BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 150/2013]

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

Shri. Sohesh Prakash Shah

(PAN: AMHPS7250B)

In the matter of DJS Shares and Stocks Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation in trading in the scrip of DJS Shares and Stocks Ltd. (hereinafter referred to as the **company**). During examination in the scrip of the company it was observed that Shri. Sohesh Prakash Shah (hereinafter referred to as the **Noticee**) while trading in the scrip of the company had acquired/ sold shares in market and off-market transactions on various occasions.

2. It was observed that Noticee while trading in the scrip of the company had acquired shares/ voting right in the company which crossed fourteen per cent shares/ voting right in the company as a result of which he was required to make necessary disclosure under Regulation 7(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **SAST Regulations**) to the company and to the exchange. Due to further acquisition of shares in the company, Noticee's shareholding in the company crossed the fifteen per cent limit as

prescribed under Regulation 10 of SAST Regulation. Since the transaction was inter-se transfer amongst the promoters, Noticee was required to file report under Regulation 3(4) of SAST Regulations to SEBI. It was observed that Noticee failed to submit necessary report within time limit as prescribed under the Regulation.

3. It was further observed that Noticee's shareholding in the company also reduced, aggregating more than two per cent of the share capital of the company, for which he was required to make necessary disclosure within two days under Regulation 7(1A) read with 7(2) of SAST Regulations to the company and to the exchange. Noticee made such disclosure with a delay of ten days. Further, it was observed that there was change in shareholding of the Noticee which was more than one per cent from the last disclosure for which he was required to make necessary disclosures under Regulation 13(4) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations**). It was observed that Noticee failed to make necessary disclosures.

4. In view of the above it was alleged that Noticee did not comply with Regulation 3(4) read with 3(5), Regulation 7(1) & 7(1A) read with 7(2) of the SAST Regulations and Regulation 13(4) read with 13(5) of PIT Regulation. Consequently the Noticee was liable for penalty under Section 15A (b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer vide order dated September 10, 2012 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 violations of SAST Regulations and PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice No. EAD-6/BM/VS/4111/2013 dated February 15, 2013 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15A (b) of SEBI Act for the alleged violation specified in the said SCN. The said SCN was delivered and acknowledged by the Noticee. Noticee vide letter dated March 5, 2013 sought time of three weeks to file reply to the SCN which was granted vide email dated March 11, 2013. Vide letter dated March 29, 2013 Noticee made the following submissions:

   a. *That the non-compliances as mentioned in the SCN were brought to my knowledge for the first time during June/July 2010 by the Manager to the offer viz. Vivro Financial Services Private Ltd. who were appointed by the acquirers viz. B.K. Dyeing & Printing Mills Pvt. Ltd., Sriram Stocks Management Pvt. Ltd. Malar Share Shoppe Ltd. (hereinafter, "Acquirers").*

   b. *That on realizing such non-compliance, I voluntarily submitted an application for consent dated November 10, 2010 offering an amount of Rs. 1,00,000/- to resolve the matter amicably and not warranting any penal action against me by SEBI. Later on, after personal meeting with the Internal Committee of SEBI on consent, I by my letter dated June 17, 2011 revised the consent terms to Rs.2,00,000/- to mitigate litigation cost and maintain my unblemished track record. However to my regrets, the High powered Advisory Committee on Consent constituted by SEBI did not accept the revised consent terms and therefore my application was rejected by SEBI and I was intimated about the same vide letter No. EFD/DRA-1/KG/OW/27247/2011 dated August 25, 2011.*

   c. *The above referred DJS/ the Company was incorporated under the Companies Act 1956, on April 27, 1994 as a Public Limited Company having registered office at*

Coimbatore. The Company was promoted by Mr. Prakash Devidas Shah with the main object to inter-alia carries out share broking activity. The Company came out with the Public issue of 30,30,400 shares in January 1995 and made Preferential allotment of 10,00,000 shares in June 1997. Thereafter the Company has not made any further issue of share capital till October 2012. During October 2012, Company allotted Bonus shares in the ratio of 1:2 and split face value from Rs.10/to Rs.1/-.

