also made all the disclosures required to be made under Regulation 13(4) of the PIT Regulations on July 21, 2014;

vi. That the Noticee had bought 2,31,358 shares in 42 tranches at average price of Rs.14.33 and sold 46,150 shares in 15 tranches at average price of Rs.11.35 and further bought 44,443 shares in 7 tranches at average price of Rs.15.29. Further that the Noticee had incurred an aggregate loss of Rs.1,37,527 from the said transactions. Hence, that there is no disproportionate gain or unfair advantage made by the Noticee in the said transactions;

vii. That no disproportionate gain or unfair advantage has been made by the Noticee as a result of the default and that no loss has been caused to any investor or group of investor as a result of delay in filing the disclosures by the Noticee;

viii. That SEBI has vide its Order dated December 15, 2011 in the matter of Mr. Swaminathan Rajendran (Adjudication Order No. PB/AO-92/2011) imposed monetary penalty of Rs. 50,000/- for violation of Regulation 13(4) of PIT Regulations on 6 occasions wherein the Noticee had not made any disclosure under Regulation 13(4) of PIT Regulations.

8. Further, in respect of the personal hearing scheduled for July 25, 2014, Mr. Lalsing B Kshirsagar, P.A. to the Noticee, vide letter dated July 25, 2014 sought for adjournment on account of hospitalization of the Noticee and requested that the hearing be fixed after August 10, 2014. In view of the same, vide hearing notice dated August 11, 2014, the personal hearing was again rescheduled to August 22, 2014. The Noticee vide e-mail dated August 21, 2014 confirmed her attendance for the personal hearing scheduled on August 22, 2014.

9. Thereafter, the Noticee vide letter dated August 20, 20, 2014 authorized Mr. Ankur Loona as Authorized Representative (hereinafter referred to as '**AR'**) to appear on her behalf. On the scheduled date, Mr. Ankur Loona, Mr. Umanath Agarwala and the Noticee herself appeared for the hearing. The AR reiterated the submission made in reply dated July 24, 2014. The AR also

submitted that all the transactions were open market transactions. The AR provided copies of the following: (i) AO Order dated December 15, 2011 against Mr. Swaminathan Rajendran (ii) AO Order dated January 29, 2014 against Mr. Vibhu Agarwal. The AR also submitted that there were no past non-compliance by the Noticee of SEBI Act and Regulations and that no action have been taken by SEBI in past against her.

10. The AR during the hearing further submitted that the obligation to make disclosure under Regulation 7(1A) of the Takeover Regulations did not arise at all as the Noticee had at no point of time crossed the 2% acquisition limit under one transaction of sale or purchase. The AR drew attention to the provisions of Regulation 29 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'Takeover Regulations, 2011'**) (corresponding provision to Reg. 7(1A) of Takeover Regulations) and Regulation 13(4) of PIT Regulations, wherein the trigger point for calculating the 2% limit commences from "the last disclosure made under that Regulation". The AR pointed out that SEBI had, in fact, amended Regulation 29(2) of Takeover Regulations, 2011 in March 2013 to make the trigger point from last disclosure applicable. The AR submitted further that prior to such amendment there was no requirement on the acquirer to make disclosure under regulation 7(1A), in case his acquisition did not exceed 2% in a single transaction.

11. Thereafter, vide email dated April 20, 2015, the Noticee was advised that in case she had any further submissions to make, she could do so by April 24, 2015. However, the Noticee has not filed any further reply.

CONSIDERATION OF ISSUES AND FINDINGS

12. I have examined the SCNs and the submissions made by the Noticee in their replies and during the personal hearings and the documents available on record. I observe that the allegation against the Noticee is that they failed to make the relevant disclosures under the Regulation 13(4) read with 13(5) of the PIT Regulations and Regulations 7(1A) read with 7(2) of the Takeover Regulations.

13. The issues that, therefore, arise for consideration in the present case are:
    i. Whether the Noticee violated the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations?

ii. Whether the Noticee violated the provisions of Regulation 7(1A) read with 7 (2) of the Takeover Regulations?

iii. Does the violations, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?

iv. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

14. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations and the Takeover Regulations which read as under:

Acquisition of 5 per cent and more shares or voting rights of a company.

7.(1)…

[1] [(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, [2][or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]

[3] [Explanation.—For the purposes of sub-regulations (1) and (1A), the term acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.]

