

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/GR/AE/2019-20/6243-6249]**

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) RULES, 1995 AND SECTION 23 I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005

In respect to

Mr. Anilkumar T. Patel (PAN AFSP1262N), **Mr. Anand A. Patel** (PAN AFSP1260Q); **Mr. Asit A. Patel** (PAN ABBP2987K); **Mr. Manibhai V. Patel** (PAN: AHKPP8276C); **Mr. Ajitkumar T. Patel** (PAN: AFSP1261R); **M/s. Apollo Infratech Pvt. Ltd.** (PAN: AAGCA1019A) and Gujarat Apollo Industries Ltd (PAN: Not Available)

In the matter of

M/s. Gujarat Apollo Industries Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that in the scrip of M/s. Gujarat Apollo Industries Ltd. (hereinafter referred to as '**the Company**'), during the period from April 01, 2008 to March 31, 2009 (hereinafter referred to as the '**Investigation Period**'), the following promoters of the company viz. Mr. Anilkumar T Patel, Mr. Anand A Patel, Mr. Asit A. Patel, Mr. Manibhai V Patel, Mr. Ajitkumar T. Patel and M/s. Apollo Infratech Pvt. Ltd., and the company viz. Gujarat Apollo Industries Ltd (hereinafter collectively referred to as '**the Noticees**') had violated the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as '**Takeover Regulations**') and/ or SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and/or clauses under Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of the PIT Regulations, and / or the provisions

of the Listing Agreement read with Section 21 of the Securities Contracts (Regulation) Act, 1956, (hereinafter referred to as '**SCRA**'), as applicable.

APPOINTMENT OF ADJUDICATING OFFICER

2. Ms. Anita Kenkare was appointed as the Adjudicating Officer vide order dated September 24, 2013 under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Section 23 I of SCRA to inquire into and adjudge under Section 15A(b) and/ or Section 15 HB of the SEBI Act, as applicable, and/ or under Section 23E of the Securities Contracts (Regulation) Act, 1956, for the alleged violations committed by the Noticees. Pursuant to the transfer of erstwhile AO, the undersigned has been appointed as AO in the matter vide communique dated October 23, 2019.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. SEBI *inter alia* observed that the Noticees, which included the promoters/ directors of the company and the company itself, had violated the provisions of Takeover Regulations and/ or PIT Regulations and/or Clauses under Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of the PIT Regulations, and / or the provisions of the Listing Agreement read with Section 21 of SCRA as applicable, as per details given below:

Sr. No.	Name of the Promoter	Designation	Allegation/Provisions violated
1	Mr. Anilkumar T. Patel	Founder Chairman & Director	Regulation 13(4) read with 13(5) of PIT Regulations and Clauses 3.2-2, 3.2-5 and 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations
2	Mr. Anand A. Patel	Executive Director	Regulation 13(4) read with 13(5) of PIT Regulations
3	Mr. Asit A. Patel	Managing Director	Regulation 13(4) read with 13(5) of PIT Regulations
4	Mr. Manibhai V Patel	Director	Regulation 13(4) read with 13(5) of PIT Regulations
5	Mr. Ajitkumar T. Patel	Director	Regulation 7(1) read with 7(2) and Regulation 7(1A) read with 7(2) of Takeover Regulations; and Regulation 13(1), Regulation 13(3) read with Regulation 13(5) and Regulation 13(4) read with Regulation 13(5) of PIT Regulations

6	M/s. Apollo Infratech Pvt. Ltd.	Promoter	Regulation 7(1) read with 7(2) of Takeover Regulations; and Regulation 13(1) of PIT Regulations
7	Gujarat Apollo Industries Ltd	Company	Regulation 8A(4) and 7(3) of Takeover Regulations; and Clause 31(d) of the Listing Agreement read with Section 21 of SCRA

4. Accordingly, vide Show Cause Notice Nos. EAD-6/AK/RSL/29890/2013, EAD-6/AK/RSL/29886/2013, EAD-6/AK/RSL/29898/2013, EAD-6/AK/RSL/29902/2013 and EAD-6/AK/RSL/29892/2013 dated November 21, 2013, No. EAD-6/AK/RSL/32849/2013 dated December 17, 2013 and No. EAD-6/AK/RSL/30488/2013 dated November 27, 2013 (hereinafter referred to as **SCNs**) issued under Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the '**SEBI Rules**'), and/or Rule 4 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as the '**SCR Rules**') the Noticees were advised to show cause as to why an inquiry should not be held against them and penalty be not imposed under Section 15A(b) and/ or Section 15HB of the SEBI Act, as applicable, and/ or under Section 23E of the SCRA, as applicable, for the alleged violations specified in the SCNs.
5. Subsequent to the same, the Noticees viz. Mr. Anilkumar T Patel, Mr. Asit A. Patel and Mr. Anand A. Patel, Gujarat Apollo Industries Ltd vide their letters dated December 09, 2013, and M/s. Apollo Infratech Pvt. Ltd. vide letter dated December 10, 2013, Noticee Mr. Ajitkumar T. Patel vide letter dated December 27, 2013 requested for 30 days time for submission of reply to the SCN.
6. In the interest of natural justice, vide individual hearing notices dated December 10, 2013, the Noticees viz. Mr. Anilkumar T Patel, Mr. Manibhai V Patel, Mr. Ajitkumar T. Patel ,M/s. Apollo Infratech Pvt. Ltd., and Gujarat Apollo Industries Ltd were advised to submit their reply by January 01, 2014. The Noticees were also provided with an opportunity of hearing on January 15, 2014. Further, vide individual hearing notices dated December 18 2013, the Noticees viz. Mr. Anand Anilbhai Patel and Mr. Asit Anilbhai Patel were advised to submit their reply by January 06, 2014 and were also provided with an opportunity of hearing on January 15, 2014.

7. Subsequent to the same, vide email dated December 31, 2013, Noticee Mr. Asit A. Patel *inter alia* communicated that he neither received the physical copy of the SCN, nor, any email. Hence, vide email dated January 09, 2014, the scanned copy of the SCN and the hearing notice were sent to him. In response, the Noticee Mr. Asit A. Patel vide letter dated January 11, 2014, requested for 30 days time for submission of reply to the SCN, as he had received the SCN through email only on January 10, 2014. Also vide letter dated January 13, 2014, Mr. Asit A. Patel requested to postpone the hearing scheduled on January 15, 2014 to any date after February 17, 2014. Accordingly, vide hearing notice dated January 16, 2014, the Noticee viz. Mr. Asit A. Patel was advised to submit his reply by February 15, 2014 and was provided with an opportunity of hearing on February 21, 2014.
8. On January 15, 2014, Mr. Ashok Mehta, the Authorised Representative (AR) of Noticees viz. Mr. Anilkumar T. Patel, Mr. Anand A. Patel, Mr. Manibhai V. Patel and Gujarat Apollo Industries Ltd, submitted a letter dated January 14, 2014 requesting to keep the matter either on January 20, 2014 or any day between February 01, 2014 and February 10, 2014. Hence, the hearing in the matter was adjourned to January 20, 2014.
9. The Noticees viz. **Mr. Anilkumar T. Patel, Mr. Anand A. Patel and Mr. Manibhai V. Patel** vide their individual respective letters dated December 28, 2013, Noticee **Mr. Asit A. Patel** vide letter dated January 31, 2014, Noticee **M/s. Apollo Infratech Pvt. Ltd.** vide letter dated December 27, 2013 and Noticee **Mr. Ajitkumar T. Patel** vide letter dated January 2014 while denying the allegations have *inter alia* made similar submissions as follows:
- a) *That they have not contravened any provisions as alleged;*
 - b) *That the alleged non-compliances are in fact mere irregularities of technical nature which have never had any adverse or favorable consequences on any investor or capital market;*
 - c) *That as regards the allegation regarding non-disclosure under **Regulation 13(4) of the PIT Regulations** resulting in change in holding exceeding 25,000 shares from last disclosure as on December 22, 2008 by Noticee Mr. Anilkumar T. Patel, on December 22, 2008 and on June 20, 2009 by Noticee Mr. Anand A. Patel, on April 11, 2008, April 21, 2008, October 01, 2008, December 22, 2008 and June 20, 2009 by Noticee Mr. Asit A. Patel, on February 11, 2009 by Noticee Mr. Manibhai V. Patel, it has been inter alia submitted as follows:*
 - i. *That the same were credited to their account towards bonus shares;*

- ii. *That the company had proposed and allotted bonus shares to all the shareholders in the ratio of 1:2. Further, that the company had in due compliance of the listing requirements, sent all the necessary notices and information to the stock exchange in time;*
- iii. *That all the existing shareholders of the company had acquired such shares in a uniform and very transparent manner, as the Board of Directors of the company duly intimated not only the stock exchanges, but, also the public office of the Ministry of Corporate Affairs (MCA) about the increase in share capital;*
- iv. *That each and every shareholder and the public in the market were aware, in advance, that the company was declaring bonus shares;*
- v. *That the company made all the intimations etc. to the stock exchange in time and that they neither got the shares privately, nor, in preference to other shareholders, nor, did they deal in those shares in any illegal manner;*
- vi. *That there has been a total transparency and public knowledge about the acquisition of shares by them, hence, by no stretch of imagination it can become a matter of contravention of PIT Regulations;*
- vii. *That, however, there was a technical default on part of the individuals as they did not make separate subsequent intimation under Regulation 13(4) and 13(5) of the PIT Regulations;*
- viii. *That this is normal human error of "NIL" consequences to one and all, concerned or unconcerned;*
- d) *That the SCN does not mention that because of this technical error, any other person has ever faced or attracted any disadvantage;*
- e) *That there has been a long and unreasonable delay of more than five years in issuance of the SCNs, under the circumstances, the present proceedings are not maintainable and sustainable on more than one ground, including under the Limitation Act;*
- f) *That since everything has been done in a systematic manner and with full prescribed transparency, there has neither been any loss to anyone, nor, any gain to anyone. Also, the act was not done to conceal anything.*

