

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. MC/DPS/ 2018-19/1385-1389/2018]

UNDER SECTION 15-I (2) 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) **Joy Kutty P. A.** (PAN No. AAFPJ9181Q) having address at – New No. 25, H Block, 15th Main Road, Anna Nagar, Chennai – 600040.
- 2) **George P Joy** (PAN No. AEPPG8022D) having address at – New No. 25, H Block, 15th Main Road, Anna Nagar, Chennai – 600040.
- 3) **Annamma P Joy** (PAN No. AIMP6883D) having address at – New No. 25, H Block, 15th Main Road, Anna Nagar, Chennai – 600040.
- 4) **Thomas P Joy** (PAN No. ACJPT1817B) having address at – New No. 25, H Block, 15th Main Road, Anna Nagar, Chennai – 600040.
- 5) **Cybele Industries Limited.** (PAN No. AAACQ0100A) having address at – No. 138, Sidco Industrial Estate, Ambattur, Chennai, Tamil Nadu – 600098.

In the matter of Cybele Industries Limited.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter be referred to as, “**SEBI**”) had conducted examination in the scrip of Cybele Industries Limited (hereinafter be referred to as, the “**Company**”), a company listed on the BSE Limited (hereinafter be referred to as, the “**BSE**”) for the period October 01, 2013 to October 31, 2014 (hereinafter be referred to as, the “**Examination Period**”). Examination *prima facie* revealed that Joy Kutty P. A. (**the Noticee No. 1 / Joy**), George P Joy, (**the Noticee No. 2 / George**), Annamma P Joy, (**the Noticee No. 3 / Annamma**), Thomas P Joy (**the Noticee No. 4 / Thomas**) and M/s Cybele Industries Ltd (**the Noticee No. 5 / Cybele / Scrip / Company**)

are in violation of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). All the Noticees are collectively referred as '**Noticees/ You**'. Aforesaid Noticees No. 1 to 4 are also the promoters of Noticee No. 5 / Cybele. The details of alleged violations are mentioned below:-

Noticees	Violations
Noticee No. 1	Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 2	Regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 3	Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 4	Regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 5	Regulation 13(6) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

- SEBI initiated adjudication proceedings and appointed Mr. Suresh Gupta, Chief General Manager as Adjudicating Officer under Section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter be referred to as, the "**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as, the "**Adjudication Rules**") vide order dated August 1, 2016 to inquire into and adjudge under Section 15A(b) of the SEBI Act against the Noticee for the alleged violation of aforesaid provisions of PIT Regulations. Subsequent to superannuation of Mr. Suresh Gupta, the undersigned was appointed as the Adjudicating Officer on May 23, 2018.

SHOW CAUSE NOTICE, REPLY AND HEARING

- On appointment of the undersigned as the Adjudicating Officer in the instant matter Show Cause Notice No. EAD-5/MC/DPS/21414/2018 dated July 31, 2018, (hereinafter be referred to as, the "**SCN**") was served upon 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 against them under Section 15A(b) of the SEBI Act for the aforesaid alleged violations of PIT Regulations.
- The allegations levelled against the Noticees in the SCN are as below:

5. During the examination, it was observed that Noticee No. 1 had engaged in certain transactions on March 12, 2014, March 20, 2014, May 14, 2014 and May 16, 2014 which resulted in change in shareholding as given in the table below.

Date of transaction	Gross Buy Volume	Gross Sell Volume	Value (Rs.)	Closing Holding	Share Capital	% of share capital	Change	Change as % of share capital
Holding as on December 2013				3962848	10695800	37.05%		
28.02.2014	4800	0	40800	3967648	10695800	37.10%	4800	0.04%
12.03.2014	23000	0	195500	3990648	10695800	37.31%	27800	0.26%
17.03.2014	24000	0	192000	4014648	10695800	37.53%	24000	0.22%
20.03.2014	17500	0	148750	4032148	10695800	37.70%	41500	0.39%
25.03.2014	18000	0	153000	4050148	10695800	37.87%	18000	0.17%
14.05.2014	17926	0	222282	4068074	10695800	38.03%	35926	0.34%
16.05.2014		1035500	-	3032574	10695800	28.35%	1035500	9.68%
31.12.2014	400	0	4000	3032974	10695800	28.36%	400	0.00%

