

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. AK/AO- 25-29/2017]**

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**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

**Insight Management Services Pvt. Ltd. (PAN AAACI1283L)  
Inland Dataforms Pvt. Ltd. (PAN AAACI1275Q)  
Mr. Gopalakrishnan Raman (PAN AAFPR3063H)  
Ms. Shanti Gopalakrishnan (PAN ADMPG6256B)  
Ms. Indumati Raman (PAN ACXPR3663D)**

In the matter of

**Inland Printers Limited**

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**FACTS OF THE CASE**

1. A letter of offer was made by Tigerstone Trading Pvt. Ltd., (hereinafter referred to as the **'Acquirer'**) to acquire 19,21,530 fully paid up equity shares of Rs 10/- each at an offer price of Rs. 3/- per equity share (representing 26% of the total paid-up equity share capital and voting rights) of Inland Printers Limited (hereinafter referred to as the **'the company'**). The public announcement of the same was made on March 11, 2013 and the shares of the company are listed at Bombay Stock Exchange Ltd. (hereinafter referred to as the **'BSE'**), Ahmedabad Stock Exchange Ltd. (hereinafter referred to as the **'ASE'**) and Delhi Stock Exchange Assn. Ltd. (hereinafter referred to as the **'DSE'**).

2. While examining the letter of offer document of the Acquirer to acquire the shares of the Company, it was *inter alia* observed that the then promoters of the Company, viz. Ms. Indumati Raman, Inland Dataforms Pvt Ltd, Mr. Raman Gopalakrishnan, Mr. Ramnath Raman, Insight Management Services Pvt. Ltd. and Ms. Shanti Gopalakrishnan did not comply with the provisions of Regulation 8(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations, 1997**') within the stipulated time for the financial years ended March 31, 2003 to March 31, 2011 and Regulation 30(1) and (2) read with 30(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**Takeover Regulations, 2011**') for the financial year ended March 31, 2012 within the stipulated time. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, 1997 and Takeover Regulations, 2011, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') were initiated against the Noticees under Section 15 A(b) of SEBI Act to inquire into and adjudicate the alleged violation of the aforesaid provisions of the Takeover Regulation, 1997 and/ or Takeover Regulations, 2011, as applicable. Vide order dated April 30, 2014, it was *inter alia* held that Ms. Indumati Raman, Inland Dataforms Pvt Ltd, Mr. Raman Gopalakrishnan, Insight Management Services Pvt. Ltd. and Ms. Shanti Gopalakrishnan (hereinafter referred to as the '**Noticees**') had violated the aforesaid Regulations and had accordingly imposed a penalty of Rs. 5,00,000/- (Rupees Five Lakh Only) on each of the Noticees. Since Mr. Ramnath Raman was declared legally dead, the proceedings against him were accordingly disposed of.
3. The said order dated April 30, 2014 was appealed against before the Hon'ble Securities Appellate Tribunal (SAT) by the Noticees. The Hon'ble SAT vide its Order dated November 20, 2015, set aside the Adjudication Order dated April 30, 2014 and restored the appeals to the file of SEBI for passing fresh order on merits and in accordance with law.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned was appointed as the Adjudicating Officer on November 26, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Rules**') to

inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation/ non-compliance of the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable, committed by the Noticees. Pursuant to the Order of the Hon'ble SAT dated November 20, 2015, the matter was restored to the undersigned for passing fresh order on merits and in accordance with law.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. A common Show Cause Notice (hereinafter referred to as 'SCN') Ref. No. EAD-6/AK/VG/2854/2014/1-7 dated January 27, 2014 was issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations 1997 and/ or 2011, as applicable, as detailed below. A copy of status of compliance document as admitted by the concerned Noticees and detailed below was also sent along with the SCN:

Non compliance by the Promoters:

Regulations/ Sub-regulation	Due date for compliance	Actual date of compliance	Delay in compliance (in number of days)
8(2) Takeover Regulations, 1997	21/04/2003	10/04/2012	3,277
8(2) Takeover Regulations, 1997	21/04/2004	10/04/2012	2,911
8(2) Takeover Regulations, 1997	21/04/2005	10/04/2012	2,546
8(2) Takeover Regulations, 1997	21/04/2006	10/04/2012	2,181
8(2) Takeover Regulations, 1997	21/04/2007	10/04/2012	1,816
8(2) Takeover Regulations, 1997	21/04/2008	10/04/2012	1,450
8(2) Takeover Regulations, 1997	21/04/2009	10/04/2012	1,085
8(2) Takeover Regulations, 1997	21/04/2010	10/04/2012	720
8(2) Takeover Regulations, 1997	21/04/2011	10/04/2012	355
30(1)&(2) read with 30(3) of Takeover Regulations, 2011	09/04/2012	16/04/2012	7

6. The Noticees were called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.
7. The Noticees filed their submissions in reply to the SCN vide their letters dated February 10, 2014. The submissions of the Noticees *inter alia* are as under:
  - i. *Promoter Mr. Gopalakrishnan Raman in his individual capacity and on behalf of promoters viz. Ms. Shanti Gopalakrishnan, Inland Dataforms Pvt Ltd. and Insight Management Services Pvt. Ltd. submitted that the Company defaulted on loan installment and interest thereon and banks and financial institutions filed suits for the recovery of amounts due to them. Further, the problems were aggravated by the untimely and sudden demise of its erstwhile promoters. Promoters were busy settling bank dues and cash flows were affected. The office of the company was shifted to the residence of some of the promoters, and during the process of shifting, some of the records were mutilated and software was not updated to retrieve the data. Such issues bogged down the promoters from meeting the compliances on time and submitting the same to the authorities;*
  - ii. *That since the shares were not trading for almost ten years from 2002 to 2012, there was no major change in the shareholding pattern of the Company, and no harm was caused to anybody due to non-submission/ delay in disclosure under Regulation 8(2) of Takeover Regulations;*
  - iii. *That the delay in disclosures was inadvertent and beyond the control of the promoters of the Company, and neither deliberate nor intentional;*
  - iv. *That promoter Ms. Shanti Gopalkrishnan was not the original promoter, but, was inducted as director in 1996, because of the death of the erstwhile promoters;*
  - v. *Promoter Ms. Indumati Raman, stated that in December 1997, her husband, Mr. Ramnath Raman, left home under extremely serious health conditions and never returned. Family and friends tried to locate him at hospitals, temples, ashrams, and so on, but in vain. Ms. Indumati Raman was in a state of severe shock and in dire financial*

*straits. While dealing with her personal loss and tragedy, Ms. Indumati Raman was unable to look into the matters of the Company;*

- vi. Further, Ms. Indumati Raman submitted that as is the case with Missing Persons, Ms. Indumati Raman had to wait for seven years to file a Testamentary Petition at the Bombay High Court to be designated as the legal heir of her husband. The legal procedure took over four years and finally in 2010, Ms. Indumati Raman was granted a Letter of Administration which declared Mr. Ramnath Raman as legally dead and Ms. Indumati Raman as his legal heir;*
  - vii. That the non-compliance with Takeover Regulations was not a deliberate or a willful act on her part, it happened because she was not in a mental or physical state to look into the matters of company and its procedures.*
8. Thereafter, vide Notice of hearing dated February 18, 2014, the Noticees were granted a personal hearing on March 03, 2014, wherein the submissions of the Noticees made in their earlier replies were reiterated. In addition, the authorized representatives of the respective Noticees were *inter alia* advised to submit copies of the filings made under the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, if any, as applicable.
9. Promoter Mr. Gopalakrishna Raman filed further written submissions vide letter dated March 08, 2014, on behalf of himself and promoters viz. Ms. Shanti Gopalakrishna, Inland Dataforms Pvt. Ltd. and Insight Management Services Pvt. Ltd., attaching therewith copies of the filings made under the Takeover Regulations, 1997 and the Takeover Regulations, 2011 by the aforementioned entities. It was stated that there are no past non compliances of the SEBI Act and Regulations or any action pending against them, to the best of their knowledge.
10. Subsequent to the remand of the matter, an opportunity for personal hearing was granted to the Noticees on August 22, 2016 vide hearing Notice dated July 8, 2016. On the scheduled date, Mr. Somasekhar Sundaresan and Mr. J.J. Bhatt, along with Mr.

