

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/BJD/NJMR/164-166/2017-18**

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. Bharat Patel (PAN: AAAPP6652R) 3/3A, 1st Floor, 32/34 Churchgate House, Veer Nariman Road, Fort, Mumbai- 400001.	2. Minal Bharat Patel (PAN: AACPP5126G) Divya Darshan, N S Road No. 5 JVPD Scheme, Vileparle West Mumbai - 400056.	3. PAT Financial Consultants Pvt., Ltd., (PAN: AAACP3115E) 3/3A, 1st Floor, 32/34 Churchgate House, Veer Nariman Road, Fort, Mumbai- 400001.
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In the matter of Jyoti Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter dated January 27, 2015 from the Company Jyoti Ltd., inter-alia alleging that Bharat Patel and his associates and several persons and entities, which are acting in concert with him in acquisition of shares of Jyoti Ltd., had failed to file disclosures under the provisions of SEBI (Prohibition of Insider Trading Regulations), 1992 (*hereinafter referred to as "**PIT Regulations**"*) and SEBI (Substantial Acquisition of Shares & Takeovers), 2011 (*hereinafter referred to as "**SAST Regulations**"*).
2. In view of the above, SEBI examined trading in the scrip of Jyoti Ltd., for possible violation of the provisions of the SEBI Act and various Rules and Regulations made thereunder during the period May 7, 2014 to February 27, 2015 (*hereinafter referred to as "**Examination period**"*).
3. Pursuant to examination, it was observed that the dealings of the Noticees in the scrip of Jyoti Ltd., had triggered disclosure requirements under SEBI (PIT) Regulations and SEBI (SAST) Regulations and the Noticees failed to make

the necessary disclosures in terms of the provisions of SEBI (PIT) Regulations and SEBI (SAST) Regulations. Therefore, it was alleged that the Noticee-1 i.e., Bharat Patel had violated the provisions of Regulation 13 (1), 13 (3), 13(4) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992 and Regulation 29 (1) and 29 (2) of SEBI (SAST) Regulations, 2011. It was also alleged that the Noticee-2 and 3 Minal Patel and PAT Financial Consultants Pvt., Ltd., had violated the provisions of Regulation 13 (1), 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulations, 1992 and Regulation 29 (1) and 29 (2) of SEBI (SAST) Regulations, 2011

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI initiated Adjudication Proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated November 24, 2017 (*communicated vide Order dated December 8, 2017*) under Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudicating Rules**”) to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of provisions SEBI (PIT) Regulations and SEBI (SAST) Regulations, by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. A common Show Cause Notice (hereinafter referred to as “**SCN**”) bearing ref. no. EAD/BJD/NJMR/1201/2018 dated January 11, 2018 was issued to the Noticees under Rule 4 of SEBI Adjudicating Rules to show cause as to why an inquiry be not held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under section 15 A (b) of the SEBI Act, 1992 for the violation alleged to have been committed by them.
6. The following were alleged in the SCN:

Bharat Patel

- (a) It was observed that as on April 1, 2013 Bharat Patel was holding 1,21,074 shares in his demat account number IN30015910517046 and 13,35,834 shares along with Minal Patel (first holder) in the demat account number INS30015910564804. It was observed that on April 17, 2013, Minal Patel and Bharat Patel had transferred 13,35,834 shares from their joint demat account to the demat account of Bharat Patel bearing number 1204800000011954. It was observed that by virtue of transfer of 13,35,834 shares, the holding of Bharat Patel increased from 1,21,074 shares (0.71% of shareholding) to 14,56,908 shares (8.51% of shareholding), which in effect translates into change in shareholding to the extent of 7.80%. It is observed that the aforesaid transaction triggered disclosure requirements under Regulation 13 (4) and 13 (1) of PIT Regulations and Regulation 29 (1) of SAST Regulations.
- (b) It was also observed that on August 2, 2013, Bharat Patel transferred back 13,35,834 shares from his demat account number 1204800000011954 to the joint demat account number INS30015910564804 held with Minal Patel, who was the first holder. In view of the above, the holding of Bharat Patel decreased from 14,58,058 shares (8.51% of shareholding) to 1,22,224 (0.71% of shareholding), which translates into change shareholding to the extent of 7.80% of total shareholding. It is observed that the aforesaid transaction triggered disclosure requirements under Regulation 13 (4) and 13 (3) of PIT Regulations and Regulation 29 (2) of SAST Regulations.
- (c) It was observed that during the period of the aforesaid transactions Bharat Patel was Director of the Company Jyoti Ltd.,

