BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. MC/CB/2018-19/34]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of –

Venkata Vasudev (PAN: ACAPV5346A) having address at – P.O. Box #1, Shamshabad Post Office, Shamshabad, Ranga Reddy District – 501 218 (Telangana). E-mail : venkatavasudev@rediffmail.com

In the matter of *Bheema CementsLtd.*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, the "***SEBI***") had conducted examination in the scrip of Bheema Cements Limited (hereinafter be referred to as, the "***Company***"), a company listed on the BSE Limited (hereinafter be referred to as, the "***BSE***") for the period January 01, 2013 to June 30, 2014 (hereinafter be referred to as, the "***Examination Period***"). Examination *prima facie* revealed violation of Regulation 13(1) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter be referred to as, the "***PIT Regulations***") and Regulation 29(1) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter be referred to as, the "***SAST Regulations***") by Mr. Venkata Vasudev (hereinafter be referred to as, the "***Noticee***") upon not making disclosures upon change in its shareholding in the Company.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "***SEBI Act***") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the "***Adjudication Rules***") vide order dated August 04, 2016 to inquire into and adjudge under Section

15A (b) of the SEBI Act against the Noticee for the alleged violation of aforesaid provisions of PIT Regulations and SAST Regulations. Subsequently, the undersigned was appointed as the Adjudicating Officer on April 26, 2018 which was communicated *vide* order dated May 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. E&AO/MC/JP/15774/2018 dated May 29, 2018 (hereinafter be referred to as, the "***SCN***") was served upon the Noticee under Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against him under Section 15A (b) of the SEBI Act for alleged violations of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

a) The shareholding of the Noticee in the Company changed from 4.57% (1288546 shares) to 7.89% (2232246 shares) through two off market transactions of acquisition of 12700 shares on November 25, 2013 and 931000 shares on February 22, 2014.

b) As a result of such acquisition, the Noticee was required to submit relevant disclosures to the Company and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations and to the Company under Regulation 13(1) of the PIT Regulations within 2 days of such change in his shareholding. However, the Noticee, allegedly, failed to submit disclosure required under the SAST Regulations and the PIT Regulations.

c) The BSE, *vide* e-mail dated July 27, 2017 confirmed that no disclosures were made by the Noticee under the PIT Regulations or SAST Regulations in relation to the increase in shareholding of the Noticee during the Examination Period. Similarly, the Company, *vide* e-mail dated September 05, 2017 confirmed that no disclosures were made by the Noticee under the PIT Regulations or SAST Regulations.

d) It was alleged that the aforesaid non-disclosure regarding increase in its shareholding by the Noticee was in violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations, text of which is mentioned as below:

SEBI (Prohibition of Insider Trading) Regulations, 1992

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.

SAST Regulations:

29. Disclosure of acquisition and disposal

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

(3). The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

5. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee liable for monetary penalty under Section 15A (b) of the SEBI Act. The SCN was served upon the Noticee by way of Speed Post with Acknowledgment Due (hereinafter be referred to as, the "**SPAD**") at the address of the Noticee on June 02, 2018, an acknowledgment of which is available on record. The Noticee was also advised to file his reply, if any, within 14 days from the receipt of the SCN. However, no reply towards the SCN was received from the Noticee.

6. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticee on September 12, 2018 *vide* Notice of Hearing dated August 31, 2018. On account of non-delivery of the Notice of Hearing

dated August 31, 2018, another notice of hearing dated October 03, 2018 was served upon the Noticee by way of e-mail wherein, the undersigned granted an opportunity of hearing to the Noticee on October 15, 2018. On receiving a request of adjournment from the Noticee, the undersigned provided the Noticee a final opportunity of hearing on November 01, 2018. The Noticee was also advised to file its reply, if any, towards the SCN.