Gopalakrishnan Raman, Authorised Representatives appeared in person and on behalf of Mr. Gopalakrishnan Raman, Ms. Shanti Gopalakrishnan, Insight Management Services Pvt. Ltd. and Inland Dataforms Pvt. Ltd., and Mr. J.J. Bhatt, Advocate and Ms. Ruupa Raman, Authorised Representatives appeared on behalf of Ms. Indumati Raman for the personal hearing. The Authorized Representatives (ARs) were requested to clarify whether Ms. Indumati Raman, Mr. Gopalakrishnan Raman, Ms. Shanti Gopalakrishnan, Insight Management Services Pvt. Ltd. and Inland Dataforms Pvt. Ltd. were individual promoters or constituted a promoter group/were acting in concert during the period 2002-2012. Further, in case they constituted a promoter group/ were acting in concert, the ARs were advised to submit documentary evidence in support thereof.

11. During the course of the adjudication proceedings, the Hon'ble Supreme Court vide its Order dated November 26, 2015 in the matter of *SEBI v. Roofit Industries Ltd.* opined that the Adjudicating Officer had no discretion under Section 15J in deciding the quantum of penalty for offences committed between 2002 and 2014, other for than penalty under Section 15F(a) and Section 15HB of the SEBI Act. However, subsequently, another Bench of the Hon'ble Supreme Court in the matter of *Siddharth Chaturvedi v. SEBI* vide Order dated March 14, 2016 stated that the matter deserved consideration at the hands of a larger Bench. Accordingly, the Supreme Court directed that the papers of these appeals be placed before the Hon'ble Chief Justice of India for placing these matters before a larger Bench. Hence, the current Adjudication proceedings were kept on hold until determination of the issue of applicability of Section 15J to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.
12. However, subsequent to the amendment made vide the Finance Act, 2017 to Section 15J of the SEBI Act, 1992 (notified on April 26, 2017), the following Explanation has been inserted in Section 15J:  
*“Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of*

*section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”.*

13. Thus, it is now settled that Section 15J also applies to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.
14. Subsequent to the notification of the Finance Act, 2017 and the amendment made thereby to Section 15J of the SEBI Act, an opportunity of personal hearing was granted to the Noticees on June 1, 2017 vide the hearing notice dated April 28, 2017. The Noticees were also informed that additional information sought during the hearing had not been received.
15. However, vide email dated May 05, 2017 and letter dated May 16, 2017, the Noticees stated that they had already submitted the details as sought, vide letter dated August 29, 2016, which was duly received by SEBI on September 2, 2016. The Noticees also submitted a copy of the said letter. Vide the said letter, it was *inter alia* submitted as follows:
  - i. That Inland Printers Ltd. (the Company) was promoted by late Shri PA Raman, whose family comprise of the following persons (who were acting in concert at all relevant times). The relationship and other details were stated as follows:

Name	Relation	Remark
Mr. Ramnath Raman (deceased)	Son of PA Raman Managing Director Legally declared dead after disappearance in 1997	Original Promoter
Mr. Gopalkrishnan Raman	Brother of Ramnath Raman Son of PA Raman	Original Promoter Took over the management of the company exclusively

		after his brother's disappearance
Ms. Indumati Raman	Wife of Late Mr. Ramnath Raman	Member of Promoter group as per Clause (b)(i) of Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997
Ms. Shanti Gopalakrishnan	Wife of Mr. Gopalakrishnan Raman	
Inland Dataforms Pvt. Ltd.	Raman family owned and controlled company. Shareholding pattern as follows: <ol style="list-style-type: none"> <li>1. Ramnath Raman- 64.98%</li> <li>2. Indumkati Raman- 8.44%</li> <li>3. Shanti Gopalakrishnan- 26.58%</li> </ol>	Member of Promoter group as per Clause (b)(ii) of Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997
Insight Management Services Pvt. Ltd.	Raman family owned and controlled company. Shareholding is as follows: <ol style="list-style-type: none"> <li>1. Gopalakrishnan Raman-50%</li> <li>2. Shanti Gopalakrishnan- 50%</li> </ol>	