6. Purchases by Noticee No. 1 exceeded 25,000 shares on March 12, 2014, March 20, 2014, May 14, 2014 and selling on May 16, 2014, which triggered disclosure under regulation 13(3), 13(4A) read with 13(5) of PIT Regulations. Noticee No. 5 / Cybele vide email dated July 7, 2018 submitted that Noticee No. 1 had acquired shares in off-market in physical form which was provided to the Noticee as Annexure – 3 of SCN.
7. Noticee No. 2 acquired 1035500 shares from Noticee No. 1 on May 16, 2014 causing his shareholding to become more than 5% in the company and hence triggered disclosure requirement under regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.
8. Noticee No. 3 had sold 1209200 shares on May 16, 2014, which resulted in change in shareholding as given in the table below.

Date of transaction	Gross Buy Volume	Gross Sell Volume	Value (Rs.)	Closing Holding	Share Capital	% of share capital	Change	Change as % of share capital
Holding as on March 2014				2907050	10695800	27.18%		
16.05.2014		1209200	-	1697850	10695800	15.87%	1209200	11.31%

9. Noticee No. 3 on May 16, 2014 transferred 1209200 shares to Noticee No. 4, which resulted in change in shareholding and such change exceeded 2% of total shareholding and hence triggered disclosure under regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.
10. Noticee No. 4 acquired 1209200 shares from Noticee No. 3 on May 16, 2014 causing his shareholding to become more than 5% in the company and hence triggered disclosure requirement under regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.
11. Company (Cybele / Noticee No. 5) vide its email dated September 5, 2017 and January 10, 2015 informed that above mentioned disclosures have been made by the Noticee No. 1 – 4 to the company and exchange, however they are unable to produce any proof of disclosures. However, BSE confirmed vide its email dated September 1, 2017 and January 13, 2015, that no disclosures were received under regulation 13 of PIT Regulations from the Noticees, which was provided to the Noticees as Annexure – 6 of SCN. In view of the same, it was alleged that Noticee No. 5 / Cybele, has not made the said disclosures to BSE under regulation 13(6) of PIT Regulations.
12. In view of the above, Noticee No. 1 – 4 being the promoters of Noticee No. 5 failed to disclose their change in their shareholding to the exchanges as well as to the company and Noticee No. 5 in turn has not made the said disclosures to BSE; thus, it is alleged that the Noticees have violated PIT Regulations as mentioned below:-

Noticees	Violations
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Noticee No. 1	Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 2	Regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 3	Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 4	Regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 5	Regulation 13(6) of PIT Regulations.

13. The aforesaid regulations are reproduced as under;

PIT Regulations

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

Disclosure by company to stock exchanges.

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

14. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticees liable for monetary penalty under Section 15A(b) of the SEBI Act.
15. In response to the SCN, the Noticees submitted their replies separately vide letters dated August 11, 2018.
16. The key submissions of the Noticees in their separate replies dated August 11, 2018 towards the SCN are mentioned below;

REPLY OF NOTICEE NO. 1 :-

- a) Company was incorporated in May, 1993 and we went public issue during the year 1995 with a capital raising of Rs.1.95 crores. The shares got listed in BSE Limited, since then we are in the manufacture of cable business and due to price fluctuations and imported cables, the company could not make profits and it went to BIFR during the year 2005. Promoters have taken best efforts to bring the company out of BIFR during the year 2011. Since then the business conditions are not conducive and the company was incurring losses.
- b) At the time of public issue, some of the known persons and friends invested in the company and they could not get any return / benefit due to company's position. The said investors were pressurised due to their financial crisis and

I was forced to pay the amount for purchase of their shares during 2014. I have made necessary disclosures to the Company and Stock Exchange. However, these disclosures were sent by ordinary post and there was no proof for despatch of the same.