Minal Patel

- (d) It was observed that as on October 1, 2011, Minal Patel (first holder) along with Bharat Patel was holding 13,35,834 shares in her demat account number INS30015910564804, which was equivalent to 7.80% of total shareholding. On November 29, 2011, Minal Patel sold 13,30,000 shares i.e., equivalent of 7.76% of shareholding, which resulted into decrease in the shareholding of Minal Patel from 7.80% to 0.04% (5,834 shares). It is

observed that the aforesaid transaction triggered disclosure requirement under Regulation 13 (3) of PIT Regulations and Regulation 29 (2) of SAST Regulations.

- (e) It was also observed that, on January 31, 2012, Minal Patel acquired 13,30,000 shares (*equivalent of 7.76% of shareholding*), thereby increasing her shareholding from 0.04% to 7.80% (13,35,834 shares). It is observed that the aforesaid transaction triggered disclosure requirements under Regulation 13 (1) of PIT Regulations and Regulation 29 (1) of SAST Regulations.
- (f) Further, it was observed that on April 17, 2013 Minal Patel from her joint demat account held with Bharat Patel viz., INS300159106564804 transferred 13,35,834 shares to the demat account of Bharat Patel viz., 1204800000011954, which resulted into change in shareholding from 7.80% to 0%. It is observed that the aforesaid transaction triggered disclosure requirements under Regulation 13 (3) of PIT Regulations and Regulation 29 (2) of SAST Regulations.

PAT Financial Consultants Ltd.,

- (g) It was observed that PAT Financial Consultants Ltd., on August 2, 2013, received 13,35,834 shares i.e., 7.80% of total shareholding from Minal Patel & Bharat Patel (joint demat account bearing number IN30015910564804). It is observed that the aforesaid transaction triggered disclosure requirements under Regulation 13 (1) of PIT Regulations and Regulation 29 (1) of SAST Regulations.
- (h) It is also observed that PAT Financial Consultants Ltd., on August 5, 2013 had sold 7,60,000 shares which was equivalent to 4.44% of total shareholding, which resulted into decrease in the shareholding from 7.80% to 3.36%. It is observed that the aforesaid transaction triggered disclosure requirements under Regulation 13 (3) of PIT Regulations and Regulation 29 (2) of SAST Regulations.

- (i) Further, it is observed that, PAT Financial Consultatns Ltd., on August 7, 2013 had bought 7,60,000 shares which was equivalent to 4.44% of total shareholding, which resulted into increase in the shareholding from 3.36% to 7.80%. It is observed that the aforesaid transaction triggered disclosure requirements under Regulation 13 (1) of PIT Regulations and Regulation 29 (1) of SAST Regulations.
- (j) It is observed that in respect of the aforesaid transaction as brought out in the above paragraphs, no disclosures were made by the Noticees viz., Bharat Patel, Minal Patel and PAT Financial Consultants Pvt., Ltd., It is also observed that BSE vide email dated April 23, 2015 had confirmed that no disclosure were received by it for the aforesaid transactions
7. Therefore, it was alleged that the Noticees pursuant to change in their shareholding as detailed above, by not making the required disclosures to the Company and/or BSE (as applicable), had violated the provisions of SEBI (PIT) Regulations, 1992 and SEB (SAST) Regulations, 2011 as mentioned above.
8. The Noticees vide their respective letters dated February 6, 2018 had requested copy of investigation report, copy of statement of various entities / their representatives recorded by SEBI and copies of all correspondence SEBI may have exchanged with anyone in connection with the investigation.
9. Vide letter dated February 14, 2018 the Noticees were informed that all the documents that were related and relied upon in the instant proceedings were provided along with the SCN. It was conveyed to the Noticees that the principles of natural justice have been duly complied with in the instant proceedings and no prejudice has been caused to the Noticees.
10. The Noticees vide a common letter dated February 10, 2018 submitted their replies to the SCN, which is summarized hereunder.

(a) The Noticees denied all the allegations and findings made against them in the said SCN, except to the extent specifically admitted by them.

