

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/DPS/ 158 - 160 /2017]

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

Adjudication Order in respect of:

- 1) **Naresh Laxminarayan Grover (PAN No. ADNPG0426G)** having address at H No. 245, Rajlaxmi Marg Civil Lines, Nagpur – 440001.
- 2) **Anupam Narain Gupta (PAN No. AIQPG8113N)** having address at B 103, Oberoi Gardens, Thakur Village, Kandivali East, Mumbai – 400101.
- 3) **Triyamb Securities Pvt. Ltd. (PAN No. AACCT7484L)** having address at B 103, Oberoi Gardens, Thakur Village, Kandivali East, Mumbai – 400101.

In the matter of Pro Fin Capital Services Ltd

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the trading of the scrip of Pro Fin Capital Services Ltd (hereinafter referred to as '**PFCSL / Scrip / Company**') for the period from July 01, 2012 to January 31, 2014 (hereinafter referred to as '**examination period**'). The shares of the company are listed on Bombay Stock Exchange (BSE). Examination *inter – alia* revealed that no disclosures were made under regulation 13(1) of SEBI(Prohibition of Insider Trading)

Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and regulation 29(1) read with 29(3) of SEBI(Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') by Naresh Laxminarayan Grover, (**the Noticee No. 1 / Naresh**), no disclosures were made under regulation 13(4), 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations by Anupam Narain Gupta, (**the Noticee No. 2 / Anupam**) and no disclosures were made under regulation 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations by Triyamb Securities Pvt. Ltd., (**the Noticee No. 3 / Triyamb**). All the Noticees collectively referred as '**the Noticees**'.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15I 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 May 19, 2016, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations of regulation 13(1), 13(4) and 13(4A) read with 13(5) of PIT Regulations and regulation 29(1) and 29(2) read with 29(3) of SAST Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Common Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2016/15632/1 dated June 1, 2016 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and

penalty be not imposed under section 15A(b) of the SEBI Act for the aforesaid alleged violation of PIT Regulations and SAST Regulations.

4. The observations made under the examination and the allegations levelled against the Noticees in the SCN are mentioned hereunder;
5. During the examination, it was revealed that Noticee No. 2 and 3 are promoters of PFCSL and Noticee No. 2 is also the Director of PFCSL and it was revealed that the Noticees had not disclosed about the change in its shareholding to exchanges as well as to the PFCSL as required under PIT Regulations and SAST Regulations. The details of which are explained below.
6. The details of Noticee No. 1, related transactions where disclosures required as per SAST Regulations and PIT Regulations are given below:-

Date	Transaction Type	Debit / Credit	Total Quantity	Holding after trasaction	As a % of share capital	No Disclosures made as required under PIT	No Disclosures made as required under SAST
Holding before transaction as on 24/07/2013				0	0		
25/07/2013	On Market	C	8750	8750	0.16%		
29/07/2013	On Market	C	10000	18750	0.34%		
30/07/2013	On Market	C	10000	28750	0.53%		
31/07/2013	On Market	C	20000	48750	0.89%		
01/08/2013	On Market	C	10000	58750	1.07%		
02/08/2013	On Market	C	12500	71250	1.30%		
05/08/2013	On Market	C	10000	81250	1.49%		
06/08/2013	Interdepository	C	5000	86250	1.58%		
20/08/2013	On Market	C	10000	96250	1.76%		
21/08/2013	On Market	C	10000	106250	1.94%		
27/08/2013	On Market	C	16000	122250	2.24%		
29/08/2013	On Market	C	20000	142250	2.60%		
30/08/2013	Interdepository	C	8000	150250	2.75%		

