

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/882 - 887/2017]

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.

In respect of:

- 1. Shri Ravi Bhandari (PAN: ADQPR8496J)**
- 2. Ms Rekha Bhandari (PAN : AAHPR8192A)**
- 3. Ravi Bhandari HUF (PAN : AAJHR4856E)**
- 4. Lollipop Fashions Private Limited (PAN: AACCL1423B)**
- 5. Shri Samir Ghosh (PAN : AMPPG0185K)**
- 6. Shri Anand Kumar Dhanuka (PAN : AMBPD8464A)**

In the matter of

ANSHUS CLOTHING LIMITED

- 1. Securities and Exchange Board of India (hereinafter referred to as the 'SEBI') had conducted an examination into the matter of Anshus Clothing Limited (hereinafter referred to as the 'target company' / 'ACL') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act, 1992') and various Rules and Regulations made there under.**
- 2. Upon examination, it was observed that the following entities had violated the following provisions of law:**
 - (a) Shri Samir Ghosh and Shri Anand Kumar Dhanuka were observed to have violated Regulation 29(1) and 29(2) read with 29(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "SAST Regulations, 2011") and Regulations 13(1) and 13(3) read with**

13(5) of SEBI (Prohibition of Insider Trading) Regulations 1992 (hereinafter referred to as "PIT Regulations, 1992"),

(b) Ms. Rekha Bhandari, Lollipop Fashions Private Limited and Ravi Bhandari HUF were observed to have violated Regulation 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with 13(5) of PIT Regulations, 1992,

(c) Shri Ravi Bhandari was observed to have violated Regulation 29(2) read with 29(3) of the SAST Regulations, 2011, Regulation 31(1) read with 31(3) of the SAST Regulations, 2011 and Regulation 13(3), 13(4) and 13(4A) read with 13(5) of the PIT Regulations, 1992.

(The said entities are hereinafter individually referred to by their respective names and collectively referred to as the Noticees)

3. SEBI, therefore, had initiated adjudication proceedings against the Noticees for the alleged violation of the abovementioned provisions of law in the matter of ACL.

Appointment of Adjudicating Officer

4. I have been appointed as the Adjudicating Officer, vide order dated June 18, 2015, under Section 15 I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992, the alleged violation of the abovementioned provisions of law by the Noticees.

Show Cause Notice, Reply and Personal Hearing

5. A common show cause notice dated October 15, 2015 (hereinafter referred to as the 'SCN') was issued to the Noticees in terms of Rule 4 of the Adjudication Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of the provisions of law. The SCN issued to the Noticee viz. Shri Samir Ghosh was duly delivered. Further, it is noted that the SCNs issued to rest of the Noticees were returned undelivered.

6. In view of the same, the SCN issued to Shri AnandKumar Dhanukawas affixed at his last known address and the report thereof is available on record. Further, with respect to the other Noticees, it is observed that vide separate but identical letters dated December 04, 2015, Ravi Bhandari, Ravi Bhandari HUF and RekhaBhandari submitted their new addresses and requested that the SCNs be issued to the said addresses. Accordingly, vide letters dated December 23, 2015, the SCNs were forwarded to the latest correspondence addresses of the said Noticees. With respect to the SCN issued to Lollipop Fashions Private Limited, vide letter dated November 09, 2015, the said SCN was forwarded to the Western Regional Office, SEBI for getting it delivered to the Noticee at its last known address. I note that the SCN was duly delivered by the Western Regional Office, SEBI to Lollipop Fashions Private Limited.
7. Vide letters dated December 29, 2015, the Noticees viz. Ravi Bhandari, Ravi Bhandari HUF and Rekha Bhandari submitted their detailed replies in the matter. Further, vide letter dated December 10, 2015, Shri Samir Ghosh also submitted his reply to the SCN. With respect to Lollipop Fashions P. Ltd, vide letter dated December 04, 2015, the said Noticee submitted its reply in the matter. It is noted that no reply was received from Shri Anand Kumar Dhanuka in the matter. Thereafter, in the interest of natural justice and in order to conduct an inquiry as per Rule 4(3) of the Adjudication Rules, vide hearing notices dated June 15, 2017, an opportunity of personal hearing was granted to the Noticees on June 30, 2017 in the matter. The hearing notices were duly delivered to all except Shri Anand Kumar Dhanuka.
8. Vide email dated June 23, 2017, the Noticees viz. Ravi Bhandari, Ravi Bhandari HUF, Rekha Bhandari and Lollipop Fashions P. Ltd requested for adjournment of the scheduled hearing by two weeks. The said request was acceded to and accordingly, vide email dated June 28, 2017, the said personal hearing was adjourned to July 14, 2017. The Authorized Representatives (ARs) attended the hearing on the scheduled date on behalf of Ravi Bhandari, Ravi Bhandari HUF, Rekha Bhandari and Lollipop Fashions P. Ltd and made oral submissions. The ARs reiterated the submissions made by the said Noticees in their earlier replies and further requested time to file additional submissions in the matter.