- (b) *All three entities viz., Bharat Patel, Minal Patel and PAT Financial Consultants Pvt., Ltd., (PAT) are as such family and/or ought to be considered as a group of persons acting in concert. The entire shareholding of PAT is held by Bharat Patel and his family members.*
- (c) *The shareholding pattern of all the three entities as evidenced from the respective demat accounts prior to or after the transfers (and that too without any monetary consideration) have not undergone any change in order to attract any provisions of SEBI (SAST) Regulations. In other words, the transfers were inter-se within the group. The consolidated holding of the group is enclosed herewith for the period from 31/03/2011 for your consideration that there is no change in shareholding pattern of the group as such and there was no violation as regards compliance to SEBI (SAST) and SEBI (PIT) Regulations.*
- (d) *It is also pertinent to note that none of the entities are promoter or a promoter group of Jyoti Ltd.,*
- (e) *It is also pertinent to note that the said transfers were without any monetary consideration and were sheer temporary loan of shares between husband and wife and / or their family company (PAT).*
- (f) *In terms of Regulation 10 of the SEBI (SAST) Regulations, such transfers are exempt particularly having regard to the fact that the said transfers from demat accounts of all the Noticees were without any consideration and amongst immediate relatives and thus cannot attract the provisions of Rule 29 of the SEBI (SAST) Regulations. It also needs to be appreciated that the total percentage of holding amongst the Noticees has not undergone any change which could otherwise attract the provisions of Regulation 29.*
- (g) *We repeat and reiterate that neither the provisions of Regulation 13 (4) or 13 (1) of SEBI (PIT) Regulations or that of Regulation 29 (1) of SEBI (SAST) Regulations are applicable or could be said to be violated. The*

aforesaid transaction of transfer inter-se within the group cannot trigger the disclosure requirements under the aforesaid Regulations.

- (h) It is also submitted that whether Mr. Bharat Patel was a Director of Jyoti Ltd., during the period for he aforesaid transactions does not make any difference in as much as the said transactions cannot be considered as acquisition of shares as contemplated under SEBI (SAST) Regulations or there was percent change in the holding of the group of all the three Noticees (persons acting in concert).*
- (i) The complaint by Jyoti Ltd., was false and motivated to harass us because we raised certain issues like lack of corporate governance, falsification of accounts and diversion of assets of the Company. It will be out of context to point out that the Complainant were fully aware of shareholders and their holding all these time since 2013 and did not find any fault and felt it now to communicate alleged violation to SEBI. In fact, the Regulator must take action against such erring Officer who has failed in their duty if the complaint is found to be any substance.*
- (j) The transfer of 13,35,384 shares from the demat account of Minal Patel to Bharat Patel was as and by way of temporarily loan given by Minal Patel to Bharat Patel. The above short term loan of shares were returned back by Bharat Patel on 02/08/2013.*
- (k) As regards sale of 13,30,000 shares by Minal Patel, it is submitted that these shares were offered as margin to Finquest Securities Pvt., Ltd., (Finquest) as broker for the purpose of carrying other trades as per the requirements of Stock Exchange. The same number of shares were transferred from the account of Finquest to Minal Patel's demat account.*
- (l) In respect of transfer of 13,35,834 shares to PAT, it is submitted that it is change in shareholding inter-se between shareholders who are acting in concerts. The necessary disclosures were already given in time and thus there is no violation of any Rules or Regulations.*

(m) As regards sale of 7,60,000 shares by PAT, it is submitted that the same was towards early pay-in of expected in lieu of margin payment. As the transaction did not materialise the broker returned back the shares.

(n) The disclosure dated 08/09/2010 received by BSE on 09/09/2010 and the various disclosures under SEBI (PIT) and (SAST) Regulations with our covering letter dated 15/04/2015, which was received by BSE on 17/04/2015 are enclosed.

(o) In view of the foregoing explanations, it is respectfully submitted that all the transactions were in accordance with the provisions of SEBI Act, the Rules and Regulations framed thereunder and in accordance with the prescribed Stock Exchange mechanism and none of our transactions which are referred to in the SCN are at all in violation of breach of any of the provisions of the Law including SEBI (PIT) and (SAST) Regulations as appreciated. The allegations in the SCN are completed contrary to the factual position on record. In the event if there any technical infraction, the same may be condoned as no prejudice of any nature whatsoever has been caused to anyone.

