BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.IVD-ID6/DM-EIIL/AO/DRK/AKS/EAD-3/ 341 / 7 -13]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995

Against:

Shri Devang D. Master
16-A, Tower C, Viceroy Park
Thakur Palace, W E Highway
Kandiwali (E), Mumbai - 400101

FACTS IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation relating to buying, selling or dealing in the shares of Empower Industries India Ltd. (hereinafter referred to as '**EIIL / company**') to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Regulations made there-under. Investigation period was taken as February 16, 2005 to March 11, 2005.

2. The shares of the company are listed only on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**'). On BSE the price of the scrip rose from

₹ 81.00 on February 16, 2005 to ₹ 113.00 on March 11, 2005 (an increase of ₹ 32) during 18 trading days. Total trading volume during the period of investigation was 2,17,700 shares with an average daily trading volume of 12,095 shares. One month before the investigation period the scrip traded with the daily average volume of 2,365 shares and the price of the scrip increased from ₹ 61.00 on 13th January, 2005 to ₹ 79.50 on 9th February, 2005 (an increase of ₹ 18.50). One month after the investigation period the scrip traded with an average trading volume of 13,773 shares per day and the price of the scrip came down to ₹ 97.80 on 11th April, 2005 as against ₹ 110.75 on 14th March, 2005 (Decrease of 13.29% during one month after investigation period).

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer (subsequent to the transfer of previous AO) under Section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') vide order dated 17.01.2012 to inquire into and adjudge under Sections 15HA, 15H(ii) and 15A(b) of the SEBI Act, the violation of Regulations 3 (b), 3(c) and 3(d), 4 (1), 4(2)(d), 4(2)(e), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), Regulation 7(1A) read with Regulation 7(2) and Regulations 10 and 11 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations'**) and also Regulation 13(4) read with 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) alleged to have been committed by Shri Devang D Master (hereinafter referred to as '**noticee'**).

SHOW CAUSE NOTICE, HEARING AND REPLY

4. A Show Cause Notice (herein after referred to as **'SCN'**) dated 15.07.2009 which was issued by the previous AO was served on the noticee in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring the noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under Sections 15HA, 15H(ii) and 15A(b) of the SEBI Act for the alleged violations of Regulations 3 (b), 3(c) and 3(d), 4 (1), 4(2)(d), 4(2)(e), 4(2)(k) and 4(2)(r) of PFUTP Regulations, Regulation 7(1A) read with Regulation 7(2) and Regulations 10 and 11 of Takeover Regulations and Regulation 13(4) read with 13(5) of PIT Regulations. In the said SCN it was alleged that the noticee was instrumental in issuing misleading corporate announcement on March 02, 2005 of preferential / rights issue, which did not materialize and which had lured investors, leading to creation of artificial volumes. Further, it was also alleged in the SCN that the noticee had made off market transfers to various entities and had also received shares in off market for which the noticee had not made disclosures / open offer under Takeover Regulations and PIT Regulations.

5. The noticee vide his letter dated 01.08.2009 requested for all the supporting documents and evidences based on which allegations were made in the SCN and had requested for time to prepare the reply in detail. Vide letter dated 22.09.2009 the noticee was provided with the supporting documents and was given 15 days time to file the reply to the SCN. The noticee vide his letter dated 09.10.2009 requested for extension of time due to festive season to submit a reply. Vide letter dated 06.11.2009, the noticee was granted 7 days from the date of receipt of the letter to submit a reply to the SCN. The noticee vide his letter dated 07.11.2009 sought inspection of documents

relied on for the allegations made in the SCN. The noticee was granted an inspection vide letter dated 16.11.2009 on 24.11.2009.

6. Noticee vide letters dated 26.11.2009 authorised Ms. Poonam Gadkari, Shri Suhas Ganpule and Shri Rajesh Khandelwal to undertake inspection of documents on his behalf. Vide letter dated 27.11.2009 the noticee was provided with copy of supporting evidence as sought during the inspection of documents.

7. Subsequently noticee vide letter dated 30.11.2009 expressed his desire to avail the consent process. However, noticee's consent application was rejected by High Powered Advisory Committee in its meeting dated 19.11.2010 and the same was intimated to the noticee.