(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

[1] Substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002. Prior to its substitution, clause 1A as inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2001, w.e.f. 24-10-2001 read as under:
"(1A) Any acquirer who has acquired shares or voting rights of a company, under sub-regulation (1) of regulation 11, shall make disclosures of such acquisitions as well as the aggregate of his pre- and post-acquisition of shareholding and voting rights to the company when such acquisition aggregates to 5% and 10% of the voting rights."

[2] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

[3] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002.

(b) the acquisition of shares or voting rights, as the case may be.

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than [4] [fifty five per cent (55%)] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5][5% of the voting rights], [6][with post acquisition shareholding or voting rights not exceeding fifty five per cent.], [7][in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

[8] (2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through [9][or with] persons acting in concert with him any additional shares [10][entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that …

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[4] Substituted for "75%"by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2005, w.e.f. 3-1-2005.

[5] Substituted for "10% of the voting rights" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 1-10-2002. Earlier it was substituted for "5% of the voting rights" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2001, w.e.f. 24-10-2001.

[6] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

[7] Substituted for the words "in any period of 12 months" by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002.

[8] Substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006, w.e.f. 26-5-2006. Prior to its substitution, sub-regulation (2), as amended by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2005, w.e.f. 3-1-2005 and SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998, w.e.f. 28-10-1998, read as under:

―(2) An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, fifty five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these regulations:‖

[9] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009

[10] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, w.e.f. 31-10-2008.

[11] [Provided further that such acquirer may, [12][notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11,] without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).]

SEBI (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

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 subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(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

[11] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, w.e.f. 31-10-2008.

[12] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

15. The first issue for consideration is whether the Noticee violated Regulation 13(4) read with 13(5) of the PIT Regulations. I note that Regulation 13(4) read with 13(5) of the PIT Regulations mandates directors and officers of listed companies to disclose to the company and to the stock exchange(s) where the shares of the company are listed, any change in their shareholding within two working days, if the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. I find from the Annual Report of the company for the period 2009-10 and 2010-11 as available on BSE website that the Noticee was the Managing Director of the company. Further, I find that it was pointed out in the SCN that the Noticee had acquired 2,31,358 shares in 42 tranches, then sold 46,150 shares in 15 tranches and again acquired 44,443 shares in 7 tranches, whereby the Noticee had violated the disclosure requirement under Regulation 13(4) read with 13(5) of PIT Regulations on 9 occasions during the period from July 10, 2009 to May 21, 2010. I note that the Noticee vide her reply dated July 24, 2014, while admitting the same, has *inter alia* submitted that she had incurred an aggregate loss of Rs. 1,37,527/- from the said transactions. The Noticee vide the said reply has further stated that all the disclosures required to be made under Regulation 13(4) of the PIT Regulations have been made on July 21, 2014.

16. I, thus, find that it is established without doubt that the Noticee has failed to comply with the provisions of Regulation 13(4) read with 13(5) of PIT Regulations within the stipulated time.

17. The next issue that has to be considered is whether the Noticee has violated the provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations. Regulation 7(1A) requires that any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or, *under second proviso to sub-regulation (2) of regulation 11 (which was inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009 w.e.f. November 06, 2009)* shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale. As per second proviso to sub-regulation (2) of regulation 11, no acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or

through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations. Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto 5% voting rights in the target company subject to the acquisition being made through open market purchase in normal segment on the stock exchange and the post acquisition shareholding of the acquirer together with persons acting in concert does not increase beyond 75%. The said proviso to Regulation 11(2) was incorporated with effect from October 30, 2008. It was thereafter clarified vide circular Ref: CFD/DCR/TO/Cir-01/2009/06/08 dated August 06, 2009 that *t*he acquirer together with persons acting in concert with him, holding 55% or more, but, less than 75% shares or voting rights in the target company may acquire additional shares or voting rights upto a maximum of five per cent (5 %) voting rights in the target company in one or more tranches, without any restriction on the time-frame within which the same can be acquired. Also that the acquisition of 5% is to be calculated by aggregating all purchases, without netting the sales.

18. I note here that the Noticee vide letter dated July 24, 2014 has pointed out that though in October 2008, SEBI inserted second proviso to Regulation 11(2), *inter alia* permitting an acquirer holding shares more than 55% in a target company to acquire additional shares or voting rights entitling him up to 5% shares/voting rights in the target company subject to certain conditions stipulated therein, the requirement to make disclosures regarding such acquisitions did not arise until SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulation 2009 came into force from November 06, 2009 (i.e. when amendment to regulation 7(1A) was made to this effect). The Noticee vide the said letter has also pointed out that it was only pursuant to November 2009 amendment that an acquirer (holding more than 55% shares) acquiring shares exceeding 2% of the target company's share capital was required to make disclosure under Regulation 7(1A), and that after November 06, 2009 i.e. the date on which 2009 amendment came into force, the Noticee / promoter group has breached the acquisition limit of 2% or more shares of the Company on February 09, 2010. Therefore, the Noticee was under an obligation to make a disclosure under Regulation 7(1A) only on one

occasion on February 09, 2010, which the Noticee has made belatedly on July 21, 2014. Thereafter, the Noticee / promoter group has not crossed further limit of 2% shareholding of the Company and hence there has been only one instance of non-disclosure under Regulation 7(1A) of the Takeover Regulations.