30/08/2013	On Market	C	12000	162250	2.97%		
02/09/2013	Interdepository	C	20000	182250	3.33%		
03/09/2013	Interdepository	C	20000	202250	3.70%		
04/09/2013	On Market	C	10	202260	3.70%		
18/10/2013	On Market	C	10500	212760	3.89%		
18/10/2013	Interdepository	C	500	213260	3.90%		
22/10/2013	Interdepository	C	11001	224261	4.10%		
25/10/2013	Interdepository	C	11000	235261	4.30%		
29/10/2013	Interdepository	C	10805	246066	4.50%		
31/10/2013	Interdepository	C	11000	257066	4.70%		
13/11/2013	Interdepository	C	11000	268066	4.90%		
22/11/2013	Interdepository	C	19953	288019	5.27%	13(1)	29(1) r.w. 29(3)
25/11/2013	On Market	C	13040	301059	5.51%		
10/12/2013	Interdepository	C	14455	315514	5.77%		
16/12/2013	Interdepository	C	2200	317714	5.81%		
16/12/2013	On Market	C	8800	326514	5.97%		
20/01/2014	On Market	C	38650	365164	6.68%		
26/02/2014	On Market	D	25000	340164	6.22%		
04/03/2014	Interdepository	C	25000	365164	6.68%		
05/03/2014	On Market	D	20000	345164	6.31%		
06/03/2014	Interdepository	C	19133	364297	6.66%		
07/03/2014	On Market	C	867	365164	6.68%		
10/03/2014	Interdepository	C	4912	370076	6.77%		
11/03/2014	Interdepository	C	6654	376730	6.89%		
11/03/2014	On Market	D	75000	301730	5.52%		
12/03/2014	On Market	D	75000	226730	4.15%		
20/03/2014	On Market	D	696	226034	4.13%		
21/03/2014	On Market	D	10000	216034	3.95%		

7. The details of Noticee No. 2, related transactions where disclosures required as per SAST Regulations and PIT Regulations are given below:-

Date	Transaction Type	Debit / Credit	Total Quantity	Holding after trasaction	As a % of share capital	No Disclosures made as required under PIT	No Disclosures made as required under SAST
Holding before transaction as on 06/12/2012				409900	9.16%		
07/12/2012	Off Market	C	37000	446900	8.82%	13(4) & 13(4A) r.w. 13(5)	29(2) r.w. 29(3)
07/01/2013	Interdepository	D	248	446652	8.82%		
13/03/2013	Interdepository	C	103300	549952	10.85%	# 13(4) & 13(4A) r.w. 13(5)	29(2) r.w. 29(3)
29/05/2013	Interdepository	D	32000	517952	9.47%	13(4) & 13(4A) r.w. 13(5)	
15/06/2013	Interdepository	D	30000	487952	8.93%	13(4) & 13(4A) r.w. 13(5)	
12/08/2013	Interdepository	C	3000	490952	8.98%		
23/08/2013	Interdepository	C	10000	500952	9.16%	13(4) & 13(4A) r.w. 13(5)	
30/08/2013	On Market	D	5000	495952	9.07%		
03/09/2013	On Market	D	5000	490952	8.98%	13(4) & 13(4A) r.w. 13(5)	
28/10/2013	Interdepository	D	270000	220952	4.04%	13(4) & 13(4A) r.w. 13(5)	29(2) r.w. 29(3)
29/10/2013	Interdepository	C	150000	370952	6.79%	13(4) & 13(4A) r.w. 13(5)	29(2) r.w. 29(3)
30/10/2013	Interdepository	C	50000	420952	7.70%	13(4) & 13(4A) r.w. 13(5)	
17/01/2014	Interdepository	D	20800	400152	7.32%	13(4) & 13(4A) r.w. 13(5)	

BSE has confirmed vide its email dated May 30, 2016 that it had received the disclosures under PIT regulations.