10. Additionally, the Noticee **Mr. Anilkumar T Patel** vide letter dated **December 28, 2013** has *inter alia* also submitted as follows:

- a) As regards **violation of Clause 3.2-5 and 3.2-2 of Model Code of Conduct of PIT Regulations** due to having bought 1,000 shares of the company on Bombay Stock

Exchange Ltd. (hereinafter referred to as '**BSE**') on August 25, 2008 through 8 trades, when the trading window of the company was supposed to be closed, it has been submitted that:

- i. That the referred purchase of 1,000 shares was done on August 25, 2008 only after the necessary notice of the proposal of the Board was conveyed to BSE on August 23, 2008;
 - ii. that the evidence of company having informed the Stock exchange on August 23, 2008 has been provided by way of activity report of the fax;
 - iii. That the prescribed "Model Code of Conduct of PIT for Listed Companies" (hereinafter referred to as 'Model Code') came into effect only on November 19, 2008 when SEBI inserted the following clause "without diluting it in any manner and ensure compliance of the same", and accordingly before that date it was not necessary for the companies to adopt the advised Model Code verbatim;
 - iv. That irrespective of above law, he had not contravened the desired code (not in existence on that day) because as per clause 3.2-4 of the Model Code, the trading window shall be opened 24 hours after information referred as per clause 3.2.3 of the Model Code (declaration of financial results; declaration of dividends; issue of securities by way of public/ rights/ bonus etc.; any major expansion plan or execution of new projects; amalgamation, mergers, takeovers and buy-back; disposal of whole or substantially whole of the undertaking; any changes in policies, plans or operations of the company) is made public, and as mentioned above the information was sent to Stock Exchange on August 23, 2008 and 1000 shares were purchased from the market on August 25, 2008;
- b) That as regards **violating Clause 4.2 of Model Code of Conduct of PIT Regulations** by entering into opposite transaction within six months due to purchase of 175 shares on March 03, 2009 and selling 175 shares on March 04, 2009 on BSE, it has been submitted as follows:
- i. That he had neither bought, nor, sold such shares;
 - ii. That after receipt of the SCN he enquired the details from the broker, when it was informed by the broker that a punching error had happened on March 03, 2009 and upon realization of the facts, the entry was reversed by the broker on March 04, 2009;
 - iii. That this is a normal human working error by third party, hence there is no violation of clauses 3.2-2 and 4.2 of the Model Code of Conduct.

11. The Noticee **Mr. Manibhai V. Patel** vide letter dated December 28, 2013, as regards the allegation regarding **non-disclosure under Regulation 13(4) of the PIT Regulations** resulting in change in holding exceeding 25,000 shares from last disclosure *inter alia* as on July 15, 2008 and October 25, 2008 has *inter alia* also submitted as follows:
- a) *That he did not file the post action report of an individual, as prescribed, in the year 2008 for transactions undertaken during the period from April 2008 to October 2008 as he relied upon his assistant who was kept for taking care of corporate law compliances;*
 - b) *That, however, the non compliance was absolutely technical error which never had any adverse consequences on anybody;*
 - c) *Further, that the whole of the information was already in public domain since then, therefore in letter and spirit of the provisions of the PIT Regulations, he had not made any actual non-compliance.*
12. The Noticee **Mr. Ajitkumar T. Patel** vide letter dated January 2014 has *inter alia* submitted as follows:
- a) *That the reply is without prejudice to his right to seek and obtain complete information/ copy of documents referred to and relied upon in the SCN/ investigation report and cross examination by him of persons on whose statements SEBI is relying upon;*
 - b) *That he should not be construed to have accepted or admitted anything stated in the SCN, except save and except where the same has been expressly admitted by him in the reply;*
 - c) *That the true and correct facts as regards contents of para (2) of the SCN is that by virtue of his acquisition of 1,000 shares on September 26, 2008, acquisition of 1,66,467 shares on October 01, 2008, sell of 43,300 shares on December 15, 2008, acquisition of 1,45,406 shares on December 16, 2008, sell of 2,00,000 shares on December 17, 2008, sell of 3,13,523 shares on January 23, 2009 and issue of 1,56,761 bonus shares on February 11, 2009, the post transaction holding was 2,44,950 shares (2.33%), 4,11,417 shares (3.92%), 3,68,117 shares (3.51%), 5,13,523 shares (4.89%), 3,13,523 shares (2.99%), nil shares and 1,56,761 shares (1.41%) respectively;*
 - d) *That as regards the alleged violation of Regulation 7(1) and 7(1A) read with 7(2) of the Takeover Regulations, it has inter alia been submitted as follows:*

- i. *That violation of Regulation 7(1) read with 7(2) is redundant, as it is evident from the above that at no point of time shareholding exceeded the threshold limit of 5% as is wrongly alleged;*
 - ii. *That in view of the above, the allegation that shareholding decreased by 2% on December 16, 2008 does not hold, as in fact, the holding increased by 1.38% on December 16, 2008;*
 - iii. *That the change in holding consequent to sell of 2.99% of the shareholding on January 23, 2009 was duly informed to the company on January 25, 2009, however, intimation to the stock exchange was left out inadvertently. A copy of the disclosure to the company was provided;*
 - iv. *That even though disclosures in prescribed form in terms of Regulation 7(1) and 7(2) of the Takeover Regulations remained to be made, BSE was in knowledge of the acquisitions by virtue of filings made by the company and intent of the regulation to dissipate information to all concerned is more than adequately met within the extant case;*
 - v. *That there was no intention of suppressing the facts of the sale, as such, no adverse inference may be drawn from the alleged failure to make disclosure;*
 - vi. *That there was no malafide intent to defraud or otherwise, which is apparent from the fact that the disclosures were filed with the company, hence, duly complied with the requirement;*
 - vii. *That violation of filing to be made under Regulation 7(1) and 7(2) of the Takeover Regulations was merely a technical and inadvertent lapse to be condoned;*
- e) *That as regards the allegation regarding **non-disclosure under Regulation 13(3) and 13(4) read with 13(5) of the PIT Regulations**, it has been submitted as follows:*
- i. *That the alleged violation of Regulation 13(3) read with 13(5) of the PIT Regulations does not hold as he had never been in possession of more than 5% shares at any point of time. Therefore the compliance under Regulation 13(3) was never necessitated;*
 - ii. *That with respect to decrease in shareholding by 2.99% on January 23, 2009, the compliance under PIT Regulations was duly met with by intimating the company on January 24, 2009 in Form C;*
 - iii. *That timely disclosures of the acquisitions made on September 26, 2008, October 01, 2008, December 16, 2008 and February 11, 2009 and sales made on December 15, 2008, December 17, 2008 and January 23, 2009 in the prescribed*

format to the company were made. A copy of Form D pertaining to the respective disclosures made as such was provided;

- iv. that it is in fitness of things to assume that once disclosures are made, presumption of receipt thereof is submitted and acknowledged by the company;
- v. that they reserve their right to cross examine the officials of the company in the event of a denial by the company as regards non-receipt of the aforesaid disclosures;
- vi. That nevertheless the fact was communicated to the company and thereby there was no malafide intent in inadvertent non-compliance with BSE;
- vii. Therefore, violation of compliance of Regulation 13(4) and 13(5) of the PIT Regulations does not stand.

- f) That the only act of non-disclosure to BSE was post transaction of January 23, 2009 subsequent to amendment dated November 19, 2008 pursuant to PIT Regulations;
- g) That this has neither led to wrongful gains nor had the investors suffered any loss on account of the said omission;
- h) That the lapse is not repetitive in nature and calls for a lenient view;
- i) That as regards violation of Clause 4.2 of Model Code of Conduct of PIT Regulations, as inserted by the SEBI (PIT)(Amendment) Regulations, 2008 w.e.f. November 19, 2008, due to entering into an opposite transaction (i.e. buy after sell or sell after buy) on December 15, 2008, December 16, 2008, December 17, 2008 and January 23, 2009, it has been submitted *inter alia* as follows:
 - i. That the subsequent buy and sell transactions were executed inadvertently;
 - ii. That nevertheless, there was no malafide intent involved;
 - iii. That a loss of Rs. 2,13,021/- was made on the same.