16. Thereafter, vide hearing Notice dated May 23, 2017, the hearing scheduled for June 01, 2017 was rescheduled to June 13, 2017 due to administrative exigencies. Subsequently, an email



dated June 02, 2017 was received from Mr. Gopalkrishnan Raman *inter alia* inquiring for the need for another hearing in the matter. Vide email dated June 05, 2017, the Noticees were informed that the opportunity of personal hearing was granted subsequent to the notification of the Finance Act, 2017 and the amendment made thereby to Section 15J of the SEBI Act, 1992, to make submissions, if any, subsequent to the said amendment. The Noticees were also requested to resend the enclosures to the written submissions dated August 29, 2016.

17. Thereafter, on the scheduled date, Mr. J.J.Bhatt, Mr. Abhishek Venkataraman and Mr. Gopalakrishnan Raman, Authorised Representatives appeared on behalf of the Noticees and made submissions. The ARs reiterated their earlier submissions, including replies dated June 2, 2017 and August 29, 2016. The ARs also submitted a copy of the Order of the Hon'ble Supreme Court (SC) in the matter of *Bharjatiya Steel Industries Ltd.* Further, the ARs submitted copies of the disclosures made under Regulation 8(1) and 8(2) of the Takeover Regulations, 1992 dated April 10, 2014, for the years 1998- 2011 to indicate that the disclosures were made as one family by the Noticees.

### **CONSIDERATION OF ISSUES**

18. I have carefully perused the written submissions of the Noticees and the documents available on record. It has been alleged that the Noticees did not comply with the provisions of Regulation 8(2) of the Takeover Regulations, 1997 for the financial years ended March 31, 2003 to March 31, 2011 and Regulation 30(1) and (2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012, within the stipulated time.
19. The issues that arise for consideration in the present case, therefore, are :
- a. Whether the promoters have failed to comply with the provisions of Regulation 8(2) of the Takeover Regulations, 1997 within the stipulated time for the financial years ended March 31, 2003 to March 31, 2011 and have also failed to comply with the provisions

of Regulation 30(1) and (2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012, within the stipulated time?

- b. If so, whether the Promoter Noticees were individual promoters or did they constitute 'Promoter group' acting in concert under the Takeover Regulations, 2011?
- c. Do the violations, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
- d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

## **FINDINGS**

20. Before moving forward, it is pertinent to refer to the relevant provisions of the Takeover Regulation, 1997 and the Takeover Regulations, 2011, which reads as under:

### **Regulation 8(2) of the Takeover Regulations, 1997**

#### **Continual disclosures.**

8. (1) ...

*(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.*

### **Regulation 30(1), (2) and (3) of the Takeover Regulations, 2011**

#### **Continual disclosures**

*30(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a*

*target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

*(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

*(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—*

*(a) every stock exchange where the shares of the target company are listed; and*

*(b) the target company at its registered office.*

21. The issue for consideration is whether the Noticees failed comply with the provisions of the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable, within the stipulated time. As per Regulation 8(2) of the Takeover Regulations, 1997, the promoters *inter alia* were required to make disclosures of the number and percentage of shares and voting rights within 21 days from the financial year ending March 31 to the Company. As per Regulation 30(1)/30(2) read with 30 (3) of the Takeover Regulations, 2011, every person, who together with persons acting in concert with him, held shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a company and the promoters of the company were required to disclose within seven working days from thirty-first day of March, their aggregate holdings to the Company and the concerned stock Exchanges where the shares of the Company were listed. With regard to the aforesaid compliances, the respective Noticees in their submission have stated that the lapses/delay in compliance of making disclosures have occurred due to inadvertence and were unintentional. The promoters have given an account of the difficulties that they were facing on personal front as well as in the business which resulted in delayed compliance.

22. I find from the submission of the Noticees and on perusal of the copies of the delayed filings made by the Noticees, that it is established without doubt that the promoters have failed

to comply with the provisions of Regulation 8(2) of the Takeover Regulations, 1997 for the financial years ended March 31, 2003 to March 31, 2011 and with Regulation 30(1) and (2) read with 30(3) of the Takeover Regulations, 2011 for the financial year ended March 31, 2012, within the stipulated time. The respective number of days of non-compliance in respect of each financial year has been enumerated in the table at Para 5 above.