8. In view of the rejection of noticee's consent application, vide personal hearing notice dated 25.02.2011 the noticee was granted an opportunity to appear for hearing at SEBI Bhavan, Mumbai on 11.03.2011 at 11:00 am. Proof of service is on record. The noticee vide his letter dated 09.03.2011 requested to adjourn the matter by 10 days so as to prepare a reply and appear for the hearing.

9. Subsequent to the transfer of previous AO, the undersigned provided an opportunity of hearing to the noticee vide personal hearing notice dated 07.05.2012 to appear for hearing at SEBI Bhavan, Mumbai on 29.05.2012 at 03:00 pm and submit a reply to the SCN on or before 18.05.2012. Proof of service of this notice is also on record. Noticee vide his letter dated 15.05.2012 requested to extend the time till 31.05.2012 for submitting the reply to the SCN due to legal complexity. Noticee's request was acceded to and vide final personal hearing notice dated 29.05.2012, noticee was granted time till 31.05.2012 to submit a reply to the SCN and attend the final hearing on 11.06.2012 at 11:00 am at SEBI Bhavan, Mumbai. Proof of

service is on record. At last (almost 3 years of service of SCN) noticee vide his letter dated 05.06.2012 submitted a reply to the SCN but failed to attend the hearing granted to him without providing any reasons.

10. Noticee vide his letter dated 05.06.2012 submitted as follows:

- The noticee is the Promoter Director of EIIL. EIIL is engaged in digital retail sales and in future intends to open number of retail outlets and hence in constant need of capital expansion. The noticee was in need of some funds for other business engagements and the same was arranged through a common friend by a business associate since the finance was required on very urgent basis. The noticee was requested to give the shares as the security /collateral upon assurance that there would be no change of management. However, since the transaction got cancelled, the money borrowed was returned and the shares were taken back in physical form. The noticee had no clue of the details of the accounts from where the shares had been received. But the shares which were offered as security were thus returned to the noticee. The transaction was more financial in nature and there was no sell/ purchase of the shares.

- EIIL follows the practice of discussing the issues including its pros and cons, before it is finally placed before the Board. As mentioned in SEBI letter dated 14.12.2007, the future plans, acquisitions were discussed amongst management. Based on the said discussions, the Corporate Announcement was made .However, the Board was of the opinion that such expansion/ acquisition will not benefit the company as a whole and also the shareholders of the Company. However, even after making the Corporate Announcement, no action was taken in Board meeting by the company.

- The Board Note which was presented in the Board meeting which was scheduled to be held on 08.03.2005 was enclosed with the written submission dated 07.02.2008 along with financial projections for the business expansion plan of the company which was to be taken in the meeting to raise funds via Preference issues which could not be proceeded due to quantum and pricing of issue. Hence, it could not be finalized during the said period.

- Moreover the allegation that aborted corporate announcement had led to spurt in the volume and increased price of the scrip and was intended to only create investor's interest in the scrip and thereby misleading investors is far-fetched. The investigation has conveniently not considered the fact that the price of EIIL rose from ₹ 84.15 on 16.02.2005 (closing price) to

₹ 100.15 on 01.03.2005. There was an increase of around ₹ 16 (i.e an increase of 19%) where there was no announcement of the aborted preferential issue the mere announcement of which took place on 2.3.2005 and whereas after the announcement of 2.3.2005 , the price rose only by ₹ 13.81 amounting to 13.79% increase i.e. from ₹ 100.15 to ₹ 113.96. Thus it can be seen that the prices were going up irrespective of the announcement albeit more than the rate at which it did after the aborted announcement.

- The increase in price from ₹ 100.15 on 1.3.2005 to ₹ 101.90 on next trading day i.e by ₹ 1.75 is quite insignificant considering various market factors like boom in IT sector and that no adverse interference there from may be attributed. It may be appreciated that in percentage terms, the rise in the share price of EIIL by ₹ 1.75 is negligible, amounting to a rise in less than 1.75% which is quite less than average circuit filter of 10% on the trading date.

- It is further observed that on 11.3.2005 upon announcing that the board meeting which was scheduled on 08.03.2005 was cancelled the price of EIIL came down from ₹ 113.96 to ₹ 110.75 which in absolute terms tantamount to ₹ 3.21, which translates to a fall of 2.81%. It is submitted that the fall was in consonance and within the permitted circuit filters of that day. In any event the said notice admits that on 11.3.2005 there was negligible effect on the volume.

