

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. AK/AO- 23-24/2014]**

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

**In respect to**

**M/s Spark Securities Pvt Ltd (PAN - AADCS6039D)  
Anirudha Bubna Trust (PAN - AABTA1547K)**

**In the matter of  
M/s Himalaya Granites Limited**

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') examined into the alleged irregularities observed in the matter of M/s Himalaya Granites Limited (hereinafter referred to as '**the Company**') for the period from January 1, 2009 to March 31, 2012 (hereinafter referred to as '**the examination period**'). During the examination period, it was observed that M/s. Spark Securities Pvt Limited and Anirudh Bubna Trust (hereinafter referred to as the '**Noticee no. 1**' and '**Noticee no. 2**' respectively and collectively referred to as the '**Noticees**') acquired/sold shares in the scrip of M/s Himalaya Granites Limited without complying with the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as the '**Takeover Regulations, 1997**'), and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the '**PIT Regulations**'). The shares of the Company at the relevant point of time were listed on Bombay Stock Exchange Ltd (hereinafter referred to as '**BSE**').

2. It was observed that the Noticees were under an obligation to make disclosures under Regulation 7(1) read with 7(2) of Takeover Regulations, 1997 and Regulation 13(1) and 13(3) read with 13(5) of PIT Regulations. However allegedly no such disclosure was made by the Noticees under the Takeover and PIT Regulations. It was therefore alleged that through the aforesaid act, the Noticee violated Regulations 7(1) read with 7(2) of Takeover Regulations, 1997 and Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations.
3. Based on the aforesaid non-compliance of the provisions of Takeover Regulations, 1997 and PIT Regulations, adjudication proceedings under Chapter VI-A of SEBI Act, 1992 (hereinafter referred to as '**Act**') were initiated against the Noticees under Section 15 A(b) of the SEBI Act.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. Ms. Anita Kenkare was appointed as Adjudicating Officer on October 04, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Rules**') to inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation of the Regulation 7(1) read with 7(2) of Takeover Regulations, 1997 and Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations as committed by the Noticees.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A Show Cause Notice (hereinafter referred to as **SCN**) Ref. No. EAD-6/AK/RSL/29246/2013 and EAD-6/AK/RSL/29250/2013 dated November 14, 2013 was issued to Noticees no. 1 & 2 under rule 4(1) of SEBI Rules communicating the alleged violation of the provisions Takeover Regulations, 1997 and PIT Regulation. The transaction statement of Noticee no. 1 & 2 for this scrip and during the period from January 01, 2009 till March 15, 2012 was sent along with the SCN.

6. From the transaction statement of Noticee no. 1, it was observed that it was holding nil shares of the company as on January 1, 2009, and its holding in the company increased to 1,75,100 shares (5.83%) on February 05, 2009. The Noticee no. 1 was required to disclose, within 2 working days, the details of its holding to the company and the stock exchange as per the requirements under Regulation 7(1) read with 7(2) of the Takeover Regulations, 1997. The same was also required to be disclosed to the company as per the requirements under Regulation 13(1) of PIT Regulations.
7. It was further observed that Noticee no. 1's holding in the company decreased to 89,718 shares (2.99%) (the holding changed by more than 2%) on September 16, 2011, hence requiring a disclosure within 2 working days, the details of its holding to the company as per the requirements Regulation 13(3) read with 13(5) of PIT Regulations.
8. It is alleged that no such disclosure under the Takeover and PIT Regulations were made by Noticee no. 1. The details of the holding of Noticee no. 1 is as given below:

Date (mm/dd/yyyy)	Credit	Debit	Balance	Shareholding %	Disclosure Requirements under Takeover Regulations, 1997 and PIT Regulations	Due date of disclosure for entity	Remarks
1/1/2009			0				
1/28/2009	75100		75100	2.50%			
1/30/2009	50000		125100	4.16%			
<b>2/5/2009</b>	<b>50000</b>		<b>175100</b>	<b>5.83%</b>	<b>7 (1) of Takeover Regulation, 1997 and 13(1) of PIT Regulations</b>	<b>2/7/2009</b>	<b>Not disclosed</b>
2/6/2009	15000		190100	6.33%			
2/9/2009	1000		191100	6.36%			
2/10/2009	18678		209778	6.98%			
2/18/2011	4000		213778	7.11%			
9/14/2011		4050	209728	6.98%			
9/15/2011		20010	189718	6.31%			
<b>9/16/2011</b>		<b>100000</b>	<b>89718</b>	<b>2.99%</b>	<b>13(3) of PIT Regulations</b>	<b>9/19/2011</b>	<b>Not disclosed</b>