23. The next issue that arises is whether the Promoter Noticees were individual promoters or do they constitute 'promoter group' acting in concert under the Takeover Regulations, 1997/ Takeover Regulations, 2011, as applicable. Vide Order dated November 20, 2015, the Hon'ble SAT *inter alia* held that:

*"20. ...firstly, use of the word 'A promoter' instead of the word 'every promoter' clearly indicates that the disclosure could be made not only by promoter but also by a promoter group. Secondly, by including every person/member in the promoter group within the meaning of 'promoter' it is made clear that the obligation cast on the promoter has also to be discharged by the promoter group. Thirdly, all the entities covered under the promoter group though treated as 'promoter', every such entity may not be holding shares of the Target Company and in that case, if contention of SEBI is accepted it would mean the every promoter covered under the Takeover Regulations must make yearly disclosure even though some of the promoters never held any shares of the Target Company. Having included persons/members of the promoter group within the meaning of 'promoter' under the Takeover Regulations, SEBI cannot now contend that it would be difficult for a promoter in the promoter group to know the shares held by other promoters in the promoter group and their PAC [Persons Acting in Concert] before making disclosure and therefore, every promoter must be directed to make yearly disclosure. Therefore, it is just and reasonable to hold that under the Takeover Regulations the obligation to make yearly disclosure is on the promoter or the promoter group as the case may be.*

...

*23...The obligation to make yearly disclosure under regulation 8(2) and regulation 30(2) of the Takeover Regulations framed by SEBI in the year 1997 & 2011 respectively is on the*

*promoter/promoter group. If the promoters of a listed company are individual promoters then the obligation is on the individual promoters and in case there is a 'promoter group' then the promoter group is required to make yearly disclosure. If the promoter group fails to disclose the shares or voting rights held by the promoters in the promoter group as also their PAC's within the time stipulated under the Takeover Regulations, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's..."*

24. Hence, as per the above cited judgment of the Hon'ble SAT, it is imperative that we determine whether the Promoter Noticees were acting as individual promoters or as a Promoter Group. Vide letter dated August 29, 2016, the Noticees have confirmed that they were part of a Promoter Group. As per Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997 *promoter group* shall include:

*(a) in case promoter is a body corporate—*

*(i) a subsidiary or holding company of that body corporate;*

*(ii) any company in which the promoter holds 10 % or more of the equity capital or which holds 10 % or more of the equity capital of the promoter;*

*(iii) any company in which a group of individuals or companies or combinations thereof who holds 20 % or more of the equity capital in that company also holds 20 % or more of the equity capital of the target company; and*

***(b) in case the promoter is an individual—***

***(i) the spouse of that person, or any parent, brother, sister or child of that person or of his spouse;***

***(ii) any company in which 10 % or more of the share capital is held by the promoter or an immediate relative of the promoter or a firm or HUF in which the promoter or any one or more of his immediate relative is a member;***

*(iii) any company in which a company specified in (i) above, holds 10 % or more, of the share capital; and*

*(iv) any HUF or firm in which the aggregate share of the promoter and his immediate relatives is equal to or more than 10 per cent of the total.*

25. Further, Under Regulation 2(1)(t) of the Takeover Regulations, 2011, “*promoter group*” has the same meaning as in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009 (hereinafter referred to as ‘ICDR’); whereas Regulation 2(1)(zb) of the ICDR defines ‘promoter group’ as:

*2(1)*

*(zb) “promoter group” includes:*

***(i) the promoter;***

***(ii) an immediate relative of the promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and***

*(iii) in case promoter is a body corporate:*

*A. a subsidiary or holding company of such body corporate;*

*B. any body corporate in which the promoter holds ten per cent. or more of the equity share capital or which holds ten per cent. or more of the equity share capital of the promoter;*

*C. any body corporate in which a group of individuals or companies or combinations thereof which hold twenty per cent. or more of the equity share capital in that body corporate also holds twenty per cent. or more of the equity share capital of the issuer; and*

*(iv) in case the promoter is an individual:*

***A. any body corporate in which ten per cent or more of the equity share capital is held by the promoter or an immediate relative of the promoter or a firm or Hindu Undivided Family in which the promoter or any one or more of his immediate relative is a member;***