d. *The promoter of the Company viz. Mr. Prakash Devidas Shah signed a Share Purchase Agreement as on March 17, 2010 with the Acquirers viz. B.K. Dyeing & Printing Mills Pvt. Ltd., Sriman Stocks Managements Pvt. Ltd. and Malar Share Shoppe Ltd. to sell his entire holding of 28,07,100 shares representing 55.80% of the total paid up equity share capital of the Company @ Rs.25/- and the said Acquirers in compliance of SEBI (SAST) Regulations, 1997 made Public Announcement on March 23, 2010. The said acquirers made an open offer in July 2010 to acquire 10,06,080 shares representing 20 % of the total paid up equity share capital of the Company @ Rs.45/-. However in response thereto only 1,600 shares were tendered by the public shareholders. Thus the public shareholders had an opportunity to sell the shares @ Rs.45/- in July 2010.*

e. *With regard to my transaction of 69,300 shares on October 21, 2008, I would like to state that it was an inter-se acquisition of shares from Mr. K Annamalai, who at the relevant time was holding 2,09,200 shares representing 4.16 % of the paid up capital of DJS/the Company. In this regard, I would like to humbly submit that both of us were the promoters of the DJS and effectively there was no change in the total promoter holding due to inter-se transfer between us and hence we were under the bonafide impression that no disclosure was required for the same. Further, with regard to acquisition of 1,46,400 shares on November 04, 2008 and 83,500 shares on November 14, 2008, I would like to submit that it was an inter-se transfer from my mother*

Smt. Anilaben P Shah , by way of gift to me. Thus it was my understanding that since the transaction is not only within the promoter group but also within the family; I was under the bonafide impression that no disclosure was required under regulation 13(4) of PIT regulation. Besides I would like to further submit that, at the relevant time, I along with the persons acting in concert was already holding 77.78 % of the shares of DJS / the Company. For ready references, the relevant provisions of the SAST regulation i.e. regulation 10 of the SAST regulation is reproduced below:

"SEBI (ACQUISITION OF SHARES & TAKEOVERS)
REGULATIONS, 1997"
CHAPTER III

SUBSTANTIAL ACQUISITION OF SHARES OR VOTING RIGHTS IN AND ACQUISITION OF CONTROL OVER A LISTED COMPANY
Acquisition of [fifteen] per cent or more of the shares or voting rights of any company.
10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise 1[fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

f. *On plain reading of the aforesaid provision, I understand that if an acquirer acquires more than fifteen percent of shares of a company then he is mandated to make a public announcement to acquire further shares of the Company. However, in the instant case, promoters along with persons acting in concert (including me) were already holding 77.78 % hence in my understanding of the aforesaid regulation 10 of the SAST, the same was not triggered. However when advised otherwise, I belatedly filed report under*

regulation 3(4) for seeking exemption under Regulation 3 (1) (e) (iii) (b) of SAST Regulation on June 02,2010 which resulted into a delay of 545 days. Under the aforesaid facts and circumstances of the case, I request your good selves to kindly condone the same.

g. *Further, with regard to the non-compliance of regulation 7(1A) of SAST regulations for execution of sale transactions for 9,43,600 shares, I would like to submit that the compliances for the aforesaid transaction were filed with a delay of 10 days on two occasions. I humbly request your good selves to kindly condone the delay of 10 days in the compliance requirements on the sole ground that I am an Individual and not having any full time competent professional to assist me.*

h. *Additionally, it is also pertinent to note that during the relevant period, DJS/ the Company itself was acting as its Registrar and Transfer Agents. Therefore every sale transaction resulting into change in beneficial ownership necessarily passed through DJS/the Company records. Be that as it may, I admit and accept the non-compliance, however please be informed that it was unintentional and innocent lapse on my part. I therefore request your good selves to kindly take a lenient view and exonerate me from penal action for the same.*

i. *Under the facts and circumstances as enumerated hereinabove, I request you to kindly consider the following facts and mitigating factors in exonerating me from the alleged violations in the SCN.*

(i) The execution of aforesaid transactions has not adversely affected the interests of the shareholders of the DJS/ the Company in any manner whatsoever and has not put the existing Shareholders of the Company to any disadvantage.