9. With regard to Noticee no. 2, during the examination period he was holding nil shares of the company as on January 01, 2009 and its holding in the company increased to 5.07% and 10.10% shares on September 22, 2011 and on October 03, 2011 respectively requiring Noticee no. 2 to disclose, within 2 working days, the details of his holding to the company and the stock exchange as per the requirements under Regulations 7(1) read with 7(2) of the Takeover Regulations, 1997. Further, the change in holding on September 22, 2011 was also required to be disclosed to the company as per the requirements under Regulation 13(1) of PIT Regulations.
10. It was further observed that the Noticee's holding in the company increased to 8.41% and 11.33% (the holding changed by more than 2%) on September 22, 2011 and on October 13, 2011, requiring the Noticee to disclose, within 2 working days, the details of its holding to the company as per the requirements under Regulation 13(3) of PIT Regulations.
11. It is alleged that the Noticee no. 2 failed to make such disclosures under the Takeover Regulations, 1997 and PIT Regulations. The details of the holding of Noticee no. 2 is as given below:

Date (mm/dd/yyyy)	Credit	Debit	Balance	Sharehold ing %	Disclosure Requirements under Takeover Regulations, 1997 and SEBI (PIT), Regulations	Due date of disclosure for entity	Remarks
Opening as on 9/1/2009			0				
9/15/2011	210		210	0.01%			
9/15/2011	19291		19501	0.65%			
9/16/2011	2076		21577	0.72%			
9/16/2011	4050		25627	0.85%			
9/19/2011	20010		45637	1.52%			
9/19/2011	2450		48087	1.60%			
9/20/2011	100000		148087	4.93%			
<b>9/22/2011</b>	<b>4300</b>		<b>152387</b>	<b>5.07%</b>	<b>7 (1) of Takeover Regulations, 1997 and 13(1) of PIT Regulations</b>	<b>9/24/2011</b>	<b>Not disclosed</b>
<b>9/22/2011</b>	<b>100242</b>		<b>252629</b>	<b>8.41%</b>	<b>13(3) of PIT Regulations</b>	<b>9/24/2011</b>	<b>Not disclosed</b>
9/26/2011	21332		273961	9.12%			
9/26/2011	4000		277961	9.25%			
9/29/2011	17150		295111	9.82%			
<b>10/3/2011</b>	<b>8460</b>		<b>303571</b>	<b>10.10%</b>	<b>7 (1) of Takeover Regulations, 1997</b>	<b>10/5/2011</b>	<b>Not disclosed</b>
10/4/2011	200		303771	10.11%			
10/4/2011	5551		309322	10.29%			
10/5/2011	50		309372	10.30%			
10/8/2011	400		309772	10.31%			
<b>10/13/2011</b>	<b>30815</b>		<b>340587</b>	<b>11.33%</b>	<b>13(3) of PIT Regulations</b>	<b>10/15/2011</b>	<b>Not disclosed</b>

12. On perusal of the information from BSE and the company, it was further observed that no disclosures were received by them during the period from January 01, 2009 till March 31, 2012 from the Noticees.