- c) I would also like to bring to your kind notice the above said purchased shares are dematerialised and credited to my account and have not sold even single share in the market
- d) Due to my family settlement, I need to transfer 1035500 equity shares to my younger son Mr. George P Joy as an interse transfer and for which necessary disclosures were submitted.
- e) Once again I would like to bring to your kind notice, I have not sold any shares in the market and there is no monetary benefit in these transactions. No unfair gain or advantage has occurred to us and also no harm or loss has been caused to other investors, and I kindly request to take a lenient view in the matter and penalty stipulated under Section 15A(b) of SEBI Act may not be imposed.
- f) I submit, say and reiterate that we have always followed all the procedures, as stipulated by any regulatory authority, follow all rules/regulations/instructions etc. issued by any government agency, and our intentions has always been to comply with rules/ regulations/ filling etc. and not to conceal any information.
- g) I respectfully submit that the investors had not suffered any losses due to this and also company has not made any und ue gain out of the above. I also submit that this is neither intentional nor deliberate and hence I humbly request SEBI to kindly take a lenient view in the matter and pardon us in this regard. I would abide by your order and comply accordingly. I assure SEBI that the company henceforth would exercise due care and caution in ensuring the statutory compliances.

REPLY OF NOTICEE NO. 2 :-

- a) Company was incorporated in May, 1993 and we went public issue during the year 1995 with a capital raising of Rs.1.95 crores. The shares got listed in BSE Limited, since then we arc in the manufacture of cable business and due to price fluctuations and imported cables, the company could not make profits and it went to BIFR during the year 2005. Promoters have taken best efforts to bring the company out of BIFR during the year 2011. Since then the business conditions are not conducive and the company was incurring losses.
- b) I would also like to bring to your kind notice that I have not sold even single share in the market.
- c) Due to my family settlement, I have received 1035500 equity shares from my father Mr. P.A. Joykutty as an interse transfer and for which necessary disclosures were submitted.
- d) Once again I would like to bring to your kind notice, I have not sold any shares in the market and there is no monetary benefit in these transactions. No unfair gain or advantage has occurred to us and also no harm or loss has been caused to other investors, and kindly requested to take a lenient

view in the matter and penalty stipulated under Section 15A(b) of SEBI Act may not be imposed.

- e) I submit, say and reiterate that we have always followed all the procedures, as stipulated by any regulatory authority, follow all rules/regulations/instructions etc. issued by any government agency, and our intentions has always been to comply with rules/ regulations/ filling etc. and not to conceal any information.
- f) I respectfully submit that the investors had not suffered any losses due to this and also company has not made any undue gain out of the above. I also submit that this is neither intentional nor deliberate and hence we humbly request SEBI to kindly take a lenient view in the matter and pardon us in this regard. I would abide by your order and comply accordingly. I assure SEBI that the company henceforth would exercise due care and caution in ensuring the statutory compliances.

REPLY OF NOTICEE NO. 3 :-

- a) Company was incorporated in May, 1993 and we went public issue during the year 1995 with a capital raising of Rs.1.95 crores. The shares got listed in BSE Limited, since then we are in the manufacture of cable business and due to price fluctuations and imported cables, the company could not make profits and it went to BIFR during the year 2005. Promoters have taken best efforts to bring the company out of BIFR during the year 2011. Since then the business conditions are not conducive and the company was incurring losses.
- b) I would also like to bring to your kind notice that I have not sold even single share in the market.
- c) Due to my family settlement, I need to transfer 1209200 equity shares to my elder son Mr. Thomas P Joy as an interse transfer and for which necessary disclosures were submitted.
- d) Once again I would like to bring to your kind notice, I have not sold any shares in the market and there is no monetary benefit in these transactions. No unfair gain or advantage has occurred to us and also no harm or loss has been caused to other investors, and kindly requested to take a lenient view in the matter and penalty stipulated under Section 15A(b) of SEBI Act may not be imposed.
- e) I submit, say and reiterate that we have always followed all the procedures, as stipulated by any regulatory authority, follow all rules/regulations/instructions etc. issued by any government agency, and our intentions has always been to comply with rules/ regulations/ filling etc. and not to conceal any information.
- f) I respectfully submit that the investors had not suffered any losses due to this and also company has not made any undue gain out of the above. I also submit that this is neither intentional nor deliberate and hence we humbly request SEBI to kindly take a lenient view in the matter and pardon us in this regard. I would abide by your order and comply accordingly. I assure SEBI that the company henceforth would exercise due care and caution in ensuring the statutory compliances.