11. Further, as requested by the Noticees and in terms of Rule 4 (4) of Adjudicating Rules, the Noticees were provided with an opportunity of personal hearing scheduled on March 7, 2018.

12. The Noticee-1 i.e., Bharat Gupta had appeared on his behalf and on behalf of other two Noticees viz., Minal Patel and PAT Financial Consultants Pvt., Ltd., before me on March 7, 2018. The Noticees reiterated the submissions made by them vide their letter dated February 10, 2018 and made additional submissions vide letter dated March 6, 2018 stating that the complainant has intentionally misrepresented and have made a frivolous complaint against them.

CONSIDERATION OF ISSUES

13. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticees is that they have failed to make disclosures under the relevant provisions of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011.

After perusal of the material available on record, I have the following issues for consideration, viz.,

- a. Whether the Noticees have violated the provisions of Regulation 13 (1), 13 (3), 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1) and 29 (2) of SEBI (SAST) Regulations, 2011?*
- b. Does the violation, if any, attract monetary penalty under Section 15 A (b) of 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?*

ISSUE-1: Whether the Noticees have violated the provisions of Regulation 13 (1), 13 (3), 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1) and 29 (2) of SEBI (SAST) Regulations?

14. Before moving forward, it is pertinent to refer to the relevant provisions of SEBI (PIT) Regulations, 1992 and SEB (SAST) Regulations, 2011, which reads as under:

Regulation 13 (1) of PIT Regulations

Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.

Regulation 13 (3) of SEBI (PIT) Regulations, 1992

Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

Regulation 13 (4) of PIT Regulations

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 ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

Regulation 13 (5) of SEBI (PIT) Regulations, 1992

The disclosures mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of

- (a) the receipt of intimation of allotment of shares or*
- (b) the acquisition or sale of shares or voting rights, as the case may be.*

Regulation 29 (1) of SAST Regulations, 2011

Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

Regulation 29 (2) of SEBI (SAST) Regulations, 2011

Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

FINDINGS

15. Now, I deal with the allegations levelled against the Noticees and record my findings hereunder.

(a) I note that the shares of Jyoti Ltd., are listed in Bombay Stock Exchange (BSE).

(b) I note that it is obligatory on the part of the Directors / Any person who holds more than 5% of shareholding, to make the requisite disclosure to the Stock Exchange and to Company once the prescribed shareholding limits were exceeded, irrespective of the mode and manner of acquisition of the shares.

(c) I note that the Noticees were shareholders of Jyoti Ltd., holding more than 5% of shareholding. I also note that the Noticee-1 was Director of Jyoti Ltd., during period when the transactions of his shareholding triggered disclosure requirements in terms of SEBI (PIT) and (SAST) Regulations.

(d) I note that as at the quarter ended period March 2013, the shareholding of the Noticee-1 i.e., Bharat Patel was 1,21,074 shares which was 0.71% of total shareholding. It was observed that the Noticee-1 pursuant to acquiring 13,35,834 (7.80% of shareholding) shares on April 17, 2013 had crossed

threshold limit of 5% shareholding, which obligates him to disclose to the Company, the number of shares held by him, on becoming such holder, within two days of acquisition of shares, in terms of Regulation 13 (1) of SEBI (PIT) Regulations and Regulation 29 (1) of SEBI (SAST) Regulations. Similarly, pursuant to transfer of 13,35,834 shares to Minal Patel on August 2, 2013, as the change in shareholding of the Noticee had fallen below 5% and also resulted in change of more than 2% of the total shareholding, the Noticee-1 was under an obligation to make the necessary disclosures to the Company within two working days of sale of shares, in terms of Regulation 13 (3) of SEBI (PIT) Regulations and in terms of Regulation 29 (2) of SEBI (SAST) Regulations. Further, the Noticee-1 being the Director of the Company had carried out the aforesaid transactions, which exceeded ₹ 5 lakhs in value or 25,000 shares or 1% of his total shareholding in the Company. Therefore, in terms of Regulation 13 (4) of SEBI (PIT) Regulations, 1992, the Noticee-1 was required to make the requisite disclosures to the Company & BSE.