Accordingly, the Noticees were advised to submit their additional replies on or before July 19, 2017. Vide separate but identical letters dated July 18, 2017, the said Noticees made additional submissions in the matter.

9. With respect to the hearing notice issued to Shri Samir Ghosh, I note that vide letter dated June 30, 2017, the legal representative on behalf of the said Noticee stated that as the Noticee has already made the submissions in the matter vide his earlier reply, the proceedings initiated against him may not be proceeded with. Further, the Noticee also stated that he has filed a civil suit before the City Civil Court, Kolkata for appropriate relief in the matter. Thus, the Noticee did not attend the hearing on the scheduled date.
10. With respect to the hearing notice issued to Shri Anand Kumar Danuka, the same was returned undelivered. Thereafter, vide notice dated July 14, 2017, another opportunity of personal hearing was granted to the said Noticee on July 21, 2017 and the same was affixed at the last known Mumbai address of the Noticee. The affixture report for the same is available on record.
11. In view of the above, I note that ample opportunities have been granted to the Noticee viz. Shri Anand Kumar Danuka to submit his reply in the matter and to present his case before me. However, I note that the Noticee has neither submitted any reply nor appeared before me for the personal hearing. Therefore, I am proceeding further against the said Noticee on the basis of material available on record in the matter.

Consideration of Issues, Evidence and Findings

12. I have carefully perused the charges leveled against the Noticees as per the SCNs, written submissions made by them and the material as available on record. The issues that arise for consideration in the present case are:

(a) Whether Shri Samir Ghosh and Shri Anand Kumar Dhanuka have violated the provisions of Regulation 29(1) and 29(2) read with 29(3) of the SAST Regulations, 2011 and Regulations 13(1) and 13(3) read with 13(5) of the PIT Regulations, 1992?

(b) Whether Ms. Rekha Bhandari, Lollipop Fashions Private Limited and Ravi Bhandari HUF have violated the provisions of Regulation 29(1)

and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with 13(5) of PIT Regulations, 1992?

(c) Whether Shri Ravi Bhandari has violated the provisions of Regulation 29(2) read with 29(3) of the SAST Regulations, 2011 and Regulation 31(1) read with 31(3) of the SAST Regulations, 2011 and Regulations 13(3), 13(4) and 13(4A) read with 13(5) of PIT Regulations, 1992??

(d) Do the violations, if any, on the part of the Noticees attract any penalty under Section 15A (b) of the SEBI Act, 1992?

(e) If yes, what should be the quantum of penalty?

13. Before proceeding further, it will be appropriate to refer to the relevant provisions of law which read as under:

Relevant provisions of the 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.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of 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 address.

Disclosure of encumbrance of shares.

31(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

31(3) The disclosure requirement under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to, --

- (a) Every stock exchange where the shares of the target company are listed; and
- (b) The target company at its registered address.

Relevant provisions of the PIT Regulations, 1992:

Disclosure of interest or holding in listed companies by certain persons -

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.

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 any 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 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(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 shareholding of such person from 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 under sub-regulations (3), (4) and (4A) shall be made within two working days of :

- (a) The receipt of intimation of allotment of shares, or
(b) The acquisition or sale of shares or voting rights, as the case may be.

14. I find from the SCN that Ravi Bhandari, Ravi Bhandari HUF, Rekha Bhandari and Lollipop Fashions P. Ltd were the promoter and promoter group entities of ACL as per the shareholding pattern filed by ACL with BSE for the quarter ended on September 30, 2013. It was observed that during the examination period, Shri Samir Ghosh and the promoter and promoter group entities of ACL had carried out certain transactions in the shares of ACL. The Target Company / Promoters had entered into three different agreements in 2013 with various persons for providing / arranging loan to the Target Company/ Promoters. The details of the said agreements are as under:

Date of the Agreement	Pledgor	Pledgee	Loan Amount (₹)	No. of Shares provided for pledge
18.10.2013	Ravi Bhandari	Chirag N Shah	10,00,000	1,00,000
18.10.2013	Ravi Bhandari	PragneshDoshi	30,00,000	2,80,000
27.11.2013	Anshus Clothing Limited	Samir Ghosh, proprietor of S.K. Ghosh & Co.	No loan was availed / provided	NA

15. Pursuant to the Agreements dated October 18, 2013 with PragneshDoshi and Chirag N. Shah, the following shares of the target Company were provided by Ravi Bhandari:

Date	Name of the Party to whom shares are transferred to	No. of Shares transferred
18.10.2013	Chandrika J Sheth – 68000 (1.09%) PundrikNayak – 68,000 (1.09%) KalpanaJigneshDoshi – 72,000 (1.15%) PragneshDoshi -72,000 (1.15%)	2,80,000 (4.49%)
16.01.2014	Chandarika J Sheth – 1,42,000 (1.14%)	1,42,000 (1.14%)
Total no. of shares		4,22,000 (5.63%)