13. The Noticee **M/s. Apollo Infratech Pvt. Ltd.** vide letter dated December 27, 2013 has also *inter alia* submitted as follows:

- a) That as regards violation of **Regulation 7(1) read with 7(2) of the Takeover Regulations**, it has *inter alia* been submitted as follows:
 - i. That it is on record and admitted that the requirement of disclosure in the prescribed form in terms of Regulation 7(1) and 7(2) of the Takeover Regulations has been complied to with respect to the company;
 - ii. That even though disclosures in prescribed form in terms of Regulation 7(1) and 7(2) of the Takeover Regulations to BSE remained to be made, BSE was in

knowledge of the acquisitions by virtue of filings made by the company and intent of the regulation to dissipate information to all concerned is more than adequately met with in the extant case;

- iii. That there was no intention of suppressing the facts of the acquisition, as such, no adverse inference may be drawn from the alleged failure to make disclosure;*
- iv. That there was no malafide intent to defraud or otherwise, which is apparent from the fact that the disclosures were filed with the company, hence, duly complied with the requirement;*
- v. That violation of filing to be made under Regulation 7(1) and 7(2) of the Takeover Regulations was merely a technical and inadvertent lapse to be condoned;*
- vi. That the act of non-disclosure to BSE had neither led to wrongful gains for them, nor, had the investors suffered any loss on account of the said omission;*

*b) That as regards violation of **Regulation 13(1) of the PIT Regulations**, it has inter alia been submitted as follows:*

- i. That they had disclosed the acquisition to the company on January 25, 2009. A copy of the Form A filed with the company was provided;*
- ii. That it is in fitness of things to assume that once disclosure is made presumption of receipt thereof is admitted and acknowledged by the company;*
- iii. That it would be inappropriate to conclude that no disclosure was made in terms of Regulation 13(1) of the PIT Regulations;*
- iv. That that they reserve their right to cross examine the officials of the company in the event of a denial by the company as regards non-receipt of the aforesaid disclosures;*
- v. That they cannot be held liable for the acts of omission of the company.*

14. The Noticee viz. **Gujarat Apollo Industries Ltd** vide its letter dated December 28, 2013 made the following main submissions –

- a) They have not contravened the provisions as alleged in the SCN.*
- b) That as regards violation of Regulation 8A(4) of the Takeover Regulation, it is submitted that they have filed the post action report. Further, as regards BSE's email intimating that no such disclosure has been received by them, they are not in a position to make any comment. It is reiterated that they have done the necessary compliance.*

- c) That as regards violation of Regulation 7(3) of the Takeover Regulation, they are not in a position to comment, whether the disclosures is received by the stock exchange in time or not. It is reiterated that they have done the necessary compliance.
- d) That as regards violation of Clause 31(d) of the listing agreement read with Section 21 of SCRA, it is stated that the company proposed and allotted bonus shares to all the shareholders in the ratio 1:2 and in due compliance of the listing requirements, sent all the necessary notices and information to the stock exchange in time as per the following particulars;

Particulars	Particulars	Particulars
Proposed date of Board meeting – “23 rd August, 2008”	Date by which stock exchange required to be intimated – “14 th August, 2008”	Date on which intimated “14 th August, 2008”
Record date “22 December 2008”	At least 42 days before Record date	24.10.2008 [Letter by Company] 06.11.2013 [received by the Exchange]
Board meeting regarding allotment of shares “3 rd January, 2009”	24.12.2008	24.12.2008

- e) The above explanation and information confirm that all the existing shareholders of the company acquired shares in a uniform and very transparent manner and the same was intimated not only to the stock exchanges but also to the public office of the Ministry of Corporate Affairs about this increase in share capital. There has been a total transparency and public knowledge about the acquisition of shares,
- f) The SCN is issued after a gap of more than 5 years from the above stated transactions of “NIL” consequences. There is a long and unreasonable delay in issuance of the subject notice.
- g) None of the factors mentioned in Section 15J of the SEBI Act, 1992 would have any application in this case.

15. On January 20, 2014, Mr. Ashok Mehta, Authorised Representative (AR) of Mr. Anilkumar T Patel, Mr. Anand A. Patel, Mr. Manibhai V. Patel, and Gujarat Apollo Industries Ltd appeared on their behalf and reiterated the submissions made vide their individual letters dated December 28, 2013. The AR on behalf of Mr. Anand A. Patel *inter alia* further submitted

that the shares were received by the Noticee Mr. Anand A. Patel by way of bonus issue and preferential allotment and that a detailed reply with respect to the non-disclosure vis-à-vis the preferential allotment would be submitted by January 27, 2014. The AR on behalf of the Noticee Mr. Manibhai V. Patel *inter alia* further stated that as regards the two acquisitions resulting in the Noticee Mr. Manibhai V. Patel crossing 25,000 shares, written submissions would be given by January 27, 2014. It was clarified to the AR during the hearing that date when Noticee Mr. Manibhai V. Patel acquired shares exceeding 25,000 was inadvertently mentioned in the SCN as “15.07.2008” in the Remarks column (in table at para 2), instead of “15.10.2008”. The AR was *inter alia* on behalf of Mr. Anilkumar T. Patel advised to submit a copy of the demat statement/ contract notes of Mr. Anilkumar T. Patel with respect to 175 shares bought on March 03, 2009 and sold on March 04, 2009.

16. Further Ms. Poonam D. Gadkari and Ms. Deepika Motagi, Authorized Representatives (**ARs**) of the Noticees viz. Mr. Ajitkumar T. Patel and M/s. Apollo Infratech Pvt. Ltd. appeared on their behalf and reiterated the submission made by the said Noticees in their letters of January, 2014 and December 27, 2013 respectively. The ARs on behalf of the Noticee Mr. Ajitkumar T. Patel further *inter alia* submitted that the Noticee Mr. Ajitkumar T. Patel had made the disclosures under Regulation 7(1A) read with 7(2) of the Takeover Regulations on January 23, 2009 only to the Company, but, had inadvertently failed to disclose it to the stock exchange. It was noted and recorded in the hearing minutes that though the submissions made to the company as stated by the ARs of the Noticee Mr. Ajitkumar T. Patel were stamped under the company’s seal, but, neither were the documents initialed/ signed by any company official, nor, was there was any date of receipt of documents by the company. Similarly, the AR on behalf of the Noticee M/s. Apollo Infratech Pvt. Ltd. *inter alia* submitted that the Noticee M/s. Apollo Infratech Pvt. Ltd. had made the disclosure under the Takeover Regulations and PIT Regulation to the Company, but, the said Noticee too had inadvertently failed to disclose it to the stock exchange under the Takeover Regulations. It was here too noted and recorded in the minutes of the hearing that though the submissions made to the company were acknowledged by the company, however, there was no date of receipt of documents by the company.
17. Further, the Noticee Mr. Asit A. Patel failed to appear for the hearing scheduled on February 21, 2014, hence, another opportunity of hearing was granted on March 14, 2014. Vide email dated March 13, 2014, Noticee Mr. Asit A. Patel requested to take the written submissions

and the explanation given during the hearing of the other directors and the company as his final submission in the matter and further stated that he would not require any further personal hearing. Subsequent to the hearing, further written submissions dated January 29, 2014 were received from Noticee Mr. Anilkumar T. Patel, written submissions dated January 27, 2014 were received from Noticee Mr. Anand A. Patel, written submissions dated January 24, 2014 were received from Noticee Mr. Manibhai V. Patel, written submissions dated January 21, 2014 were received from Noticee Mr. Ajitkumar T. Patel and written submissions dated January 21, 2014 were received from Noticee M/s. Apollo Infratech Pvt. Ltd.

18. It is noted that the Noticee Anilkumar T. Patel vide his submissions dated January 29, 2014 has inter alia submitted that regarding his opposite transactions (i.e. buying 175 shares on March 03, 2009 and selling 175 shares on March 04, 2009 on BSE), the same was due to “punching error” on March 03, 2009 and that upon realization of the facts, the entry was reversed by his broker on March 04, 2009.
19. The Noticee Mr. Anand A. Patel vide letter dated January 27, 2014 reiterated the submissions made earlier vide letter dated December 28, 2013 and at the personal hearing, while clarifying that the acquisition of more than 25,000 shares was also through preferential allotment.
20. The Noticee Mr. Manibhai V. Patel vide written submissions dated January 24, 2014 has *inter alia* submitted as follows:
 - a) *That as regards more than 25,000 shares acquired on July 15, 2008, October 25, 2008 and February 1, 2009, net acquisition which only needs to be considered was not breached during April 02, 2008 to May 07, 2008, as the net acquisition was 9,720 shares only as he had sold 15,280 shares, therefore, while calculating change in his shareholding for acquisition of 25,000 shares, the shares sold should not be taken into consideration;*
 - b) *Therefore, the first disclosure for acquisition of more than 25,000 shares would come while acquiring 14,384 shares on October 18, 2008 and second would come on issue of bonus shares;*
 - c) *That he was appointed as Director of the company on October 07, 1986, and that at that time PIT Regulations was not in existence, therefore disclosures under Regulation 13(2) was not required to be made, as such, there is no comparable disclosure by which he*

could inform the company that there was a change in his shareholding as compared to his previous disclosure;

d) That on account of technical interpretation of the relevant law, he did not make the necessary disclosure.

21. The Noticee Mr. Ajitkumar T. Patel vide letter dated January 21, 2014 has *inter alia* submitted that he had filed the disclosure under Regulation 7(1A) read with Regulation 7(2) of the Takeover regulations on January 23, 2009 to the company. Further he submitted that since such filing made to the company bears the company seal, although didn't bear the signature of the company official and date of receipt, hence, no adverse inference can be drawn. Also, that the same is not disputed by the company.
22. The Noticee M/s. Apollo Infratech Pvt. Ltd. vide letter dated January 21, 2014 has *inter alia* stated that they had made disclosure under Regulation 7(1A) to the company vide letter dated January 23, 2009 and the same was also confirmed by the company vide letter dated January 25, 2009 to BSE. Further, that although there is no date of receipt of documents by the company, no adverse inference can be drawn against them. That on the contrary, it is on record that the company has not disputed the disclosure filed by them and in fact acknowledged receipt thereof.
23. The Noticees *inter alia* confirmed that there were no past non-compliance with regard to PIT and Takeover Regulations and no action has been taken by SEBI against them.
24. Pursuant to the appointment of the undersigned as AO, the Noticees were granted an opportunity of personal hearing on November 27, 2019 vide Hearing Notice dated November 08, 2019. In response, the following Noticees, viz. Mr. Manibhai Patel, Mr. Asit Patel, Mr. Anand Patel, and Gujarat Apollo Industries Ltd vide common letter dated November 20, 2019, and Mr. Ajitkumar T Patel vide letter dated November 18, 2019, and Apollo Infratech Pvt Ltd vide letter dated November 18, 2019, *inter alia* submitted that their earlier submissions made in the matter be taken into consideration and that they do not wish to make any further submissions in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

25. I have examined the SCN, carefully perused the written submissions of the Noticee and the documents available on record. It is observed that the allegations against the Noticees are

that they violated the provisions of Takeover Regulations and/ or PIT Regulations and/or Clause 3.2-2, 3.2-5 and 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of the PIT Regulations, and Clause 31(d) of the Listing Agreement read with Section 21 of SCRA as applicable.