REPLY OF NOTICEE NO. 4 :-

- a) Company was incorporated in May, 1993 and we went public issue during the year 1995 with a capital raising of Rs.1.95 crores. The shares got listed in BSE Limited, since then we are in the manufacture of cable business and due to price fluctuations and imported cables, the company could not make profits and it went to BIFR during the year 2005. Promoters have taken best efforts to bring the company out of BIFR during the year 2011. Since then the business conditions are not conducive and the company was incurring losses.
- b) I would also like to bring to your kind notice that I have not sold even single share in the market.
- c) Due to my family settlement, I have received 1209200 equity shares from my mother Mrs. Annamma Joy as an interse transfer and for which necessary disclosures were submitted.
- d) Once again I would like to bring to your kind notice, I have not sold any shares in the market and there is no monetary benefit in these transactions. No unfair gain or advantage has occurred to us and also no harm or loss has been caused to other investors, and kindly requested to take a lenient view in the matter and penalty stipulated under Section 15A(b) of SEBI Act may not be imposed.
- e) I submit, say and reiterate that we have always followed all the procedures, as stipulated by any regulatory authority, follow all rules/regulations/instructions etc. issued by any government agency, and our intentions has always been to comply with rules/ regulations/ filling etc. and not to conceal any information.
- f) I respectfully submit that the investors had not suffered any losses due to this and also company has not made any undue gain out of the above. I also submit that this is neither intentional nor deliberate and hence we humbly request SEBI to kindly take a lenient view in the matter and pardon us in this regard. I would abide by your order and comply accordingly. I assure SEBI that the company henceforth would exercise due care and caution in ensuring the statutory compliances.

REPLY OF NOTICEE NO. 5 :-

- a) Company was incorporated in May, 1993 and we went public issue during the year 1995 with a capital raising of Rs. 1.95 crores. The shares got listed in BSE Limited, since then we are in the manufacture of cable business and due to price fluctuations and imported cables, the company could not make profits and it went to BIFR during the year 2005. Promoters have taken best efforts to bring the company out of BIFR during the year 2011. Since then the business conditions are not conducive and the company was incurring losses.

- b) We have made necessary disclosures to the Stock Exchange. However, these disclosures were sent by ordinary post and there was no proof for despatch of the same.
 - c) Once again we would like to bring to your kind notice, the promoters have not sold any shares in the market and there is no monetary benefit in these transactions. No unfair gain or advantage has occurred to us and also no harm or loss has been caused to other investors, and kindly requested to take a lenient view in the matter and penalty stipulated under Section 15A(b) of SEBI Act may not be imposed.
 - d) We submit, say and reiterate that we have always followed all the procedures, as stipulated by any regulatory authority, follow all rules/regulations/instructions etc. issued by any government agency, and our intentions has always been to comply with rules/ regulation s/ filling etc. and not to conceal any information.
 - e) We respectfully submit that the investors had not suffered any losses due to this and also company has not made any undue gain out of the above. We also submit that this is neither intentional nor deliberate and hence we humbly request SEBI to kindly take a lenient view in the matter and pardon us in this regard. We would abide by your order and comply accordingly. We assure SEBI that the company henceforth would exercise due care and caution in ensuring the statutory compliances.
17. An opportunity of personal hearing was provided to the Noticees on September 11, 2018 *vide* Notice of Hearing dated August 27, 2018. Hearing on September 11, 2018 was attended by the Authorised Representative of the Noticees (AR). AR of the Noticees reiterated submissions made in their replies dated August 11, 2018.