(ii) There was no intention to suppress any material/information from the DJS/ the Company or from any shareholder of the Company.

(iii) I have voluntarily made an Application for Consent to settle the matter amicably before issuance of the aforesaid SCN to me.

(iv) The said violation is only technical, procedural and venial breach and has not caused any adverse consequences to anybody, especially the shareholders of the company.

(v) I have not consciously or deliberately avoided the filing of the requisite information to DJS / the Company.

(vi) I have not made any disproportionate gain or derived any unfair advantage from the aforementioned transaction.

(vii) No loss has been caused to any investor or group of investors or to any member of the public as a result of the technical default on my side.

(viii) The alleged default is not repetitive in nature.

(ix) There is no investors' complaint with regard to the non compliances arising from the execution of aforesaid transactions by me.

7. In the interest of natural justice an opportunity of hearing was provided to the Noticee on April 25, 2013 vide hearing notice dated April 3, 2013. Noticee, vide email dated April 4, 2013, requested to reschedule the hearing on or before April 23, 2013. Accordingly the hearing was rescheduled to April 18, 2013 and same was intimated to the Noticee vide email dated April 5, 2013. Shri. Prakash Shah, (Advocate) Authorized Representative (AR) appeared along with the Noticee and reiterated the submissions given in the reply to the SCN. During the hearing Noticee sought time till April 23, 2013 for filing additional submission, if any. Vide letter dated April 18, 2013 Noticee reiterated the submission made vide letter dated March 11, 2013 and made following further submissions:

   a. *That with regard to the acquisition of 1,46,400 shares by me on November 3, 2008, I reiterate that the said shares were received by me as gift from my mother Smt. Anilaben P Shah.*

b. That with regard to the acquision of 83,500 shares by me on November 14, 2008, I clarify that the said shares were received by me as gift from my aunty Smt. Sarojben Jayantilal Shah.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:

   i. Noticee did not make necessary disclosures under Regulation 13(4) of PIT Regulations for acquiring more than one per cent shareholding in the company.
   ii. Noticee did not make necessary disclosures under Regulation 7(1) of SAST Regulation when his shareholding in the company crossed fourteen per cent.
   iii. Noticee's shareholding in the company crossed the fifteen per cent limit as prescribed under Regulation 10 of SAST Regulation. Since the transaction was inter-se transfer amongst the promoters, Noticee was required to file report under Regulation 3(4) of SAST Regulations. It was observed that Noticee delayed in filing necessary report under Regulation 3(4) of SAST Regulations by 545 days.
   iv. Noticee delayed in failing disclosures under Regulation 7(1A) of SAST Regulations.

9. In view of the above it was alleged that the Noticee violated the provisions of Regulation 7(1), 7(1A) read with 7(2) of SAST Regulations; Regulation 3(4) read with 3(5) of SAST Regulations and 13(4) read with 13(5)of PIT Regulations.

10. Before moving forward, it will be appropriate to refer to the relevant provisions of 13(4) of PIT Regulations, Regulation 7(1), 7(1A) read with 7(2) of SAST Regulations, Regulation 3(4) read with 3(5) of SAST Regulations, which reads as under:

Regulation 13(4) of PIT Regulations is as under:

(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 right 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.

(5) The disclosure mentioned in sub-regulation (3) and (4) shall be made within 4 working days of:

(a) The receipt of intimidation of allotment of shares, or

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

Regulation 7(1) and 7(1A) of SAST Regulations is as under:

(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.

(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.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and

such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

(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.