Date	Name of the Party to whom shares are transferred to	No. of Shares transferred
19.10.2013	Chirag N. Shah-40000(0.64%) Chirag N. Shah HUF- 32000(0.51%)	1,00,000(1.60%)

	DeepaChirag Shah-28000(0.45%)	
24.02.2014	Chirag N. Shah-3,50,000(2.81%)	3,50,000(2.81%)
Total no. of shares		4,50,000(4.41%)

(Additional shares of 3,50,000 shares provided as security on February 24, 2014 due to decrease in value of earlier shares on account of decrease in market price.)

16. The aforesaid transfers were in the nature of pledge/encumbrance and for this necessary disclosures under Regulation 31 of SAST Regulations, 2011 were required to be done by Shri Ravi Bhandari. I find that Ravi Bhandari, vide letter dated September 18, 2014, had enclosed copies of the Agreements dated October 18, 2013 entered with Pragnesh Doshi and Chirag N. Shah. Para-3 of the said Agreement, inter alia, stated that Pragnesh Doshi and Chirag N. Shah would have no rights on shares and the shares were transferred only for security purpose. Further, Pragnesh Doshi and Chirag N. Shah cannot trade in these shares unless and until interest is overdue for one month or more. Further, Ravi Bhandari will be entitled towards the corporate benefits i.e. Bonus, Dividend etc. In view of the above, it was alleged in the SCN that the shares transferred by Ravi Bhandari to Pragnesh Doshi and Chirag N. Shah were in the nature of pledge. Further, BSE, vide email dated January 22, 2015, inter alia, had stated that it had not received any disclosures under Regulation 31(1) of SAST Regulations, 2011 from Ravi Bhandari with regard to pledging of shares in connection to agreements with Pragnesh Doshi and Chirag N. Shah. It was, therefore, alleged in the SCN that Shri Ravi Bhandari had violated the provisions of Regulation 31(1) read with Regulation 31(3) of the SAST Regulations, 2011.

17. I further find that vide agreement dated November 27, 2013 entered between Shri Ravi Bhandari, Director of ACL and Shri Samir Ghosh for providing loan to the Target Company, the promoter entities viz. Ravi Bhandari, Ravi Bhandari HUF, Rekha Bhandari and Lollipop Fashions P. Ltd had transferred a total of 25,00,000 shares of ACL constituting 40.1% share capital of ACL to Shri Samir Ghosh on November 27, 2013 and November 28, 2013. The details of the said transfer of shares is as under:

Date of transfer	Name of the entity which credited the shares	No. of the shares credited
27.11.2013	Rekha Bhandari	6,36,000

27.11.2013	Ravi Bhandari HUF	6,52,000
27.11.2013	Lollipop Fashions Pvt. Ltd	5,12,000
28.11.2013	Ravi Bhandari	7,00,000
	Total	25,00,000

18.It was observed that to finance the above loan facility entered into vide the agreement dated November 27, 2013, Shri Samir Ghosh had entered into another agreement with Shri RakeshDhanuka on November 27, 2013 for a loan amount of ₹ 2 Crore. The details of the transfer of shares by Samir Ghosh to RakeshDhanuka is as under:

Date of transfer	Name of the entity which credited the shares	No. of the shares credited
03.12.2013	Anand Kumar Dhanuka	15,00,000

19.Thereafter, I find that by virtue of allotment of bonus shares (ratio 1:1) in December, 2013, the total shares held by Shri Samir Ghosh became 50,00,000. Further, it was observed that due to some reason, Shri Samir Ghosh was not in a position to provide the said loan facility and in view of the same, 45,00,000 shares were credited to the account of Shri Ravi Bhandari in two trenches, the details of which are as under:

Date of transfer	Name of the entity which credited the shares	No. of the shares credited
16.12.2013	Ravi Bhandari	35,00,000
15.01.2014	Ravi Bhandari	10,00,000

20.In view of the above transactions, vide email dated December 04, 2014, ACL was, inter alia, advised to furnish whether it had received any disclosures under Regulation 13(1), 13(3) read with Regulation 13(5) of the PIT Regulations from Shri Samir Ghosh and Shri Anand Kumar Dhanuka. In this regard, ACL, vide email dated January 12, 2015, informed that it had not received any disclosures from Samir Ghosh and Anand Kumar Dhanuka. It was, therefore, alleged in the SCN that the said Noticees, by acquiring shares of ACL and thereafter failing to making the necessary disclosures, had violated the provisions of Regulation 13(1), 13(3) read with Regulation 13(5) of the PIT Regulations and Regulation 29(1), 29(2) read with 29(3) of the SAST Regulations, 2011.