26. Thus, the issues that arise for consideration in the present case are:

- a. Whether the Noticee **Anilkumar T Patel** violated Clauses 3.2-2, 3.2-5 and 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations? Whether further Noticee **Anilkumar T Patel** failed to make a disclosure on 22.12.2008 and violated Regulation 13(4) and 13(5) of PIT Regulations once in the year 2008?
- b. Whether the Noticee viz. **Anand Anilbhai Patel** failed to make a disclosure on 22.12.2008 and 20.06.2009 and violated Regulation 13(4) and 13(5) of PIT Regulations twice in the year 2008-09?
- c. Whether the Noticee viz. **Asit Anilbhai Patel** failed to make a disclosure on 11.04.2008, 21.04.2008, 01.10.2008, 22.12.2008 and 20.06.2009 and violated Regulation 13(4) and 13(5) of PIT Regulations five times in the year 2008-09?
- d. Whether the Noticee viz. **Manibhai V Patel** failed to make a disclosure on 15.10.2008, 25.10.2008 and 11.02.2009 and violated Regulation 13(4) and 13(5) of PIT Regulations?
- e. Whether the Noticee viz. **Ajitkumar T Patel** failed to make requisite disclosures and violated Regulation 7(1) read with 7(2) and Regulation 7(1A) read with 7(2) of Takeover Regulations; and Regulation 13(1), Regulation 13(3) read with Regulation 13(5) and Regulation 13(4) read with Regulation 13(5) of PIT Regulations? Whether further the Noticee **Ajitkumar T Patel** violated Clauses 3.2-2, 3.2-5 and 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations?
- f. Whether the Noticee viz. **M/s. Apollo Infratech Pvt. Ltd.** failed to make requisite disclosures and violated Regulation 7(1) read with 7(2) and of Takeover Regulations; and Regulation 13(1) of PIT Regulations?

- g. Whether the Noticee viz. **Gujarat Apollo Industries Ltd** violated the provisions of Regulation 8A(4) and 7(3) of Takeover Regulations; and Clause 31(d) of the Listing Agreement read with Section 21 of SCRA?
- h. Whether the failure on the part of the Noticees to comply with the aforesaid provisions of the Takeover Regulations, and/or PIT Regulations and /or Clauses 3.2-2, 3.2-5 and 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations, and /or Clause 31(d) of the Listing Agreement read with Section 21 of the SCRA attracts monetary penalty under Section 15A(b) of the SEBI Act, and/or Section 15HB of SEBI Act, and/or Section 23E of SCRA and, if so, what would be the monetary penalty that can be imposed on the Noticees, taking into consideration the factors mentioned in Section 15J of SEBI Act and Section 23J of SCRA?
27. Before moving forward, it will be appropriate to refer to the relevant provisions of law alleged to have been violated by the Noticees, which are reproduced as follows –

PIT Regulations

13 (1) 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.

13(3) 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) and 13(5) of SEBI (PIT) Regulations, 1992 prior to SEBI (PIT) (Amendment) Regulations, 2008, wef 19-11-2008:

13 (4) Any person who is a director or officer of a listed company, shall disclose to the company 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 from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13 (5) The disclosure mentioned in sub-regulations shall be made within four 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.

Regulation 13(4) and 13(5) of SEBI (PIT) Regulations, 1992 after SEBI (PIT) (Amendment) Regulations, 2008, wef 19-11-2008:

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

13 (5). The disclosure mentioned in sub-regulations 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

Regulation 12 (1) of SEBI (PIT) Regulations, 1992 prior to PIT (Amendment) Regulations, 2008 w.e.f. 19.11.2008:

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING

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

12. (1) All listed companies and organisations associated with securities markets including :

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;
- (b) the self-regulatory organisations recognised or authorised by the Board;
- (c) the recognised stock exchanges and clearing house or corporations;
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

[SCHEDULE I [Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

3.2-5 All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

Clause 4.2 of Model Code of Conduct of SEBI (PIT) Regulations as inserted by the SEBI (PIT)(Amendment) Regulations, 2008 w.e.f. 19.11.2008:

4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.

Takeover Regulations

7 (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent or ten percent or fourteen percent or fifty four percent or seventy four percent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

7(1A) 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 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.

7(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—

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

Listing Agreement

31. The Company will forward to the Exchange promptly and without application –
(d) copy of the proceedings at all Annual and Extraordinary General Meetings of the Company;

SCRA

Conditions for listing.

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

28. The allegations against each of the Noticees as specified in the respective SCN are outlined and dealt with below:

A. Mr. Anilkumar T. Patel

A.1 It was observed that corporate announcements related to the recommendation of dividend, and issue of bonus shares were published in the BSE website on August 25, 2008 and further

announcement relating to the fixing of book closure for dividend and AGM was published on August 26, 2008. It was also observed that the Noticee purchased 1000 shares of Gujarat Apollo Industries Ltd on 25.08.2019. It was thus alleged that the Noticee bought shares of the company when the trading window of the company was closed and therefore violated **Clause 3.2-5 and 3.2-2 of Model Code of Conduct of SEBI (PIT) Regulations**. Further, it was observed that the Noticee bought 175 shares on March 03, 2009 and sold 175 shares on March 04, 2009 on BSE. It was thus alleged that by entering into an opposite transaction (i.e. sell after buy transaction) within six months, the Noticee had violated **Clause 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations**. The SCN further alleged that the Noticee Mr. Anilkumar T. Patel had also violated **Regulation 13(4) and 13(5) of PIT Regulations** for not making the require disclosure while the changes in holding of shares exceeding 25000 shares, as a result of allotment of 25,000 bonus shares on 22.12.2008.

- A.2 From the material available on record, I note that the company intimated on November 20, 2019 that the Noticee, Mr. Anilkumar T. Patel had passed away on February 08, 2018. In this regard, a copy of Death Certificate of the aforesaid Noticee was submitted by the company as proof of demise.
- A.3 In this regard, I note that the Hon'ble Supreme Court in its Order in the case of ***Girija Nandini vs. Bijendra Narain Choudhury (AIR 1967 SC 2110)*** has stated that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases the maxim "*actio personalis moritur cum persona*" (personal action dies with the death of the person) would apply, and the said view was subsequently followed by SEBI in the case of M/s. Sakthi Finance Limited, wherein Adjudication Proceedings against Late N. Mahalingam were abated vide Order dated September 14, 2016. In the present case, I note from the copy of the Death Certificate dated February 15, 2018 issued by the Ahmedabad Municipal Corporation that the Noticee had passed away on February 08, 2018.
- A.4 Therefore, by relying on the aforementioned Order of Hon'ble Supreme Court, I am of the view that the Adjudication Proceedings initiated against the Noticee will not survive and is liable to be abated without going into the merits of the case.

B. Mr. Anand A. Patel

B.1 It was alleged in the SCN that the Noticee Mr. Anand A. Patel failed to make disclosure to the company and to the stock exchange for the shares received through bonus and preferential allotment and had **violated Regulation 13(4) and 13(5) of PIT Regulations**.

B.2 During the investigation period, it was observed that the Noticee Mr. Anand A. Patel, Executive Director, of the Company had received 3,56,450 shares and 1,20,000 shares through bonus and preferential allotment plus bonus on December 22, 2008 and June 20, 2009 respectively, as per details given in the table below:

Dates of transaction *	Acquired/ Sold	Quantity of shares transacted	Holding post transaction	Holding post transaction (%)	Date of disclosure, if any, to company	Date of disclosure, if any, to stock exchange
22.12.2008	Bonus	3,56,450	10,69,000	6.79	N.A.	N.A.
20.06.2009	Allotment + Bonus	1,20,000	11,89,000	7.17	N.A.	N.A.

**date of transaction is as provided by the company*

B.3 The Noticee Mr. Anand A. Patel was required to file a disclosure to the company and to the stock exchanges under Regulation 13(4) and 13(5) of SEBI (PIT) Regulations, however, it was observed that the Noticee has failed to make disclosures and thus had violated Regulation 13(4) and 13(5) of PIT Regulations.

B.4 The Annual Report of the company for FY 2008-09 shows that Mr. Anand A. Patel was an Executive director at the relevant period of time. It is pertinent to be mentioned here that as regards to the disclosure under Regulations 13(4) read with 13(5) of the PIT Regulations, I find that under Regulation 13(4) of PIT Regulations, any person who was/ is a director or officer of a listed company, was/ is required to disclose, only to the company in Form D prior to amendment dated November 19, 2008 but subsequent to the said amendment the disclosure to be made both to the company and the stock exchange in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there was a change in such holdings from the last disclosure made, and if the change exceeded Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. Such disclosure, I find, under Regulation 13(5) of PIT Regulations was required to be

disclosed within four working days of the receipts of intimation of allotment of shares, or the acquisition or sale of shares or voting rights, as the case may be, prior to amendment dated November 19, 2008 and within two working days w.e.f. the amendment dated November 19, 2008.