- B. any body corporate in which a body corporate as provided in (A) above holds ten per cent. or more, of the equity share capital;*
- C. any Hindu Undivided Family or firm in which the aggregate shareholding of the promoter and his immediate relatives is equal to or more than ten per cent. of the total; and*
- (v) all persons whose shareholding is aggregated for the purpose of disclosing in the prospectus under the heading "shareholding of the promoter group":*
- Provided that a financial institution, scheduled bank, foreign institutional investor and mutual fund shall not be deemed to be promoter group merely by virtue of the fact that ten per cent. or more of the equity share capital of the issuer is held by such person:*
- Provided further that such financial institution, scheduled bank and foreign institutional investor shall be treated as promoter group for the subsidiaries or companies promoted by them or for the mutual fund sponsored by them;*

26. I note from the submissions of the Noticee that Mr. Gopalkrishnan Somani was an original promoter of the company. Ms. Shanti Gopalkrishnan is the wife of Mr. Gopalakrishnan Raman. As a result, Ms. Shanti Gopalkrishnan is part of the same promoter group as per Clause (b)(i) of Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997 and as per Regulation 2(1)(zb)(ii) of the ICDR. Further, Ms. Indumati Raman is the wife of original promoter, Late Shri Ramnath Raman, who in turn was the brother of Shri Gopalakrishnan Raman. While the promoter Ms. Indumati Raman does not fall into the strict definition of *immediate relative* under Regulation 2(1)(zb)(ii) of the ICDR, nor does she fall squarely under Clause (b)(i) of Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997, I am of the view that given the peculiar circumstances of the case where her deceased husband (being an original promoter himself) was the son and brother of the original promoters, is also a part of the same promoter group.

27. Further, Inland Dataforms Pvt. Ltd. and Insight Management Services Ltd. are family owned and controlled companies of Mr. Gopalkrishnan Raman. Under Regulation 2(1)(zb) (iv) (A) of ICDR in case the promoter is an individual, any body corporate in which ten percent or more of the equity share capital is held by the promoter or an immediate relative of the promoter is included in promoter group. Further, as per Clause (b)(ii) of Explanation 1 to Regulation 2(h) of the Takeover Regulations, 1997, any company in which 10% or more of the share capital is held by the promoter or an immediate relative of the promoter also forms part of the promoter group. I note that Gopalkrishnan Raman and Shanti Gopalkrishnan held 50% each in Insight Management Services Pvt. Ltd. Further, Shri Ramnath Raman (64.98%), Ms. Indumati Raman (8.44%) and Ms. Shanti Gopalkrishnan (26.58%) own the entire shareholding of Inland Dataforms Pvt Ltd. It has been submitted that Ms. Indumati Raman was declared the legal heir of Shri Ramnath Raman after he was legally declared dead. Hence, I find that both Inland Dataforms Pvt Ltd and Insight Management Services Ltd. are also part of the same promoter group.
28. I further find from the copy of disclosures made by the Noticees to the Company/ BSE for the years 1998-2011 under Regulation 8(1) and 8(2) of Takeover Regulations, 1997 on April 10, 2012 that they were made as a promoter group.
29. In view of the above, I find that the Promoter Noticees formed part of the same promoter group. I note that Regulation 2(q)(2)(iv) of the Takeover Regulations, 2011 qualifies promoters and members of the promoter group as deemed to be persons acting in concert with other persons within the same category, unless the contrary is established. I note that there is nothing on record to establish anything contrary to the above. In view of the same, the Promoter Noticees herein are PACs, being promoters and part of the same promoter group.
30. Thus, the responsibility for making the disclosure under Regulation 8(2) of the Takeover Regulations, 1997 and Regulation 30(2) of the Takeover Regulations, 2011, as applicable,



rests upon the Promoter Group as a whole, and not upon the individual Promoter Noticees. And as has been discussed in the earlier paras of the Order, the Promoter Noticees have admitted to delay in filing disclosure under Regulation 8(2) of the Takeover Regulations, 1997 for the financial years 2002-03 to 2010-11 and Regulation 30(2) read with 30(3) of Takeover Regulations, 2011 for the financial year ended March 31, 2012.

