

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/JP/ 89 – 95 /2017]

UNDER SECTION 15-I 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:-

1. Mr. Atul Kumar Agarwal (PAN: ABKPA0055C)
2. Surya Medi Tech Ltd. (PAN: AALCS3282L)
3. Archit Hotels and Resorts Pvt. Ltd. (PAN: AADCA5858N)
4. Zarf Infra Development Pvt. Ltd. (PAN: AAACZ4477F)
5. HSI Infotech Pvt. Ltd. (PAN: AACCH6937J)
6. Novalty Enterprises Pvt. Ltd (formerly known as Venus Insec Pvt. Ltd.) (PAN: AABCV8188Q)
7. Zoom Building Materials & Products Pvt. Ltd. (PAN: AAACZ3425D)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') upon certain alerts of non-disclosures of shareholdings in the scrip of Ashutosh Paper Mills Ltd. (hereinafter referred to as "**APML / the Company**") - a company listed at BSE Ltd, SEBI had conducted investigations in the shares / shareholding of APML to find out the possible irregularities of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations** ') and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') during the period from September 24, 2012 to March 07, 2013 (**Investigation Period**). The investigations *inter-alia* revealed that (1) Mr. Atul Kumar Agarwal, (2) Surya Medi Tech Ltd., (3) Archit

Hotels and resorts Pvt. Ltd., (4) Zarf Infra Development Pvt. Ltd., (5) HSI Infotech Pvt. Ltd., (6) Novalty Enterprises Pvt. Ltd (Formerly known as Venus Insec Pvt. Ltd.) and (7) Zoom Building Materials & Products Pvt. Ltd. (hereinafter referred to as '**the Noticee No. 1 to 7**' respectively or as '**the Noticees**' collectively) had bought / sold shares of the APML during the Investigation Period in violation of SAST Regulations and PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and appointed undersigned as the Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide order dated April 24, 2015, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations of regulation 13 (1), 13(3), 13 (4A) read with 13(5) of PIT Regulations and regulation 29 (1), 29(2) read with 29(3) of SAST Regulations, alleged to have been committed by the Noticee(s).

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notices dated January 11, 2016 Reference No. E&AO/RA/JP/1003/2016, E&AO/RA/JP/1015/2016, E&AO/RA/JP/1005/2016, E&AO/RA/JP/1014/2016, E&AO/RA/JP/1010/2016, E&AO/RA/JP/1018/2016 and E&AO/RA/JP/1013/2016 (hereinafter referred to as "**SCNs**") were served upon the Noticees respectively 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 them under sections 15A (b) of the SEBI Act, for the alleged violation of failure to make the required disclosures upon acquiring / purchasing or selling/disposing of the shares of the APML, in contravention of provisions of regulation 13 (1), 13(3), 13 (4A) read with 13(5) of PIT Regulations and regulation 29 (1), 29(2) read with 29(3) of SAST Regulations. The SCNs were served through Speed Post

Acknowledgement Due (SPAD) / through digitally signed e-mail duly delivered as available on records.

4. The provisions of law alleged to have been violated by the Noticees are mentioned below;

PIT Regulations

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.

13 (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

13 (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.

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

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

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

SAST Regulations

Disclosure of acquisition and disposal.

29. (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.

29. (2) 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.

(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. Since, the allegations levelled against the Noticees are identical in nature involved under the investigation carried out by SEBI in the same scrip of APML, therefore, all the aforesaid SCNs / cases against the all the Noticees, are being decided in this common order.
6. In respect to the SCNs, Noticee No. 1 and 2 had submitted reply dated January 21, 2016 and March 01, 2016 respectively. No reply has been received from the Noticee No. 3 to 7 despite the SCNs were duly served through SPAD / through digitally signed e-mail (at the e-mail IDs as shown in the website of Ministry of Corporate Affairs in respect of Noticees) in term of Adjudication Rules. Notably, it was clearly stated in the SCN that if the Noticees fails to submit reply in the matter, then, the matter would be further proceeded with on the basis of the evidence available on record in terms of sub-rule (7) of rule (4) of Adjudication Rules.
7. Thereafter, a notice of hearing dated March 09, 2016 was served upon all the Noticees through digitally signed e-mail (duly delivered as per record) / SPAD providing an opportunity of hearing on March 28, 2016. As no reply was received from the Noticee No. 3-7, therefore, vide said notice of hearing, they were also asked to submit their reply if any, on or before March 21, 2016. However, all the Noticees had failed to appear for the hearing on the scheduled date and also no

reply has been received from Noticee No. 3-7 at all. The Noticee No. 1& 2, vide their letter dated March 21, 2016 and March 23, 2016 had sought adjournment of hearing attributing the reason of 1st Death Anniversary of his father on March 28, 2016 etc.

8. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and 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."

9. Consequent to the clarity brought into the Finance Act, 2017, final opportunity of hearing was provided to the Noticees on May 24, 2017 vide notice of hearing dated May 11, 2017. The said notice of hearing was delivered to the Noticees through digitally signed e-mail (duly delivered) / SPAD. Vide said notice of hearing, the Noticee No. 1-2 were asked to submit additional submissions, if any. Further, the Noticee No. 1 was asked to provide by May 22, 2017 the original / authentic proof in support of his claim made under reply dated January 21, 2016 and the Noticee No. 2 was also asked to submit the original / authentic proof of making disclosures / delivery proof of disclosures as claimed by it vide its reply March 01, 2016. It was clearly stated in the said notice of hearing that if the Noticees fails to

appear or file reply in the matter, then, the matter would be further proceeded with on the basis of the evidence available on record in terms of sub-rule (7) of rule (4) of Adjudication Rules.

