

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/BS/AO/11-19/2017-18]

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 THE MATTER OF SHRI LAKSHMI COTSYN LIMITED.

In respect of

Sr. No.	Name of entity	PAN	Address	Order No.
1	Asian Pacific Continental Pvt. Ltd	AADCA1820E	26/X-1, Krishnapuram, Kanpur – 208007	EAD-5/BS/AO / 11 / 2017-18
2	Mac Glasses Pvt. Limited	AADCM4264E	81/84, Kshri Sadan, Dhankutti, Kanpur - 208001	EAD-5/BS/AO / 12 / 2017-18
3	Sarvamangla Industrial Enterprises Pvt. Ltd	AAACH3510K	H/X-1, Krishnapuram, Kanpur – 208007	EAD-5/BS/AO / 13 / 2017-18
4	Gautam Budh Impex Pvt. Ltd (Now known as Divya Trade Impex Pvt. Ltd.)	AACCG5073C	19/X-1, Krishnapuram, Kanpur – 208007	EAD-5/BS/AO / 14 / 2017-18
5	Nutech Steel Limited	AACCN1742K		EAD-5/BS/AO / 15 / 2017-18
6	Raj Rajeshwari Techno Fab Pvt. Ltd	AADCR1379K		EAD-5/BS/AO / 16 / 2017-18
7	Lalitamba Garments Manufacturers Pvt. Ltd (Now known as Lalitamba Home Decor Pvt. Ltd.)	AABCL1802D		EAD-5/BS/AO / 17 / 2017-18
8	Lalitamba Textile Pvt. Ltd (Now known as Lalitamba Textiles Clusters Pvt. Ltd.)	AABCL1503D		EAD-5/BS/AO / 18 / 2017-18
9	Shri Lakshmi Cotsyn Ltd.	AAICS9582J		EAD-5/BS/AO / 19 / 2017-18

BACKGROUND

1. Securities and Exchange Board of India (**SEBI**) initiated adjudication proceedings against **1)** Asian Pacific Continental Private Limited, **2)** Mac

Glasses Private Limited, **3)** Sarvamangla Industrial Enterprises Private Limited, **4)** Gautam Budh Impex Private Limited (Now known as Divya Trade Impex Private Limited), **5)** Nutech Steel Limited, **6)** Raj Rajeshwari Techno Fab Private Limited, **7)** Lalitamba Garments Manufacturers Private Limited (Now known as Lalitamba Home Décor Pvt. Ltd.), **8)** Lalitamba Textile Private Limited (Now known as Lalitamba Textiles Clusters Private Limited) and **9)** Shri Lakshmi Cotsyn Limited (***All the above 9 entities hereinafter referred individually as “Noticee no. 1 to 9” respectively and collectively as “Noticees”***) for the alleged violation of Regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (***hereinafter referred to as “SAST Regulations”***) and Regulation 13(4A) of SEBI (Prohibition of Insider Trading) Regulations 1992 (***hereinafter referred to as “PIT Regulations”***) by Noticee no. 1 to 6, violation of Regulation 29(2) of SEBI (SAST) Regulations, 2011 and Regulation 13(2A) of SEBI (PIT) Regulations, 1992 by Noticee no. 7 & 8, and violation of Regulation 13(6) of SEBI (PIT) Regulations, 1992 by Noticee no. 9.

2. Shri Lakshmi Cotsyn Limited was incorporated with the name Galaxy Indo-Fab Ltd., in 1988 which was subsequently changed to Shri Lakshmi Cotsyn Ltd., in 2005. Shares of the Company are listed at Bombay stock Exchange (BSE), National Stock Exchange (NSE), and Foreign Currency Bonds of the company are listed at Singapore stock Exchange (SGX).
3. It was observed that on January 31, 2012, Shri Lakshmi Cotsyn Limited (Noticee no. 9 herein) made allotment of 35,00,000 equity shares at a price of Rs.156/- per share (inclusive of premium of Rs.146/- per share) on conversion of equivalent number of share warrants to Noticee no. 1 to 8 forming part of ‘promoter group’ of the Company. Consequently, the shareholding of the Noticee no. 1 to 8 has increased as under.

Sl. No.	Name of the promoter group entity	No of shares held - pre conversion	No of shares held as a % of pre-conversion paid up capital	No of shares Acquired on 31-Jan-2012 (as a result of conversion of share warrants)	Value of shares Acquired (Rs.in Lacs)	No of shares held - post conversion	No of shares held as a % of post conversion paid up capital	Change in Holdings as a % of paid up capital
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)
1	Asian Pacific Continental Pvt Ltd	3,39,996	1.61	5,00,000	780	8,39,996	3.16	1.55
2	Mac Glasses Pvt Ltd	7,60,000	3.60	5,00,000	780	12,60,000	4.74	1.13
3	Sarvamangla Industrial Enterprises Pvt Ltd	7,84,400	3.72	5,00,000	780	12,84,400	4.83	1.11
4	Gautam Budh Impex Pvt Ltd	8,00,000	3.79	5,00,000	780	13,00,000	4.89	1.10
5	Nutech Steels Ltd	8,00,000	3.79	5,00,000	780	13,00,000	4.89	1.10
6	Raj Rajeshwari Techno Fab Pvt Ltd	5,00,000	2.37	5,00,000	780	10,00,000	3.76	1.39
7	Lalitamba Garments Manufacturers P Ltd	-	-	2,50,000	390	2,50,000	0.94	0.94
8	Lalitamba Textile Pvt Ltd	-	-	2,50,000	390	2,50,000	0.94	0.94
Total of 1 to 8 above		39,84,396	18.89	35,00,000	5,460	74,84,396	28.14	9.25
Remaining 22 entities of the promoters group.		47,33,435	22.44	-		47,33,435	17.81	(4.63)
Total of promoters and promoters group		87,17,831	41.33	35,00,000		1,22,17,831	45.94	4.61
Total Paid up Share Capital of the Company		2,10,93,835	100	55,00,000		2,65,93,835	100	-

4. It was alleged that the Noticee no. 1 to 8 being part of 'promoter group' of Shri Lakshmi Cotsyn Limited (Noticee no. 9 herein) had allegedly failed to make the necessary disclosures with regard to the change (as mentioned under column no. 5 in the above table) in their shareholdings to the stock exchange under Regulation 29(2) of SEBI (SAST) Regulations, 2011. Further it was also alleged that the Noticee no.1 to 6 failed to make the disclosures to the Stock exchanges under Regulation 13(4A) of SEBI (PIT) Regulations, 1992, and the Noticee no. 7 & 8 failed to make the disclosures to the Company under Regulation 13(2A) of SEBI (PIT) Regulations, 1992, with regard to the aforesaid change in their shareholdings.
5. The Company i.e. Noticee no. 9 herein had allegedly failed to make disclosures to the Stock exchanges under Regulation 13(6) of SEBI (PIT) Regulations, 1992, about the disclosures received from the above promoter group entities, under Regulation 13 of SEBI (PIT) Regulations, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

6. Shri S.V. Krishnamohan was appointed as the Adjudicating Officer (**AO**) vide order dated 26.04.2016, subsequently the undersigned was appointed as Adjudicating Officer vide order dated September 15, 2017 to inquire into and adjudge under Section 15A(b) of Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as “SEBI Act”*), the violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. A common Show Cause Notice dated June 30, 2016 (*hereinafter referred to as “SCN”*) was issued to the Noticees in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (*hereinafter referred to as the ‘Adjudication Rules’*) read with Section 15-I of SEBI Act, 1992, to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act, 1992, for the violations alleged to have been committed by the Noticees.
8. Vide letter dated August 26, 2016, Noticee no. 1 to 8 filed a common reply to the SCN while Noticee no. 9 filed a separate reply dated August 26, 2016 to the SCN. The relevant portion of their aforesaid replies are reproduced hereunder:-

Reply dated August 26, 2016 of Noticee no. 1 to 8:

- *We are the promoters of Target Company, and belong to a homogenous promoter group.*
- *For converting the warrants into equity shares a board meeting was convened on 31.01.2012 (due disclosure of this meeting made in public domain) wherein conversion of 35,00,000 number of share warrants (out of 50,00,000 share warrants) into equivalent number of equity shares to promoters was approved and equity shares allotted to us. Details of equity shares so allotted are as follows:*

Sr. No.	Name of the Noticees who were allotted equity shares pursuant to the conversion of warrants	Category to which Noticees belong	No. of shares allotted to Noticees
1.	Asian Pacific Continental Pvt. Ltd.	Promoter	5,00,000
2.	Mac Glasses Pvt. Ltd.	Promoter	5,00,000
3.	Sarvamangla Industrial Enterprises Pvt. Ltd.	Promoter	5,00,000
4.	Gautam Budh Impex Pvt. Ltd.	Promoter	5,00,000
5.	Nutech Steels Ltd.	Promoter	5,00,000
6.	Raj-Rajeshwari Techno Fab Pvt. Ltd.	Promoter	5,00,000
7.	Lalitamba Garments Manufacturers Pvt. Ltd.	Promoter	2,50,000
8.	Lalitamba Textiles Pvt. Ltd.	Promoter	2,50,000

- Since the Noticees belonged to the promoter category, on account of aforesaid allotment of equity shares, shareholding of the entire Promoter Group increased from 41.33% to 45.94% and also as the shares acquired by them were more than 25000 and more than Rs.5 lacs in value, the disclosures under the provisions of SAST and PIT Regulations were made by the Noticees to the Target Company and Stock Exchange(s). Following table enumerates about the disclosure so made by the Noticees under the provisions of SAST and PIT Regulations:
- Details of disclosures made under Regulation 29(2) r/w Regulation 29(3) of the SAST Regulations and Regulation 13 (4A) of the PIT Regulations:

Date of Allotment	Disclosure made by	Due date of making disclosure to the Target Company and Stock Exchange	Date of making disclosure to the Target Company	Mode of delivery to Target Company	Date of making disclosure to the Stock Exchanges	Mode of delivery to Stock Exchange
31.01.2012	Asian Pacific Continental Pvt. Ltd.	02.02.2012	02.02.2012	Since the Noticees and Target Company are situated in same city i.e. Kanpur. Disclosures were made by way of hand delivery	Dispatched on 31.01.2012	All the disclosures were made through courier under one stack.
31.01.2012	Mac Glasses Pvt. Ltd.	02.02.2012	02.02.2012			
31.01.2012	Sarvamangla Industrial Enterprises Pvt. Ltd.	02.02.2012	02.02.2012			
31.01.2012	Gautam Budh Impex Pvt. Ltd.	02.02.2012	02.02.2012			
31.01.2012	Nutech Steels Ltd.	02.02.2012	02.02.2012			
31.01.2012	Raj-Rajeshwari Techno Fab Pvt. Ltd.	02.02.2012	02.02.2012			
31.01.2012	Lalitamba Garments Manufacturers Pvt. Ltd.	02.02.2012	02.02.2012			
31.01.2012	Lalitamba Textiles Pvt. Ltd.	02.02.2012	02.02.2012			

- Copies of disclosure made by the Noticees under Reg. 29(2) r/w Reg. 29(3) of the SAST Regulations and Reg. 13(4A) of the PIT Regulations to the Target Company, alongwith its acknowledgment and to Stock Exchange alongwith Proof of Dispatch of the courier are filed.
- In light of the aforesaid, we herein humbly put forth that we have complied with all the necessary compliances under Reg. 29(2) of the SAST Regulation and Reg. 13(4A) of the PIT Regulations.

- *W.r.t your observation of filing disclosure by Noticee No. 7 and 8 under Regulation 13(4A) instead of Reg. 13(2A) of the PIT Regulations. We most humbly submit that it was done under bonafide belief that since there has been a change in shareholding of said promoter(s), disclosure under Reg. 13(4A) will be made. It is only after the receipt of this SCN that we have come to know about the fact that such disclosure was ought to be filed under Reg. 13(2A) instead of Reg. 13(4A). However, what is more significant to note herein that the disclosure so filed under Regulation 13(4A) by the Noticee No. 7 and 8 essentially disclosed all the information which would have been disclosed under Regulation 13(2A) of the PIT Regulations. The disclosures so filed under Reg. 13(4A) duly disclosed-*
 - a.** *The fact that Noticee No. 7 and 8 are the promoters of the Target Company;*
 - b.** *The Name, PAN, Address of Noticee No. 7 and 8;*
 - c.** *Number and % of shares/voting rights held by the Noticee No. 7 and 8;*
 - d.** *Date of intimation to Company;*
 - e.** *Mode of acquisition;*
 - f.** *Trading member through whom trade was executed;*
 - g.** *Exchange on which trade was executed.*
- *Further, in addition to the above said information which would have been disclosed in Form B i.e. under Reg. 13(2A) had it been filed, the disclosure filed under Reg. 13(4A) also disclosed the Number and % of shares/voting rights held by the Noticee No. 7 and 8 post acquisition. Moreover, it is significant to note that the disclosure window of disclosures under Reg. 13(4A) and Reg. 13(2A) are also same.*
- *It is further submitted that the replies of NSE and BSE, as enclosed with the SCN, has come as an surprise, as to how the said disclosures were not received by them when the disclosures were duly made by us. All the more, the disclosures were dispatched to BSE and NSE through one of our regular couriers and on receiving the SCN from you good office, we have also asked the Courier service to produce us an explanation to the statements of NSE and BSE.*
- *It is also submitted that the information with respect to allotment of warrants to us, its conversion into equity shares and change in our shareholding was disclosed several times by the Target Company and was well available in the*

public domain. Also, it is imperative to consider that the allotment was done with due approval of the shareholders of the Target Company. Thus the shareholders and public at large had been duly aware of the change in our shareholding and that of the whole promoter group. Furthermore, it is also placed on fact the information could not have been suppressed as it was already in public domain.

- It is also put forth into your kind consideration that as the due disclosures were made by us. Further, public at large also had notice about of change in our Shareholding as well as of the whole promoter group. Therefore, no loss could have occurred to any investor. Furthermore, it may be noted that no undue gain has been made by us on account of non-showing of disclosure on the website of Stock Exchanges, reason of which is nonetheless beyond our comprehension.

Reply dated August 26, 2016 of Noticee no. 9:

- The Company was incorporated on 31.08.1988, Shares of Company are listed at Bombay Stock Exchange (BSE), National Stock Exchange (NSE) and Foreign Currency Bonds are listed at Singapore Stock Exchange (SGX). Company is engaged in manufacturing of textiles including, Terry Towel, Technical Textiles, Fusible Interlining, Denim, shirting, suiting, sheeting, readymade garments etc.
- As on 31.01.2012, a board meeting was convened wherein conversion of 35,00,000 number of warrants (out of 50,00,000 warrants) into equivalent number of equity shares to promoters was approved and shares allotted to the Promoters/noticees. Due disclosure of the board meeting was also made by the Company to the stock exchanges.
- Post allotment, company had filed Listing application with both the Exchanges vis-a-vis, shares so allotted, with all the necessary documents and details.
- That the Company had received as on 02.02.2012, the disclosure under Regulation 13(4A) of SEBI (Prohibition of Insider Trading) Regulations 1992 from the Promoters (namely Asian Pacific Continental Pvt. Ltd.; Mac Glasses Pvt. Ltd.; Sarvamangla Industrial Enterprises Pvt. Ltd.; Gautam Budh Impex Pvt. Ltd (Presently known as Divya Trade Impex Private Limited) Nutech Steels Ltd.; Raj-Rajeshwari Techno Fab Pvt. Ltd.; Lalitamba Garments Manufacturers

Pvt. Ltd. (Presently Known as- Lalitamba Home Decor Private Limited).; Lalitamba Textiles Pvt. Ltd. (Presently Known as- Lalitamba Textiles Cluster Pvt. Ltd.); and the Company had duly made the subsequent disclosures under Regulation 13(6) of SEBI (PIT) Regulations to both NSE and BSE as on 02.02.2012 itself.

- That immediately on receipt of Disclosures from the Promoters, the Company had made requisite disclosures (under SEBI (PIT) Regulations) to the stock exchanges through courier on the very same day. The copy of disclosures under Regulation 13(6) and Courier dispatch proof; i.e POD are filed.*
- We herein further submit, that the entire process of allotment of warrants, conversion of warrants into equity and subsequent listing of equity share allotted post conversion was being carried out under the supervision of Stock Exchanges. So many documents were being produced to them during the process for various approvals being obtained from these exchanges. That had they not received the necessary disclosures under SEBI (PIT) Regulations and SEBI (SAST) Regulations, they would not have granted us the listing permission for the shares so allotted. Compliances of listing agreement and PIT and SAST regulations are pre-requisite for listing permission. It is our case that we had made due disclosures, had the same not been made, no listing permission would have been obtained by us on the said equity shares. Thus this in itself prove that disclosures were adequately received by the exchanges.*
- Further it is pertinent to inform that the website of BSE is not showing few more informations relating to intimation & outcome for the Meeting during the year 2010 to 2013. List of the same is also given below. After perusal of this list, you will observe that these disclosures were duly submitted vide e- mails & couriers. But BSE has not disclosed the same at their websites. Proof of the few E-mails sent to the exchange along with Courier Receipt/ Fax Receipt are filed.*
- In addition to aforesaid, it is further submitted that as on date, no record of Company vis-a-vis corporate announcements, actions etc. is available at all on NSE despite being giving regular disclosures.*
- That in light of aforesaid facts, it is evident that not all the disclosures being made are displayed by these exchanges on its website. This further*

substantiates our contention that necessary disclosures were duly made by us and it is not in our control if they are not being reflected on Exchange's website.

- *Thus it is our humble submission that no prejudicial view should be framed against us merely because of the fact that certain copies of disclosures could not be traced in exchanges website and records (as submitted in response to the query to your goodself) post lapse of more than four years (with crores and crores of documents to search from) and the disclosure not available on their website either erroneously or for reasons unexplainable after so long.*
- *Furthermore the Company has not taken any unfair advantage as a result of alleged case of non-receipt of disclosures by the stock exchanges and has no malafide intention on part of the Company to create the alleged default by not making such disclosures.*
- *Without prejudice to submissions above, it is reiterated that as on date, the networth of the Company is totally eroded and a reference of the Company was accepted and company is registered under BIFR w.e.f. 08.09.2014. Thus in light of the said fact, no monetary penalty (without prejudice to the submission that all the due compliances have been made) should be imposed on the company to protect the company position from further deterioration.*

9. Noticees were granted an opportunity of personal hearing on November 16, 2016. Shri Rakesh Kumar Srivastava, Company Secretary Cum Finance Controller, of Shri Lakshmi Cotsyn Limited appeared on behalf of all the Noticees. He reiterated the contents of the replies dated August 26, 2016.
10. Since the undersigned has been appointed as the Adjudicating Officer vide order dated September 15, 2017 in place of Shri S. V. Krishnamohan, another opportunity of hearing were granted to the Noticees for making additional submissions, if any. On October 13, 2017, Shri Rakesh Kumar Srivastava, Company Secretary cum Finance Controller, of Shri Lakshmi Cotsyn Limited appeared on behalf of all the Noticees. He reiterated the contents of their replies dated August 26, 2016 and also made the following submissions:-

1. *The Company had filed Listing application with both the Exchanges, for the shares allotted, with all the necessary documents and details. It is our case that we had made due disclosures. Had the same not been made, no listing permission would have been granted to us for the said equity shares.*
2. *All the disclosures being made were disseminated by the exchanges on its website except the disclosures questioned in the SCN.*
3. *Neither the Company nor the Promoters of the Company have taken any unfair advantage as a result of non-receipt of disclosures by the stock exchanges and there was no loss caused to the investors.*

CONSIDERATION OF ISSUES AND FINDINGS

11. I have carefully perused the replies to the SCN, submissions of the Noticees, and the documents available on record. The issues that arise for consideration in the present case are:
 - a) Whether the Noticee no. 1 to 8 violated the provisions of Regulation 29(2) of SEBI (SAST) Regulations, 2011?
 - b) Whether the Noticee no.1 to 6 violated the provisions of Regulation 13(4A), Noticee no. 7 & 8 violated the provisions of Regulation 13(2A) and Noticee no. 9 violated the provisions of Regulation 13(6) of SEBI (PIT) Regulations, 1992?
 - c) Whether the Noticees are liable for monetary penalty under Section 15A (b) of SEBI Act, 1992?
 - d) If yes, then what should be the quantum of monetary penalty?
12. Before moving forward, it is pertinent to mention here the relevant provisions of SEBI SAST Regulations, 2011 & PIT Regulations, 1992, alleged to have been violated by the Noticees:-

Regulation 29 (2) of SAST Regulations, 2011 - Disclosure of acquisition and disposal.

“Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.”

Regulation 13 (2A), (4A) and (6) of SEBI PIT Regulations, 1992.

Regulation 13 (2A) – *“Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in **Form B** the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.”*

Regulation 13 (4A) – *“Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in **Form D**, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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.”*

Regulation 13 (6) – *“Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.”*

13. I note that the Noticees mentioned at serial no. 1 to 8 are stated as ‘promoter group’ entities in the shareholding pattern of Shri Lakshmi Cotsyn Limited

(Noticee 9 herein) disclosed to NSE and BSE. The Company vide its letter dated February 22, 2014 also confirmed that the said eight Noticees belong to the promoter group and further the same is also admitted by all the Noticees. As per Regulation 2(1)(q)(2)(iv) of SEBI (SAST) Regulations 2011, Noticees at serial no. 1 to 8 being members of the 'promoter group' are deemed to be "Persons Acting in Concert" (PACs).

14. It is the admitted fact that on January 31, 2012, the Company (Noticee no. 9 herein) have made the allotment of 35,00,000 equity shares, on conversion of share warrants to 'promoters group' entities (Noticee no. 1 to 8 herein) and accordingly, their shareholding has increased as mentioned in the table at para 3 above.
15. It is observed from above referred table, that the promoter group entities were holding 41.33 % of the pre-conversion share capital of the Company. Pursuant to allotment of 35,00,000 equity shares to the Noticee no. 1 to 8 as aforesaid, the shareholding of the 'promoter group' increased to 45.94% of post-conversion share capital of the Company an increase of 4.61% and hence they are required to make disclosures under Regulation 29(2) SEBI (SAST) Regulations, 2011, of such change to the Company and the Stock exchanges within two working days of acquisition of shares.
16. Further, the change in the share holdings of each of the Noticees no.1 to 6, who are part of promoter group, is 5,00,000 shares which is more than 1% of post conversion paid up capital of the company, more than Rs.5 lakh in value and also more than 25,000 shares. Regulation 13(4A) of SEBI (PIT) Regulations requires the disclosure of such change to the Company and to the Stock exchanges within two working days of acquisition of shares (In prescribed format Form D).

17. Regulation 13(2A) of SEBI (PIT) Regulations, 1992, requires Noticees at serial no. 7 and 8 being part of promoter group to disclose the number of shares held by them to the Company in Form B within two working days of becoming such promoter. However, it is observed from the documents available on record that the Noticees no. 7 and 8 have made disclosure to the Company in **Form D** prescribed under regulation 13(4A) instead of disclosures in **Form B** under Regulation 13(2A) of SEBI (PIT) Regulations, 1992.
18. It is also observed that in terms of Regulation 13(6) of SEBI (PIT) Regulations, 1992, the Company i.e. Noticee no. 9 herein was required to make disclosures to the Stock exchanges regarding the disclosures received from the 'promoter group' entities (Noticee 1 to 8) under Regulation 13 of PIT Regulations as detailed above.
19. The main contention of all the Noticees is that they have made all the necessary disclosures to the stock exchanges in the prescribed formats within the time limit. The said disclosures are stated to have been forwarded to the Stock Exchange through Courier service. The Noticees have produced copies of the disclosures formats claimed to have been made by them to the stock exchanges and they also produced copies of the courier receipts in support of their claim that they had dispatched the disclosure formats to NSE and BSE within the stipulated time period.
20. I note that the Noticees claimed to have made all the required disclosures under SEBI SAST and PIT Regulations by dispatching the same through courier. In this regard, I find that the courier receipt produced by the Noticees bears the details of the consignor/ sender (i.e. Noticees), the name of the consignee (i.e. BSE & NSE) and the date of shipment i.e. on 02/02/2012. However, I note that there is nothing on record to show that BSE & NSE had acknowledged the receipt of the said couriers purportedly sent by the Noticees. It is on record that the BSE vide its email dated February 25, 2014 and NSE vide e-mail dated

February 13, 2014 addressed to SEBI had categorically denied having received any disclosures from the Noticees with regard to the said change in shareholding of the 'promoter group' entities under SAST & PIT Regulations.

21. At this juncture, it is pertinent to mention the Order of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Mega Resources Ltd. v. SEBI (Appeal No. 49/2001)* wherein it was observed:

"Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement... Therefore the crucial question is whether the requisite disclosure has been made by the Appellant. For the purpose it is necessary to know what is meant by "disclosure" in the sense in which it is used in the regulation. Disclosure is required to be made to the Target Company. "Disclose to the company" is the clue. "Disclose" according to Websters 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 the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."

22. The agency through which the document is sent acts as the agent of the sender and if a dispute were to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. Admittedly, the Noticees have not placed on record any acknowledgement received from the Stock Exchanges in proof of receipt of the disclosures that were sent. The requirement is not mere dispatch of the disclosures, but the disclosures should reach the recipient(s). On the other hand, emails from the Stock Exchanges specifically

stating that they did not receive the disclosures from the Noticees under SEBI SAST and PIT Regulations for the said change in shareholding of the promoter entity during the relevant period are on record.

23. In view of the above, the Noticees cannot evade the responsibility for making necessary disclosures to the stock exchanges by stating that the entire process of allotment of warrants, conversion of warrants into equity and subsequent listing of equity share allotted post conversion was being carried out under the supervision of Stock Exchanges and so many documents were being submitted during the process for various approvals being obtained from these Exchanges. It is a specific requirement under these Regulations for making the disclosures in the prescribed format and it was duty of the Noticees to make the necessary disclosures under the provisions of SAST Regulations and PIT Regulations. Further, obtaining the listing permission for the shares cannot be construed as the Noticees have made all the disclosures to the stock exchanges under SAST and PIT Regulations.
24. As regard to the violation of Regulation 13(2A) of PIT Regulations by Noticee no. 7 and 8, it is observed that the Noticee made disclosure to the Company under Regulation 13(4A) of PIT Regulations in Form D, instead of in Form B prescribed under Regulation 13(2A) of the PIT Regulations. I note that the disclosure so filed under Regulation 13(4A) by the Noticee No. 7 and 8 essentially covered all the information which would have been disclosed under Regulation 13(2A) of the PIT Regulations. Hence I am of the view that although the Noticee 7 and 8 did not file the disclosures in Form B to the Company prescribed under Regulation 13(2A) of PIT Regulations, they disclosed the necessary information to the Company which were essentially required to be stated under Regulation 13(2A). Considering the same, I do not find the violation of Regulation 13(2A) by the Noticee no. 7 & 8 is established.

25. As regard to the submission of the Noticee no. 9 that *“the networth of the Company is totally eroded and a reference of the Company was accepted and company is registered under BIFR w.e.f. 08.09.2014. Thus in light of the said fact, no monetary penalty (without prejudice to the submission that all the due compliances have been made) should be imposed on the company to protect the company position from further deterioration.”* I note that initiation of adjudication proceedings under the provisions of the SEBI Act, in respect of non-submission of disclosures to the stock exchange by the Company is not barred under the Sick Industrial Companies (Special Provisions) Act, 1985. Thus, the submission of the Noticee 9 is devoid of any merit.
26. In view of the forgoing, I find that the Noticee no. 1 to 8 being members of the ‘promoter group’ are deemed to be PACs, required to disclose the change in their shareholding pursuant to allotment of shares on conversion of share warrants to the Company as well to the Stock Exchanges in terms of the Regulation 29(2) of SAST Regulations, 2011, however they failed to make necessary disclosures to the Stock Exchanges under the said Regulation. Noticee 1 to 6 have also violated Regulation 13(4A) of PIT Regulations, 1992, by not disclosing the change in their shareholding as aforesaid. Further, Noticee no. 9 violated Regulation 13(6) of PIT Regulations, 1992, by not submitting the disclosures received from the above promoter group entities, under Regulation 13 of SEBI (PIT) Regulations, 1992.
27. The aforesaid violations by the Noticees attract monetary penalty under Section 15A(b) of the SEBI Act, 1992, which reads as follows at the time of the violations.

“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 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”

28. In this context, I observe that Hon'ble Securities Appellate Tribunal (SAT) has consistently held that the obligation to make disclosure within the stipulated time is a mandatory and penalty is attracted for non-compliance with the mandatory obligation. The Hon'ble SAT in its *Order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI* observed that-

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

29. While determining the quantum of penalty under Section 15A (b), 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*

Explanation – *For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

- 30. Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary.*"
- 31. It may also be noted that the Investigation Report has not quantified the profit/ loss for the nature of violations committed by Noticees and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors.
- 32. Details of the shareholding of the Promoters and changes thereto is an important information for the benefit and proper functioning of the securities market and timely disclosure thereof to the stock exchanges etc. are of significant importance from the stand point of investors. The purpose of

these disclosures is to bring about transparency in the transactions of Promoters/Acquirers and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of *Coimbatore Flavors & Fragrances Ltd. vs SEBI* (Appeal No. 209 of 2014 order dated August 11, 2014), observed "Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."

33. Needless to say that there is no exemption from making disclosures of the kind envisaged in Regulation 29 of the SAST Regulations and Regulation 13 of PIT Regulations as in the present case. Timely disclosures to the Stock Exchanges as required under the regulations would have helped dissemination of this important information to the general public in making their investment decisions.
34. In this connection reference may also be made to the Order of the Hon'ble SAT in Appeal no 118 of 2013 dated 04.09.2013 in the matter of Vitro Commodities Private Limited v SEBI wherein the Hon'ble SAT held 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.*"
35. Both the disclosures under Regulation 29 (2) of SAST Regulations, 2011 and Regulation 13 (4A) of PIT Regulations, 1992 are quite similar in nature. It is also

pertinent to note that the purpose of both Regulations is dissemination of information. Considering the same, I am inclined to take a lenient view in the matter.

36. In view of the above, I hold that the Noticee No. 1 to 6 have violated Regulation 29 (2) of SEBI (SAST) Regulations, 2011 and Regulation 13(4A) of SEBI (PIT) Regulations, 1992. Noticee no. 7 and 8 have violated Regulation 29(2) of SEBI (SAST) Regulations, 2011 and Noticee No. 9 has violated Regulation 13(6) of SEBI (PIT) Regulations, 1992 and hence shall be liable to the penalty under Section 15A (b) of SEBI Act, 1992.

ORDER

37. After taking into consideration the nature and gravity of the charges established in the preceding paragraphs and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose the following penalties on the Noticees in terms of Section 15 A(b) of the SEBI Act, 1992:-

Sr. No.	Noticees	Violating Provisions	Penalty Amount
1	Noticee No. 1 to 6	Regulation 29 (2) of SEBI (SAST) Regulations, 2011 and Regulation 13(4A) of SEBI (PIT) Regulations, 1992	₹ 1,00,000/- (Rupees One Lakh Only) each [Total ₹1,00,000 x 6 = ₹6,00,000/-]
2	Noticee No. 7 & 8	Regulation 29 (2) of SEBI (SAST) Regulations, 2011	₹ 1,00,000 /- (Rupees One Lakh Only) each [Total ₹1,00,000 x 2 = ₹2,00,000/-]
3	Noticee No. 9	Regulation 13(6) of SEBI (PIT) Regulations, 1992	₹2,00,000 /- (Rupees Two Lakhs Only)
Total Penalty Amount			₹10,00,000/- (Rupees Ten Lakhs Only)

38. The amount of penalty shall be paid either by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or by e-payment in the account of “SEBI - Penalties Remittable to Government of India”, A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to “The Chief General Manager (Enforcement Department), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.”

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

39. In terms of rule 6 of the Rules, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : October 31, 2017
Place : Mumbai

Biju. S
Adjudicating Officer