19. I note from the SCN that it was alleged that Noticee had violated Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations on two (2) occasions. I further note that during the period from July 10, 2009 to May 21, 2010, the shareholding of the promoter group was between 55% and 75%.

20. I note from the above that in her reply dated July 24, 2014, the Noticee has pointed out that the requirement to make disclosure under regulation 7(1A) of the Takeover Regulations was attracted when a acquirer holding shares between 15% to 55%, purchases or sells shares aggregating 2% or more of the target company's share capital. The term acquirer under the Takeover Regulations means the acquirer himself along with persons acting in concert with him (PAC's). In the instant case, while the Noticee's individual holding of 40.90% in the Company went upto 47.04%, the shareholding of the promoter group (of which the Noticee is a part) went up from 58.69% to 64.85% during the period June, 2009 to June 2010. I find that SEBI had inserted second proviso to Regulation 11(2) with effect from October 21, 2008, *inter alia* permitting an acquirer holding shares more than 55% in a target company to acquire additional shares or voting rights entitling him upto 5% shares/voting rights in the target company subject to certain conditions stipulated therein. However, I further note that as submitted by the Noticee, the requirement to make disclosures regarding such acquisitions did not arise until SEBI (SAST) (Third Amendment) Regulation 2009, came into force from November 06, 2009.

21. I note that as on November 06, 2009, the Noticee's holding stood at 44.88%. The holding of the promoter group on the date was 62.65%. Thereafter post November 6, 2009, the Noticee acquired shares in tranches and by February 09, 2010, the holding of the Noticee had increased to 46.90% and that of the promoter group to 64.66%, a rise of more than 2%. I also note from the submissions made by the AR at the hearing that the acquisitions were made on the open market. Thus, the acquisitions fell under second proviso to Regulation 11(2). Hence, the requirement of disclosure under Regulation 7(1A) of the Takeover Regulations was triggered on

February 09, 2010. I find that the same has been admitted by the Noticee in her reply dated July 24, 2014 and the Noticee has stated that the disclosure under Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations was made belatedly on July 21, 2014. I further agree with the submission of the Noticee that Regulation 7(1A) was triggered only on one occasion and not on two occasions as alleged in the SCN.

22. Further, I note that at the time of the hearing, the AR of the Noticee submitted that since the Noticee had not acquired more than 2% of the shares of the company in a single transaction, the requirement under Regulation 7(1A) of the Takeover Regulation for disclosure was not triggered. I, however, do not mind any merit in this argument as SEBI vide circular Ref: CFD/DCR/TO/Cir-01/2009/06/08 dated August 06, 2009 has clarified that an acquirer together with persons acting in concert with him, holding 55% or more but less than 75% shares or voting rights in the target company, may acquire additional shares or voting rights upto a maximum of five per cent (5%) voting rights in the target company in one or more tranches. Further, Regulation 7(1A) of the Takeover Regulations does not stipulate that acquisition or sale of more than 2% of shares of the company should have occurred in a single transaction to trigger the provision of Regulation 7(1A) of the Takeover Regulations. Regulation 7(1A) of the Takeover Regulations merely requires that purchases or sales at every 2% level, where the holding of the acquirer together with persons acting in concert falls within the ambit of Regulation 11, should be disclosed. In the context, I find that the AR has further pointed out that SEBI had, in fact, amended Regulation 29(2) of Takeover Regulations, 2011 in March 2013 to make the trigger point from last disclosure applicable. I find it pertinent to mention here that Regulation 7(1A) of Takeover Regulations states purchase or sale aggregating 2% or more. The word 'aggregate' makes it abundantly clear that the intent of the Takeover Regulations was to mandate disclosure of any change in shareholding of 2% or more whether in one tranche or in several tranches.