Regulation 3(4) of Takeover Regulations:

3(4) In respect of acquisition under clause (a), (b), (e) and (i) of sub-regulation (1), the acquirer shall, within 21 days if the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitled such person to exercise 15 per cent or more of the voting rights in a company.

Regulation 3(5) of Takeover Regulations:

3(5) The acquirer shall, along with the report referred to under sub-regulation (4), pay a fee of twenty five thousand rupees to the Board, either by a banker's cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.

11. The issues that arise for consideration in the present case are:

i. Whether Noticee has violated Regulation 7(1) read with 7(2) of SAST Regulations when his shareholding in the company crossed fourteen per cent of the paid capital of the company?
ii. Whether the Noticee was required to file for exemption under Regulation 3(4) of SAST Regulations?

iii. Whether Noticee violated Regulation 7(1A) read with 7(2) of SAST Regulations when his shareholding in the company reduced from 18.76% to 0%?

iv. Whether Noticee violated Regulation 13(4) of PIT Regulations by not making necessary disclosures when his shareholding in the company changed and such change exceeds Rs. 5 Lakh in value or 25,000 shares or one per cent of the total shareholding or voting rights in the company?

v. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (b) of SEBI Act?

vi. 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?

FINDINGS:

12. I now proceed with the alleged violations of SAST and PIT Regulations.

i. I note that Noticee while trading in the scrip of the company had acquired/ sold shares in market and off-market transactions on various occasions. Details of market and off-market transactions are given below:

Sr. no	Date of transaction	Mode of Transfer	Shareholding Before Acquisition/ Transfer (%)	No. of shares Acquired/Transferred (%)	Shareholding After Acquisition/ Transfer (%)	Disclosure Required under PIT Regulation	Disclosure Required under SAST Regulation
1	21/10/2008	Inter-se	644400 (12.91%)	69300 (1.38%)	713700 (14.19%)	13(4)	7(1)
2	04/11/2008	Inter-se	713700 (14.19%)	146400 (2.91%)	860100 (17.10%)	13(4)	3(4)
3	14/11/2008	Market	860100 (17.10%)	83500 (1.66%)	943600 (18.76%)	13(4)	NA
4	31/03/2009 to 15/02/2010	Market	943600 (18.76%)	-943600 (-18.76%)	0 (0%)	NA	7(1A)

ii. It was observed that on October 21, 2008 Noticee acquired through inter-se transfers among promoters 69,300 shares representing 1.38% of his total shareholding in the company as a result of which his shareholding in the company crossed 14% i.e. from 12.91% to 14.19% for which he was required to make necessary disclosure under Regulation 7(1) of the SAST Regulations. It was further observed from the aforementioned transaction that Noticee was

required to make necessary disclosure under Regulation 13(4) of PIT Regulations. Admittedly no disclosure was made by the Noticee.

iii. On November 4, 2008 Noticee acquired 1,46,400 shares representing 2.91% of his total shareholding in the company through inter-se transfers among promoters; and on November 14, 2008 he acquired 83,500 shares representing 1.66% of his total shareholding in the company through market transactions. For the aforesaid transactions he was required to make disclosures under Regulation 13(4) of PIT Regulations. Further, it was observed that with the acquisition of 1,46,400 shares (2.91%) through inter-se transfer on November 4, 2008 the Noticee's holding in the company exceeded 15% of the paid up capital of the company. As per SAST Regulation acquisition of shares beyond 15% triggers open offer but as the transactions were inter-se exemption can be sought from making open offer under Regulation 3(1)(e)(iii)(b) of SAST Regulations for which a report is to be filed with SEBI under Regulation 3(4) within 21 days of acquisition of shares. It was observed that the Noticee filed the report on June 02, 2010 which was with a delay of 545 days.