8. The details of Noticee No. 3, related transactions where disclosures required as per SAST Regulations and PIT Regulations are given below:-

Date	Transaction Type	Debit / Credit	Total Quantity	Holding after trasaction	As a % of share capital	No Disclosures made as required under PIT	No Disclosures made as required under SAST
Holding before transaction as on 19/08/2013				1218800	24.05%		
20/08/2013	Interdepository	D	150000	1068800	19.55%	13(4A) r.w. 13(5)	29(2) r.w. 29(3)
13/09/2013	Off Market	C	85000	1153800	21.11%	13(4A) r.w. 13(5)	
11/10/2013	On Market	D	9900	1143900	20.92%	# 13(4A) r.w. 13(5)	

14/10/2013	On Market	D	10900	1133000	20.72%	# 13(4A) r.w. 13(5)	
15/10/2013	On Market	D	8150	1124850	20.58%	# 13(4A) r.w. 13(5)	
17/10/2013	Off Market	C	65000	1189850	21.76%	13(4A) r.w. 13(5)	29(2) r.w. 29(3)
18/10/2013	Interdepository	D	121050	1068800	19.55%	13(4A) r.w. 13(5)	29(2) r.w. 29(3)
21/11/2013	On Market	D	7500	1061300	19.41%	13(4A) r.w. 13(5)	
06/12/2013	On Market	D	15746	1045554	19.13%	13(4A) r.w. 13(5)	

BSE has confirmed vide its email dated May 30, 2016 that it had received the disclosures under PIT regulations.

9. In view of above, it is alleged that the Noticees by indulging in trading in the scrip triggered disclosure requirements and BSE also confirmed vide its email dated May 30, 2016 no disclosures were received as per regulation 29 of SAST Regulations and as per regulation 13(4), 13(4A) read with 13(5) of PIT Regulations (copy of BSE email dated May 30, 2016 is placed at **Annexure - 2**); and by not making the said disclosures, the Noticees had allegedly violated SAST Regulations and PIT Regulations as mentioned below:-

Noticees	Violations
Noticee No. 1	Regulation 29(1) read with 29(3) of SAST Regulations and Regulation 13(1) of PIT Regulations.
Noticee No. 2	Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(4), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 3	Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 13(4A) read with 13(5) of PIT Regulations.

10. The aforesaid regulations are reproduced as under;

PIT Regulations

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

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.

Continual Disclosure

13(4) *Any person who is a director or officer 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 and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, 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(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 percent 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.*

29(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.*

11. In response to the SCN, the Noticee No. 1 vide its letter dated June 13, 2016 requested for grant of 1 week time for replying the said SCN. Noticee No. 2 and 3 submitted their reply separately vide letter dated June 23, 2016.

12. The key submissions/ reply of the Noticee No. 2 and 3 in their reply dated June 23, 2016 towards the SCN are being mentioned below;

REPLY OF NOTICEE NO. 2 :-

a. Capital structure of the Company

b. The total number of shares issued and paid up of the Company as on 31st March 2013 50,66,900

Further allotment made on conversion of warrants on 6th April 2013 2,00,000

Further allotment made on conversion of warrants on 8th April 2013 2,00,000

Total no. of shares issued and paid up as on 8th April 2013 54,66,900

c. My submissions on the alleged non-compliance with reference to the details given in para 6 of your show cause notice under reference are as under:

<i>Date</i>	<i>Total quantity</i>	<i>Debit/Credit</i>	<i>Disclosures under PIT 13(4), 13(4A) rw 13(5)</i>	<i>Disclosures under SAST 29(2) rw 29(3)</i>
<i>7/12/2012</i>	<i>370000</i>	<i>C</i>	<i>Not complied with</i>	<i>Not applicable as the quantity is less than 2% of the total shareholding or voting rights of the Company.</i>
<i>13/03/2013</i>	<i>103300</i>	<i>C</i>	<i>Not complied with</i>	<i>Not complied with</i>
<i>29/05/2013</i>	<i>32000</i>	<i>D</i>	<i>Not complied with</i>	<i>Not applicable</i>
<i>15/06/2013</i>	<i>30000</i>	<i>D</i>	<i>Not complied with</i>	<i>Not applicable</i>
<i>23/08/2013</i>	<i>10000</i>	<i>C</i>	<i>Not complied with</i>	<i>-do-</i>
<i>3/9/2013</i>	<i>5000</i>	<i>D</i>	<i>The details are incorrect as the total volume on 3/9/2013 as per BSE data was only 50 shares</i>	<i>-do-</i>
<i>28/10/2013</i>	<i>270000</i>	<i>D</i>	<i>Not complied with</i>	<i>Not complied with</i>