31. Thus, we come to the next issue, i.e. do the violations, if any, attract monetary penalty under Section 15 A (b) of SEBI Act. In this regard, I note that the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Mr. 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..."*. Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of Takeover Code was violated the penalty must follow."*
32. I note that at the time of the hearing, the AR of the Noticees cited the **judgment of the Hon'ble Supreme Court in the case of *Bharjatiya Steel Industries V. Commissioner, Sales Tax, UP (2008)*** stating that after taking into consideration the **judgment in *Chairman, SEBI Vs. Shriram Mutual Fund (2006 SC)***, the Supreme Court had held therein that that when there is a discretion to not award any penalty at all, the question of *mens rea* becomes relevant. The AR had undertaken to file written submissions in this regard. However, the additional written submissions filed by the Noticees do not mention the same.
33. However, after having perused the Order of the Hon'ble Supreme Court in both the above cases, I am of the view that the judgment of *Bharjatiya Steel* does not state anything contrary to the finding in *Chairman, SEBI Vs. Shriram Mutual Fund*. I find that in ***Bharjatiya Steel Industries vs. Commissioner, Sales Tax, U.P. on March 05, 2008, the Hon'ble Supreme Court*** had observed as thus:

*“Furthermore, the question as to whether mens rea is an essential ingredient or not will depend upon the nature of the right of the parties and the purpose for which penalty is sought to be imposed.*

*19. A distinction must also be borne in mind between a statute where no discretion is conferred upon the adjudicatory authority and where such a discretion is conferred. Whereas in the former case the principle of **mens rea** will be held to be imperative, in the latter, having regard to the purport and object thereof, it may not be held to be so.”*

34. In **Chairman, SEBI vs. Shriram Mutual Fund**, referred above, **the Hon’ble Supreme Court** while interpreting the provisions of the SEBI Act has 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 Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow.” (emphasis supplied)*

35. In abovementioned matter of **Bharjatiya Steel Industries vs. Commissioner, Sales Tax** that the Noticees have cited, I note that the Hon’ble Supreme Court after quoting the above cited lines from the Chairman, SEBI Vs. Shriram Mutual Fund judgment has further stated as follows:

*“It is, therefore difficult to accede to the contention ... that under no circumstances absence of mens rea would not be a plea for levy of penalty. An assessing authority has been conferred with a discretionary jurisdiction to levy penalty. By necessary implication, the authority may not levy penalty. If it has discretion not to levy penalty, existence of mens rea becomes a relevant factor.”*

36. From the above, it becomes apparent that the judgment in *Bharjatiya Steel Industries vs. Commissioner, Sales Tax* was re-emphasizing the ruling in *Chairman, SEBI vs. Shriram Mutual Fund*. I note that the **Hon’ble Supreme Court** made it clear in ***Chairman, SEBI vs. Shriram Mutual Fund*** that Chapter VIA of the SEBI Act has no element of any criminal offence, and therefore there is no question of proof of intention or any mens rea by the appellants and it is not an essential element for imposing penalty under SEBI Act and Regulations. On the other hand, the ***judgment in Bharjatiya Steel Industries vs. Commissioner, Sales Tax*** talks about a situation where the statute allows discretion and hence *mens rea* becomes a relevant factor.
37. It, thus, becomes clear from the above that the **Hon’ble Supreme Court in *Bharjatiya Steel Industries vs. Commissioner, Sales Tax*** cited *Chairman, SEBI vs. Shriram Mutual Fund*, not to overrule it, but, to show that the necessity to prove *mens rea* depends on the wording on the statute, and whether it allows discretion. Hence, after perusing both the Orders of the Hon’ble Supreme Court, **it is clear that the later judgment in *Bharjatiya Steel Industries vs. Commissioner, Sales Tax*, does not overrule the former judgment in *Chairman, SEBI Vs. Shriram Mutual Fund*.**
38. In ***Chairman, SEBI vs. Shriram Mutual Fund***, the **Supreme Court** further observed therein that *“...The impugned Order sets the stage for various market players to violate statutory regulations with impunity and subsequently plead ignorance of law or lack of mens rea to escape the imposition of penalty. The imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of*

*introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations.”*

39. In view of the same, I am of the view that mens rea is not an essential element for imposing penalty under Chapter VI A of the SEBI Act. The Supreme Court has unambiguously stated that *imputing mens rea into the provisions of Chapter VIA is against the plain language of the statute and frustrates entire purpose and object of introducing Chapter VIA to give teeth to the SEBI to secure strict compliance of the Act and the Regulations.*
40. The aforesaid gets further strengthened by the fact that subsequent to the judgment in Bharjatiya Steel Industries vs. Commissioner, Sales Tax, ***the Hon’ble Supreme Court on September 29, 2008 in Union of India & Ors vs. Dharamendra Textile*** has cited the judgment in Chairman, SEBI v. Shriram Mutual Fund with respect to in built discretion, and has stated that the judgment has analyzed the legal position in the correct perspective.
41. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which 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,—*

*(a)...*

*(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.*

42. While determining the quantum of monetary penalty under Section 15A(b), I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:-

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

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

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

*[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]<sup>1</sup>*

43. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Though I have taken note of the personal, professional and financial hardship that the Noticees were under, however, at the same time, in case of listed companies, it is especially important for the companies and its promoters to ensure that correct and timely disclosures, as required under the law are made, as the cornerstone of the Takeover Regulations is investor protection.
44. As per Section 15A(b) of the SEBI Act, the Noticees are liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard

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<sup>1</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017, wef April 26, 2017

to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticees. However, I note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014) has observed that:

*“Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”*

45. In view of the same, the argument put forth by the Noticee Ms. Indumati Raman that no harm, loss or injury was caused to the investors as there was no trading in the market and the argument put forth by the Noticee Promoters viz. Mr. Gopalakrishnan Raman, Ms. Shanti Gopalakrishnan, Inland Dataforms Pvt Ltd. and Insight Management Services Pvt. Ltd. that no harm was caused to anybody due to non-submission/ delay in disclosure under Regulation 8(2) of Takeover Regulations is not relevant for the given case.
46. I also note that the Noticees have submitted that there was no trading in shares of the Company. I note that the trading in equity shares of the Noticee was suspended by BSE from 2002 to 2012 for non compliance with the provisions of the listing agreement and for non-payment of listing fees. The shares were reinstated for trading on September, 2012. Thus, I note that it was due to delinquency on the part of the Company in complying with the provisions of the listing agreement and with respect to payment of listing fees of the Exchange, which resulted in non-trading of the Company's shares on the Exchange, and thus, cannot support the Noticee's case for non-disclosure under the relevant provisions of the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable. I find that the Noticee promoters did not comply with Regulation 8(2)

of the Takeover Regulations for nine (9) consecutive financial years within the stipulated time and Regulation 30(1) and (2) read with 30(3) of the Takeover Regulations, 2011 on one occasion.

47. As promoters of a listed company, the Noticees had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose of the Takeover Regulations. Non-compliance/ Delayed compliance with the disclosure requirements by a listed company and its promoters undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

### **ORDER**

48. After taking into consideration all the facts and circumstances of the case, I impose the following penalty on **the Noticees** under Section 15 A(b) of SEBI Act, which will be commensurate with the violations committed by them. The Noticees shall be **jointly and severally liable** to pay the below mentioned monetary penalty:

Name of the entity	Regulation Violated	Penalty (Rs.)
<b>Insight Management Services Pvt. Ltd.</b>	8(2) of the Takeover Regulations, 1997  and  30(1) and (2) r/w. 30(3) Takeover Regulations, 2011	<b>5,00,000/- (Rupees Five Lakh Only)</b>
<b>Inland Dataforms Pvt. Ltd.</b>		
<b>Mr. Gopalakrishnan Raman</b>		
<b>Ms. Shanti Gopalakrishnan</b>		
<b>Ms. Indumati Raman</b>		

49. 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

50. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

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

51. In terms of rule 6 of the Rules, copies of this order are sent to the Promoter Noticees and also to the Securities and Exchange Board of India.

**Date: July 24, 2017**

**Place: Mumbai**

**Anita Kenkare  
Adjudicating Officer**