13. The Noticee no. 1 & 2 were also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.

14. The Noticee no. 1 vide letter dated November 29, 2013 has *inter alia* made the following submissions:

- a) That they had during the period bought and sold shares of the company on the floor of the stock exchange BSE, which had resulted in a total of three (3) instances of non disclosures of Takeover Regulations, 1997/ PIT Regulations due to oversight and unintended human error, as they were not fully aware about the then paid up share capital of the company and the fact that their acquisition had crossed the threshold limit of disclosure requirement under the Takeover Regulations, 1997 and PIT Regulations;
- b) That after the receipt of the SCN the non compliance came to their notice and accordingly they made applicable compliance under Regulation 7(1) of the Takeover Regulations, 1997 and Regulation 13 (1) and 13 (3) of the PIT Regulations;
- c) That as per records of the shareholding pattern available on the BSE website, their name appeared in the shareholding pattern filed by the Company under Clause 35 of the Listing Agreement under the head "Public shareholder holding more than 5% and more than 1% share of the Company", hence by default, the transparency was maintained and information was available to the shareholders and other stakeholders of the company;
- d) That their non compliance did not result in any undue benefit to them or their associates, nor, any loss or damage was caused to the investors;
- e) That they did not have any connection whatsoever with the Promoters/ Persons in Control/ directors of the company and that they had made their investment in shares based on their own investment acumen;
- f) They have referred to the Hon'ble Supreme Court's decision in Hindustan Steel Ltd. Vs. State Of Orissa (AIR 1970 SC 253: 1969 (2) SCC 627), wherein the Court has observed that "*an Order imposing penalty for failure to carry out a statutory obligation is the result of quasi criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or*

*was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute”;*

- g) That the aforementioned case was also upheld by the Hon’ble Securities Appellate Tribunal (SAT) in the matter of Samrat Holdings Ltd. Vs. SEBI;
  - h) That the company had no intention of violating the said regulations and hence considering the aforesaid fact, a lenient view on the matter may be taken.
15. The Noticee no. 2 vide letter dated November 29, 2013 has stated that they are a beneficiary trust. They too have *inter alia* made similar submissions as made by Noticee no. 1. They have *inter alia* along with the other submissions made on the lines of submissions made by Noticee no. 1, have stated that they too had during the period bought and sold shares of the company on the floor of the stock exchange BSE, which had resulted in a total of five (5) instances of non disclosures of Takeover Regulations, 1997/ PIT Regulations due to oversight and unintended human error.
16. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticees were granted an opportunity of personal hearing on January 09, 2014 vide hearing notice dated December 17, 2013.
17. The Noticees vide letter dated January 02, 2014 had requested for rescheduling the date of personal hearing at a later date preferably on or after February 10, 2014. Vide hearing

notice dated January 16, 2014, the request of the Noticees was acceded to and another opportunity of personal hearing was granted on February 10, 2014.

18. During the personal hearing, Mr. Sanjeev Bubna, Authorized Representative (**hereinafter referred to as 'AR'**), appeared on behalf of the Noticees and reiterated the submissions made vide their individual replies dated November 29, 2013. The AR further submitted that all the transaction (sale/purchase) on behalf of Noticee no. 1 & 2 were done on the exchange in demat form, however, the disclosure under the Takeover Regulations, 1997 and PIT Regulations were inadvertently not made. The AR further explained that the two Noticees are connected to one another. The AR was advised to provide the details of the connection along with supporting documents and also to provide the purpose of sale/purchase transaction along with supporting documents, if any. The AR sought to make the submission by February 20, 2014.
19. Vide letter dated February 14, 2014, the Noticees submitted copies of the filings dated January 20, 2014 made under Regulation 7(1) read with 7(2) of Takeover Regulations, 1997 and Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations and further submitted that:
  - a) Noticee no. 1 required funds and Noticee no. 2 had funds readily available, hence the said transaction was done and further purchases were made by Noticee no. 2. The shares are still held by Noticee no. 2. The purchases were made for the purpose of investment only.
  - b) That as regards Noticee no. 2, Mr. Anirudh Bubna is the beneficiary of the Trust and his father Mr. Rajendra Prasad Bubna and mother Ms. Anita Bubna are the Trustees of the Trust. Further, that 100% shares of Noticee no. 1 are held by Mr. Rajendra Prasad Bubna, Mr. Sanjeev Bubna, Ms. Rashmi Bubna, Ms. Anita Bubna and Mr. Anirudh Bubna. It was further stated that Mr. Sanjeev Bubna is the brother of Mr. Rajendra Prasad Bubna and Ms. Rashmi Bubna is the wife of Mr. Sanjeev Bubna. Also, that Mr. Anirudh Bubna is the son of Mr. Rajendra Prasad



Bubna and Ms. Anita Bubna is the wife of Mr. Rajendra Prasad Bubna. Thus, that the Noticees are connected to each other.