29/10/2013	150000	C	-do-	-do-
30/10/2013	50000	C	-do-	-do-
17/01/2014	20800	D	-do-	-do-

- d. *The non disclosure is due to misunderstanding of the relevant provisions of SEBI PIT Regulations and SEBI SAST Regulations. I have been regular in complying with the disclosure requirements under SEBI Regulations as can be seen from the details furnished to you by BSE annexed to the show cause notice. This is the first time I received the show cause notice. The non compliance is of minor procedural nature. It has not caused any loss to any investor; nor I gained monetarily due to non disclosure. There are no economic benefits accruing to any person due to non compliance.*

REPLY OF NOTICEE NO. 2 :-

a. Capital structure of the Company

- b. *The total number of shares issued and paid up of the Company as on 31st March 2013 50,66,900*

Further allotment made on conversion of warrants on 6th April 2013 2,00,000

Further allotment made on conversion of warrants on 8th April 2013 2,00,000

Total no. of shares issued and paid up as on 8th April 2013 54,66,900

- c. *Our submissions on the alleged non-compliance with reference to the details given in para 7 of your show cause notice under reference are as under:*

<i>Date</i>	<i>Total quantity</i>	<i>Debit/Credit</i>	<i>Disclosures under PIT 13(4A) r w 13(5)</i>	<i>Disclosures under SAST 29(2) r w 29(3)</i>
20/08/2013	150000	D	Not complied with	Not complied with
30/09/2013	85000	C	Not complied with	Not applicable
11/10/2013	9900	D	Complied with, Pl refer to the details from BSE received with your SC notice	Not applicable
14/10/2013	10900	D	-do-	Not applicable
15/10/2013	8150	D	-do-	-do-

17/10/2013	65000	C	Not complied with	Not applicable as the number of shares bought is less than 2% of the total shareholding of the Company
18/10/2013	121050	D	Not complied with	Not complied with
21/11/2013	7500	D	-do-	Not applicable
06/12/2013	15746	D	-do-	-do-

d. *The non disclosure is due to misunderstanding of the relevant provisions of SEBI PIT Regulations and SEBI SAST Regulations. We have been regular in complying with the disclosure requirements under SEBI Regulations as can be seen from the details furnished by BSE annexed to your show cause notice. This is the first time we received the show cause notice. The non compliance is of minor procedural nature. It has not caused any loss to any investor; nor we gained monetarily due to non disclosure. There are no economic benefits accruing to any person due to non compliance.*

13. 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.”

14. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticees on September 6, 2017 vide notice dated August 14, 2017. In this regard Noticee No. 1 vide email dated August 25, 2017, had requested for copy of the SCN as it has been misplaced due to shifting of its premise. Accordingly, vide email dated August 28, 2017, SCN was provided to the Noticee No. 1. Noticee No. 1 vide its email dated August 30, 2017 submitted its reply to the said SCN. Hearing on September 6, 2017 was attended by Noticee No. 1 and reiterated as submitted in its reply dated August 30, 2017 and submitted that I don't have any other documents for submissions in this regard. Authorized representative (AR) of Noticee No. 2 and 3 attended the hearing on September 6, 2017. AR reiterated as submitted in their reply dated June 23, 2016 and submitted that we would like to submit additional submissions within a week from the date of this hearing. Noticee No. 2 and 3 vide separate letters dated September 8, 2017 submitted same written submissions, which are reproduced below:-