iv. It was observed that from March 31, 2009 to February 15, 2010, Noticee sold 9,43,600 shares representing 18.76% of the shareholding of the company through market transactions as a result of which his shareholding in the company came down to 0%. The disclosures were required to be filed under Regulation 7(1A) of SAST Regulations for the aforesaid transactions within two days the change in the holding to the company and the Stock Exchange where the shares are listed. It was observed that the Noticee filed to make necessary disclosures within stipulated time as required under the Regulations and made it with a delay of 10 days on two occasions to the company and stock exchanges. Thus, the Noticee did not comply with Regulation 7(1A) of SAST Regulations.

v. Noticee in its reply has claimed that the alleged acquisition of shares on October 21, 2008 was inter-se acquisition of shares from Shri. K Annamalai, promoter of the company and acquisition of shares from one promoter by another promoter does not warrant any disclosure requirement as there was effectively no change in the total promoter shareholding. Noticee further claimed that the acquisition of 1,46,000 shares on November 04, 2008 and 83,000 shares on November 14, 2008 was an inter-se transfer from his mother Smt. Anilaben P Shah, by way of gift. Noticee has submitted the gift deed along with the reply. Noticee submitted that since the transaction was not only within the promoter group but also within the family, he was under the bonafide impression the no disclosure was required under 13(4) of PIT Regulations. Noticee further submitted that promoters along with the persons acting in concert (including Noticee) were already holding 77.78% hence, in light of Regulation 10 of SAST Regulations, same was not triggered. For the alleged violation of Regulation 7(1A) of SAST Regulations Noticee accepted the delayed/non- compliance.

vi. From the documents available on record and from the reply of the Noticee I note that for the transaction dated October 21, 2008 Noticee acquired 1.38% of share capital of the company as a result of which he was liable to make disclosures under Regulation 7(1) of SAST Regulations. I note from the demat account of the Noticee that 69,000 shares were credited in his Beneficial Owner (BO) account on October 21, 2008 hence I find that Noticee acquired shares in the company. I note that Regulation 7 of SAST Regulations does not exempt inter-se transfer among the promoters from making disclosures. In fact the provisions of Regulation 7 have been held to be mandatory and not merely directory. Hence the claim of the Noticee that the transaction was inter-se acquisition of shares from promoter of the company and acquisition of shares from one promoter by another promoter does not warrant any disclosure requirement as there was effectively no change in the total promoter shareholding, is not acceptable.

vii. For the transaction dated November 11, 2008 wherein the Noticee's holding crossed 15% Noticee submitted that promoters along with the persons acting in concert (including Noticee) were already holding 77.78% hence, in light of Regulation 10 of SAST Regulations, same was not triggered. I note that in the case of *Swedish Match AB Vs. SEBI*[1] Supreme Court has interpreted the provision of Regulation 11 of SAST Regulations and has observed that if the additional shares are acquired entitling an acquirer to exercise more than 5 per cent of the voting rights, the statutory embargo to the effect that the acquirer must make a public announcement to acquirer shares in accordance with the Regulations comes into operation. The Supreme Court judgment makes it clear that even when a single acquirer acquires more than 5 per cent voting rights, irrespective of the total voting rights of the promoter group, the acquirer is under obligation to make public announcement under Regulation 11 of the takeover code.[2] Applying the ratio of Supreme Court judgment of *Swedish Match AB Vs. SEBI*, it becomes clear that even if a single acquirer triggers the SAST Regulations, irrespective of the total voting rights of the promoter group, the acquirer is under obligation to make public announcement as and where required under the Regulation. Hence, the claim of the Noticee that Regulation 10 of SAST Regulations does not get triggered when Noticee along with the persons acting in concert is holding 77.78% is not acceptable. I note that Noticee was under obligation to make open offer under Regulation 10 of SAST Regulations but since the transaction was inter-se transfer amongst the promoters Noticee could have availed the exemption given under Regulation 3(1)(e)(iii)(b) of SAST Regulation by filing report as prescribed under Regulation 3(4) of SAST Regulation within 21 days of the acquisition. However, Noticee failed to file the report under Regulation 3(4) of SAST Regulations within time prescribed therein. Noticee filed the report on June 02, 2010 i.e. with a delay of