- 21.** As mentioned in para no. 19 above, I find that Shri Samir Ghosh had transferred back only 45,00,000 shares of ACL. Thus, I find that he was still to transfer 5,00,000 shares of ACL to the promoter entities.
- 22.** I also find from the SCN that there was a change in the shareholding of the promoter and promoter group for the period between June 30, 2013 to June 28, 2014 on account of the various transfer of shares of ACL and it was observed that there was no compliance with the disclosure requirements upon the said change by the promoter and promoter group entities. Therefore, it was alleged in the SCN that the promoter group of ACL viz. Ravi Bhandari, Rekha Bhandari, Ravi Bhandari HUF and Lollipop Fashions Pvt. Ltd had violated the provisions of Regulation 29(1), 29(2) read with 29(3) of SAST Regulations, 2011 and Regulation 13(1), 13(3) and 13(4A) read with 13(5) of the PIT Regulations, 1992.
- 23.** Vide letters December 29, 2015, Shri Ravi Bhandari, Ravi Bhandari HUF and Ms Rekha Bhandari submitted their replies in the matter. Shri Ravi Bhandari submitted that ACL was in need of funds and therefore, they had approached the financiers to provide funds to the Company. The Noticee, while admitting the execution of agreements with Shri Chirag N Shah and Pragnesh Doshi, submitted that the said transactions were in the nature of pledge and the necessary disclosures with respect to the same were made by him under Regulation 31(1) read with 31(3) of the SAST Regulations, 2011. Further, Shri Ravi Bhandari submitted that in the third agreement, he had provided 7,00,000 equity shares of ACL to Shri Samir Ghosh in advance before arranging loan to ACL upon execution of the agreement for establishing its credibility and as a good gesture. Apart from him, Ravi Bhandari HUF, Rekha Bhandari and Lollipop Fashions P. Ltd had also provided shares to Shri Samir Ghosh and in total 25,00,000 shares were provided to him. Later on, ACL had declared bonus shares in the ratio 1:1 (record date – 05/12/2013) and therefore, the total shares of ACL held by Shri Samir Ghosh increased to 50,00,000 shares. It is the case of Ravi Bhandari that as the shares were provided to Shri Samir Ghosh in advance before availing of loan, Shri Samir Ghosh was holding those shares as a trustee on behalf of Ravi

Bhandari and the transaction of providing shares did not amount to sale / disposal or any kind of encumbrance on the shares.

24. The Noticee further submitted that Shri Samir Ghosh later had returned back the shares held by him into the demat account of Shri Ravi Bhandari in two tranches. On December 16, 2013, Shri Samir Ghosh returned 35,00,000 shares and on January 15, 2014 he had returned back 10,00,000 equity shares. Thus, instead of returning the shares in the demat accounts of the respective promoter entity, he returned the shares to the account of Shri Ravi Bhandari and therefore, Shri Ravi Bhandari had initiated to return the said shares held by him on behalf of other promoters. The said transfer of shares in the respective demat accounts of the promoter group entities was done on January 01, 2014 and January 03, 2014. The Noticee submitted that there was no financial assistance or any amount whatsoever which was provided by Shri Samir Ghosh to Shri Ravi Bhandari or other promoters. It is the case of the Noticee that as the said transaction did not materialize and the shares were returned back within a short span, the said transaction cannot be viewed as pledge transaction. Further, the transfer of shares from the account of Shri Samir Ghosh to the account of Shri Ravi Bhandari was due to non-materializing of the agreement and further, the transfers between the accounts of the promoter group entities were just to rectify the technical mistake done by Shri Samir Ghosh. In view of the same, the Noticee has submitted that the said transaction does not amount to any sale / disposal of shares.

25. I find that vide their respective replies, Ravi Bhandari HUF, Ms. Rekha Bhandari and Lollipop Fashions P. Ltd made similar submissions as made by Shri Ravi Bhandari in the matter. Further, vide an undated letter (received on December 11, 2015), Shri Samir Ghosh submitted that he is a solicitor, advocate and a legal consultant mainly practicing within the jurisdiction of the Hon'ble High Court of Kolkata. The Noticee stated that somewhere in November 2013, Shri Ravi Bhandari was looking for financial affairs of ACL and had sought help for obtaining loan by transferring shares of ACL. In order to create a good gesture, Shri Ravi Bhandari had transferred shares of ACL in the demat account of Shri Samir Ghosh. The Noticee stated that he was holding the shares of ACL in trust

which were liable to be returned and never held the said shares for any benefit. It is the case of the Noticee that he had tried from various banks and NBFCs for financial help but none of the banks / NBFCs were interested in lending money. Thereafter, Shri Samir Ghosh returned 80% of the shares to Shri Ravi Bhandari and on instructions of Shri Ravi Bhandari a small portion was transferred to Shri Anand Kumar Dhanuka who agreed to finance from private sources against the shares of Shri Ravi Bhandari. The Noticee submitted that he has not transferred, sold or acquired shares of the ACL but had acted on behalf of Shri Ravi Bhandari. Therefore, there was no violation of the disclosure requirements under SAST Regulations, 2011 and PIT Regulations, 1992.