- a. As mentioned in our letter dated 23rd June 2016, we complied with the provisions relating to disclosures under SEBI (PIT) Regulations and SEBI (SAST) Regulations then in force on some dates when the transactions took place and on some other dates did not comply. However, the non-compliance did not result in any disproportionate gain or unfair advantage either to us or the promoter group to which we belong.*
- b. The non-compliance did not cause any loss to any investor or group of investors.*
- c. The non-compliance is not of the repetitive nature as we have been complying with the disclosure requirements under the regulations within the stipulated time, since then.*
- d. The default is only of technical nature and, as explained above, did not result in any personal gain for us nor it caused any loss to any investor.*
- e. Our case is squarely covered by the judgment of Hon'ble Supreme Court rendered in Civil Appeal No. 14730 of 2015 in Siddharth Chaturvedi Vs SEBI. The Hon'ble Supreme Court in para 11 observed, inter alia, that where there is only a technical default and the parameters of Section 15J of the SEBI Act 1992 are satisfied, no penalty ought to be imposed.*

- f. We further reiterate that, as explained above, our case squarely falls within the parameters of section 15J of the SEBI Act 1992 and taking into account the ratio of the Hon'ble Supreme Court Judgment cited above, no penalty can be imposed.*

15. The key submissions/ reply of the Noticee No. 1 in its reply dated August 30, 2017 towards the SCN are being mentioned below;

- (a) I would like to inform you that the transactions I had done were unintentional, as I was totally unaware of the rules and regulations of SEBI. Neither was it planned nor did my dealer inform me about the rules. I sincerely apologise for the mistake I have made unknowingly. I would like to inform you that I had instructed my dealer to invest in the particular share for certain amount of money. However a drop in the price of shares led him to get a higher number of shares for the same amount of money.*
- (b) May I humbly request you to kindly forgive me for the mistake I have made for the first time in my life. I assure you and promise to you that I will abide by the rules in future.*
- (c) Request your good self again to please consider my apology and forgive me.*

CONSIDERATION OF ISSUES AND FINDINGS:-

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

- a. Whether the Noticee had failed to make the disclosures to BSE and the PFCSL in respect of buy / sell transactions as stated at Para 5 – 8 of the SCN?*
- b. If the disclosures were not made by the Noticees then, whether the Noticee No. 1 is in violation of regulation 13(1) of PIT Regulations and regulation 29(1) read with 29(3) of SAST Regulations, Noticee No. 2 is in violation of regulation 13(4) and 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of*

SAST Regulations and Noticee No. 3 is in violation of regulation 13(4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations.

- c. If yes, then, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act?*
- d. If yes, then, what would be the monetary penalty that can be imposed upon the Noticee?*

17. I have perused the available records and replies of the Noticees in respect of the allegations alleged in the SCN. From the perusal of the SCN at para 5, it is observed that the Noticee No. 1 had not disclosed about the change in shareholding to BSE as well as to the company (PFCSL) as its shareholding increased to 5.27% by way of purchase of 19953 shares on November 22, 2013, which triggered disclosure requirement under regulation 13(1) of PIT Regulations and regulation 29(1) read with 29(3) of SAST Regulations. Noticee in its reply dated August 30, 2017 and during hearing also accepted that it had not made any disclosure under PIT Regulations and SAST Regulations. Further BSE vide its e-mail dated May 30, 2016 confirmed that no disclosures have been received under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations for the said transaction.

18. In view of the aforesaid, it is established that the Noticee No. 1 purchase of shares exceeds 5% shares of total shareholding or voting rights on November 22, 2013. Noticee No. 1 has neither made any disclosures to company (PFCSL) in term of regulation 13(1) of PIT Regulations nor made under regulation 29(1) read with 29(3) of SAST Regulations to the Company (PFCSL) and to the Stock Exchange (BSE) as accepted in its reply and also accepted during hearing and also confirmed by BSE that no disclosures have been received from Noticee No. 1 under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations for the said transaction; and thus it

is established that Noticee No. 1 had violated regulation 13(1) of PIT Regulations and regulation 29(1) read with 29(3) of SAST Regulations.