23. Further, if the argument of the AR of the Noticee that acquisition or sale of more than 2% shares of the company only in a single transaction is required to be disclosed under Regulation 7(1A) of the Takeover Regulations is considered, it would defeat the very purpose for which the disclosure requirement under Regulation 7(1A) has been mandated under the Takeover Regulations. This is because the promoters would then be able to acquire and dispose of shares

or voting rights in tranches without the knowledge of the investors, until the aggregate shareholding increases by 5%, by ensuring that no individual tranche is of 2% or more of the company's paid-up capital/ voting rights. Whereas on the other hand, Regulation 7(1A) has been incorporated in the Takeover Regulations so that the shareholders and investors are made aware about every change of 2% or more in shareholding of the promoters/ acquirers holding more than 15% in the company. Also, if the argument of AR that acquisition or sale of more than 2% shares of the company only in a single transaction is required to be disclosed under Regulation 7(1A) of the Takeover Regulations is considered, it may even result in promoters totally exiting the company without the knowledge of the investors in a single financial year.

24. Further, it is a settled law that where there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope to undertake any exercise to read something into the provisions which the legislature in its wisdom has consciously omitted. Such an exercise if undertaken may amount to amending or altering the statutory provisions. In the matter, it may be necessary to refer to the ***Hon'ble Supreme Court's judgment in the case of MOHD. SHAHABUDDIN v. STATE OF BIHAR AND OTHERS, reported in (2010) 4 SCC 653*** **wherein the Hon'ble Court has observed as follows:**

"Even otherwise, it is a well-settled principle in law that the court cannot read anything into a statutory provision which is plain and unambiguous. The language employed in a statute is a determinative factor of the legislative intent. If the language of the enactment is clear and unambiguous, it would not be proper for the courts to add any words thereto and evolve some legislative intent, not found in the statute....."

25. In view of all of the above, I conclude that the Noticee has failed to make the relevant disclosures under Regulations 7(1A) read with 7(2) of the Takeover Regulations on one occasion within the stipulated time.

26. The ***Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(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…". Further in the matter of ***Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT*** had observed *"Once it is established that the mandatory provisions of Takeover Code was violated the penalty must follow*."

27. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

Penalty for failure to furnish information, return, etc.

15A.*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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

28. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J 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. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information

to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. The disclosures under Regulation 13 of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby serving as a deterrent. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations and PIT Regulations is investor protection.

30. As per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. However, I note that the ***Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- 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."

In view of the same, the argument put forth by the Noticee that there was no loss caused to any investor or group of investors due to the delayed disclosures made by the Noticee is not relevant for the given case.

31. In the matter, I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** had observed that:

"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any

merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."

In view of the same, the argument put forth by the Noticee that no disproportionate gain or unfair advantage has been made by the Noticee is also not relevant for the given case.

32. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the Company at the relevant point of time; b) the trading volumes of the Company's shares on the exchange where the shares were listed during the relevant period; and c) the number of occasions in the instant proceeding that the Noticee has violated the relevant provisions of the Takeover Regulations/ PIT Regulations.

33. The paid up capital of the Company was 37,41,008 equity shares of Rs. 10/- each aggregating Rs.3,74,10,080/-. The market capitalization of the company during the relevant point of time was around Rs. 5 crore. The average daily volume of the Company's shares on BSE during the relevant period was approx. 3,000 shares. It is further noted that the Noticee failed to make disclosures under Regulation 13(4) read with 13(5) of PIT Regulations on 9 occasions and disclosures under Regulations 7(1A) read with 7 (2) of the Takeover Regulations on one occasion.

34. I note further that the Noticee has pointed out that vide ***Order dated December 15, 2011 in the matter of Mr. Swaminathan Rajendran (Adjudication Order No. PB/AO-92/2011),*** *the Adjudicating Officer has* imposed monetary penalty of Rs. 50,000/- for violation of Regulation 13(4) of PIT Regulations on 6 occasions wherein the Noticee had not made any disclosure under Regulation 13(4) of PIT Regulations. In the case *of* ***Mr. Swaminathan Rajendran (Adjudication Order No. PB/AO-92/2011 dated December 15, 2011)*** referred by the AR, I find from a perusal of the said Adjudication Order that Mr. Swaminathan Rajendran, the Noticee in the said case was a Manager of the target company M/s. Filatex Fashions Ltd., whereas the Noticee Ms. Anju Innani in the extant case is the Promoter and Managing Director of the company M/s. Apollo Finvest (India) Ltd. Besides, in the extant case, it has been alleged that the Noticee Ms. Anju Innani has violated the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations and