26. Shri Samir Ghosh further submitted that after about 2.5 months, he was informed by Shri Ravi Bhandari that he had not received any payment from Shri Anand Kumar Dhanuka against the shares so transferred to him. The intimation about the same came over phone and email. It was further observed by the Noticee that Shri Anand Kumar Dhanuka had mortgaged or sold the shares to one of his business associates but no payment was made to Shri Ravi Bhandari. Therefore, the Noticee stated that the said transaction does not amount to any sale / acquisition / encumbrance/ purchase, etc. and thus there was no requirement to make the disclosures under the relevant provisions of law. Further, the said Noticee has even submitted a copy of the civil suit filed by him before the City Civil Court, Kolkata against the present proceedings initiated against him.

27. I have carefully perused the charges leveled against the Noticees in the SCN and the replies submitted by the Noticees in the matter. With respect to the agreements executed by Shri Ravi Bhandari with Shri Pragnesh Doshi and Shri Chirag N Shah and the transfer of shares of ACL to the said two entities, I find that, admittedly, the said transactions were in the form of pledge transactions. Further, I find from the submissions made by Shri Ravi Bhandari that in support of his contention that he had made the necessary disclosures under Regulation 31(1) of the SAST Regulations, 2011 to the target company and the stock exchange, he has produced copies of the courier receipts for the letters sent by him to the BSE and ACL as documentary evidence in the matter. However, I find that he has not provided the acknowledged copies of the letters so forwarded to

the Target Company and BSE showing receipt of the same. I find that it is a well settled law that courier receipts per se cannot be treated as a proof of delivery of any document or letter. The actual proof of delivery is when some documentary evidence is present to show that the recipient of the said document or letter has received the same. Here, I would like to rely on the observations made by the ***Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of Arun Kumar Bajoria v/s SEBI – Order dated March 27, 2001.*** The Hon'ble Court, while examining the issue of certain disclosure related compliances as prescribed under the SAST Regulations, 1997, observed as under:-

“..... Therefore, it is obligatory on the part of the person so acquiring to inform the company. In what mode or manner such information should be given has not been prescribed. It has not also been mentioned that the subject information or disclosure must be given in writing. Such disclosure, therefore, may be made orally or through telephone or in writing transmitted in some known manner. The information or disclosure must, however, reach the company. In law, anyone sending a written information through the agency of someone else, appoints such agency as his agent. If a letter is posted, unless the law specifies, the Postal Authority acts as an agent of the sender. As appears to me, by law, in respect of two instances the post office is considered as the agent of the receiver of the letter. The first is in relation to acceptance of an offer and the second is in respect of a letter sent by registered post. In all other circumstances, the post office acts as a mere agent of the sender of the letter. The Certificate of Posting may be an evidence of engaging the Postal Authority as an agent of the sender to deliver the subject letter, but not the proof of receipt of the letter by the addressee. In the event, it is contended by the addressee that the letter has not been received by him, it must be established and if necessary through the agent that the letter has been received by the addressee. Merely because the letter was sent by post, it cannot be contended that the sender has discharged his obligations under Regulation 7 of the said Regulations as the said regulation cast the duty and obligation upon the acquirer to ensure receipt of the disclosure or information by the company concerned and argument contrary thereto is not acceptable. It is not permissible for the sender to contend that he has no control over the mode of

transmission inasmuch as he has free choice of selecting the mode of transmission and for that purpose to engage a suitable agent.”

- 28.** In the present case, I also find that vide email dated January 22, 2015, BSE has confirmed that it did not receive any disclosures under Regulation 31(1) of the SAST Regulations, 2011 made by Shri Ravi Bhandari with regard to the pledge of shares in connection with agreements with Shri PragneshDoshi and Shri Chirag N Shah. In view of the same, I conclude that the Noticee viz. Shri Ravi Bhandari, by failing to make the necessary disclosures to the target company and the stock exchange, has violated the provisions of Regulation 31(1) read with 31(3) of the SAST Regulations, 2011.
- 29.** With respect to the agreement entered into by the promoter group entities i.e. Shri Ravi Bhandari, MsRekha Bhandari, Ravi Bhadari HUF and Lollipop Fashions Pvt. Ltd with Shri Samir Ghosh on November 27, 2013, I find that, admittedly, the Noticees viz. Ravi Bhandari, Rekha Bhandari, Ravi Bhandari HUF and Lollipop Fashions Pvt. Ltd had transferred a total of 25,00,000 shares to Shri Samir Ghosh even before availing any loan from him as per the terms of the agreement. Further, I find that the said shares were duly transferred from the demat accounts of the said Noticees to the demat account of Shri Samir Ghosh. I do not find any merit in the argument advanced by the Noticees that the said shares were transferred by the Noticees to the demat account of Shri Samir Ghosh under trust inasmuch as the said transfer of shares actually amounted to acquisition of shares by Shri Samir Ghosh as the said shares were technically transferred to his demat account. I note that upon the said transfer of shares to the demat account of Shri Samir Ghosh, he had become the deemed beneficial owner of the same.
- 30.** Further, as submitted by the Noticees, upon declaration of the bonus shares, the shares lying in the account of Shri Samir Ghosh had increased to 50,00,000 shares. Admittedly, as the said agreement and loan transaction did not materialize, the shares were transferred back only to the account of Shri Ravi Bhandari in two tranches i.e. on December 16, 2013 (35,00,000 shares) and January 15, 2014 (10,00,000 shares) i.e. after 18 days and 48 days, respectively. Therefore, I find that the shares accounting to 45,00,000 were in possession of