10. The scheduled final hearing on May 24, 2017 was attended only by the Authorized Representative (**AR**) of the Noticee No. 1 and 6. The other Noticees viz. Noticee No. 2 to 5 and 7 neither appeared for the hearing nor they corresponded towards the said hearing notice. The submissions of AR had been recorded. During the course of hearing, the AR was asked whether he like to make any other submission in respect of violations referred to in the SCN against Mr. Atul Kumar Agarwal (Noticee No.1) in addition to reply dated January 21, 2016 and whether he had brought original / authentic proof in support of claim of Noticee No.1 that 25,000 shares were gifted by Noticee No. 1 to Mr. Ankush Gupta and as Mr. Ankush Gupta had refused to receive said gift, then, it came back to Noticee No. 1? In respect of this query, the AR besides reiterating as stated in aforesaid reply of Noticee No. 1, had stated that the documents as available were submitted along with said reply and requested for a lenient view to drop the charges. Notably, the AR could not provide the authentic/original proof as stated in the notice of hearing dated May 11, 2017 and as demanded during the course of hearing.
11. Also, during the course of hearing, the said AR representing of Noticee No. 6 was asked that as no reply towards the SCN has been received from Novalty Enterprises Pvt. Ltd. (formerly known as Venus Insec Pvt. Ltd.), therefore, whether he would like to submit any reply? In respect of said query, the AR had merely stated that Noticee No. 6 had made the disclosures as required and he undertook to submit reply within a week from date of hearing. Thereafter, the Noticee No. 6 vide letter dated June 03, 2017 without filing reply towards the SCN, had surprisingly stated that it had not received copy of SCN therefore, copy of SCN be provided to it so that it can submit its reply. Along with its said letter, the Noticee No. 6 provided copy of summons dated January 19, 2016 issued by Investigation Department of SEBI earlier and its reply dated February 13, 2016 towards said

summons. No other documents have been provided by the Noticee No. 6 to show that it had made the required disclosures.

12. Here, I do not agree with the submission of the Noticee No. 6 that SCN was not received by it. The SCN against the Noticee No. 6 was duly delivered through SPAD on January 16, 2016 at the address- *Flat No. 10/A, Janyug Apartment, sector -14, Extension, Rohini, Delhi-110085*, (Postal delivery proof is available on records), but it had failed to submit reply towards the SCN. Further, at the same address, the hearing notice dated March 09, 2016 was delivered through SPAD on March 14, 2016 (Postal delivery proof of said notice dated March 09, 2016 is placed on records) advising it to submit reply on or before March 21, 2016 and to appear for hearing on March 28, 2016, but, the Noticee No. 6 had failed to do so. Surprisingly, the notice of hearing dated May 11, 2017 was also served at the same aforesaid address. More interestingly, during the course of hearing on May 24, 2017, the AR of the Noticee No. 6 had neither disputed that Noticee No. 6 had not received SCN, nor requested for copy of SCN. Moreover, upon specific query asked by me, the AR had stated that the Noticee No. 6 had already made the disclosure as required. It is not out of place to mention that at the opening part of the hearing minutes itself, it has been clearly indicated that- *"The charges/violation leveled in Show Cause Notice Ref: No. E&AO/RA/JP/1018/2016 dated January 11, 2016 in respect of Venus Insec Pvt. Ltd. (currently known as Novalty Enterprises Pvt. Ltd.) are explained and the same is understood by the aforesaid authorized representative of the Noticee."*

13. Also, the fact cannot be ignored that near the same point of time, a summons dated January 19, 2016 issued by Investigation Department of SEBI was duly delivered at the same address viz. *Flat No. 10/A, Janyug Apartment, sector -14, Extension, Rohini, Delhi-110085*, and it had replied to said summons vide letter dated February 13, 2016. The Noticee No. 6 also had admittedly stated that some documents were received from the changed address.

14. Therefore, keeping in view of the aforesaid postal delivery proof, the charge under SCN were understood by the AR of the Noticee No. 6 during the course of hearing and delivery of summons at the said address during same point of time, it is established that the Noticee No. 6 had been served with the SCN at the same addresses as shown in the aforesaid SCN / Hearing Notice, and therefore, the plea of the Noticee that it could not get the SCN due to change of its registered address, is not acceptable at all. Such incorrect plea of non-service of SCN, are misleading in nature and is undoubtedly meant to delay the present proceedings.
15. Vide a digitally signed e-mail dated June 15, 2017 the Noticee 7 was also informed that the alleged violation in the SCN viz. regulation 13 (3) be treated as 13 (1) of the PIT Regulations and regulation 29 (2) be treated as regulation 29 (1) of the SAST Regulations, and rest of the contents and provisions of law in SCN shall remain unchanged. Vide said e-mail, it was asked to file reply if any, within a period of seven days failing which the matter would be further decided on the basis of rule 4(7) of the Adjudication Rules, however, no such reply whatsoever has been received till date.
16. Since, the hearing / inquiry is concluded and sufficient opportunities have been provided to the Noticees in the matter, therefore, the matter needs to be proceeded further on the basis of material available on records. As no reply / submissions has been received from Noticee No. 3 to 5 and 7, therefore, matter is proceeded *ex-parte* against them in terms of rule 4 (7) of the Adjudication Rules.
17. After taking into account the allegations, replies of the Noticee(s) and evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

18. The issues that arise for consideration in the present case SCNs are :
- a) Whether the Noticees had failed to make the required disclosures under the PIT Regulations and SAST Regulations as alleged in the SCNs.

- b) Whether the failure, if any, on the part of the Noticees, would attract monetary penalty under section 15 A (b) of the SEBI Act.
- c) If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

19. I have carefully perused the allegations / submissions of the Noticee(s), the evidences / material available on records and accordingly, the case is being decided Noticee wise as under.

ISSUE NO. 1 - Whether the Noticees had failed to make the required disclosures under the PIT Regulations and SAST Regulations as alleged in the SCNs.