B.5 In the matter, I note that ***the Hon'ble SAT vide Order dated September 30, 2014 in the matter of M/s. Akriti Global Traders Ltd. Vs. SEBI in Appeal No. 78 of 2014*** has held 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.”

B.6 In the present case too, admittedly, the Noticee viz. Mr. Anand A. Patel had received bonus shares allotted by the company as a result of which the change in his holding from the last disclosure exceeded the limit prescribed under Regulation 13(4) of the PIT Regulations, which mandated disclosure under Regulation 13(4) read with Regulation 13(5) of the PIT Regulations - to the company prior to amendment dated November 19, 2008 to the PIT Regulations, and, to the company and the stock exchange w.e.f. November 19, 2008. I find that the Noticee viz. Mr. Anand A. Patel for the shares exceeding 25,000 acquired on December 22, 2008 had accepted that there was a technical default on his part of not making separate subsequent intimation under Regulation 13(4) and 13(5) of SEBI PIT Regulations. In view of the above, I find that the Noticee Anand A Patel has violated Regulation 13(4) read with 13(5) of the PIT Regulations.

C. Mr. Asit A. Patel

C.1 The Noticee Mr. Asit A. Patel was also alleged in the SCN for failure to make disclosures under Regulation 13(4) and 13(5) of the PIT Regulations when the holding of the Noticee increased by more than 25000 shares.

C.2 During the investigation period, it was observed that the holding of the Noticee Mr. Asit A. Patel, who was the Managing Director of the Company, increased by more than 25,000 shares on April 11, 2008, April 21, 2008, October 01, 2008, December 22, 2008 and June 20, 2009. The change in holding was as per details given in the table below:

Dates of transaction*	Acquired/Sold	Quantity of shares transacted	Holding post transaction	Holding post transaction (%)	Remarks
04.04.2008	Acq	11,000	6,44,044	6.13	acquired more than 25,000 shares during the period from 04.04.2008 to 11.04.2008
11.04.2008	Acq	20,000	6,64,044	6.32	
15.04.2008	Acq	110	6,64,154	6.33	acquired more than 25,000 shares during the period from 15.04.2008 to 21.04.2008
21.04.2008	Acq	32,588	6,96,742	6.64	
Dates of transaction*	Acquired/Sold	Quantity of shares transacted	Holding post transaction	Holding post transaction (%)	Remarks
23.04.2008	Acq	100	6,96,842	6.64	acquired more than 25,000 shares in the period from 23.04.2008 to 01.10.2008
29.04.2008	Acq	20,050	7,16,892	6.83	
30.04.2008	Acq	1,000	7,17,892	6.84	
13.05.2008	Acq	151	7,18,043	6.84	
26.05.2008	Acq	110	7,18,153	6.84	
15.07.2008	Acq	100	7,18,253	6.84	
17.07.2008	Acq	100	7,18,353	6.84	
01.10.2008	Acq	5,000	7,23,353	6.89	
01.10.2008	Acq	2,600	7,25,953	6.91	acquired more than 25,000 shares on 22.12.2008
06.10.2008	Acq	97	7,26,050	6.91	
02.12.2008	Acq	203	7,26,253	6.92	
04.12.2008	Acq	449	7,26,702	6.92	
17.12.2008	Acq	5,000	7,31,702	6.97	
19.12.2008	Acq	10,000	7,41,702	7.06	
22.12.2008	Bonus	3,73,348	11,15,050	7.08	
22.12.2008	Acq	4,995	11,20,045	7.11	

20.06.2009	altmnt+ bonus	1,20,000	12,40,045	7.48	acquired more than 25,000 shares on 20.06.2009
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* dates of transaction is as provided by the company

C.3 It was observed that the Noticee Mr. Asit A. Patel was required to file under Regulation 13(4) and 13(5) of PIT Regulations, a disclosure to the company due to increase in shareholding or voting rights by more than 25,000 shares on April 11, 2008, April 21, 2008 and October 01, 2008 within 4 working days, however, no such disclosure was observed to have been made to the company. Further, the Noticee Mr. Asit A. Patel was required to file under Regulation 13(4) and 13(5) of PIT Regulations, a disclosure to the company as well as to the stock exchanges, where the shares of the company were listed, for change in shareholding or voting rights by more than 25,000 shares on December 22, 2008 and June 20, 2009 within 2 working days, however, no such disclosure observed to have been made to the company and to the stock exchanges and thus violated Regulation 13(4) and 13(5) of the PIT Regulations.

C.4 The Annual Report of the company for FY 2008-09 shows that Mr. Asit A. Patel was Managing Director of the Company at the relevant period of time. Thus, as discussed in the previous para B.4 as per the amended provision he was also required to make a disclosure in respect to change in holding exceeding 25,000 shares from last disclosure as on April 11, 2008, April 21, 2008, October 01, 2008, December 22, 2008 and June 20, 2009. In this regard, he also made similar submission as submitted by Noticee Mr. Anand A. Patel at Para B.6. Further, he also accepted and admitted that there was a technical default on his part of not making separate subsequent intimation under Regulation 13(4) and 13(5) of SEBI PIT Regulations. At this juncture, reliance is placed on the observations of the Hon'ble SAT in the case of of M/s. Akriti Global Traders Ltd (quoted supra at para B.5), and thus I find no merits in the contentions of the Noticee. Therefore, I hold that the Noticee Mr. Asit A Patel has violated Regulation 13(4) and 13(5) of the PIT Regulations.

D. Mr. Manibhai V. Patel

D.1 It was also alleged in the SCN that the Noticee Mr. Manibhai V Patel had **failed to make disclosures under Regulation 13(4) and 13(5) of SEBI (PIT) Regulations, when the holding increased by more than 25000 shares as per the said regulation.**

D.2 During the investigation period, it was observed that the shareholding of Mr. Manibhai V Patel, Director of the Company had increased by more than 25,000 shares on July 15, 2008, October 25, 2008 and February 11, 2009 as per details given in the table below:

Dates of transaction*	Acquired/ Sold	Quantity of shares transacted	Share Holding post transaction	Share Holding post transaction (%)	Remarks
02.04.2008	Sell	2,209	1,55,247	1.48	
10.04.2008	Sell	2,201	1,53,046	1.46	
11.04.2008	Sell	1,050	1,51,996	1.45	
15.04.2008	Sell	868	1,51,128	1.44	
16.04.2008	Sell	3,252	1,47,876	1.41	
17.04.2008	Sell	5,000	1,42,876	1.36	
05.05.2008	Sell	400	1,42,476	1.36	
07.05.2008	Sell	300	1,42,176	1.35	
12.05.2008	Acq	200	1,42,376	1.36	has acquired more than 25,000 shares during the period from 12.05.2008 to 15.10.2008 (inadvertently mentioned as 15.07.2008 in the SCN)
15.05.2008	Acq	333	1,42,709	1.36	
16.05.2008	Acq	62	1,42,771	1.36	
06.06.2008	Acq	500	1,43,271	1.36	
07.06.2008	Acq	90	1,43,361	1.37	
11.06.2008	Acq	1,325	1,44,686	1.38	
26.06.2008	Acq	1,000	1,45,686	1.39	
30.06.2008	Acq	2,632	1,48,318	1.41	
01.07.2008	Acq	500	1,48,818	1.42	
07.07.2008	Acq	15,119	1,63,937	1.56	
15.10.2008	Acq	12,311	1,76,248	1.68	
17.10.2008	Acq	5,515	1,81,763	1.73	has acquired more than 25,000 shares during the period from 17.10.2008 to 25.10.2008
18.10.2008	Acq	14,384	1,96,147	1.87	
25.10.2008	Acq	14,400	2,10,547	2.01	
01.11.2008	Acq	1	2,10,548	2.01	
11.02.2009	Bonus	1,05,274	3,15,822	2.01	has acquired more than 25,000 shares on 11.02.2009

D.3 The Noticee Mr. Manibhai V Patel under Regulation 13(4) and 13(5) of PIT Regulations was required to make a disclosure to the company within 4 working days from July 15, 2008,

October 25, 2008 and to the company as well as to the stock exchange where the shares of the company were listed within 2 working days from February 11, 2009, however, it is observed that no such disclosure was made by the Noticee Mr. Manibhai V Patel and thus he violated Regulation 13(4) and 13(5) of SEBI (PIT) Regulations.

D.4 The Annual Report of the company for FY 2008-09 shows that Mr. Manibhai V Patel was the Director of the Company at the relevant period of time. Thus, as discussed in the para B.4 as per the amended provision he also required to make a disclosure in respect to change in holding exceeding 25,000 shares from last disclosure as mentioned in the above table. In this regard, he also made similar submission as submitted by Noticee Mr. Anand A. Patel at Para B.6. Further, he also accepted that there was a technical default on his part of not making separate subsequent intimation under Regulation 13(4) and 13(5) of SEBI PIT Regulations. Besides, I note that Noticee Mr. Manibhai V Patel vide letter dated December 28, 2013 has also admitted that he did not make disclosure for acquisitions exceeding 25,000 shares done on July 15, 2008 and October 25, 2008 as he was relying upon his assistant who was kept for taking care of corporate law compliances. Further, at this juncture, reliance is placed on the observations of the Hon'ble SAT in the case of M/s. Akriti Global Traders Ltd (quoted supra at para B.5), and thus I find no merits in the contentions of the Noticee. Therefore, I hold that the Noticee Mr. Manibhai V Patel has violated Regulation 13(4) and 13(5) of the PIT Regulations.