Shri Samir Ghosh for 18 days and 48 days and the rest 5,00,000 were not even transferred back by Shri Samir Ghosh to the promoter group entities during the relevant period. Therefore, I conclude that for the said number of shares when the shares were in the account of Shri Samir Ghosh, he was the beneficial owner for the said shares and thus, was under an obligation to make the disclosures under the SAST Regulations and PIT Regulations.

31. Also, I note that as per the material available on record and as submitted by the Noticees, 10,00,000 shares of ACL were transferred to one, Shri Anand Kumar Dhanuka by Shri Samir Ghosh on the instructions of Shri Ravi Bhandari. The said fact further establishes that Shri Samir Ghosh was having all the rights with respect to the said shares lying in his demat account which allowed him to transfer the said shares to the demat account of some other entity. The said chronology of events clearly shows acquisition / transfer of shares under the name of loan and thus, I conclude that the same was not in the nature of encumbrance. I also note that vide email dated December 04, 2014, ACL was, inter alia, advised to furnish whether any disclosures have been made by Shri Anand Kumar Dhanuka under the PIT Regulations. However, I find that vide email dated January 12, 2015, ACL informed that it did not receive any disclosures from the said Noticee. In view of the same, I conclude that Shri Anand Kumar Dhanuka, upon acquiring shares of ACL was under an obligation to make necessary disclosures under Regulation 29(1) and 29(2) read with 29(3) of the SAST Regulations, 2011 and Regulations 13(1) and 13(3) read with 13(5) of the PIT Regulations, 1992 which he failed to do.

32. I also find that even if a monetary consideration has not been exchanged between the parties for the said shares so transferred to the demat account of Shri Samir Ghosh, the fact that the shares were transferred from the demat accounts of the Noticees to the demat account of Shri Samir Ghosh in itself amounts to acquisition / transfer of shares warranting disclosures under the relevant provisions of law.

33. I note that ***the Hon'ble Securities Appellate Tribunal (SAT) in the case of Mrs. Komal Nahata Vs. SEBI (Misc Appl. No. 3 of 2014 and Appeal No. 5 of***

2014 – decided on January 27, 2014), where similar facts were under question, had also made similar observations which are reproduced as under:

“In the present case, admittedly 375000 shares of Arvind International Limited were transferred to the demat account of the appellant on September 13, 2010. Admittedly, transfer of 375000 shares of Arvind International Limited constituted holding more than 5.35% shares of Arvind International Limited. Since, no disclosure was made within 2 days of such acquisition, it was apparent that the appellant has violated regulation 7(1) and regulation 7(2) of the SAST Regulations, 1997. Similarly, on effecting transfer, since disclosures were not made, appellant violated regulation 13(1) and regulation 13(3) read with regulation 13(5) of PIT Regulations.....

Argument that erroneous transfer was without consideration and did not constitute trade is also without any merit because, for the purpose of SAST Regulations what is relevant is acquisition of shares and once acquisition exceeds the limits prescribed therein, provisions of SAST Regulations are triggered.....”

- 34.** Further, I find that SEBI had, simultaneously, initiated proceedings under Section 11B of the SEBI Act, 1992 against the Noticees for the alleged violation of Regulation 3(1) and 3(2) read with 13(1) of the SAST Regulations, 2011 by Shri Ravi Bhandari, MsRekha Bhandari, Ravi Bhandari HUF, Lollipop Fashions P. Ltd and Shri Samir Ghosh arising out of the same cause of action i.e. the transactions pursuant to the Agreement dated November 27, 2013 between the promoter and promoter group entities of ACL and Shri Samir Ghosh. The Whole Time Member, SEBI, vide his order dated August 28, 2017, while disposing of the said proceedings against the said Noticees, has observed as under:

“In the instant matter, it is important to ascertain whether the noticees really intended to carry out the transfer of shares as transactions related to pledge or whether the intended purpose was transfer of ownership amounting to acquisition of shares covered under regulation 3 of the Takeover Regulations.....