### **CONSIDERATION OF ISSUES**

20. I have carefully perused the written submissions of Noticee no. 1 & 2 and the documents available on record. It is observed that the allegation against the Noticees is that they have failed to make the relevant disclosure under the provisions of the Regulation 7(1) read with 7(2) of Takeover Regulations, 1997 and Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations during the examination period.
21. The issues that arise for consideration in the present case are :
- a. Whether Noticee no. 1 & 2 have violated the provisions of the Takeover Regulations, 1997 and PIT Regulations during the examination period?
  - b. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
  - c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

### **FINDINGS**

22. Before moving forward, it is pertinent to refer to the provisions of Regulations 7(1) read with 7(2) of Takeover Regulations, 1997 and Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations, which reads as under:

#### **Regulation 7(1) & 7(2) of Takeover Regulations, 1997**

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

*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 per cent or ten per cent or fourteen per cent [or fifty four per cent or seventy four per cent] 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.]*

*(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.*

**Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations:**

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

**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.*

**Continual disclosure.**

**13 (3)** *Any person who holds more than 5% shares or 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.*

**13 (5).** *The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of:*

*(a) the receipts of intimation of allotment of shares, or*

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

23. The issue for consideration is whether the Noticees failed to make the relevant disclosures during the examination period. As per Regulation 7(1) of the Takeover Regulations, 1997, an 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 per cent or ten per cent or fourteen per cent shares or voting rights in a company, shall disclose at every stage the aggregate of his shareholding to the company and to the exchange. I find that Noticee no. 1 was required to make such disclosure under Regulation 7(1) read with 7(2) for his change in shareholding on February 05, 2009 and

the Noticee no. 2 was required to make a disclosure under Regulation 7(1) read with 7(2) for his change in holding on September 22, 2011 and October 03, 2011 within two (2) days. Further with respect to acquisitions made on February 05, 2009 and September 22, 2011, it is observed that the Noticees were also required to disclose under Regulation 13(1) of the PIT Regulations within two (2) working days for holding more than 5% shares or voting rights in the company. As per Regulation 13(3) read with 13(5) of the PIT Regulation, the Noticee no. 1 was required to disclose its change in holding on September 16, 2011 to the company within two (2) working days and Noticee no. 2 was required to disclose its change in holding on September 22, 2011 and October 13, 2011 within two (2) working days. With regard to the non-disclosures, I find that the Noticees while *inter alia* admitting to the lapse on their part in making disclosures due to oversight and unintended human error, have submitted that they were not fully aware about the then paid up share capital of the company, and, were not knowing that their acquisition had crossed the threshold limit of disclosure requirement under the Takeover Regulations, 1997 and PIT Regulations. The said admittance was also reiterated by the AR of the Noticees at the time of the hearing and same was recorded accordingly.

24. From all of the above, it is established without doubt that the Noticee no. 1 and Noticee no. 2 have both violated the provisions of Regulations 7(1) read with 7(2) of Takeover Regulations, 1997 and Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations as has been enumerated in the table given at paragraphs (8) and (11) above respectively.
25. 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.”*

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

***Penalty for failure to furnish information, return, etc.***

***15A.****If any person, who is required under this Act or any rules or regulations made thereunder,—*

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

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

***“15J - Factors to be taken into account by the adjudicating officer***

*While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:*

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

28. 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 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 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 both - the Takeover Regulations and PIT Regulations is investor protection.

29. As per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15 J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the 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. It is, however, observed that in the matter of Jubilant Organosys Ltd., vide consent order dated January 24, 2008, adjudication proceedings initiated against Noticee no. 1 for alleged violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 and Code of Conduct for Stock Brokers under Regulation 7 of SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992, were settled without admission or denial of guilt on the part of Noticee no. 1.
30. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's

shares on BSE, where the shares were listed, during the relevant period; C) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations, 1997/ PIT Regulations, as applicable.