7. Thereafter, the Noticee submitted his reply towards the SCN *vide* letter dated October 29, 2018. Submissions of the Noticee are summarized as under:

a) The Noticee submitted that he is neither a promoter nor a director of the Company and he submitted that the SCN had failed to bring out anything on record to show his involvement in the allegation made in the SCN.
b) The Noticee also submitted that there were no allegations relating to monetary gains made on him.
c) The Noticee had no dealings or arrangement with any of the promoters, directors or other persons with respect to the shares of the Company.
d) The Noticee submitted that he was not aware of percentage of his shareholding in the Company. Therefore, he did not have any intention to hold more than 5% of the shares of the Company.
e) The Noticee submitted that he had been holding 1288546 shares of the Company since 2007-08 and he acquired only 3.32% shares during the Examination Period and therefore, provisions of Regulation 13(1) of the PIT Regulations and 29(1) read with 29(3) of the SAST Regulations should not apply on him.
f) The purported non-disclosures were merely a technical lapse and that they did not cause any loss to any investor nor did he make any wrongful gain out of it.

8. The hearing scheduled on November 01, 2018 was attended by Mr. Rajesh Khandelwal who was appointed as, the authorized representative by the Noticee (hereinafter be referred to as, the "***Authorized Representatieve***"). During the hearing, the Authorized Representative reiterated their submissions dated October 29, 2018 and sought additional time to make submissions. The request of the Authorized Representative was acceded to by the undersigned and the Noticee was given additional time until November 15, 2018 to make submissions.

9. Thereafter, *vide* e-mail dated November 14, 2018, the Noticee submitted additional submissions, a summary of which is produced as under:

a. The Company was in knowledge of Noticee having purchased the shares and that the Company had admitted to show Noticee's purchases in their year ending accounts.
b. Therefore, there has been a delay in disclosures by about two months only.
c. The Noticee did not have any intent to hold more than 5% shares of the Company.

10. Since the inquiry in the instant matter is concluded, I proceed to decide the case on merit keeping into account the allegations mentioned in the SCN, submissions of the Noticee towards the SCN and material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the instant matter are:

Issue No. I Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

Issue No. I **Whether the Noticee had failed to make mandated disclosures under the PIT Regulations and SAST Regulations as alleged in the SCN?**

12. I note that the Noticee had not disputed the details relating to change in the shareholding of the Noticee as alleged in the SCN. Thus, the details of change in shareholding of the Noticee in the scrip of the Company (also provided to the Noticee as Annexure III to the SCN), as provided to the Noticee in the SCN, are as follows:

Date	Transaction Type	Debit / Credit	Traded Quantity	Closing Holding	Holding as % of the share capital
30/09/2013	Holding Before Transactions			1288546	4.57%
25/11/2013	Off Market	Credit	12700	1301246	4.60%
22/02/2014	Off Market	Credit	931000	2232246	7.89%
		TOTAL	943700		

Thus, it is observed from the SCN that the Noticee acquired 931000 shares of the Company on February 22, 2014 by way of off market acquisition which led to increase in his shareholding in the Company to 7.89% of the latter's total share capital.

13. Regulation 13(1) of the PIT Regulations requires any person who holds more than 5% shares in a company to disclose to the company in Form A, number of shares or voting rights held by him on becoming such holder within 2 working days of receipt of intimation of allotment of shares or the acquisition of shares or voting rights. Similarly, Regulation 29(1) read with 29(3) of the SAST Regulations requires an acquirer, who acquires shares or voting rights in a target company aggregating to five per cent or more of shares of such target company to disclose their aggregate shareholding and voting rights in such target company to every stock exchange where the shares of the target company are listed and to the target company within 2 days of such acquisition.

14. On perusal of the available records and the table reproduced in paragraph 12 hereinabove, it is observed that consequent to the off-market acquisition of 931000 shares by the Noticee on February 22, 2014, the aggregate shareholding of the Noticee reached more than 5% of the total share capital of the Company. On the aforesaid increase, the Noticee ought to have disclosed such acquisition in terms of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.