19. From perusal of SCN at Para 6 – 8, it was observed that the Noticee No. 2 and 3 are the Promoters of PFCSL and Noticee No. 2 is also the Director of PFCSL. Noticee No. 2 had not disclosed about the change in shareholding to BSE as well as to the company (PFCSL) as its shareholding *change exceeds 25,000 shares or 1% of total shareholding* on 07/12/2012, 29/05/2013, 15/06/2013, 23/08/2013, 03/09/2013, 28/10/2013, 29/10/2013, 30/10/2013, 17/01/2014 and Noticee No. 2 shareholding *also exceeds 2% of total shareholding or voting rights* on 07/12/2012, 13/03/2013, 28/10/2013, 29/10/2013, which triggered disclosure requirement under regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations and regulation 29(2) read with regulation 29(3) of the SAST Regulations.

20. Noticee No. 3 had not disclosed about the change in shareholding to BSE as well as to the company (PFCSL) as its shareholding *change exceeds 25,000 shares or 1% of total shareholding* on 20/08/2013, 13/09/2013, 17/10/2013, 18/10/2013, 21/11/2013 and 06/12/2013 and Noticee No. 3 shareholding *also exceeds 2% of total shareholding or voting rights* on 20/08/2013, 17/10/2013, 18/10/2013 which triggered disclosure requirement under regulation 13(4A) read with 13(5) of the PIT Regulations and regulation 29(2) read with regulation 29(3) of the SAST Regulations.

21. Noticee No. 2 and 3 in their replies dated June 23, 2016 and during the hearing also accepted that they had not made any disclosure under PIT Regulations and SAST Regulations. Further, submission made during the hearing and vide their letters dated September 8, 2017 stated that, “*Our case is squarely covered by the judgment of Hon’ble Supreme Court rendered in Civil Appeal No. 14730 of 2015 in Siddharth Chaturvedi Vs SEBI. The Hon’ble Supreme Court in para 11 observed, inter alia, that where there is only a technical*

default and the parameters of Section 15J of the SEBI Act 1992 are satisfied, no penalty ought to be imposed". It may be noted that the applicability of Sec 15J has already been dealt at para 12 of this order. It may be noted that pursuant to the notification of the Finance Act 2017, Adjudicating Officer has the power to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA.

22. Noticee No. 2 and Noticee No. 3 has neither made any disclosures to the Company (PFCSL) and BSE in term of regulation 13 of PIT Regulations nor made under regulation 29 of SAST Regulations to the Company (PFCSL) and BSE. Further BSE vide its e-mail dated May 30, 2016 confirmed that no disclosures have been received from Noticee No. 2 and Noticee No. 3 under regulation 13 of PIT Regulations and regulation 29 of SAST Regulations for the said transactions. Thus it is established that Noticee No. 2 and Noticee No. 3 had violated regulation 13 of PIT Regulations and regulation 29 SAST Regulations.

23. I note that the violation of aforesaid non disclosures occurred during the period January 2013 and January 2014 and as per records no disclosures were made by the Noticees despite the requirement of making the same within 2 working days. Therefore, there is a delay of around 3 years and 8 months in making the disclosure and the aforesaid violation continues till date as the Noticees has not made the said disclosure till date to exchange (BSE) and to the company as appears from the BSE website.

24. The plea of the Noticees that alleged non-compliances were unintentional, unknowingly, technical in nature and due to misunderstanding of the relevant provisions of SEBI PIT Regulations and SEBI SAST Regulations and noncompliance is of minor procedural nature and it has not caused any loss to any investor; nor I gained monetarily due to non-disclosure. There are no economic benefits accruing to any person due to noncompliance is not acceptable as it is settled position of law the ignorance of law is

not an excuse and I do not agree with the aforesaid contention of the Noticees. It would be appropriate to refer here the observations made by the Hon'ble SAT in the following cases:

- a) In the matter of ***Komal Nahata Vs. SEBI decided on January 27, 2014***:- *“Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”*
- b) In the matter of ***Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014*** :- *“... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”*

25. Here, I refer the judgement of the Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund*** [2006] 68 SCL 216(SC) has also held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”*.