CONSIDERATION OF ISSUES AND FINDINGS

18. The issues that arise for consideration in the instant matter are:

- Issue No. I** Whether the Noticees had failed to make mandated disclosures under the PIT Regulations as alleged in the SCN?
- Issue No. II** If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(b) of the SEBI Act?
- Issue No. III** If yes, 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?

Issue No. I

(a) Whether the Noticee No. 1 had failed to make mandated disclosures under the PIT Regulations as alleged in the SCN?

19. It was alleged in the SCN that Noticee No. 1 being the promoter of the company / Noticee No. 5 had engaged in certain transactions which exceeded 25,000 shares on March 12, 2014, March 20, 2014, May 14, 2014 and May 16, 2014, which triggered disclosure under regulation 13(3), 13(4A) read with 13(5) of PIT Regulations. The details of change in shareholding of the Noticee No. 1 in the scrip of the Company are given in the table below.

Date of transaction	Gross Buy Volume	Gross Sell Volume	Value (Rs.)	Closing Holding	Share Capital	% of share capital	Change	Change as % of share capital
Holding as on December 2013				3962848	10695800	37.05%		
28.02.2014	4800	0	40800	3967648	10695800	37.10%	4800	0.04%
12.03.2014	23000	0	195500	3990648	10695800	37.31%	27800	0.26%
17.03.2014	24000	0	192000	4014648	10695800	37.53%	24000	0.22%
20.03.2014	17500	0	148750	4032148	10695800	37.70%	41500	0.39%
25.03.2014	18000	0	153000	4050148	10695800	37.87%	18000	0.17%
14.05.2014	17926	0	222282	4068074	10695800	38.03%	35926	0.34%
16.05.2014		1035500	-	3032574	10695800	28.35%	1035500	9.68%
31.12.2014	400	0	4000	3032974	10695800	28.36%	400	0.00%

20. I note that Noticee No. 1 being the promoter of the company executed transactions on March 12, 2014, March 20, 2014, May 14, 2014 and May 16, 2014, which triggered disclosure under regulation 13(3), 13(4A) read with 13(5) of PIT Regulations. I note that Noticee in his reply to the said SCN submitted that the above said purchased shares are dematerialized and credited to its account. Due to family settlement, he had transferred 1035500 shares to his younger son / Noticee No. 2 as an interse transfer. He had not sold any shares in the market and there is no monetary benefit. No unfair gain or advantage has occurred and also no harm or loss has been caused to other investors and also that this is neither intentional nor deliberate and hence requested to take a lenient view in the matter. Noticee in his reply also submitted that he had made

necessary disclosures to the Company and Stock Exchange and these disclosures were sent by ordinary post and therefore there was no proof for dispatch of the same. However, BSE confirmed vide its email dated September 1, 2017 and January 13, 2015, that no disclosures were received under regulation 13 of PIT Regulations from the Noticee. Taking into account the confirmation given by BSE, I am of the view that without any documentary evidence of disclosures made by the Noticee, the above said contentions of the Noticee are not acceptable. Further, the disclosure requirement is a statutory obligation where the intention of the parties is not relevant.

21. At this juncture, I find it pertinent to refer to the judgment of Hon'ble Securities Appellate Tribunal in the matter of **Mega Resources Ltd. v. SEBI**, (Appeal 49 of 2001 dated March 19, 2002), wherein, the Hon'ble Tribunal observed, "... *the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of information is short of the said requirement... Thus, the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox....*".
22. In view of the aforesaid, I note that Noticee No. 1 had failed to make the disclosures with regard to transactions executed on March 12, 2014, March 20, 2014, May 14, 2014 and May 16, 2014. Therefore it is established that the Noticee No. 1 had failed to make disclosures as required under regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.