E. Mr. Ajitkumar T. Patel

E.1 During the investigation period, shareholding of the Noticee Mr. Ajitkumar T. Patel changed as per details given in the following table:

Dates of transaction as per BSE/ NSE	Acquired /Sold	Quantity of shares transacted	Holding post transaction	% Holding post transaction	Remarks
26.09.2008	Acq	1,000	4,11,417	3.92	
01.10.2008	Acq	1,66,467	5,77,884	5.5	<ul style="list-style-type: none"> acquired more than 25,000 shares; shareholding has crossed 5%

15.12.2008	Sell	43,300	5,34,584	5.09	has sold more than 25,000 shares
16.12.2008	Acq	1,45,406	6,79,990	6.48	<ul style="list-style-type: none"> • acquired more than 25,000 shares; • shareholding increased by more than 2%
17.12.2008	Sell	2,00,000	4,79,990	4.57	has sold more than 25,000 shares
23.01.2009	Sell	3,13,523	1,66,467	1.06	<ul style="list-style-type: none"> • has sold more than 25,000 shares; • shareholding has decreased by more than 2%
11.02.2009	Bonus	1,56,761	3,23,228	2.05	transaction of more than 25,000 shares

E.2 SEBI observed that the Noticee Mr. Ajitkumar T. Patel's holding crossed 5% by his acquisition of 1,66,467 shares on October 01, 2008, however, no disclosures under Regulation 7(1) read with 7(2) of Takeover Regulations and under Regulation 13(1) of PIT Regulations were made by the Noticee Mr. Ajitkumar T. Patel to the company and to the stock exchange within the stipulated timeframe as per the concerned Regulations. It was also observed that though due to the said transaction, the Noticee Mr. Ajitkumar T. Patel had acquired more than 25,000 shares, no disclosures to the company under Regulation 13(4) read with 13(5) of the PIT Regulations was made. Hence it was alleged in the SCN that the Noticee Mr. Ajitkumar T. Patel had violated the said Regulations.

E.3 SEBI further observed that the Noticee Mr. Ajitkumar T. Patel while selling and/ or acquiring, as applicable, more than 25,000 shares as on December 15, 2008, December 16, 2008, December 17, 2008, January 23, 2009 and February 11, 2009 was required under Regulation 13(4) read with 13(5) of PIT Regulations to make disclosure to the company and the stock exchange within two working days, however, had failed to make such disclosure. Hence, it was alleged in the SCN that the Noticee Mr. Ajitkumar T. Patel had violated Regulation 13(4) read with 13(5) of the PIT Regulations.

E.4 SEBI also observed that since the promoter group was holding more than 15% and less than 55% of the total paid up capital of the company during the investigation period, the Noticee Mr. Ajitkumar T. Patel was required to disclose the details of change in his holding, as

applicable, by more than 2% on December 16, 2008 and January 23, 2009 to the company and the stock exchanges, as required under Regulation 7(1A) read with 7(2) of Takeover Regulations, however, no such disclosures were made by the Noticee Mr. Ajitkumar T. Patel. Hence, it was alleged in the SCN that the Noticee Mr. Ajitkumar T. Patel had violated Regulation 7(1A) read with 7(2) of the Takeover Regulations on two occasions.

E.5 It was also alleged in the SCN that the Noticee Mr. Ajitkumar T. Patel was holding more than 5% shares as on December 16, 2008 and the Noticee's holding decreased by more than 2% on January 23, 2009, hence, under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations, he was required to disclose to the company regarding his change in shareholding within two working days, however, it was alleged that the Noticee Mr. Ajitkumar T. Patel failed to make such disclosure.

E.6 Further, as alleged in the SCN, it is also noted that the Noticee Mr. Ajitkumar T. Patel by entering into an opposite transaction (i.e. buy after sell or sell after buy) on December 15, 2008, December 16, 2008, December 17, 2008, January 23, 2009 within six months following the prior transaction had **violated Clause 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations, 1992.**

E.7 With regards to the aforesaid allegations, I find from the Annual Report of the company for FY 2008-09 that Mr. Ajitkumar T. Patel was the Director of the company at the relevant point of time. Thus, as discussed in the para B.4 as per the amended provision he also required to make a disclosure. Thus, except for acquisition made on October 01, 2008, other acquisitions and sales done by the Noticee Mr. Ajitkumar T. Patel are pursuant to amendment dated November 19, 2008, i.e. wherein compliance can be considered as complete only if disclosures have been made both to the company and the stock exchange within the stipulated time period given under the Regulation. Besides, I note that even the disclosures claimed to have been made to the company within the stipulated time, does not provide any evidence of the document having been received by the company within the stipulated time period as provided under Regulation 13(4) read with 13(5) of PIT Regulations, except that it bears the seal of the company on it. From the material available on record, I note that BSE vide its email dated June 27, 2012 has informed SEBI that no disclosure under 13(4) of the PIT Regulations has been received by it from the Noticee, Mr. Ajitkumar T Patel. Thus I note that the Noticee has violated Regulation 13(4) read with 13(5) of PIT Regulations.

E.8 Further, I note that the Noticee Mr. Ajitkumar T. Patel had stated that the fact regarding the disclosures was communicated to the company and there was no malafide intent in inadvertent non-compliance with BSE, hence, violation of compliance of Regulation 13(4) and 13(5) of the PIT Regulations does not stand. The facts regarding the disclosures made by the Noticee to the company were referred to the company vide emails dated March 27, 2015 and March 30, 2015 seeking confirmation from the company as to whether they had received the said disclosures within the stipulated time period. After following with the company, vide reply dated June 04, 2015, the company *inter alia* stated that the company did not receive any communication relating to adjudication proceedings in the matter of the company for alleged failure to make disclosures under PIT Regulations and Takeover Regulations from its then director and shareholder Mr. Ajitkumar T. Patel. Therefore the company did not make any further submissions. The said reply of the company was forwarded to Mr. Ajit Kumar Patel vide email dated June 18, 2015. Further, it was also pointed out therein that neither was Mr. Ajit Kumar Patel able to produce any documents/ evidence to the effect that disclosures under PIT Regulations and Takeover Regulations were received by the company within the stipulated time. In reply vide letter dated June 24, 2015, Mr. Ajit Kumar Patel while denying that he had not been able to produce any documents/ evidence that disclosures under PIT Regulations and Takeover Regulations were received by the company within the stipulated time has *inter alia* pointed out that the company was silent on filing of disclosures by him. It has further been stated that he had already placed on record disclosures made by him on acquisitions made on September 26, 2008, December 16, 2008 and February 11, 2009 and sales made on December 15, 2008, December 17, 2008 and January 23, 2009 in the prescribed format to the company.

The Noticee Mr. Ajitkumar T. Patel, I find, has also vide his letter (received in SEBI on January 10, 2014) stated that it is in fitness of things to assume that once disclosures are made, presumption of receipt thereof is submitted and acknowledged by the company. In this regard, it is pertinent to quote the observations of the Hon'ble Securities Appellate Tribunal (SAT), in the case of ***Kalindee Rail Nirman Engineers Limited vs SEBI (decided on 19.07.2010)*** wherein Hon'ble SAT has observed that:

".....if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the facts by clear and cogent evidence in this regard....."

I also note that subsequently during the adjudication proceedings, the company has stated on October 18, 2016 that it could not find any relevant documents in regard to the disclosures under Regulation 13(4) from the Noticee, Mr. Ajitkumar T Patel. Thus in the given matter, I do not find any clear and cogent evidence submitted by the Noticee Mr. Ajitkumar T. Patel establishing that the disclosures made by him to the company under Regulation 13(4) read with 13(5) of the PIT Regulations was actually received by the company within the stipulated time given under the PIT Regulation. In view of the same I find that the Noticee Mr. Ajitkumar T Patel has violated Regulation 13(4) read with 13(5) of the PIT Regulations.

E.9 With regards to the alleged violation of Regulation 13(4) read with 13(5) of the PIT Regulations, I find it pertinent to mention here that under the PIT Regulations, the primary rationale for continuous disclosures required to be made by directors and officers of a listed company to the stock exchanges where the company's shares are listed, in addition to the disclosure required to be made to the company, is to achieve maximum reach and quick dissemination of information, so as to enhance confidence and informed participation by investors in secondary securities markets. Even presuming for a moment that the disclosure was made to the company within the stipulated time, then too non-disclosure to the Exchange cannot be considered a mere technical non-compliance as claimed by the Noticee, when there is a statutory requirement on the part of directors and officers of a listed company to disclose to the stock exchanges as well, so that it would add significantly to the meaningful information available to the market. In view of the above, as alleged in the SCN, the Noticee Mr. Ajitkumar T. Patel by not making required disclosures had **Regulation 13(4) read with Regulation 13(5) of PIT Regulations**.

E.10 The SCN also alleged that Mr. Ajitkumar T Patel had entered into opposite transactions (i.e. buy after sell or sell after buy) on 15.12.2008, 16.12.2008, 17.12.2008 and 23.01.2009, and thus contravened Clause 4.2 of Model Code of Conduct of the PIT Regulations.