In respect of Noticee No. 1 / Mr. Atul Kumar Agarwal

Allegation

20. It was alleged that the Promoter's / Noticee No. 1 shareholding in the scrip of APML was decreased by 25,000 shares in Quarter ended September 2012 as compared to previous Quarter ended June 2012 and his shareholding was increased by 25,000 shares in Quarter ended March 2013 when compared to previous Quarter ended December 2012. It was revealed that promoters did not pledge any shares during the above period. The shareholding pattern in the APML at BSE regarding the Noticee No. 1 was enclosed as Annexure II along with SCN. The shareholding belonging to the category of "Promoter and Promoter Group" which includes the Noticee No. 1, was revealed as under;

(Source – bseindia.com)

| Sr. No | Name of the shareholder | Quarter June 2012 | | Quarter Sept. 2012 | | Quarter Dec. 2012 | |
|--------|-------------------------|-------------------|-------------------------|--------------------|-------------------------|-------------------|-------------------------|
| | | No. of shares | % of total shareholding | No. of shares | % of total shareholding | No. of shares | % of total shareholding |

| | | | | | | | |
|-------|---------------------|----------|-------|----------|-------|----------|-------|
| 1 | Atul Kumar Agarwal | 4,39,000 | 6.73 | 4,14,000 | 6.34 | 4,14,000 | 6.34 |
| 2 | Sunil Kumar Agarwal | 3,33,170 | 5.11 | 3,33,170 | 5.11 | 3,33,170 | 5.11 |
| 3 | Payal Agarwal | 8,340 | 0.13 | 8,340 | 0.13 | 8,340 | 0.13 |
| Total | | 7,80,510 | 11.96 | 7,55,510 | 11.58 | 7,55,510 | 11.58 |

| Sr. No | Name of the shareholder | Quarter March 2013 | | Quarter June 2013 | |
|--------|-------------------------|--------------------|-------------------------|-------------------|-------------------------|
| | | No. of shares | % of total shareholding | No. of shares | % of total shareholding |
| 1 | Atul Kumar Agarwal | 4,39,000 | 6.73 | 4,39,000 | 6.73 |
| 2 | Sunil Kumar Agarwal | 3,33,170 | 5.11 | 3,33,170 | 5.11 |
| 3 | Payal Agarwal | 8,340 | 0.13 | 8,340 | 0.13 |
| Total | | 7,80,510 | 11.96 | 7,80,510 | 11.96 |

21. On analyzing the Noticee No.1 de-mat account, it was revealed that he has sold 25000 shares in off market on July 13, 2012 to Mr. Ankush Gupta (PAN - AICPG1320K) and he had purchased 25000 shares in off market on February 08, 2013 from same person Mr. Ankush Gupta. It was further revealed that the Noticee No. 1 has sold/acquired shares in off market transactions, but, had failed to answer during investigation about the price at which shares were sold/ purchased. The weighted average price on the dates of sell/purchase has been taken into account under investigation to calculate the value of transactions which are as under;

| Date | Quantity | Weighted Average Price (₹) | Value (₹) |
|-------------------|----------|----------------------------|-----------|
| July 13, 2012 | 25,000 | 45.3 | 11,32,500 |
| February 08, 2013 | 25,000 | 35.15 | 8,78,750 |

22. It was alleged that the above transactions of the Noticee exceeded ₹ 5 lakh in value and the same has not been disclosed Company / Stock Exchange (BSE). Copy of de-mat account of the Noticee No. 1 was enclosed as Annexure III along with SCN.

23. In view of the aforesaid non disclosures to the Company / stock exchange by the Noticee No. 1 regarding the purchase/sell of shares in the scrip of the APML, it

was alleged that the he being a promoter of APML, has violated regulation 13 (4A) read with 13(5) of PIT Regulations.

Reply and Findings

24. In respect to the allegations the Noticee contended that he had not violated the rules and regulations indicated in the SCN as 25,000 shares of APML were not transferred, but, were gifted to Mr. Ankush Gupta by him, which was not accepted by Mr. Ankush Gupta lateron. The Noticee submitted that for such non acceptance of gift, he had received a letter from Mr. Ankush Gupta within 2 days of transfer of such shares; therefore, there was no effect of such transfer. In support, the Noticee No.1 enclosed a photocopy of letter dated July 13, 2012 sent by him to Mr. Ankush Gupta and photocopy of letter dated July 14, 2012 from Mr. Ankush Gupta refusing such gift.
25. In order to examine the authenticity of such photocopies and to inquire regarding such contended gift, vide notice of hearing dated May 11, 2017 the Noticee No. 1 was specifically called upon to provide original / authentic proof in support of his such claim. Also during the course of hearing, AR of the Noticee No. 1 was asked whether he had brought original / authentic proof in support of claim of Noticee No.1 that 25,000 shares were gifted by Noticee No. 1 to Mr. Ankush Gupta and as Mr. Ankush Gupta had refused to receive said gift, then, it came back to Noticee No. 1? As observed in pre paras that AR had failed to provide any authentic documents in support of such claim and merely stated that the documents as available were submitted along with said reply. In absence of any authentic evidence, I cannot rely such unauthentic piece of papers which can be afterthought.
26. The contention of the Noticee that it was not transfer of share but was a gift only and the share came back to him upon refusal by Mr. Ankush Gupta, cannot be

accepted in absence of any evidence. It is material to mention that the Noticee No. 1 could have provided the delivery instruction slip (DIS) sent to Depository which contains a column for reason of transfer of shares. Duly confirmed DIS or other records of DP/Depositories could have been produced in his support which in fact was not so done by him. Secondly, it is interesting to note that had it was a gift and refused by Mr. Ankush Gupta with 2 days of such transfer of shares as contended by the Noticee No.1, then, same should have come back to the Noticee No. 1 very immediately and not too belatedly in February 08, 2013 i.e. after around 7 months.