(b) Whether the Noticee No. 2 had failed to make mandated disclosures under the PIT Regulations as alleged in the SCN?

23. It was alleged in the SCN that Noticee No. 2 being the promoter of the company acquired 1035500 shares from Noticee No. 1 on May 16, 2014 causing his shareholding to become more than 5% in the company which triggered disclosure requirement under regulation 13(1), 13(4A) read with 13(5) of PIT Regulations. I note that Noticee in his reply to the said SCN submitted that due to family settlement, he had received 1035500 shares from his father / Noticee

No. 1 as an interse transfer and for which disclosures were made. He had not sold any shares in the market and there is no monetary benefit. No unfair gain or advantage has occurred and also no harm or loss has been caused to other investors and also that this is neither intentional nor deliberate and hence he has requested to take a lenient view in the matter. However, BSE confirmed vide its email dated September 1, 2017 and January 13, 2015, that no disclosures were received under regulation 13 of PIT Regulations from the Noticee. Taking into account the confirmation made by BSE, I am of the view that without any documentary evidence of disclosures made by the Noticee the above said contentions of the Noticee is not acceptable. Further, the disclosure requirement is a statutory obligation where the intention of the parties is not relevant.

24. At this juncture, I find it pertinent to refer to the judgment of Hon'ble Securities Appellate Tribunal in the matter of **Mega Resources Ltd. v. SEBI**, (Appeal 49 of 2001 dated March 19, 2002), wherein, the Hon'ble Tribunal observed, "... *the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of information is short of the said requirement... Thus, the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox....*".

25. In view of the aforesaid, I note that Noticee No. 2 had failed to make the disclosures with regard to transactions executed on May 16, 2014. Therefore it is established that the Noticee No. 2 had failed to make disclosures as required under regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.

(c) Whether the Noticee No. 3 had failed to make mandated disclosures under the PIT Regulations as alleged in the SCN?

26. It was alleged in the SCN that Noticee No. 3 being the promoter of the company sold 1209200 shares on May 16, 2014, which resulted in change in shareholding as given below.

Date of transaction	Gross Buy Volume	Gross Sell Volume	Value (Rs.)	Closing Holding	Share Capital	% of share capital	Change	Change as % of share capital
Holding as on March 2014				2907050	10695800	27.18%		
16.05.2014		1209200	-	1697850	10695800	15.87%	1209200	11.31%

27. I note that Noticee No. 3 on May 16, 2014 transferred 1209200 shares to Noticee No. 4, which resulted in change in shareholding and such change exceeded 2% of total shareholding and hence triggered disclosure under regulation 13(3), 13(4A) read with 13(5) of PIT Regulations. I note that Noticee in her reply to the said SCN submitted that due to family settlement, she had transferred 1209200 shares to her elder son / Noticee No. 4 as an interse transfer and for which disclosures were made. She had not sold any shares in the market and there is no monetary benefit. No unfair gain or advantage has occurred and also no harm or loss has been caused to other investors and also that this is neither intentional nor deliberate and hence she has requested to take a lenient view in the matter. However, BSE confirmed vide its email dated September 1, 2017 and January 13, 2015, that no disclosures were received under regulation 13 of PIT Regulations from the Noticee. Taking into account the confirmation made by BSE, I am of the view that without any documentary evidence of disclosures made by the Noticee the above said contentions of the Noticee is not at all acceptable. Further, the disclosure requirement is a statutory obligation where the intention of the parties is not relevant.

28. At this juncture, I find it pertinent to refer to the judgment of Hon'ble Securities Appellate Tribunal in the matter of **Mega Resources Ltd.** v. **SEBI**, (Appeal 49 of 2001 dated March 19, 2002), wherein, the Hon'ble Tribunal observed, "... the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of information is short of the said requirement... Thus, the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox....".