31. I find that the market capitalization of the company during the said period was less than ₹. 5 crore. I further note from the BSE website that there were about 1,421 shareholders in public shareholding category holding approx. 12,87,950 shares representing approx. 42.86% of total paid-up capital of the Company as on September 30, 2011. Out of the same, 5.38% was held by bodies corporate and 1,378 Individual Shareholders holding nominal share capital up to ₹. 1 lakh constituted about 9.99%. The average trading volume on BSE in the month of September 2011 was approx. 20,500 shares and in the month of November 2011 was approx. 3,700 shares. I further find that the Noticee no. 1 was required to make disclosure under Regulation 7(1) read with 7(2) of Takeover Regulations, 1997 on one (1) occasion, Regulation 13 (1) of PIT Regulations on one (1) occasion and Regulation 13 (3) read with 13 (5) of PIT Regulations on one (1) occasion, thereby, a total of three (3) occasions. Similarly, Noticee no. 2 was required to make disclosure under Regulation 7(1) read with 7(2) of Takeover Regulations, 1997 on two (2) occasions, Regulation 13 (1) of PIT Regulations on one (1) occasion and Regulation 13 (3) read with 13 (5) of PIT Regulations on two (2) occasions, thereby, a total of five (5) occasions. It is not under dispute that the Noticees have failed to make the relevant disclosure under Takeover and PIT Regulations on each such occasion.
32. 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 that as per records of the shareholding pattern available at the BSE website, their name appeared in the shareholding pattern filed by the Company under Clause 35 of the Listing Agreement under the head "Public shareholder holding more than 5% and more than 1% share of the Company", hence by default, the transparency was maintained and information was available to the shareholders and other stakeholders of the company. Even going by the

said version of the Noticees, I do not find the name of Noticee no. 1 in the shareholding pattern filed by the Company for the quarter ended September 2011 under the head "Public shareholder holding more than 5% and more than 1% share of the Company", though the same appears in quarter ended March 2009. Besides, though the name of Noticee no. 2 appears in both quarters ending September 2011 and December 2011, I note that the disclosures under clause 35 of the listing agreement are required to be filed with the concerned Exchange on a quarterly basis, within 21 days from the end of each quarter and within 10 days of any capital restructuring resulting in a change exceeding +/- 2% of its total paid up share capital. On the contrary, I find that the disclosures under the provisions of Regulation 7(1) read with 7(2) of Takeover Regulations, 1997 are required to be filed with the company/ stock Exchange, as applicable, within 2 days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights, as the case may be. Also, the disclosures under Regulations 13(1) and 13(3) read with 13(5) of PIT Regulations are required to be filed with the company within two 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. Further, I find that the Noticees cannot absolve themselves through the disclosures under Listing Agreement made by the Company in lieu of making necessary disclosures under the Takeover Regulations, 1997 and PIT Regulations as the purpose and intent of each of the laws are different. Under the Takeover Regulations, 1997 and PIT Regulations, every individual crossing the prescribed limit is subject to disclosure requirements, irrespective of reporting made under clause 35 of the listing agreements with the stock Exchanges. I note here that the Noticees have referred to the Hon'ble Supreme Court's decision in *Hindustan Steel Ltd. Vs. State Of Orissa* wherein the Court has *inter alia* observed that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute. However, I find that any transaction which requires compliance of the Takeover and/ or PIT 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 under the Takeover Regulations and disclosures/ continuous disclosures under the PIT Regulations.

### **ORDER**

33. After taking into consideration all the facts and circumstances of the case, I impose a penalty of . 10,00,000/- (Rupees Ten Lakh only) under Section 15 A(b) on the Noticees. The Noticees shall be jointly and severally liable to pay the said monetary penalty which will be commensurate with the violations committed by the Noticees.
34. The Noticees shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Debashis Bandyopadhyay, Deputy General Manager, Investigation Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
35. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: **February 26, 2014**  
Place: **Mumbai**

**Anita Kenkare**  
**Adjudicating Officer**