15. I note from the e-mail confirmation of the Company dated September 05, 2017 which was provided to the Noticee by way of Annexure V to the SCN that the Noticee had not made any disclosure in terms of Regulation 13(1) of the PIT Regulations to the Company. I further note from the e-mail confirmation of the BSE dated July 07, 2017 which was provided to the Noticee by way of Annexure IV to the SCN that the no

disclosures relating to acquisition of shares of the Company were made to the BSE in terms of SAST Regulations by the Noticee.

16. I further note that the Noticee had contended that he was not aware of his shareholding in the Company and that he acquired only 3.32% of shareholding in the Company during the Examination Period and thus, was not required to make any disclosures under PIT Regulations or SAST Regulations. However, I am of the view that ignorance of his shareholding in the Company is no excuse for non-compliance of a statutory requirement.

17. I also note that the Noticee had submitted that he was neither a promoter nor a director of the Company and he submitted that the SCN had failed to bring out anything on record to show his involvement in the allegation made in the SCN. However, I note that the obligation of disclosure under Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations is on the persons holding or acquiring 5% shares or voting rights in any listed company. Thus, the Noticee cannot shirk responsibility from an obligation mandated by statutes by claiming not to be a promoter or director of the Company.

18. In view of the aforesaid, it is established that the Noticee had failed to make disclosures as required under Regulation 13(1) of the PIT Regulations to the Company and under Regulation 29(1) read with 29(3) of the SAST Regulations to the Company as well as the BSE.

Issue No. II **If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A (b) of the SEBI Act?**

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Issue No. III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

19. Since failure of the Noticee in making disclosures to the Company under Regulation 13(1) of the PIT Regulations and to the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations is established, I am of the view that it warrants imposition of

monetary penalty under Section 15A(b) of the SEBI Act on the Noticee, text of which is reproduced as under:

> ***SEBI Act***
>
> "*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.*"

20. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

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.

21. I note that the Noticee had submitted that the non-disclosures on the part of Noticee were merely a technical lapse and that they did not cause any loss to any investor nor did he make any wrongful gain out of it. I find it relevant to note here that the Securities Appellate Tribunal (hereinafter be referred to as, the "***Hon'ble SAT***") in the matter of ***Virendrakumar Jayantilal Patel*** v. ***SEBI*** (Appeal No. 299 of 2014 dated October 14, 2014) had observed that, "*obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly, argument that the failure to make the disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make the disclosures.*" Thus, I am of the view that the abovementioned submission of the Noticee cannot be accepted.

22. While it is established that the Noticee did not make disclosure to the Company under Regulation 13(1) of the PIT Regulations and to the Company and the BSE under Regulation 29(1) read with 29(3) of the SAST Regulations, I cannot ignore the fact that

the necessary information was made available in public domain by way of shareholding pattern of the Company on April 12, 2014, i.e. after about 2 months of the acquisition. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. From the material available on record, repetitive nature of default could also not be ascertained.

23. I also find it relevant to refer to the order of Hon'ble SAT in the matter of ***Vitro Commodities Private Limited, Kolkata*** v. ***Securities and Exchange Board of India, Mumbai*** (Appeal No. 118 of 2013 dated September 04, 2013), wherein it held, "*It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.*" Considering the aforeasid *ratio decendi*, I am of the view that the aforesaid violations of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations be considered as single violation for the purpose of imposition of penalty on the Noticee.

24. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹1,00,000 will be commensurate with the violations committed. .

ORDER

25. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of ₹1,00,000/- (Rupees One Lakh only) upon the Noticee, i.e. Mr. Vasudeva Venkat under Section 15A(b) of the SEBI Act for violation of Regulation 13(1) of the PIT Regulations and Regulation 29(1) read with 29(3) of the SAST Regulations.

26. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to

Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

27. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

28. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date : November 30, 2018 **(Maninder Cheema)**
Place : Mumbai **Adjudicating Officer**