Regulation 7(1A) read with 7 (2) of the Takeover Regulations. Thus, I note that the facts and circumstances of the extant case are different from that of the case of Mr. Swaminathan Rajendran referred to by the AR. I further find that at the hearing, the AR has also referred the ***Adjudication Order dated January 29, 2014 in the matter of Mr. Vibhu Agarwal.*** The said case pertains to non-disclosure under Regulation 7(1A) of the Takeover Regulations with respect to transaction done on March 18, 2008 i.e. even before SEBI inserted second proviso to Regulation 11(2). It was concluded therein that acquisition of 4.93% shares of the target company by the Noticee in the said case, Mr. Vibhu Agarwal does not require him to make disclosure under Regulation 7(1A) read with 7(2), since the acquisition did not invoke Regulation 11(1) of the Takeover Regulations, whereas, in the extant case it has been established that the Noticee Ms. Anju Innani has violated the provisions of Regulation 13(4) read with 13(5) of the PIT Regulations and Regulation 7(1A) read with 7 (2) of the Takeover Regulations.

35. Also, assuming that lower penalty has been imposed based on the facts and circumstances of those cases, it does not automatically imply that same lower penalty need to be imposed in the extant case. The determination of penalty in the extant case would depend upon the facts and circumstances of the extant case. In the matter, I would like to refer to the ***Order of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Hybrid Financial Services Limited Vs. SEBI (Appeal No.119 of 2014 and Order dated June 12, 2014)***, wherein SAT had observed as follows:

"……. argument that penalty imposed on appellant is excessive compared to penalty imposed in the case of M/s. Kamalakshi Finance Corporation Ltd. (supra) and Gupta Carpet International Ltd. is also without any merit, because, firstly, nothing is brought on record to show that facts in that case are similar to the facts in the present case. Secondly, assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted especially when the Regulations prescribe stringent action for non compliance of disclosure provisions which are mandatory….."

36. In view of the same, I conclude that the aforesaid Orders of the Adjudicating Officers referred to by the AR cannot become the yardstick for imposing penalty in the extant case. Besides, it is well established rule of law that the decision of one court is not binding on another court of same judicature. In the case ***of N.R. Papers and Board Ltd. vs. Dy. CIT (1998) 234 ITR 733 (Guj)***, the Court has observed that:

"decisions of other High Courts have great persuasive value, but, if it becomes impossible to agree with, or, if there are no reasons and only pronouncement of legal principles, the court is free to give its own reasons not coinciding with conclusion reached by another court in graphic language. It is said that the decisions of any High Court are after all not intended to be gag order for other High Courts and do not have the effect of freezing judicial thinking on the points covered by them".

37. It further becomes pertinent to mention here that ***in the matter of Custom Capsules Private Limited Vs. SEBI (Date of Decision : 06.04.2015),*** wherein the Adjudicating Officer had imposed a penalty of Rs. 25 lacs for violating Regulation 29(1) and Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 and Regulation 13(1) and Regulation 13(3) read with 13(5) of PIT Regulations, ***the Hon'ble SAT*** has observed as follows:

"Moreover, penalty at the rate of Rs. 1 lac per day under section 15A(b) of SEBI Act, 1992 would come to more than a crore and since penalty under Section 15A(b) is restricted to Rs. 1 crore, penalty in respect of four transactions would be Rs. 4 crore. However, after considering all mitigating factors set out under section 15J of the SEBI Act, 1992, the adjudicating officer of SEBI has imposed composite penalty of Rs. 25 lac which cannot be said to be arbitrary, unreasonable or highly excessive."

38. In the extant case, I note that as a Promoter and Managing Director of a listed company, the Noticee had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose. Non-compliance/ Delayed compliance with disclosure requirements by the Promoter and Managing Director of a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

39. After taking into consideration all the facts and circumstances of the case, I impose under Section 15 A (b) of SEBI Act, 1992 the following penalty on the **Noticee, Ms. Anju Innani** for the violation of Regulation 13(4) read with 13(5) of PIT Regulations and Regulations 7(1A) read with 7 (2) of the Takeover Regulations, which will be commensurate with the violations committed by her:

Regulation	Penalty (Rs.)
Regulation 13(4) read with 13(5) of PIT Regulations	**5,00,000 (Five Lacs Only)**
Regulations 7(1A) read with 7 (2) of the Takeover Regulations	**2,00,000 (Two Lacs Only)**

40. The Noticee shall pay the said amount of penalty 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 Mr. V S Sundaresan, Chief General Manager, Corporation Finance Department, 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 Noticee and also to the Securities and Exchange Board of India.

Date: April 30, 2015 **Anita Kenkare**
Place: Mumbai **Adjudicating Officer**