- (e) Further, the Noticee-1 had contended that the transfer of 13,35,834 shares from Noticee-2 to Noticee-1 on April 17, 2013 was towards loan given by Noticee-2 to Noticee-1, which were returned by the Noticee-1 on August 2, 2013. I note that there was no record produced by the Noticees before me to substantiate that the aforesaid transactions were towards loan. For the purpose of assumption, if the aforesaid transaction was towards loan, in terms of Regulation 58 of SEBI (Depositories and Depository Participants) Regulations, the shares pledged have to be identified separately as “pledged” shares. I note from the demat statements of the Noticees 1 & 2 that there was no entry of pledge as regards the aforesaid transactions. In this regard, I refer to the observations made by Hon’ble Securities Appellate Tribunal (SAT) in Appeal No. 83 of 2010 in Liquid Holdings Pvt., Ltd., Vs., SEBI decided on March 11, 2011, which reads as – *“The Law also prescribes a mode for the creation and revocation of pledge. The parties cannot agree to create a pledge contrary to the provisions of Regulation 58..... In the case of shares held in demat form,*

the Depositories Act and the Regulations framed thereunder provide the manner in which the pledge is to be created and invoked.....". In view of the above, I find no merit in the argument of the Noticees that the transactions of the Noticees were for the purpose of loan.

- (f) I find that the Noticee-1 had not made the requisite disclosures in respect of the aforesaid transactions, in terms of Regulation 13 (1), 13 (3), 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1) and 29 (2) of SEBI (SAST) Regulations, 2011 to the Company and to BSE (as applicable).
- (g) I note that the Noticee-2 i.e., Minal Patel was holding 13,35,834 shares as at the quarter ended period September 2011, which constitutes 7.80% of total shareholding. I note that pursuant to sale of 13,30,000 shares on November 29, 2011, the shareholding of Minal Patel decreased from 13,35,834 shares to 5,834 shares, which in terms of percentage was from 7.80% to 0.04%. I note that the aforesaid transaction had triggered disclosure requirement under Regulation 13 (3) of SEBI (PIT) Regulations and Regulation 29 (2) of SEBI (SAST) Regulations, as the change in shareholding of the Noticee had fallen below 5% and also resulted in change of more than 2% of the total shareholding. Further, it was observed that pursuant to acquisition of 13,30,000 shares by the Noticee-2 on January 31, 2012, the shareholding of the Noticee-2 increased from 5,834 shares to 13,35,834 shares, which in terms of percentage was from 0.04% to 7.80%. I note that the aforesaid transaction had triggered disclosure requirement under Regulation 13 (1) of SEBI (PIT) Regulations and Regulation 29 (1) of SEBI (SAST) Regulations, as the acquisition of shares by the Noticee-2 exceeded the threshold limit of 5%. Further, the Noticee-2 on April 17, 2013 had sold her entire shareholding of 7.80% i.e., 13,35,834 shares, thereby her shareholding decreasing to 0%, which triggered disclosure requirement under Regulation 13 (3) of SEBI (PIT) Regulations and Regulation 29 (2) of SEBI (SAST) Regulations, as the

change in shareholding fallen below 5% and also exceeded 2% of the total shareholding in the Company.

- (h) The Noticee-2 submitted that on November 29, 2011, 13,30,000 shares were offered to Finquest Securities Pvt., Ltd., towards margin for the purpose of carrying other trades as per the requirements of Stock Exchange. These shares were subsequently received back by the Noticee-2 on January 31, 2012. I note that in support of her claim to justify that the aforesaid transaction was for the purpose of margin requirement, I note that there is no documentary evidence viz., corresponding client ledger with the stock broker reflecting that these shares were offered towards clients margin account, were made available to me. In the absence of same, I am not inclined to consider the claim of the Noticee-2 that the transfer of 13,30,000 shares to the beneficiary account of the stock broker was for the purpose of margin. Hence, I consider the aforesaid transfer of shares transaction from one beneficiary account to another beneficiary account as off-market sale, as the same resulted in change in beneficial ownership, which requires disclosure requirements in terms of SEBI (PIT) & (SAST) Regulations.
- (i) I find that the Noticee-2 had not made the requisite disclosures in respect of the aforesaid transactions, in terms of Regulation 13 (1), 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1) and 29 (2) of SEBI (SAST) Regulations, 2011 to the Company and to BSE (*as applicable*).
- (j) I note that the Noticee-3 i.e., PAT Financial Consultants Pvt., Ltd., (PAT) had acquired 13,35,834 shares i.e., 7.80% of total shareholding of the Company on August 2, 2013, which resulted into acquisition of more than 5% of shares, which obligates the Noticee to make disclosure in terms of Regulation 13 (1) of SEBI (PIT) Regulations and Regulation 29 (1) of SEBI (SAST) Regulations. Pursuant to transfer of 7,60,000 shares (equivalent to 4.44% of shareholding) by PAT on August 5, 2013, the shareholding of PAT decreased from 7.80% (7,60,000 shares) to 3.36% (5,75,834 shares),