26. In view of the aforesaid observation and established violations against the Noticees, it is a fit case for imposing monetary penalty upon the Noticees under Section 15A(b) of the SEBI Act which read as follows:

SEBI Act:

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;

27. 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.”*

28. In the matter of ***Gurmeet Singh Dhingra Vs. SEBI (Appeal No. 353 of 2014) decided on December 13, 2014*** :- “...as per regulation 13(3) read with regulation 13(5) of the PIT Regulations, appellant was obliged to make disclosures within two working days of acquisition or sale of shares or voting rights as the case may be. In the present case, the appellant has neither made disclosure when regulation 13(3) got triggered on account of acquiring 2,49,300 shares of Trinity on September 28, 2009 nor the appellant has made disclosures on sale of shares on December 30, 2009, January 5, 2010, January 8, 2010 and January 23, 2010 when on all the four occasions the sale resulted in decrease in shareholding by more than 2%. Thus, on all the five occasions, it was obligatory on part of the appellant to make disclosure under regulation 13(3) within the time stipulated under Regulation 13(5) of the PIT Regulations. Penalty imposable under Section 15A(b) of SEBI Act for failure to make such disclosure is ₹1 lac each day during which such failure continues or ₹1 crore whichever is less. Since the appellant has

failed to make disclosure on all the aforesaid five occasions, penalty imposable for aforesaid five violations would be ₹ 1 crore each i.e. ₹ 5 crore in all. As against penalty of ₹ 5 crore imposable on the appellant for not making disclosure under Regulation 13(3) read with Regulation 13(5) of PIT Regulations on the aforesaid five occasions, the adjudicating officer after considering all mitigating factors has imposed penalty of ₹ 5 lac which cannot be said to be excessive, arbitrary or unreasonable.

29. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticees, the specific loss suffered by the investors due to such violations; nor the violations as repetitive in nature. Thus before arriving to the quantum of penalty in the 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 to shareholders as regards their holdings in the company. 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 substantial selling / acquiring in the company. 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. Furthermore, in the instant matter leave aside timely disclosure, the Noticees has not only failed to make disclosures but also continues with aforesaid non-disclosures. Therefore, taking into consideration the facts / circumstance of the case and above factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

30. After taking into consideration all the aforesaid facts and circumstances of the case, I hereby impose a penalty upon the Noticees, in terms of the provisions of Section 15A(b) of the SEBI Act, 1992, as shown in table below;

Name of the Noticee	Violations	Penalty Amount
Naresh Laxminarayan Grover	Regulation 29(1) read with 29(3) of SAST Regulations	₹ 7,00,000/- (Rupees Seven Lakh only)
	Regulation 13(1) of PIT Regulations	₹ 8,00,000/- (Rupees Eight Lakh only)
	Total	₹ 15,00,000/- (Rupees Fifteen Lakh only)
Anupam Narain Gupta	Regulation 29(2) read with 29(3) of SAST Regulations	₹ 4,00,000/- (Rupees Four Lakh only)
	Regulation 13(4), 13(4A) read with 13(5) of PIT Regulations	₹ 4,00,000/- (Rupees Four Lakh only)
	Total	₹ 8,00,000/- (Rupees Eight Lakh only)
Triyamb Securities Pvt. Ltd.	Regulation 29(2) read with 29(3) of SAST Regulations	₹ 4,00,000/- (Rupees Four Lakh only)
	Regulation 13(4A) read with 13(5) of PIT Regulations	₹ 4,00,000/- (Rupees Four Lakh only)
	Total	₹ 8,00,000/- (Rupees Eight Lakh only)

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

32. 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

33. 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

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

DATE: SEPTEMBER 19, 2017

PLACE: MUMBAI

RACHNA ANAND

ADJUDICATING OFFICER