[1] *Civil Appeal No 2361 of 2003; Order dated August 5, 2004.*
[2] *Hanumesh Realtors Pvt. Ltd. v SEBI (Appeal No. 66 of 2012; Order dated July 25, 2012)*

545 days. Thus, I conclude that Noticee by filing report with a delay of 545 days has violated Regulation 3(4) read with 3(5) of SAST Regulations.

viii. With regard to the non-disclosure under Regulation 7(1A) of SAST Regulations when his shareholding in the company reduced from 18.76% to 0%. Noticee in his submission has admitted the default.

ix. I further note that for the transactions dated October 21, 2008, November 04, 2008 and November 14, 2008 Noticee was required to make necessary disclosures under Regulation 13(4) of PIT Regulations. Noticee has submitted that since the transaction was not only within the promoter group but also within the family, he was under the bonafide impression the no disclosure was required under 13(4) of PIT Regulations. I note that disclosure requirement under Regulation 13(4) of PIT Regulations does not exempt inter-se transfer among the promoters nor there is any exemption for shares transferred in form of gift deeds. Thus the submission of the Noticee is not acceptable. Hence, I conclude that by not making such disclosures under Regulation 13(4) read with 13(5) of PIT Regulations he has violated the said provision.

x. Noticee in his submission mentioned various mitigating factors for exonerating him such as there has been no disproportionate gain or unfair advantage as a result of the transaction in question nor has there been any loss caused to an investor or investor group and this is the first default, if any, committed by him etc. I note that 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…".

13. In view of the above I hold that the Noticee violated the provisions of 7(1), 7(1A) read with 7(2) of SAST Regulations; Regulation 3(4) read with 3(5) of SAST Regulations and 13(4) read with 13(5)of PIT Regulations.

14. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulations 7(1), 7(1A) read with 7(2) of SAST Regulations; Regulation 3(4) read with 3(5) of SAST Regulations and 13(4) read with 13(5)of PIT Regulations attracts monetary penalty under section 15A(b) of SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee.

15. The object of the SAST and PIT Regulation mandating disclosure of acquisitions 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 such information is required. In this regard I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that:

> *"the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market".*

Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 7(1), 7(1A) read with 7(2) of SAST Regulations; Regulation 3(4) of SAST Regulations and 13(4) read with 13(5)of PIT Regulations.

16. 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:

15A(b). <u>Penalty for failure to furnish information, return, etc.-</u>

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

17. While determining the quantum of penalty under Section 15A (b) of SEBI Act, it is important to consider 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."

18. In view of the charges as established, and the facts and circumstances of the case, and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The SAST and PIT Regulation have been framed in order to bring about the transparency in the market and timely disclosure to the investors. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, had responsibility in ensuring the compliance of disclosure norms. The timely disclosure was of importance from the point of view of outside shareholders/other investors as such disclosure would have prompted them to buy or sell shares of the

target company. As regards the contention of the Noticee that no loss was caused to the investors the Noticee cannot pre-judge the reaction of the investors. It is an admitted fact that the Noticee had not made the disclosure as required and hence there was no dissemination of information to the general investor. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the information. Under these circumstances, the compliance with the disclosure requirements under SAST and PIT Regulation assumes significance and the Noticee's failure to do so needs to be viewed seriously and an appropriate view is being taken with regard to imposition of monetary penalty in the matter.

19. In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find from the records available before me the default is not repetitive.

ORDER

20. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹. 4,00,000 (Rupees Four lakh only) under Section 15A (b) of SEBI Act, on the Noticee which will be commensurate with the violations committed by it.

21. The Noticee 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 Shri. Debashis Bandyopadhyay, Deputy General Manager, Integrated Surveillance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

22. 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 08, 2013** **BARNALI MUKHERJEE**

Place: **Mumbai** **ADJUDICATING OFFICER**