.....

I find that the terms and conditions mentioned in the agreement dated November 27, 2013, the chain of events and the conduct of parties as mentioned above clearly indicate that the noticees had entered into a series of transactions among themselves with an intention of giving effect to the agreement dated November 27, 2013 for loan against depositing securities and subsequently to reverse the transaction due to failure of the lender to provide the loan as agreed. I find that though the noticees did not take recourse to the provisions of Regulation 58 of the DP Regulations for creation of pledge, the terms of the agreement and the conduct of the parties as mentioned above, in totality, indicate that the essence of the said series of transactions was in the nature of intended pledge, even if the transaction could not be completed due to default on part of lender to provide funds.....

I am of the considered opinion that, for the reasons recorded hereinabove, the referred transactions do not amount to 'acquisition' of shares as contemplated under the Takeover Code, and, therefore, the facts of the case do not merit invoking the provisions of the Takeover Code, as specified in the SCNs, against the noticees.....

In view of the above, in exercise of powers conferred upon me under Sections 11 & 11B of the Securities and Exchange Board of India Act, 1992, I hereby dispose of the SCNs dated March 23, 2016 issued against the noticee nos. 1 to 5, namely Ravi Bhandari, Rekha Bhandari, Ravi Bhandari HUF, Lollipop Fashions Pvt. Limited & Samir Ghosh, by dropping the allegations levelled against them therein.

Further, the noticees are hereby cautioned and advised to exercise due care and diligence in future while undertaking transactions in the securities market, so as to comply with all the provisions and procedures prescribed under the prevalent securities laws and regulations."

35. However, I note that the said order passed by the Whole Time Member, SEBI was in the context of Regulation 3 of SAST Regulations, 2011 only. Whereas, the present case has been initiated for the alleged disclosure violations of Regulation 29(1), 29(2) read with 29(3) of SAST Regulations, 2011 and 13(1), 13(3), 13(4), 13(4A) read with 13(5) of PIT Regulations, 1992 by the Noticees. The pith and substance of Regulation 3 of SAST Regulations, 2011 and Regulation 29(1), 29(2) read with 29(3) of SAST Regulations, 2011 is different and the same is distinguishable. Similarly, the pith and substance of Regulation

3 of SAST Regulations, 2011 and 13(1), 13(3), 13(4), 13(4A) read with 13(5) of PIT Regulations, 1992 is different and the same is distinguishable.

36. I further find that there was a change in the shareholding of the promoter and promoter group for the period between June 30, 2013 to June 28, 2014. Upon the said changes in the shareholding, the promoter group of ACL viz. Ravi Bhandari, Rekha Bhandari, Ravi Bhandari HUF and Lollipop Fashions Pvt. Ltd was under an obligation to make disclosures under Regulation 29(1), 29(2) read with 29(3) of SAST Regulations, 2011 and Regulation 13(1), 13(3) and 13(4A) read with 13(5) of the PIT Regulations, 1992. However, I conclude that no disclosures were made by the said Noticees under the said provisions of law.

37. Further, I do not find any merit in the submissions of Shri Samir Ghosh that the present adjudication proceeding initiated against him be stayed on account of a Civil Suit filed by him before the City Civil Court, Kolkata against the said adjudication proceedings inasmuch as Section 15Y and Section 20A of the SEBI Act, 1992 specifically state that the Civil Courts shall not have any jurisdiction to entertain any suit or proceeding in respect of any matter in which adjudicating officer has been appointed and further, bars jurisdiction of appeal before the civil courts. The relevant provisions of the SEBI Act, 1992 read as under:

" Civil Court not to have jurisdiction.

15Y. *No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an adjudicating officer appointed under this Act or a Securities Appellate Tribunal constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act".*

"Bar of jurisdiction.

20A. *No order passed by the Board or the Adjudicating Officer under this Act shall be appealable except as provided in section 15T or section 20 and no civil court shall have jurisdiction in respect of any matter which the Board or the Adjudicating Officer is empowered by, or under, this Act to pass any order and no*

injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by the Board or the Adjudicating Officer by, or under, this Act".