which triggered disclosure requirements under Regulation 13 (3) of SEBI (PIT) Regulations and Regulation 29 (2) of SEBI (SAST) Regulations, as the change in shareholding of PAT exceeded 2% of total shareholding in the Company. On August 7, 2013 pursuant to acquisition of 7,60,000 shares by PAT, the shareholding of PAT increased from 3.36% to 7.80%, which resulted into acquisition of more than 5% of shares, which obligates the Noticees to make disclosure in terms of Regulation 13 (1) of SEBI (PIT) Regulations and Regulation 29 (1) of SEBI (SAST) Regulations.

(k) The Noticee-3 submitted that transfer of 7,60,000 shares on August 5, 2013 was towards early pay-in of expected transaction in lieu of margin payment and as the transaction did not materialize, the shares were returned back on August 7, 2013. In this connection, I note that there is no evidence before me to substantiate that the Noticee had sold shares in the market and that the aforesaid transfer of shares to stock broker's account was towards early pay-in of its sale obligations in the market. Even it were to be a sale transaction, there is no exemption from making disclosures. I also note that these shares were returned to the Noticee-3 on August 7, 2013. Therefore, I consider the transfer of 7,60,000 shares to the stock broker's account and back to the Noticee's account as off-market transaction, wherein beneficial ownership changed, which therefore requires disclosure requirements in terms of SEBI (PIT) & (SAST) Regulations.

(l) The Noticees in their reply submitted that the aforesaid transfer of shares were inter-se within the group, for which no monetary consideration was received / paid and there was no change in shareholding pattern of the group and therefore there is no requirement of disclosures to be made under SEBI (PIT) and (SAST) Regulations. In this regard, I note that any transfer of securities from the beneficial owner account to another beneficiary account would result in change in ownership. Therefore, it is not open for anyone to transfer his shares to various entities (*even within the group*) and still claim that such transfer is not a sale / purchase and there is no change in shareholding by the group. I note that the Noticees

does not belong to the promoter group. Even in the case of inter-se transfer of shares among promoters, it is mandatory to make disclosures to the Company and Stock Exchange, where the shares are listed, upon crossing the threshold limit. Therefore, I find no merit in the contention of the Noticees that the transfer of shares among the group of families & family entity, does not constitute change in beneficial ownership.

(m) In this regard, I would like to quote the observations of the Hon'ble SAT in the matter of Premchand Shan and Others Vs., SEBI dated February 21, 2011, which reads as “.....*When a Law prescribes a manner in which a thing is to be done, it must be done only in that manner...*”

(n) The Noticees in their submissions stated that all the aforesaid transactions for which the instant proceedings have been initiated, are exempted under Regulation 10 of SEBI (SAST) Regulations from making disclosures under Regulation 29 of SEBI (SAST) Regulations. I note that Regulation 10 of SEBI (SAST) Regulations provides for exemptions from the obligation to make open offer under Regulation 3 and Regulation 4 in respect of acquisition of shares in different scenarios. It does not provide for any exemption as regards non-disclosure of shares beyond certain threshold. Therefore, I find that the argument put forth by the Noticees does not find any substance in precluding from making the requisite disclosures under SEBI (SAST) Regulations.

(o) The Noticees submitted that they have made the requisite disclosures to BSE on September 8, 2010 and April 15, 2015. On perusal of the documents submitted to BSE, I note that the disclosures made by the Noticees pertain to the relevant period of 2010 and 2015 and it does not pertain to the transactions carried out by them for which the instant proceedings have been initiated. Therefore, I am not inclined to consider the submission of the Noticees that they have made the requisite disclosures to BSE.