29. In view of the aforesaid, I note that Noticee No. 3 had failed to make the disclosures with regard to transactions executed on May 16, 2014. Therefore it is established that the Noticee No. 3 had failed to make disclosures as required under regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.

(d) Whether the Noticee No. 4 had failed to make mandated disclosures under the PIT Regulations as alleged in the SCN?

30. It was alleged in the SCN that Noticee No. 4 being the promoter of the company acquired 1209200 shares from Noticee No. 3 on May 16, 2014 causing his shareholding to become more than 5% in the company which triggered disclosure requirement under regulation 13(1), 13(4A) read with 13(5) of PIT Regulations. I note that Noticee in its reply to the said SCN submitted that due to family settlement, he had received 1209200 shares from his Mother / Noticee No. 3 as an interse transfer and for which disclosures were made. He had not sold any shares in the market and there is no monetary benefit. No unfair gain or advantage has occurred and also no harm or loss has been caused to other investors and also that this is neither intentional nor deliberate and hence he has requested to take a lenient view in the matter. However, BSE confirmed vide its email dated September 1, 2017 and January 13, 2015, that no disclosures were received under regulation 13 of PIT Regulations from the Noticee. Taking into account the confirmation made by BSE, I am of the view that without any documentary evidence of disclosures made by the Noticee the above said contentions of the Noticee is not at all acceptable. Further, the disclosure requirement is a statutory obligation where the intention of the parties is not relevant.

31. At this juncture, I find it pertinent to refer to the judgment of Hon'ble Securities Appellate Tribunal in the matter of **Mega Resources Ltd. v. SEBI**, (Appeal 49 of 2001 dated March 19, 2002), wherein, the Hon'ble Tribunal observed, "... *the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of information is short of the said requirement... Thus, the*

requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox....”.

32. In view of the aforesaid, I note that Noticee No. 4 had failed to make the disclosures with regard to transactions executed on May 16, 2014. Therefore it is established that the Noticee No. 2 had failed to make disclosures as required under regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.

(e) Whether the Noticee No. 5 had failed to make mandated disclosures under the PIT Regulations as alleged in the SCN?

33. It was alleged in the SCN that Noticee No. 1 – 4 had informed the above mentioned disclosures which triggered disclosure requirements under PIT Regulations to the company and exchange, which was confirmed by the company / Noticee No. 5 vide its email dated September 5, 2017 and January 10, 2015. However Noticee 5 was unable to produce any proof of disclosures. I note that Noticee in its reply to the said SCN submitted that the company was in the manufacturing of cable business and due to price fluctuations and imported cables, the company could not make profits and it went to BIFR during the year 2005. Promoters have taken best efforts to bring the company out of BIFR during the year 2011. Since then the business conditions were not conducive and the company was incurring losses. No unfair gain or advantage has occurred and also no harm or loss has been caused to other investors and also that this is neither intentional nor deliberate and hence requested to take a lenient view in the matter. It also submitted that it had made necessary disclosures to the Stock Exchange and these disclosures were sent by ordinary post and therefore there was no proof for dispatch of the same. However, BSE confirmed vide its email dated September 1, 2017 and January 13, 2015, that no disclosures were received under regulation 13 of PIT Regulations from the Noticee. Taking into account the confirmation made by BSE, I am of the view that without any documentary evidence of disclosures made by the Noticee the above said contentions of the Noticee is not at all acceptable. Further, the

disclosure requirement is a statutory obligation where the intention of the parties is not relevant.

34. At this juncture, I find it pertinent to refer to the judgment of Hon'ble Securities Appellate Tribunal in the matter of **Mega Resources Ltd. v. SEBI**, (Appeal 49 of 2001 dated March 19, 2002), wherein, the Hon'ble Tribunal observed, "... the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of information is short of the said requirement... Thus, the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox....".

35. In view of the aforesaid, I note that Noticee No. 5 had failed to make the disclosures to BSE. Therefore it is established that the Noticee No. 5 had failed to make disclosures as required under regulation 13(6) of PIT Regulations.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15A(b) of the SEBI Act?