38. Thus, in view of the above, I conclude that the transfer of shares from the demat accounts of the Noticees viz. Ravi Bhandari (7,00,000 shares), Rekha Bhandari (6,36,000 shares), Ravi Bhandari HUF (6,52,000 shares) and Lollipop Fashions Pvt. Ltd (5,12,000 shares) to the demat account of Shri Samir Ghosh (25,00,000 shares of ACL) and further transfer of shares back from the demat account of Shri Samir Ghosh to the account of Shri Ravi Bhandari was nothing but acquisition / transfer of shares for the purpose of disclosure requirements under the SAST Regulations and PIT Regulations. Therefore, the Noticees viz. Shri Ravi Bhandari, MsRekha Bhandari, Ravi Bhandari HUF and Lollipop Fashions P. Ltd, by not making the necessary disclosures, have violated the provisions of Regulation 29(1) & 29(2) read with 29(3) of the SAST Regulations, 2011 and Regulation 13(1), 13(3), 13(4), 13(4A) read with 13(5) of the PIT Regulations, 1992. In addition, the Noticee viz. Shri Ravi Bhandari, by failing to make the necessary disclosures to the target company and the stock exchange upon creating encumbrance of shares pursuant to the agreements with Shri PragneshDoshi and Chirag Shah, has violated the provisions of Regulation 31(1) read with 31(3) of the SAST Regulations, 2011. I also conclude that by not making necessary disclosures under the SAST Regulations and the PIT Regulations upon acquisition and transfer of shares of ACL, Shri Samir Ghosh and Shri Anand Kumar Dhanuka have violated the provisions of Regulation 29(1) & 29(2) read with 29(3) of the SAST Regulations, 2011 and Regulation 13(1), 13(3) read with 13(5) of the PIT Regulations, 1992. The said violations of the provisions of law warrant imposition of monetary penalty under Section 15A(b) of the SEBI Act, 1992 on the Noticees. Section 15A(b) of the SEBI Act, 1992 reads as under:

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.

39. The Hon'ble Securities Appellate Tribunal, ***in Appeal No.66 of 2003 order dated April 15, 2005 - Milan Mahendra Securities Pvt. Ltd. Vs SEBI***, has also observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature"*.

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

41. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:-

15J-Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

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

42. At this juncture, I would like to quote the observations from the Order dated September 04, 2013 passed by **the Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs SEBI** wherein the Hon'ble SAT had observed that *"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other "*.

43. In the light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations committed by Shri Samir Ghosh, Shri Anand Kumar Dhanuka, Ms. Rekha Bhandari, Ravi Bhandari HUF and Lollipop Fashions Pvt. Ltd are not substantially different. Therefore, these violations can be considered as a single violation for the purpose of imposition of penalty on the said Noticees.

44. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the defaults of the Noticees are not repetitive in nature. I note that the Regulations seek to achieve fair treatment by, *inter alia*, mandating disclosure of timely and adequate information to enable shareholders to make an informed decision. Therefore, correct and timely disclosures play an essential part of the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed decision.

ORDER

45. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I (2) of the SEBI

Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose the following monetary penalties on the Noticees:

Sr. No.	Name of the Noticee	Provisions of law violated	Penal Provisions	Penalty Amount (in ₹)
1.	Shri Ravi Bhandari	Regulation 29(2) read with 29(3) of the SAST Regulations, 2011, Regulation 31(1) read with 31(3) of the SAST Regulations, 2011 and Regulation 13(3), 13(4) and 13(4A) read with 13(5) of the PIT Regulations, 1992	Section 15A(b) of the SEBI Act, 1992	2,00,000/- (Rupees Two Lakh Only)
2.	Ms Rekha Bhandari	Regulation 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with 13(5) of PIT Regulations, 1992	Section 15A(b) of the SEBI Act, 1992	1,00,000/- (Rupees One Lakh Only)
3.	Ravi Bhandari HUF	Regulation 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with 13(5) of PIT Regulations, 1992	Section 15A(b) of the SEBI Act, 1992	1,00,000/- (Rupees One Lakh Only)
4.	Lollipop Fashions Pvt. Ltd	Regulation 29(1) and 29(2) read with Regulation 29(3) of SAST Regulations, 2011 and Regulations 13(1), 13(3) and 13(4A) read with 13(5) of PIT Regulations, 1992	Section 15A(b) of the SEBI Act, 1992	1,00,000/- (Rupees One Lakh Only)
5.	Shri Samir Ghosh	Regulation 29(1) and 29(2) read with 29(3) of the SAST Regulations, 2011 and Regulations 13(1) and 13(3) read with 13(5) of the PIT Regulations, 1992	Section 15A(b) of the SEBI Act, 1992	1,00,000/- (Rupees One Lakh Only)
6.	Shri Anand Kumar Dhanuka	Regulation 29(1) and 29(2) read with 29(3) of the SAST Regulations, 2011 and Regulations 13(1) and 13(3) read with 13(5) of the PIT Regulations, 1992	Section 15A(b) of the SEBI Act, 1992	1,00,000/- (Rupees One Lakh Only)

46.In my view, the aforesaid penalties are commensurate with the defaults committed by the Noticees.

47.The amount of penalties shall be paid either by way of demand draft/s in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, BandraKurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft/s or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to "The Division Chief (Enforcement Department - DRA-II), Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, BandraKurla Complex, Bandra (E), Mumbai - 400 052."

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

48.In terms of the Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

Date: December 14, 2017
Place: Mumbai

D.SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER