BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PB/AO- 41/2012]

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

In respect of

M/s Competent Surveyors Pvt. Ltd

(Presently known as "M/s Six Sigma Realty Private Limited")

(PAN No. AADCC2366H)

In the matter of A.V. Cottex Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an examination into the affairs relating to dealing, buying and selling in the shares of M/s A.V. Cottex Limited (hereinafter referred to as **'AVCL'/'Company'**) which is listed on Bombay Stock Exchange (hereinafter referred to as **'BSE'**). The period of examination was from March 31, 2006 to November 30, 2006 (hereinafter referred to as **'Examination Period'**). It was alleged that during the examination period, erstwhile promoters of AVCL comprising 6 entities viz, Anuj Dewan, M/s Lee Hotels Pvt. Ltd. (hereinafter referred to as "Lee Hotels"), M/s. Conchem Construction Pvt. Ltd. (hereinafter

referred to as “Conchem”), M/s Jas Expoship Pvt. Ltd. (hereinafter referred to as “Jas Expoship”), M/s ADB Trade Services Pvt. Ltd. (hereinafter referred to as “ADB Trade”) and M/s Competent Surveyors Pvt. Ltd. (hereinafter referred to as **“Competent”/“Noticee”**) had increased their shareholding in AVCL through off market transactions from 19.59% to 60.50% in the year 2006. Details of their acquisitions are as follows:

Date of acquisition	Acquirer Name	Shares before Acquisition	%age	Shares acquired	%age of acquired shares	Shares Post Acquisition	%age
13-Apr-06	Lee Hotels	0	0.00	303,700	5.07	303,700	5.07
20-May-06	Anuj Dewan	37,000	0.62	246,800	4.12	283,800	4.74
20-May-06	**Competent**	**90,000**	**1.50**	**172,500**	**2.88**	**262,500**	**4.38**
20-May-06	ADB Trade	80,000	1.34	201,100	3.36	281,100	4.69
20-May-06	Conchem	60,200	1.005	235,800	3.935	296,000	4.940
30-Jun-06	Jas Expoship	0	0.00	242,600	4.05	242,600	4.05
10-Jul-06	Jas Expoship	2,42,600	4.05	39,400	0.66	282,000	4.71
31-Jul-06	Jas Expoship	2,82,000	4.71	33,300	0.56	315,300	5.26
31-Jul-06	**Competent**	**2,62,500**	**4.38**	**78,300**	**1.31**	**340,800**	**5.69**
31-Jul-06	ADB trade	2,81,100	4.69	49,000	0.82	330,100	5.51
31-Jul-06	Conchem	2,96,000	4.940	3,700	0.062	299,700	5.002
10-Aug-06	Jas Expoship	3,15,300	5.26	56,600	0.94	371,900	6.21
10-Aug-06	**Competent**	**3,40,800**	**5.69**	**31,600**	**0.53**	**372,400**	**6.22**
10-Aug-06	ADB Trade	3,30,100	5.51	31,500	0.53	361,600	6.03
10-Aug-06	Conchem	2,99,700	5.002	72,900	1.216	372,600	6.218
21-Aug-06	Jas Expoship	3,71,900	6.21	90,700	1.51	462,600	7.72
21-Aug-06	**Competent**	**3,72,400**	**6.22**	**112,000**	**1.87**	**484,400**	**8.08**
21-Aug-06	ADB Trade	3,61,600	6.03	88,200	1.47	449,800	7.51
21-Aug-06	Conchem	3,72,600	6.218	77,100	1.286	449,700	7.505
21-Aug-06	Lee Hotels	3,03,700	5.07	112,700	1.88	416,400	6.95
5-Oct-06	Lee Hotels	4,16,400	6.95	1,200	0.02	417,600	6.97
10-Nov-06	Jas Expoship	4,62,600	7.72	46,200	0.77	508,800	8.49
10-Nov-06	**Competent**	**4,84,400**	**8.08**	**21,200**	**0.35**	**505,600**	**8.44**
10-Nov-06	ADB Trade	4,49,800	7.51	15,800	0.26	465,600	7.77
10-Nov-06	Conchem	4,49,700	7.505	32,900	0.549	482,600	8.054
10-Nov-06	Lee Hotels	4,17,600	6.97	30,200	0.50	447,800	7.47
30-Nov-06	Jas Expoship	5,08,800	8.49	15,100	0.25	523,900	8.74
30-Nov-06	Conchem	4,82,600	8.054	7,000	0.116	489,600	8.171
30-Nov-06	Lee Hotels	4,47,800	7.47	2,400	0.04	450,200	7.51

2. The findings of the examination led to the allegation that the Noticee had violated regulation 13(1) & regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) and therefore consequently, liable for monetary penalty under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act").**

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned has been appointed as Adjudicating Officer vide order dated August 17, 2011 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 '**Rules'**) to inquire into and adjudge the alleged violation of provisions of PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-7/PB/AK/31023/2011 dated September 30, 2011 (hereinafter referred to as **"SCN"**) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act for the alleged violation of regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations as specified in the said SCN.

5. I find from the records that the SCN was issued through Speed Post with acknowledgement card (SPAD) at the last known address of the Noticee, at *"531 L, Model Town, Karnal, Haryana -132 001"* and the same was delivered.

6. Noticee vide letter dated October 12, 2011, acknowledged the receipt of the SCN and requested four weeks time to submit the reply. Noticee, further vide letter dated November 10, 2011 informed that it was contemplating filing application for consent as prescribed by SEBI vide its circular no. EFD/ED/Cir-1/2007 dated April 20, 2007.

7. The Noticee was advised vide letter dated November 23, 2011 to indicate the time frame by which it would be filing the consent application. However, the Noticee did not give any reply. Further, it is observed from the documents available on record that the Noticee had not submitted any consent application in the matter. The Noticee had also failed to submit any reply to the SCN.

8. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on March 22, 2012, vide notice dated March 02, 2012 sent through SPAD to the Noticee. The said hearing notice was delivered. Ms. Sasmita Parida, Practicing Company Secretary, Authorized Representative, (hereinafter referred to as "**AR**") appeared on behalf of the Noticee. During the hearing, the AR made the following submissions, which *inter alia,* stated as under:

"……..…..

- *The Noticee was a promoter of A.V. Cottex Limited (AVCL) during the period of examination mentioned in the aforesaid SCN i.e. during the period from March 31, 2006 to November 30, 2006.*
- *The performance of AVCL deteriorated from the year 2000. Further, AVCL had not paid the listing fee to the exchanges from 2002 to 2007 and thereby trading in the shares of AVCL was suspended from 2002 and suspension of trading was revoked on and from February 12, 2007.*
- *Due to severe financial constraint, AVCL and the Noticee couldn't seek appropriate legal and technical advice for complying with the non compliances in SCN.*

- *I admit that the violations of SEBI (Prohibition of Insider Trading) Regulations, 1992, committed by the Noticee are technical in nature, however, there was no malafide intent on the part of the Noticee of not making the disclosures to the company.*
- *I would also like to bring to your notice that, for the same transactions SEBI vide order dated September 19, 2011 had imposed a monetary penalty of ₹ 18 lakh for the violation of regulations 7(1), 7(1A), 11(1) and 11(2) of SEBI (Substantial Acquisition of shares and Takeover) Regulations, 1997 committed by the Noticee. Further, Hon'ble SAT vide order dated February 15, 2012 had reduced the quantum of penalty to ₹ 10 lakh which has not been paid yet. Therefore, I request the AO to take a lenient view in the matter.*
- *Noticee is not filing any consent application before SEBI.*
- *On behalf of the Noticee I will submit the detailed written submissions in the matter within 10 days from the date of hearing.*

……."

9. The undersigned acceded to the request of the Noticee/AR and allowed time till April 02, 2012 to submit the additional written submissions in the matter. Noticee vide letter dated March 29, 2012 submitted additional written submissions in the matter which *inter alia* stated as under:

"……

- *A major fire incident in the factory premises of the Company in May, 2000 resulted in closure of its operations. The Balance Sheet of the company as at March 31, 2001 reflected erosion of its entire net worth as a consequences thereof the company was registered with Hon'ble BIFR as Sick Industrial Company. Due to financial constraints, the company could not pay the annual listing fees to the Stock Exchanges. The Trading was suspended by BSE in the year 2002.*
- *Subsequently, a rehabilitation scheme was prepared for consideration by the operating Agency Canara Bank. The networth of the company turned positive during the year 2004-05 and the company was discharged from the purview of Sick Industrial companies (Special Provisions) Act, 1985 on 30th January 2006. And suspension of trading from BSE was revoked on and from 12.02.2007.*
- *Because of long drawn sickness of the company, during the year 2006 some of the person from existing promoters group and also some public became harassed. They had decided to left the company by transferring their shareholding to existing promoter group. It was the harassed promoters and*

pubic who transferred their shareholding to other existing promoters but not the existing promoter group had gone to them for acquiring their shares. It may be noted that most of the transfers which took place in 2006 were inter-se promoters.

- *However the promoters were under severe financial constraints and this was the primary reason for which why it could not seek appropriate legal and technical support for compliances in the question.*
- *And further it may be noted that there was no malafide or dishonest intention to have non compliance in any manner. That the non compliance in the matter was due to lack of knowledge and proper advice at the relevant time and further, the subject non compliance were procedural lapses for which neither the company nor the promoters had any intention to take advantage, in any manner from such non - compliance.*
- *We would also like to bring to your notice that, for the same transactions SEBI vide order dated September 19, 2014 had imposed a monetary penalty of Rs. 18 lakh for the violation of Regulations 7(1), 7(1A), 11(1) and 11 (2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 1997 committed by the Noticee. Further Hon'ble SAT vide its order dated 15th February, 2012 had reduced the quantum of penalty Rs.10 lakh which has not been paid yet.*
- *In view of the above, you may appreciate that the interests of the public shareholders have not been adversely affected though there has been non compliances of SEBI PIT regulations for the reason mentioned above.*
- *We most humbly pray that the above facts and circumstances may be considered while adjudicating the matter and further requested to drop the penalty proceedings as sufficient penalty has already been imposed in other regulations of SEBI for the same transactions.*

…….……..”

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

    a. Whether Noticee had violated the provisions of regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations?

b. Does the violation, if any, attract monetary penalty under section 15A(b) of the 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 the SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, which reads as under:-

> ***13. <u>Disclosure of interest or holding by directors and officers and substantial shareholders in a listed company – Initial Disclosure</u>***
>
> *(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 4 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*
>
> *(2). ……..*
>
> *(3). ……*
>
> ***<u>Continual Disclosure</u>***
>
> *(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.*
>
> *(4) ……..…..*
>
> *(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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..*
>
> *(6)……..…*

12. As per regulation 13(1) of PIT Regulations, any person whose shareholding is in excess of 5% in any listed company has to make the required disclosure to

the company in a prescribed format within 4 working days from (a) the receipt of intimation of allotment of shares, or (b) the acquisition of shares or voting rights. As per regulations 13 (3) & 13(5) of PIT Regulations, any person who is holding more than 5% of shares or voting rights in any listed company has to make the required disclosure to the company if there is any change in shareholding of such person by more than 2% of total shareholding or voting rights in the company, in a prescribed format, within 4 working days from (a) the receipt of intimation of allotment of shares or (b) the acquisition of shares or voting rights, as the case may be.

13. Upon perusal of the documents available on record I find that the shareholding of the Noticee in AVCL prior to July 31, 2006 was 2,62,500 shares i.e. 4.38% of total shareholding of AVCL. Further, Noticee had acquired 78,300 shares i.e. 1.31% of total shareholding of AVCL on July 31, 2006, through off market transaction. Thus, by means of said acquisition the shareholding of the Noticee had increased from 2,62,500 shares i.e. 4.38% of total shareholding of AVCL to 3,40,800 shares i.e. 5.69% of total shareholding of AVCL on July 31, 2006.

14. Noticee while crossing the threshold limit of 5% specified under regulation 13(1) of PIT Regulations on July 31, 2006, was required to make the disclosures to the company i.e. AVCL as per regulation 13(1) of PIT Regulations, i.e. within four working days from the date of acquisition, i.e. by August 04, 2006 which the Noticee had failed to do.

15. Further, I find that the shareholding of the Noticee in AVCL prior to August 10, 2006 was 3,40,800 shares i.e. 5.69% of total shareholding of AVCL. Noticee had acquired 31,600 shares i.e. 0.53% of total shareholding of AVCL on August 10, 2006 and 1,12,000 shares i.e. 1.87% of total shareholding of AVCL on August 21, 2006 through off market transactions. Thus, by means of said acquisitions the shareholding of the Noticee in AVCL had increased from

3,40,800 shares i.e. 5.69% of total shareholding of AVCL to 4,84,600 shares i.e. 8.08% of total shareholding of AVCL on August 21, 2006.

16. As there was a change of more than 2% of shareholding of the Noticee in AVCL on August 21, 2006, the Noticee was required to make the disclosures to the company i.e. AVCL, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations, i.e. within four working days from the date of acquisition, i.e. by August 25, 2006, which the Noticee had failed to do.

17. I find that the Noticee in its written submission dated March 29, 2012 stated that non compliance of disclosures under regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations was due to lack of knowledge and proper legal advice at the relevant time. However, I am not inclined to accept the same, because ignorance of law is not an excuse.

18. *'Ignorantia juris non excusat'*, that is to say, ignorance of law is not an excuse. Ignorance of law of the state does not exclude any person from the penalty for the breach of it, because every person is bound to know the law, and is presumed so to do. If any individual should infringe the law of the country through ignorance or carelessness, he must abide by the consequences of his error; it is not competent of him to aver in a Court of Justice that he was ignorant of the law of the land, and Court of Justice is not at liberty to receive such a plea.

19. A mistake of law is never accepted as a defence in actions, whether civil or criminal. The basis of this rule is said to be another maxim in the law of evidence, namely, "every man is presumed to know the law". Austin, the famous jurist explained two reasons of the rule, i.e., 'Ignorance of law is no excuse', thus,

(i) If ignorance of law were admitted as a ground of exemption, the Courts will be involved in questions, which it were scarcely possible to solve, and which would render the administration of justice next to impracticable.

(ii) If ignorance of law were admitted as a ground of exemption, ignorance of law would always be alleged by the party by way of defence, and the Court, in every case, would be bound to decide the point, whether the party was really ignorant of the law. And for the purpose of determining the cause of his ignorance, it would be incumbent upon the Court to unravel it's precious history and to search his whole life for the elements of just and correct solution.

20. In the instant case, I find from the submissions of the Noticee, that the Noticee has not disputed the fact that its shareholding in AVCL prior to July 31, 2006 was 2,62,500 shares i.e. 4.38% of total shareholding of AVCL and it had acquired 78,300 shares i.e. 1.31% of total shareholding of AVCL through off market transaction on July 31, 2006, thereby its shareholding had increased from 4.38% to 5.69% of total shareholding of AVCL. Further, Noticee has not disputed the fact that it had acquired 1,43,600 shares i.e. 2.39% (31,600 shares i.e. 0.53% of total shareholding of AVCL on August 10, 2006, and 1,12,000 shares i.e. 1.87% of total shareholding of AVCL on August 21, 2006) of total shareholding of AVCL, thus by means of said acquisitions its shareholding had increased from 5.69% to 8.08%.

21. AVCL vide its letter dated May 10, 2011 mentioned that it did not have any documentary evidence to confirm about Noticee having made the necessary disclosures required under regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations to it.

22. Further, Noticee has admitted that the violations of regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations are technical

and procedural in nature and there was no malafide intent on the part of the Noticee of not making the disclosures to the company and requested the undersigned to take a lenient view in the matter.

23. In terms of regulations 13(1) & 13(3) of PIT Regulations disclosures are required to be made to the company. "Disclose" according to Webster's Encyclopedic Dictionary means - to make known, reveal or uncover – to cause to appear, allow to be seen, lay open to view. According to Black's Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus, the requirement is that complete information should reach the person for whom it is meant. The fact that complete information should be disclosed to the company is also evident from the provisions of regulations 13(1) & 13(5) of PIT Regulations which casts an obligation on the person whose shareholding crosses the specified threshold limits to disclose to the company the acquisition of shares within 4 working days. Failure to disclose full details on the specific aspects provided in the Regulations cannot be considered as trivial or of no consequence to be overlooked.

24. The Noticee, therefore, ought to have made the relevant disclosures to the company as per the provisions of PIT Regulations. However, the Noticee failed to do so. By not making the disclosure, the Noticee failed to comply with its statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005 the Hon'ble Securities Appellate Tribunal has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

25. Thus, in the light of above, the allegation of violation of regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations stands established.

26. The provisions of section 15A (b) of SEBI Act is reproduced hereunder:

> ***15A***. ***<u>Penalty for failure to furnish, information, return etc.</u>***
>
> *If any person, who is required under this Act or any rules or regulations made thereunder, -*
> *(a)……..*
> *(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.*
> *(c)……..*

27. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow".*

28. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section15A (b) of the SEBI Act.

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

> ***"15J - Factors to be taken into account by the adjudicating officer***
>
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

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

30. The object of the PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. Further, similar disclosures were also required to be made under regulation 7(1) read with regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'SAST Regulations'**). The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticee could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosure, it had concealed the vital information from the investors. It may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. Further, I also note that the Noticee had not made the disclosures required under regulation 7(1) read with regulation 7(2) of SAST Regulations. SEBI vide common order dated September 19, 2011 had imposed a monetary penalty of ₹ 18,00,000 on Noticee, Lee Hotels, Conchem, Jas Expoship, ADB Trade and Anuj Dewan (₹ 3,00,000 in terms of section 15 A(b) and ₹ 15,00,000 in terms of section 15 H(ii) of the SEBI Act) for the violations of regulations 7(1), 7(1A), 11(1) & 11(2) of SAST Regulations which was subsequently reduced to ₹ 10,00,000 by Hon'ble Securities Appellate Tribunal vide order dated February 02, 2012.

ORDER

31. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of ₹ 25,000 (Rupees twenty five thousand only) under section 15A (b) of the SEBI Act on the Noticee which will be commensurate with the violation committed by it.

32. The Noticee shall pay the said amount of penalty by way of demand 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. Sujit Prasad, Chief General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

33. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 28, 2012 **PARAG BASU**

Place: MUMBAI **ADJUDICATING OFFICER**