27. Further, for same of assumption, it is accepted that the same was gift only, even in that case also, disposal by way of gift is not exempted from the disclosure requirement under SAST Regulations. As the regulation 29 (2) of the SAST Regulations requires the disclosure of 'change' in shareholding of more than 2%. That means 'acquisition/disposal' is not necessarily from the purchase/sale of shares, but can be by other way also including pledge/gift etc. as indicated in regulation 29 (4) of the SAST Regulations which read as under;

“For the purposes of this regulation, shares taken by way of encumbrance shall be treated as an acquisition, shares given upon release of encumbrance shall be treated as a disposal, and disclosures shall be made by such person accordingly in such form as may be specified:

Provided that such requirement shall not apply to a scheduled commercial bank or public financial institution as pledge in connection with a pledge of shares for securing indebtedness in the ordinary course of business.

28. I have perused the available records (Annexure II and III of the SCN viz. the shareholding pattern and DP transaction statement) which are authentic and clearly shows that the shareholding of Noticee No. 1 (being the Promoter of APML) in Quarter ending June 2012 in the scrip of APML having 4, 39,000 shares (6.73%), but the same was shown as reduced to 4,14,000 shares (6.34%) in Quarter ending December 2012. This clearly shows that 25,000 shares were transferred by him during that period. The fact that such 25000 share were

transferred from his account to account of Mr. Ankush Gupta on September July 13, 2012 in off market transfer is not in dispute as such.

29. Further, it is also observed from the said Annexure II & III of the SCN that his shareholding again increased by 25,000 shares in Quarter ended March 2013 when compared to previous Quarter ended December 2012. The fact that such 25,000 share were again transferred into his account from the account of Mr. Ankush Gupta on February 08, 2013 in off market transfer, is not in dispute as such. This clearly shows that Noticee No. 1 again acquired the 25,000 shares in Quarter ended March 2013 when compared to previous Quarter ended December 2012.

30. Therefore, keeping in view the aforesaid observations and the evidence available on records (viz. Annexure II and III of the SCN), I am of the opinion that the Noticee No. 1 had transferred / sold 25,000 shares in July 13, 2012 and again acquired the same number of shares on February 08, 2013. The weighted average price on the dates of sell/purchase of said 25,000 shares i.e. ₹ 11,32,500 on July 13, 2012 and ₹ 8,78,750 on February 08, 2013 exceeded ₹ 5 lakh in value on said transactions as shown in the SCN, is not in dispute. Accordingly, the Noticee No. 1 was under an obligation to disclose such change of shareholding (which exceeded ₹ 5 lakh in value), but, he had failed to disclose the same to target Company / APML and to the Stock Exchange and therefore, he had violated regulation 13 (4A) read with 13(5) of PIT Regulations by not making disclosures as required under aforesaid provisions of laws.

In respect of Noticee No. 2 / Surya Medi Tech Ltd.

Allegations

31. It was alleged that the Noticee No. 2 has sold 4,29,875 shares (6.5877% of total shareholding of APML) from the period September 28, 2012 to January 03, 2013 in market transactions, but, has failed to provide disclosures to the Company /

stock exchange (BSE) within 2 working days from the date of sale of shares in terms of regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations regarding change of more than 2% shareholding in the Company while holding more than 5% shares in the Company. The shareholding of Noticee No. 2 had decreased by 2.14% & 4.21% (further 2.07%) on October 10, 2012 and November 29, 2012 respectively. Copy of de-mat account of the Noticee No. 2 was enclosed as Annexure II along with SCN showing said sale transactions. The details of said transactions are tabulated below.

| Date | Opening Balance as on Sept 24, 2012 | No of shares purchased | No of shares sold | Net Sales | % of shares acquired/sold to total no. of shares | % Holding | Market/ Off market |
|-------------------|-------------------------------------|------------------------|-------------------|-----------------|--|----------------|--------------------|
| | 5,17,000 | | | | | 7.9229% | |
| 28/09/2012 | | | 25,000 | 25,000 | 0.3831% | 7.5369% | Market |
| 01/10/2012 | | | 25,000 | 50,000 | 0.3831% | 7.1538% | Market |
| 03/10/2012 | | | 25,000 | 75,000 | 0.3831% | 6.7707% | Market |
| 08/10/2012 | | | 25,000 | 1,00,000 | 0.3831% | 6.3876% | Market |
| 09/10/2012 | | | 25,000 | 1,25,000 | 0.3831% | 6.0045% | Market |
| 10/10/2012 | | | 15,000 | 1,40,000 | 0.2299% | 5.7746% | Market |
| 12/10/2012 | | | 20,000 | 1,60,000 | 0.3065% | 5.4681% | Market |
| 18/10/2012 | | | 15,000 | 1,75,000 | 0.2299% | 5.2382% | Market |
| 19/10/2012 | | | 3,001 | 1,78,001 | 0.0460% | 5.1922% | Market |
| 22/10/2012 | | | 30,000 | 2,08,001 | 0.4597% | 4.7325% | Market |
| 23/10/2012 | | | 10,475 | 2,18,476 | 0.1605% | 4.5720% | Market |
| 29/11/2012 | | | 56,524 | 2,75,000 | 0.8662% | 3.7058% | Market |
| 03/12/2012 | | | 43,000 | 3,18,000 | 0.6590% | 3.0468% | Market |
| 04/12/2012 | | | 13,760 | 3,31,760 | 0.2109% | 2.8359% | Market |
| 10/12/2012 | | | 10,000 | 3,41,760 | 0.1532% | 2.6827% | Market |
| 11/12/2012 | | | 20,000 | 3,61,760 | 0.3065% | 2.3762% | Market |
| 14/12/2012 | | | 35,000 | 3,96,760 | 0.5364% | 1.8398% | Market |
| 03/01/2013 | | | 33,115 | 4,29,875 | 0.5075% | 1.3323% | Market |
| Total | | | 4,29,875 | | 6.5877% | | |

| Date of acquisition/sale | No. of shares Purchased/sold (%) | Alleged Provision |
|--------------------------|----------------------------------|-------------------|
|--------------------------|----------------------------------|-------------------|

| | | |
|------------|---|---|
| 10.10.2012 | Total shares sold: 1,40,000 shares (2.1455%) | No disclosures provided under regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations. |
| 29.11.2012 | Total shares sold: 2,75,000 shares (4.2143%) (5.7746% - 3.7058% = 2.0688%) | No disclosures provided under regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations. |

32. In view of the aforesaid non disclosures to the Company / stock exchange (BSE) by the Noticee No. 2 regarding the sale of shares in the scrip of the APML, it was alleged that it had violated regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29(3) of the SAST Regulations.

Reply and Findings

33. In respect to the allegations, the Noticee No. 2 vide aforesaid reply dated March 01, 2016 had contended that it had filed both the disclosures as required and annexed photocopies of letter dated October 10, 2012 and December 01, 2012 addressed to BSE (copy marked to Company/APML) in its support. Upon careful scrutiny of said photocopies, it was observed that the Noticee had not provided any evidence to show that the required disclosures were actually made to the Company and to the Stock Exchange as no acknowledgement either by the Company / APML or by the Stock Exchange is there to show that the same were delivered/forwarded to them.

34. It is relevant to mention that in order to examine the veracity of disclosures, a notice of hearing dated May 11, 2017 was issued to the Noticee No. 2 whereby it was *inter-alia* asked to appear for hearing on May 24, 2017 and to provide original / authentic proof of making disclosures / delivery proof of disclosures as claimed by it in its letter/reply dated March 01, 2016. The Noticee was also asked to make additional submissions, if any, by May 22, 2017. However, despite the notice of hearing was duly served upon it through SPAD and also through digitally signed e-mail (duly delivered) on May 11, 2017, the Noticee neither appeared for hearing

as part of inquiry nor it provided any authentic proof /additional submission as asked.

35. It is not out of place to mention that had the disclosures were made by the Noticee No. 2 as contended, then, such delivery proof would have been provided in the present proceedings or the Stock Exchange / Company could have been requested by the Noticee No. 2 to confirm the receipt of such disclosures. However, no such evidence has been provided in the matter. I am of the view that in absence of any delivery/acknowledgement proof of making disclosures to Stock Exchange and to the Company/APML, such self-prepared letters / photocopies of letters cannot be given any weight as such photocopies / letters appears to be afterthought and meant as an attempt to cover its lapses.
36. In order to examine the allegations, I have perused the Annexure II of the SCN showing transaction details received from NSDL and para 3 of the SCN showing the details of shares sold by the Notice No. 2. The said details of transactions are not in dispute. It is noted from the said details that Noticee No. 2 was having 5,17,000 shares (which was 7.9229% shareholding in the Company) as on September 24, 2012 and he had sold a total of 1,40,000 shares from 28th September to 10th October 2012 and therefore, its shareholding came down to 5.7746%. This clearly shows that the Noticee who was holding more than 5% share/voting right of the Company had sold said 1,40,000 shares thereby resulting into a change of more than 2% in shareholding by virtue of aforesaid sales. Accordingly, upon such change, the Noticee No. 2 was required to make disclosures to the target Company / APML and to the Stock Exchange, in terms of regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations.
37. Further, the Noticee No. 2 had also sold a total of 2,75,000 shares from 12th October to 29th November 2012 and its shareholding again came down to 3.7058% resulting into change of more than 2% in its shareholding by virtue of aforesaid sales. The Noticee No. 2 had again sold shares till Quarter ending December 2012 which ultimately resulted into its reduction of its shareholding to 1.8398%.

Accordingly, the Noticee No. 2 was required to make disclosures to the target Company / APML and to the Stock Exchange, in terms of regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations upon change of more than 2% in its shareholding on the triggered date i.e. 29th November 2012.

38. Taking into consideration the aforesaid observations, I am of the view that the Noticee No. 2 had failed to make necessary disclosures to the target Company / APML and to the Stock Exchange, and therefore had violated regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations.

In respect of Noticee No. 3, 4, 5 and 7

Allegation against Noticee No. 3 / Archit Hotels and Resorts Pvt. Ltd.

39. It was alleged that the Noticee No. 3 had sold 4,25,000 shares (6.51% of total shareholding of the Company/APML) on October 15, 2012 in off market transaction to Venus Insec Pvt. Ltd. now known as Novalty Enterprises Pvt. Ltd. (Noticee No. 6) and said transaction has not been disclosed to the Company / stock exchange (BSE) within 2 working days from the date of sale of shares. Copy of de-mat account of the Noticee was enclosed as Annexure II along with SCN showing said sale transactions. The details of said transactions is tabulated below.

| Date | Opening Balance as on Sept 24, 2012 | No of shares purchased | No of shares sold | % of shares acquired/sold to total no. of shares | Market/ Off market |
|------------|-------------------------------------|------------------------|-------------------|--|--------------------|
| | 4,25,000 | | | 6.51% | |
| 15/10/2012 | | 0 | 4,25,000 | 6.51 % | Off market |
| Total | | 0 | 4,25,000 | | |

40. In view of the aforesaid non disclosures to the Company / stock exchange (BSE) by the Noticee No. 3 regarding sale of shares of the APML, it was alleged that it

had violated regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29(3) of the SAST Regulations.

Allegation against Noticee No. 4 / Zarf Infra Development Pvt. Ltd.

41. It was alleged that the Noticee had sold 5,56,500 shares (8.53% of total shareholding of the Company) on December 18, 2012 in off market transaction to the Venus Insec Pvt. Ltd. Novalty Enterprises Pvt. Ltd. (Noticee No. 6) and said transaction has not been disclosed to the Company / stock exchange (BSE) within 2 working days from the date of sale of shares. Copy of de-mat account of the Noticee No. 4 was enclosed as Annexure II along with SCN showing said sale transaction. The details of said transaction is tabulated below.

| Date | Opening Balance as on Sept 24, 2012 | No of shares purchased | No of shares sold | % of shares acquired/sold to total no. of shares | Market/ Off market |
|------------|-------------------------------------|------------------------|-------------------|--|--------------------|
| | 5,56,500 | | | 8.53% | |
| 18/12/2012 | | 0 | 5,56,500 | 8.53% | Off market |
| Total | | 0 | 5,56,500 | | |

42. In view of the aforesaid non disclosures to the Company / stock exchange (BSE) by the Noticee No. 4 regarding sale of shares of the APML, it was alleged that it had violated regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29(3) of the SAST Regulations.

Allegation against Noticee No. 5 / HSI Infotech Pvt. Ltd.

43. It was alleged that the Noticee No. 5 had sold 5,05,300 shares (7.74% of total shareholding of the company) on October 10, 2012 in off market transaction to Zoom Building Materials & Products Pvt. Ltd. (Noticee No. 7), but, has failed to provide disclosures to the Company / stock exchange (BSE) within 2 working days from the date of sale of shares of the APML in terms of regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations. Copy of de-mat account of the Noticee No. 5 was enclosed as Annexure II along with SCN showing said sale transactions. The details of said transactions are tabulated below.

| Date | Opening Balance as on Sept 24, 2012 | No of shares purchased | No of shares sold | % of shares acquired/sold to total no. of shares | Market/ Off market |
|-------------------|-------------------------------------|------------------------|-------------------|--|--------------------|
| | 4,26,700 | | | 6.54% | |
| 10/10/2012 | | 78,600 | | 1.20% | Off Market |
| 10/10/2012 | | | 5,05,300 | 7.74% | Off Market |
| Total | | 78,600 | 5,05,300 | | |

44. In view of the aforesaid non disclosures to the Company / stock exchange (BSE) by the Noticee No. 5 regarding sale of shares of the APML, it was alleged that it had violated regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29(3) of the SAST Regulations.

Allegation against Noticee No. 7 / Zoom Building Materials & Products Pvt. Ltd.

45. It was alleged that the Noticee No. 7 had purchased 5,05,300 shares (7.74% of total shareholding of the company) on October 10, 2012 in off market transaction from HSI Infotech Pvt. Ltd. (Noticee No. 5), but, had failed to make disclosures to the Company / stock exchange (BSE) within 2 working days from the date of purchase of shares of the APML/Company. Copy of de-mat account of the Noticee No. 7 was enclosed as Annexure II along with SCN showing said purchase transaction.

46. In view of the aforesaid non disclosures to the Company / stock exchange (BSE) by the Noticee No. 7 regarding purchase of shares of the APML, it was alleged that the it had violated regulation 13 (1), 13 (3) & 13 (5) of the PIT Regulations and regulation 29 (1), 29 (2) & 29(3) of the SAST Regulations.

Reply and Findings

47. As observed in pre paras that despite service of SCNs and hearing notices through by SPAD / digitally signed email, the Noticee No. 3 to 5 and 7 neither submitted any reply towards the SCNs nor appeared for hearing under inquiry. It is well settled position of law as well as held by the Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of *Classic Credit Ltd. v/s SEBI [2007] 76 SCL 51 (SAT - MUM)* *inter-alia* held that – “the appellants did not file any reply to the second show-cause

notice. This being so, it has to be presumed that the charges alleged against them in the show-cause notice were admitted by them".

The Hon'ble SAT also made such proposition in case of *Sanjay Kumar Tayal & Ors. Vs. SEBI (in appeal No. 68/2013) decided on February 11, 2014 viz. "....., appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices".*

48. I have perused the available records viz. the SCN and the evidence / annexure II (transaction statement of Depository) and observed that Noticee No. 3 was having 4,25,000 shares on September 24, 2012 (6.51% of total shareholding of the Company/APML) and it had sold entire said 4,25,000 shares on October 15, 2012. Likewise, the Noticee No. 4 was having 5,56,500 shares on September 24, 2012 (8.53% of total shareholding of the Company/APML) and it had sold said entire shareholding of 5,56,500 on December 18, 2012. The Noticee No. 5 was having 4,26,700 shares on September 24, 2012 (6.54% of total shareholding of the Company/APML) and it had acquired 78,600 share (1.20% shareholding of company) on October 10, 2012, but, it had then sold entire shareholding of 5,05,300 shares (7.74% of total shareholding of the company) on October 10, 2012. Also, the Noticee No. 7 has purchased 5,05,300 shares (7.74% of total shareholding of the company) on October 10, 2012.

49. From the aforesaid, it is established that there was a change of more than 2% in shareholding of Noticee No. 3, 4 and 5 due to said sale/purchase (which required the disclosures to have been made to the target Company / APML and to the Stock Exchange, of such change) in terms of regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations. Also, it is established that the Noticee No. 7 acquired more than 5% of shares/voting right in the Company / APML which requires the disclosures to have been made to the target Company / APML and to the Stock Exchange, under regulation 13(1) read

with 13(5) of PIT Regulations and regulation 29(1) read with 29(3) of SAST Regulations.

50. As no evidence has been brought by the Noticee No. 3, 4, 5 and 7 on records to suggests that they had made the required disclosures, therefore, taking into account the allegation in SCN, Annexure I (proceeding of appointment of adjudicating Officer specifying the allegations against the Noticee(s) and Annexure II (Transaction Statement of Depositories), it is concluded that despite change of more than 2% shareholding as observed in pre paras, the Noticee No. 3 to 5 had failed to make the required disclosures to the target Company/APML and to the Stock Exchange, in terms of regulation 13(3) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations; and the Noticee No. 7 had failed to make required disclosure under regulation 13(1) read with 13(5) of PIT Regulations and regulation 29(1) read with 29(3) of SAST Regulations upon acquisition of more than 5% of shareholding in the Company / APML.

Allegation against Noticee No. 6 / Novalty Enterprises Pvt. Ltd (formerly known as Venus Insec Pvt. Ltd.)

51. It was alleged that the Noticee No. 6 had purchased 4,25,000 shares (6.51% of total shareholding of the APML / Company) and 5,56,000 shares (8.53% of total shareholding of the APML/Company) on October 15, 2012 and December 18, 2012 respectively in off market transactions. The Noticee No. 6 had purchased these shares from Archit Hotels & Resorts Pvt. Ltd. (Noticee No. 3) and Zarf Infra Development Pvt. Ltd. (Noticee No. 4) respectively. The Noticee No. 6 had sold 3,70,200 shares (5.6732% of total shareholding of the Company) from the period November 07, 2012 to December 26, 2012 in market transactions. The details of aforesaid transactions are shown in tables below;

| Date | Opening Balance as on Sept 24, 2012 | No of shares purchased | No of shares sold | % of shares acquired/sold to total no. of shares | % Holding | Market/ Off market |
|------|-------------------------------------|------------------------|-------------------|--|-----------|--------------------|
| | 0 | | | | | |

| Date | Opening Balance as on Sept 24, 2012 | No of shares purchased | No of shares sold | % of shares acquired/sold to total no. of shares | % Holding | Market/ Off market |
|--------------|-------------------------------------|------------------------|-------------------|--|-----------|--------------------|
| 15/10/2012 | | 4,25,000 | | 6.51% | 6.51% | Off Market |
| 07/11/2012 | | | 50,000 | 0.7662% | 5.74% | Market |
| 03/12/2012 | | | 20,000 | 0.3065% | 5.44% | Market |
| 05/12/2012 | | | 75,000 | 1.1494% | 4.29% | Market |
| 06/12/2012 | | | 72,500 | 1.1110% | 3.18% | Market |
| 07/12/2012 | | | 36,300 | 0.5563% | 2.62% | Market |
| 10/12/2012 | | | 46,400 | 0.7111% | 1.91% | Market |
| 18/12/2012 | | 5,56,500 | | 8.53% | 10.44% | Off Market |
| 26/12/2012 | | | 70,000 | 1.0727% | 9.36% | Market |
| Total | | 9,81,500 | 3,70,200 | | | |

| Date of acquisition/sale | No. of shares Purchased/sold (%) | Alleged Provisions |
|--------------------------|---|---|
| 15.10.2012 | 4,25,000 shares acquired (6.51%) (Total shares held : 4,25,000 shares (6.51%)) | No disclosure were provided under regulation 13(1) read with 13(5) of PIT Regulations, and regulation 29(1) read with 29(3) of SAST Regulations. |
| 05.12.2012 | 1,45,000 shares sold (2.77% additional sell i.e. 6.51% – 4.29% = 2.22%) | No disclosures provided under regulation 13(3) read with 13(5) of SEBI (PIT) Regulations, 1992 and regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011. |
| 18.12.2012 | 5,56,500 shares acquired (8.53%) (Total shares held : 6,81,300 shares (10.44%)) | No disclosures provided under regulation 13(3) read with 13(5) of SEBI (PIT) Regulations, 1992 and regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011. |

52. It was alleged that the Noticee No. 6 has failed to provide the disclosures in term of regulation 13(1) read with 13(5) of PIT Regulations and regulation 29(1) read with 29(3) of SAST Regulations, to the Company / stock exchange (BSE) within 2 working days from the date of purchase of shares in the scrip of the Company/APML as its acquisition was more than 5 % in the Company. Also, it was alleged that the Noticee No.6 had failed to provide disclosures to the Company / stock exchange (BSE) within 2 working days from the date of sale/acquisition of shares of the Company/APML in terms of regulation 13(3) read

with 13(5) of PIT Regulations, and regulation 29(2) read with 29(3) of SAST Regulations for change of more than 2% in the shareholding in the Company while holding more than 5% shares in the Company. Copy of de-mat account of the Noticee No. 6 was enclosed as Annexure II along with SCN showing said transactions.

53. In view of the aforesaid non disclosures to the Company / stock exchange (BSE) by the Noticee No. 6 regarding the acquisition / sale of shares of the APML, it was alleged that it had violated regulation 13 (1), 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (1), 29 (2) read with 29(3) of the SAST Regulations.

Reply and Findings

54. In respect to the allegations, no reply has been filed by the Noticee No. 6. First time the Noticee No. 6 through AR had appear for hearing on May 24, 2017 and merely stated that it had made required disclosures without proving any evidence in its support. Surprisingly, it had vide letter dated June 03, 2017 stated it had not received the SCN. Such submissions of the Noticee No. 6 has been examined by me at pre para 11 - 14 above and same is not reproduced here for sake of brevity. From the observations made at pre para 11 – 14 of this order and as per available records especially annexure II (Transaction Statement received from Depositories) of the SCN, it is observed that on September 24, 2012 the Noticee's shareholding in the Company was zero/nil and on October 15, 2012, it had purchased/acquired 4,25,000 shares (6.51% of total shareholding of the Company) which was more than 5% of the total shareholding of the APML; and upon such acquisition / purchase of more than 5%, the Noticee No. 6 was required to make disclosures to the target Company and to the Stock Exchange, in terms of regulation 13(1) of PIT Regulations and regulation 29(1) of SAST Regulations, which it had failed to do so as no proof has been provided by it.