&

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

36. Failure of the Noticees in making disclosures to the Company as well as to BSE under PIT Regulations is established as under:-

Noticees	Violations
Noticee No. 1	Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 2	Regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 3	Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 4	Regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.
Noticee No. 5	Regulation 13(6) of PIT Regulations.

37. Hence, I am of the view that it warrants imposition of monetary penalty under Section 15A(b) of the SEBI Act on the Noticees, text of which is reproduced as under:

SEBI Act

“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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.”

38. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:

- 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.

39. I have perused the statement of shareholding pattern of the Company, available on the website of the BSE for the financial quarter ending March 2014 and June 2014 and have noted that the following information regarding the Noticees:

- a) Shareholding of Noticee No. 1 was correctly reflected as 40,50,148 shares (37.87% of holding) as on quarter ending March 2014, which was in public domain by March 31, 2014 and as 30,32,574 shares (28.35% of holding) as on quarter ending June 2014, which was in public domain by June 30, 2014.
- b) Shareholding of Noticee No. 2 to 4 was correctly reflected as 15,01,650 shares (14.04% of holding), 16,97,850 shares (15.87% of holding) and 15,14,145 shares (14.16% of holding) respectively, as on quarter ending June 2014, which were already in public domain by June 30, 2014

40. I note that the Noticees have submitted that the aforesaid non-disclosure of change of shareholding in the Company was not intentional. At this juncture, I find it relevant to take into account the observation of the Securities Appellate Tribunal (hereinafter, the “**Hon’ble SAT**”) in the matter of **Ambaji Papers Private Limited & Ors. v. Adjudicating Officer, Securities and Exchange Board of India** (Appeal No. 201 of 2013 dated January 15, 2014) wherein, it held, *“To this extent, the appellants, though inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless. This Tribunal has held time and again that the penalty levied on any wrong-doer ought to be commensurate with the gravity of the deviation effected.”*
41. While it is established that the Noticees did not make timely disclosures to Company as well as to BSE under PIT Regulations is established. I have taken note of the fact that relevant information was available in public domain by quarter end. I also note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation.
42. Therefore, taking into account the facts and circumstances of this matter, and the mitigating factors, I am of the view that a penalty of ₹3,00,000/- (Rupees Three Lakh only) upon each of the Noticee No. 1 and 5 and ₹1,00,000/- (Rupees One Lakh only) upon each of the Noticee No. 2 to 4 will be commensurate with the violations committed. Therefore, a total penalty of ₹9,00,000/- (Rupees Nine Lakh only) is imposed upon all the Noticees.

ORDER

43. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15(2) of the SEBI Act

read with Rule 5 of the Adjudication Rules, I hereby impose the following penalties upon the Noticees, under section 15A(b) of SEBI Act:-

Noticee No.	Name of the Noticee	Violations	Penalty Amount
1	Joy Kutty P. A.	Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.	₹3,00,000/-(Rupees Three Lakh only)
2	George P Joy	Regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.	₹1,00,000/-(Rupees One Lakh only)
3	Annamma P Joy	Regulation 13(3), 13(4A) read with 13(5) of PIT Regulations.	₹1,00,000/-(Rupees One Lakh only)
4	Thomas P Joy	Regulation 13(1), 13(4A) read with 13(5) of PIT Regulations.	₹1,00,000/-(Rupees One Lakh only)
5	Cybele Industries Ltd	Regulation 13(6) of PIT Regulations.	₹3,00,000/-(Rupees Three Lakh only)

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

45. 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

46. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action

– I of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee)
- b) Name of the case / matter
- c) Purpose of Payment – Payment of penalty under AO proceedings
- d) Bank Name and Account Number
- e) Transaction Number

47. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: SEPTEMBER 27, 2018
PLACE: MUMBAI

MANINDER CHEEMA
ADJUDICATING OFFICER