With regards to the aforesaid allegation the Noticee has submitted that the said buy and sell transactions were inadvertently executed by him and that no malafide intent was involved and a lenient view may be considered. In this regard, I note that Clause 4.2 of the Model Code of Conduct of the PIT Regulations clearly specifies that all directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an

opposite transaction. I find that the Noticee has not disputed the opposite transactions, however has stated that the same were executed inadvertently. In view of the same, I find that the Noticee has engaged repeatedly in opposite transactions and thus violated Clause 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations, 1992

E.11 As regards to the Noticee Mr. Ajitkumar T. Patel's holding crossed 5% by his acquisition of 1,66,467 shares on October 01, 2008, and no disclosures made under Regulation 7(1) read with 7(2) of Takeover Regulations, I find that the Noticee Mr. Ajitkumar T. Patel vide letter dated January 2014 had inter alia submitted that the true and correct facts as regards contents of para (2) of the SCN (viz. the change in his shareholding) are as follows:

Dates of transaction as per BSE/ NSE	Acquired /Sold	Quantity of shares transacted	Holding post transaction	% Holding post transaction	Remarks
26.09.2008	Acq	1,000	2,44,950	2.33	Shareholding less than 5%
01.10.2008	Acq	1,66,467	4,11,417	3.92	Shareholding less than 5%
15.12.2008	Sell	43,300	3,68,117	3.51	Shareholding less than 5%
16.12.2008	Acq	1,45,406	5,13,523	4.89	Shareholding less than 5%
17.12.2008	Sell	2,00,000	3,13,523	2.99	Shareholding less than 5%
23.01.2009	Sell	3,13,523	0	0	Shareholding less than 5%
11.02.2009	Bonus	1,56,761	1,56,761	1.49	Shareholding less than 5%

E.12 The Noticee Mr. Ajitkumar T. Patel has submitted that hence violation of Regulation 7(1) read with 7(2) becomes redundant, as at no point of time shareholding had exceeded the threshold limit of 5% as wrongly alleged. As such, further the allegation regarding decrease of shareholding by 2% on December 16, 2008 too does not hold, as in fact, the holding increased by 1.38% on December 16, 2008.

E.13 In view of the submission made by the Noticee Mr. Ajitkumar T. Patel as aforesaid, the data incorporated in the SCN was re-verified with the transaction statement provided by NSDL and CDSL and it was noted that Ajitkumar T. Patel's holding prior to his transaction on September 26, 2008 was 2,43,950 shares and thus, his holding never crossed 5% due to acquisition/ sale as above during the investigation period. Besides, the term 'acquirer' under the Takeover Regulations means the acquirer himself along with persons acting in concert

(PACs) with him. Thus, I agree with the submissions made by the Noticee Mr. Ajitkumar T. Patel that violation of Regulation 7(1) and Regulation 7(1A) read with 7(2) of Takeover Regulations becomes redundant in his case. Further, since the Noticee Mr. Ajitkumar T. Patel I also further note that disclosure under Regulation 13(1) and Regulation 13(3) read with 13(5) of PIT Regulations also becomes inapplicable.

F. M/s. Apollo Infratech Pvt. Ltd.

F.1 During the investigation period it was observed that the Noticee M/s. Apollo Infratech Private Limited, acquired 11,63,575 shares (7.39%) of the company on January 23, 2009, through trading in BSE and NSE, details of which is as given below:

*Dates of transaction	Acquired/Sold	Quantity of shares transacted	Holding post transaction	Holding post transaction (%)	Remarks
23.01.2009	Acq	11,63,575	11,63,575	7.39	has acquired more than 5% of total paid up capital

**Dates of transaction as provided by the Company.*

F.2 Since the holding of the Noticee M/s. Apollo Infratech Private Limited increased to more than 5% of the total shares in the company, the Noticee was required to disclose the same to the company within 2 working days as required under Reg 13(1) of PIT Regulations and to the company and the stock exchanges within 2 working days, as required under Reg 7(1) read with Reg. 7(2) of Takeover Regulations.

F.3 As per information from the company, the Noticee M/s. Apollo Infratech Private Limited disclosed the same to the company in accordance with Regulation 7 (1A) of the Takeover Regulations and the company had disclosed the same to the stock exchanges vide letter dated January 25, 2009 in accordance with Regulation 7(3) of the Takeover Regulations. However, as per the email dated June 27, 2012 and September 21, 2012 from BSE, no disclosure had been received by BSE from the Noticee in relation to the above transactions. Thus, the Noticee M/s Apollo Infratech Private Limited by not making necessary disclosures, had **violated Regulations 13(1) of PIT Regulations and Regulation 7(1) read with 7(2) of Takeover Regulations.**

F.4 The Noticee M/s. Apollo Infratech Pvt. Ltd., I find, has submitted that the requirement of disclosure in the prescribed form in terms of Regulation 7(1) read with 7(2) of the Takeover Regulations has been complied with respect to the company. Further, it has been submitted that even though disclosures in prescribed form in terms of Regulation 7(1) and 7(2) of the Takeover Regulations to BSE remained to be made, BSE was in knowledge of the acquisitions by virtue of filings made by the company and intent of the regulation to dissipate information to all concerned is more than adequately met with in the extant case. I further note that the Noticee has submitted that there was no intention of suppressing the facts of the acquisition, as such, no adverse inference may be drawn from the alleged failure to make disclosure. The Noticee has also stated that the violation of the takeover regulations was merely a technical and inadvertent lapse to be condoned. However, in this regard, reliance is placed on the observations regarding disclosures of the Hon'ble SAT in the case of M/s. Akriti Global Traders Ltd (quoted supra at para B.5) and in view of the same, I find no merit in the submissions of the Noticee and find that Apollo Infratech Pvt. Ltd has violated Regulations 13(1) of PIT Regulations and Regulation 7(1) read with 7(2) of Takeover Regulations

F.5 Further, as regards violation of Regulation 13(1) of the PIT Regulations, I find, the promoter Noticee M/s. Apollo Infratech Pvt. Ltd. has *inter alia* submitted that they had disclosed the acquisition to the company on January 25, 2009 and has provided a copy of the Form A filed with the company. I note from the perusal of the said copy that it does not provide any evidence of the document having been received by the company within the stipulated time period as provided under Regulation 13(1) of the PIT Regulations, except that it bears the seal of the company on it along with an initial, but, without the initialling official's designation and date of receipt of the document. Further, the company has stated on October 18, 2016 that they have not received any disclosure from the Noticee, Apollo Infratech Industries Ltd under Regulation 7(1) read with 7(2) of the Takeover Regulations, and 13(1) of PIT Regulations. It may be reiterated that BSE has also confirmed that it has not received any disclosure under the Takeover Regulations from the Noticee, which was a mandatory obligation on the Noticee's part.

F.6 The Noticee M/s. Apollo Infratech Pvt. Ltd., I find, has stated that it is in fitness of things to assume that once disclosures are made, presumption of receipt thereof is submitted and acknowledged by the company. In this regard, it is again reiterated that as observed by the

Hon'ble SAT, in the case of ***Kalindee Rail Nirman Engineers Limited vs SEBI (decided on 19.07.2010)*** (quoted supra at para E.8), I do not find any clear and cogent evidence submitted by the Noticee M/s. Apollo Infratech Pvt. Ltd. establishing that the disclosures made by it to the company under Regulation 13(1) of the PIT Regulations was actually received by the company within the stipulated time given under the PIT Regulation. In view of the above, I find that the Noticee has violated Regulation 13(1) of PIT Regulations and Regulation 7(1) read with 7(2) of the Takeover Regulations.

G. Gujarat Apollo Industries Ltd.

G.1 During the investigation period it was observed that Mr. Anilkumar T Patel, founder chairman and Director of the company had pledged 40,000 shares with the bank which got released on July 30, 2010. The Noticee Gujarat Apollo Industries Ltd informed SEBI that it had received disclosure from Mr. Anilkumar T Patel for the pledged shares in accordance with the Takeover Regulations and that the company had in turn disclosed the same to BSE vide letter dated January 30, 2009. Investigation has however alleged that no such disclosure under Regulation 8A(4) of the Takeover Regulations was made by the company and hence the company has violated the provisions of Regulation 8A(4) of the Takeover Regulations.

With regards to the aforesaid allegation, the Noticee has submitted that they had indeed filed the requisite disclosures and enclosed a copy of the same in its reply to the SCN. From the material available on record, I note that BSE in its email dated September 21, 2012 had informed SEBI that it had not received any disclosure under Regulation 8A(4) of the Takeover Regulations from the company in respect of the aforesaid pledging of shares. In this regard, the Noticee submitted that they are not in a position to comment on the allegation as to whether the disclosures were received by the stock exchange or not. At this juncture, it is pertinent to refer the observations of the Hon'ble SAT in the case of ***Kalindee Rail Nirman Engineers Limited*** (quoted supra at para E.8). In the given matter, I do not find any clear and cogent evidence submitted by the Company establishing that the disclosures made by it to BSE was actually received by BSE. Thus I do not find merit in the aforesaid submission of the company and hold that the Noticee viz. Gujarat Apollo Industries Ltd had violated the provisions of Regulation 8A(4) of the Takeover Regulations.

G.2 Further, as per the SCN, it was alleged that the Noticee viz. Gujarat Apollo Industries Ltd had not made disclosure to BSE under Regulation 7(3) of the Takeover Regulations w.r.t to the

acquisition of 11,63,575 shares (7.39%) on 23.01.2009 by the promoter entity – Apollo Infratech Private Ltd.

With regards to the aforesaid allegation, the Noticee submitted that they had made the requisite disclosures to the stock exchange and submitted the copy of the submission sent to the stock exchanges. From the material available on record, I note that BSE in its email dated September 21, 2012 had informed SEBI that it had not received any disclosure under Regulation 7(3) of the Takeover Regulations from the company in respect of the aforesaid transaction of shares by Apollo Infratech Private Ltd. In this regard, the Noticee submitted that they are not in a position to comment on the allegation as to whether the disclosures were received by the stock exchange or not. At this juncture, referring to the observations of the Hon'ble SAT in the case of **Kalindee Rail Nirman Engineers Limited** (quoted supra at para E.8), in the given matter, I do not find any clear and cogent evidence submitted by the Company establishing that the disclosures made by it to BSE was actually received by BSE. Thus I do not find merit in the aforesaid submission of the company and hold that the Noticee viz. Gujarat Apollo Industries Ltd had violated the provisions of Regulation 7(3) of the Takeover Regulations.

G.3 Further, as per the SCN, it was stated that the Annual General Meeting (AGM) of the Noticee viz. Gujarat Apollo Industries Ltd was held on September 30, 2008. In the said AGM, the Noticee inter alia decided to issue bonus shares. It was alleged that the intimation of the proceeding at AGM was not forwarded immediately as required under clause 31(d) of the Listing Agreement, thus the Noticee was alleged to have violated clause 31(d) of the Listing Agreement read with Section 21 of the SCRA.

With regards to the aforesaid allegation, the Noticee has submitted that it had proposed and allotted bonus shares to all shareholders in the ratio 1:2 and in due compliance of the listing requirements, sent all the necessary notices and information to the stock exchanges in time on various dates as per the following particulars –

Particulars	Particulars	Particulars
<i>Proposed date of Board meeting – “23rd August, 2008”</i>	<i>Date by which stock exchange required to be intimated – “14th August, 2008”</i>	<i>Date on which intimated “14th August, 2008”</i>
<i>Record date “22 December 2008”</i>	<i>At least 42 days before Record date</i>	24.10.2008 [Letter by Company] 06.11.2013 [received by the Exchange]

Board meeting regarding allotment of shares "3 rd January, 2009"	24.12.2008	24.12.2008
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It is observed that the Noticee's Board of Directors at their meeting held on August 23, 2008 had inter alia considered the issue of bonus shares. However, it was in the Noticee's AGM held on September 30, 2008, wherein the members *inter alia* accorded the following –

"- Subject to approval of Reserve Bank of India, Banks and financial Institutions and such other authorities as may be required, a sum of Rs 5,25,00,000/- (Rupees Five Crores Twenty Five Lacs only), standing to the credit of the Company's general reserves be capitalized and such amount be applied in paying up in full 52,50,000 (Fifty Two Lacs Fifty Thousand only) Equity Shares of Rs 10/- each in the capital of the Company, to be allotted and distributed as fully paid shares to the members of the Company registered as the holders of equity shares on the record date fixed for the purpose in the proportion of one equity share for every two equity shares held in the Company subject to lower integer."

As per email of BSE dated July 27, 2012 and email NSE dated July 26, 2012, the aforesaid outcome of the AGM held on September 30, 2008 was intimated to BSE through fax on November 06, 2008 and to NSE on October 27, 2008. It is noted that the Noticee in its meeting held on August 23, 2008 had recommended issue of bonus shares, and has claimed that the same was duly disclosed to the stock exchange, however I note that the same can be termed to be at the proposal stage. The resolution passed in the AGM held on September 30, 2008 can also be held to be critical as the approval for the bonus issue was accorded in the said meeting. Clause 31(d) of the listing agreement mandates that the company shall intimate immediately to the stock exchange, the copy of the proceedings at its AGM. However, in the present case, it is observed that the Noticee has not intimated immediately about the outcome of its AGM held on September 30, 2008, but has done so with a delay of around one month. Thus I do not find merit in the Noticee's contention that they did not make any non-compliance of the Listing Agreement. Accordingly, I find that the Noticee has violated Clause 31(d) of the listing agreement read with Section 21 of the SCRA.

29. 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."

30. 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 on the Noticees, viz., Mr. Anand A Patel, Mr. Asit Anilbhai Patel Mr. Manibhai V Patel and, Apollo Infratech Pvt Ltd, and under Section 15A(b) and Section 15 HA of the SEBI Act on Mr. Ajitkumar T Patel, and under Section 15A(b) of the SEBI Act and Section 23E of SCRA on Gujarat Apollo Industries Ltd . The provisions of the said sections read as under:

SEBI Act

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.

15HB. Penalty for contravention where no separate penalty has been provided.-

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.

SCRA

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding twenty-five crore rupees.*

31. While determining the quantum of monetary penalty under Section 15 A(b) and/or 15 HB, and/or Section 23E of SCRA I have considered the factors stipulated in Section 15-J of SEBI Act, and 23J of SCRA, 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."

32. 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 the SEBI Act and stated as above. The main objective of the disclosure provisions in the PIT Regulations and the Takeover Regulations is to afford fair treatment for shareholders who are 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 main objective of the PIT Regulation and the Takeover Regulations in respect of the disclosure norms is to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. 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 decisions. Besides, continual disclosure under PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent. Thus, the cornerstone of the PIT Regulations is investor protection.
33. As per Section 15A(b) of the SEBI Act, the Noticees viz, Mr. Anand A Patel, Mr. Asit Anilbhai Patel, Mr. Ajitkumar T Patel, Mr. Manibhai V Patel, Apollo Infratech Pvt Ltd, and Gujarat Apollo Industries Ltd are liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. As per Section 15 HB of the SEBI Act, Mr. Ajitkumar T Patel is liable to a penalty which may extend to one crore rupees. As per Section 23E of the SCRA, Gujarat Apollo Industries Ltd is liable to a penalty which may extend to twenty five crore rupees. Further, under Section 15 J of the SEBI Act, and 23J of the SCRA 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 Noticees. 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 Noticees. Also, the Noticees have confirmed that there has not been any non-compliance of SEBI Act and Regulations and no action has ever been taken by SEBI in the past against the Noticees.

34. I find that the Noticees have *inter alia* claimed that the violation committed by them was purely inadvertent. I further note from the submissions made by the Noticees regarding the bonus issue that the company had made all due compliance of the listing requirements, sent all the necessary notices and information to the exchanges in time. Noticees have further submitted that all existing shareholders of the company acquired such shares in a uniform and very transparent manner as the Board of Directors of the company duly intimated not only the stock exchanges but also to the public office of the ministry of corporate affairs about this increase in share capital. It was also submitted that each and every shareholder and the public in the market were aware, in advance, that the company was declaring bonus shares. I find that the Noticees cannot absolve themselves through the disclosures made by the Company in lieu of making necessary disclosures under the PIT Regulations / Takeover Regulations as the purpose and intent of each of the laws are different. Under the PIT Regulations / Takeover Regulations, every individual crossing the prescribed limit is subject to disclosure requirements, irrespective of reporting made of any kind by the Company. I find that any transaction which requires compliance of the PIT Regulations / Takeover Regulations, if not complied, is always a serious matter, and cannot be considered a mere "technical" violation, since other shareholders/ investors were deprived of the information. In fact, I find that the non-disclosure by the Noticees undermines the investors interest relating to the effectiveness of purpose of disclosures/ continuous disclosures under the PIT Regulations and the Takeover Regulations.

ORDER

35. After taking into consideration all the facts and circumstances of the case, I impose a penalty as under against the following Noticees:

S. No.	Name	Violations	Penalty under	Penalty in Rs.
1.	Mr. Anand Anilbhai Patel	Regulation 13(4) r.w.13(5) of PIT Regulations	Section 15A(b) of the SEBI Act	Rs. 2,00,000/- (Rupees Two Lakh Only)
2.	Mr. Asit Anilbhai Patel	Regulation 13(4) read with 13(5) of PIT Regulations	Section 15A(b) of the SEBI Act	Rs. 2,00,000/- (Rupees Two Lakh Only)
3.	Mr. Manibhai V Patel	Regulation 13(4) read with 13(5) of PIT Regulations	Section 15A(b) of the SEBI Act	Rs. 2,00,000/- (Rupees Two Lakh Only)

4.	Mr. Ajitkumar T Patel	Regulation 13(4) read with 13(5) of PIT Regulations, and violated Clause 4.2 of Model Code of Conduct specified in Part A of Schedule I read with Regulation 12 (1) of PIT Regulations	Section 15A(b) and 15HB of the SEBI Act	Rs. 2,00,000/- (Rupees Two Lakh Only)
5.	Apollo Infratech Pvt Ltd	Regulation 7(1) read with 7(2) of Takeover Regulations; and Regulation 13(1) of PIT Regulations	Section 15A(b) of the SEBI Act	Rs. 2,00,000/- (Rupees Two Lakh Only)
6.	Gujarat Apollo Industries Ltd	Regulation 7(3) and 8A(4) of the Takeover Regulations Clause 31(d) of Listing Agreement read with Section 21 of the SCRA	Section 15A(b) of the SEBI Act, and Section 23E of SCRA	Rs. 2,00,000/- (Rupees Two Lakh Only)

The aforesaid Noticees shall liable to pay the said monetary penalty which will be commensurate with the violations committed by the Noticees.

36. Adjudication proceedings in respect of the Noticee, Mr. Anilkumar T Patel stands abated due to the demise of the Noticee on February 08, 2018, and accordingly the adjudication proceedings in respect of him is disposed of without imposition of penalty.
37. 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 online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW.

38. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department - DRA-I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051”. The Noticee shall also provide the following details while forwarding DD / payment information.
- Name and PAN of the Noticee
 - Name of the case / matter
 - Purpose of Payment – Payment of penalty under AO proceedings

- d. Bank Name and Account Number
- e. Transaction Number

39. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
40. In terms of rule 6 of the SEBI Rules and rule 6 of the SCR Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Date: **December 24, 2019**
Place: **Mumbai**

G Ramar
Adjudicating Officer