55. Further, Noticee No. 6 sold 1,45,000 shares (2.22%) between 7th November to 5th December 2012 amounting to more than 2 % change from last holding (4,25,000 - 1,45,000) and upon such disposal/selling the shares whereby change in

shareholding exceeded more than 2%, therefore, it was required to make disclosure to the target Company and to the Stock Exchange, in terms of regulation 13 (3) of the PIT Regulations and regulation 29 (2) of the SAST Regulations.

56. It is also observed from the records that the Noticee No. 6 again purchased / acquired 5,56,000 shares (i.e. 8.53% of total shareholding of the company) on December 18, 2012 in off market, whereby change in shareholding again exceeded more than 2%, and therefore, it was required to make disclosure to the target Company and to the Stock Exchange, in terms of regulation 13 (3) of the PIT Regulations and regulation 29 (2) of the SAST Regulations.

57. As no evidence has been brought on record by the Noticee No. 6 to suggest that it had made the required disclosures, therefore, taking into account the allegation in SCN, Annexure I (proceeding of appointment of adjudicating Officer specifying the allegations against the Noticee(s) and Annexure II (Transaction Statement of Depositories), it is concluded that despite acquiring more than 5% shares in the target Company; and despite change in its shareholding of more than 2% as observed in pre paras, the Noticee No. 6 had failed to make the required disclosures to the target Company and to the Stock Exchange, in terms of regulation 13 (1), 13(3) read with 13(5) of PIT Regulations and regulation 29 (1), 29(2) read with 29(3) of SAST Regulations and accordingly, had violated the said provisions of laws.

ISSUE NO. 2 & 3- Whether the failure, if any, on the part of the Noticees, would attract monetary penalty under section 15 A (b) of the SEBI Act AND If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

58. Keeping in view the aforesaid observations made at pre paras, I am of the view that no disclosures were made despite huge delay at the end of the Noticees. It is relevant here to mention the judgment of the Hon'ble SAT in case of Millan

Mahendra Securities Pvt. Ltd. vs. SEBI (Appeal No. 66/2003 decided on November 15, 2006) wherein it was observed that *the purpose of the SAST Regulation is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market, and therefore, it cannot be subscribed to the view that the violations are technical in nature.*

59. Thus, the aforesaid violations committed by the Noticees makes them liable for penalty under Section 15A (b) of the SEBI Act which read as follows:

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, 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;

60. While determining the quantum of penalty under sections 15A (b), it is important to consider the factors stipulated in section 15J of SEBI Act read with rule 5 (2) of the Adjudication Rules, 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.”

61. Before arriving to the quantum of penalty in matter, it is necessary to refer the importance of such disclosures. The main objective of the SAST Regulations or PIT Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities

market and failure to do so results in preventing investors from taking well informed decision.

62.No specify disproportionate gains or unfair advantage made by the Noticees or the specific loss suffered by the investors due to such non disclosures is on records; and no repetition of the default by the Noticees is shown on records / Action Taken Report of SEBI. However, considering the facts and circumstance of the case, the purpose of the SAST and PIT Regulation as sated at pre para, I am of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

63.After taking into consideration all the aforesaid facts / circumstances of the case and taking into account that the requirement of aforesaid disclosures under PIT Regulations and SAST Regulations are corollary in nature, therefore, in exercise of the powers conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticees under section 15 A (b) of the SEBI Act, as shown in table below;

| Name of the Noticee | Amount of Penalty / Provisions of Laws Violated |
|---|--|
| Mr. Atul Kumar Agarwal (Noticee No. 1) | ₹ 4,00,000/- (Rupees Four Lakh only) For violation of regulation 13 (4A) read with 13 (5) of the PIT Regulations. |
| Surya Medi Tech Ltd. (Noticee No. 2) | ₹ 4,00,000/- (Rupees Four Lakh only) For violation of regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29 (3) of the SAST Regulations. |
| Archit Hotels and resorts Pvt. Ltd. (Noticee No. 3) | ₹ 4,00,000/- (Rupees Four Lakh only) For violation of regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29 (3) of the SAST Regulations. |
| Zarf Infra Development Pvt. Ltd. (Noticee No. 4) | ₹ 4,00,000/- (Rupees Four Lakh only) For violation of regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29 (3) of the SAST Regulations. |

| | |
|--|--|
| HSI Infotech Pvt. Ltd. (Noticee No. 5) | ₹ 4,00,000/- (Rupees Four Lakh only) For violation of regulation 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29 (3) of the SAST Regulations. |
| Novalty Enterprises Pvt. Ltd (Formerly known as Venus Insec Pvt. Ltd.) (Noticee No. 6) | ₹ 6,00,000/- (Rupees Six Lakh only) For violation of regulation 13 (1), 13 (3) read with 13 (5) of the PIT Regulations and regulation 29 (1), 29 (2) read with 29 (3) of the SAST Regulations. |
| Zoom Building Materials & Products Pvt. Ltd. (Noticee No. 7) | ₹ 6,00,000/- (Rupees Six Lakh only) For violation of regulation 13 (1) read with 13 (5) of the PIT Regulations and regulation 29 (1) read with 29 (3) of the SAST Regulations. |

64. I am of the view that the said penalty would commensurate with the violations committed by the Noticees.

65. The Noticees 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 |

66. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI

Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in

| Date | Department of SEBI | Name of Intermediary/ Other Entities | Type of Intermediary | SEBI Registration Number (if any) | PAN | Amount (in Rs.) | Purpose of Payment (including the period for which payment was made e.g. quarterly, annually) | Bank name and Account number from which payment is remitted | UTR No |
|------|--------------------|--------------------------------------|----------------------|-----------------------------------|-----|-----------------|---|---|--------|
| | | | | | | | | | |

67. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

Date: June 30, 2017

Place: Mumbai

(RACHNA ANAND)
GENERAL MANAGER &
ADJUDICATING OFFICER