(p) Therefore, in view of the foregoing, I find that the Noticees had not made the requisite disclosures under the provisions of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 2011, to the Company and to BSE (as applicable).

16. The object of requiring such disclosure to be made with two days under SEBI (PIT) and SEBI (SAST) Regulations, is with a view to ensure that there is no abuse on account of investor being not aware of such change in shareholding of entities holding more than 5%. I note that non-disclosure by persons on acquisition / sale of shares beyond the threshold limit is a serious irregularity as the investing public would believe that there is no change in the shareholding of persons holding more than 5% of shares in the Company.

17. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that:

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

18. In view of the foregoing, I conclude that the Noticees by not making the requisite disclosures with regard to their change in shareholding, in terms of SEBI (PIT), 1992 and (SAST) Regulations, 2011 have violated the following regulatory provisions.

Sl. No.	Name of the Noticee	Violation of the provisions of
1	Bharat Patel	Regulation 13 (1), 13 (3), 13 (4) read with Regulation 13 (5) of SEBI (PIT)

		Regulations and Regulation 29 (1), 29 (2) of SEBI (SAST) Regulations.
2	Minal Patel	Regulation 13 (1), 13 (3), read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1), 29 (2) of SEBI (SAST) Regulations.
3	PATS Financial Consultants Pvt., Ltd.,	Regulation 13 (1), 13 (3), read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1), 29 (2) of SEBI (SAST) Regulations.

ISSUE – 2: Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act.?

19. It is a well-known fact and practice that as per the requirements of SEBI (PIT) Regulations, there is a requirement of timely disclosure of change in shareholding beyond certain threshold limits. It is obligatory on the part of the person to make timely disclosures to Stock Exchange and to the Company. By not making the requisite disclosures under SEBI (PIT) & (SAST) Regulations, the Noticees have failed to comply with the statutory requirements of Law. The timely disclosure is mandated under these Regulations for the benefit of the investors at large. There can be no dispute that compliance with the provisions of the Regulations is mandatory and it is the duty of SEBI to enforce compliance of these Regulations. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all.
20. As the violation of the statutory obligation under the provisions respective Regulations of SEBI (PIT) and (SAST) Regulations have been established against the Noticees, the Noticee are liable for monetary penalty under Section 15 A (b) of SEBI Act.
21. The provisions of Section 15 A (b) of SEBI Act are reproduced hereunder.

Penalty for failure to furnish information, return, etc.

Section 15A of SEBI Act– *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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

ISSUE – 3 - If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

22. While determining the quantum of monetary penalty under Section 15 A (b) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 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.*

23. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the Noticee's default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticee as a result of default. However, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents investors from taking a well-informed investment decision.

24. There is no dispute that the Noticees failed to make the requisite disclosures to the BSE and the Company in terms of SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, which would have deprived investors in taking informed decision. Any lapse in such matters would be detrimental to the interest of investors. Therefore, I am not inclined to view the lapse on the part of the Noticees leniently and consider it necessary to impose monetary penalty which would act as deterrent to the Noticees in future.

ORDER

25. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the Adjudicating Rules, I hereby impose monetary penalty on the Noticees, under Section 15 A (b) of SEBI Act, as under:

Sl. No.	Name of the Noticee	Penalty imposed (in ₹)	Violation of the provisions of
1	Bharat Patel	₹ 2,00,000 (Rupees Two lakhs only)	Regulation 13 (1), 13 (3), 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1), 29 (2) of SEBI (SAST) Regulations.
2	Minal Patel	₹ 2,00,000 (Rupees Two Lakhs only)	Regulation 13 (1), 13 (3), read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1), 29 (2) of SEBI (SAST) Regulations.
3	PATS Financial Consultants Pvt., Ltd.,	₹ 2,00,000 (Rupees Two Lakhs only)	Regulation 13 (1), 13 (3), read with Regulation 13 (5) of SEBI (PIT) Regulations and Regulation 29 (1), 29 (2) of SEBI (SAST) Regulations.

The said penalty imposed on the Noticees, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

26. 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

27. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the General Manager, Enforcement Department, DRA-I, SEBI, in the format as given in table below

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)	

28. In terms of rule 6 of the Adjudicating Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: 14 March 2018

Place: Mumbai

B J DILIP
Adjudicating Officer