- The observation that “there was lack of clarity with regard to the cancellation/ postponement of the meeting and no attempt thereafter was made to call for further meeting is totally misconceived and blown out of proportion. Since the meeting was cancelled, it was the prerogative of the Board whether to call another meeting or not. Just because another meeting was not convened it cannot be assumed or alleged that “there was lack of clarity”.

- Vide letter dated 08.3.2005 to BSE, EIIL has categorically communicated in the subject as “cancellation of Board Meeting” as Directors were not in station and that any further notice in this regard will be given in due course. The word postponement in the body of the letter was due to an oversight and there was no intention to mislead investors. EIIL had intended to convey that the agenda stood cancelled as of then. The SCN seeks to latch on only this word instead of considering the caption of the letter which by itself was self explanatory of the true intention of the management. However, in view of the above, it does not by itself attribute any wrongful or mala fide intention on my part. The SCN has failed to

appreciate the fact that the caption of the corporate announcement made by EIIL had clearly communicated the intention of the management. Further, the fact that the intended meeting for this purpose had not taken place at all is a testimony to the intention that the issue was dropped once for all.

- The noticee has not sold or purchased any of the EIIL shares as alleged or otherwise, the same was given as collateral for the loan that the noticee had taken from Shri Deepak Agarwal (Goel) of with the explicit understanding that the beneficial ownership in the shares shall rest with the noticee. It is beyond logic to assume that as a new Promoter - Director of EIIL, the noticee would give up his control on the company by reducing his stake to abysmally low of 9.91%. No sooner the loan was re-paid the noticee had the shares back.

- Since there was never any sale or purchase of the shares as alleged or otherwise and the ownership of the shares remained with the noticee, it cannot be alleged that there was any transfer of shares. If that be the case, no disclosure under Regulations 7 (1A) read with 7(2) of Takeover Regulations and Regulations 13(4) read with 13(5) of PIT Regulations were required to be made.

- The noticee referred to the order dated 19.1.2011 of the adjudicating officer in the matter of dealing in the shares of EIIL in connection with one Shri Girdharbhai Vagadiya. Para 3 of the said order categorically observes and admits that the noticee had allegedly transferred 2,13,000 shares (42.60%) in off market deals to Shri Vasudev Agarwal , Shri Shambhu Agarwal, Ms Indra Agarwal, Ms Lata Agarwal and Shri Rajendra Agarwal (herein after referred to as '**Agarwal family**'). Assuming without admitting that the noticee had transferred the shares as alleged, this transfer translated in to 42.60% of the share or voting rights If that be the case, the investigation has chosen not to address this issue of violation of the Takeover Regulations by the Agarwal family but has traveled beyond jurisprudence in relying on just one leg of the alleged transfer by the noticee, but has conveniently sidelined the issue that if the noticee had transferred the shares in question to the so called Agarwal family, the Agarwal family had triggered the Takeover Regulations as is apparent from the 5 transfer deeds, each for 25,000 shares, of the Agarwal family are on record and produced during inspection.

- In so far the share transfer deeds produced during investigation the noticee stated that he is unaware of the same and denied that the 5 transfer deeds bear his signature on them as is evident from the difference in his usual signature that SEBI has on record on the various

correspondence that the noticee has had with SEBI from time to time. The noticee stated that he had handed over the signed blank transfer forms with the rematerialized shares to Shri Deepak Agarwal (Goel) as collateral. The noticee was surprised when he received back from Shri Deepak Agarwal (Goel) share certificates from other entities when he repaid the loan taken from him. Assuming without admitting the said Shri Deepak Agarwal could have traded these shares when under pledge. In this connection it may be appreciated that during the period of pledge no one claimed any stake and on the noticee repaying the loan, the noticee received back the entire quantity of shares. At all points in time the noticee has always held 53.01% of the shares of EIIL. The noticee had only parted with the shares as collateral for the loan obtained and that there was never any sale or purchase of the shares and the ownership of the shares remained with the noticee which means the beneficial interest in the same was never transferred and thus no disclosures were required to be made. SEBI has grossly failed to bring on record any evidence of the alleged purported transfer/sale of shares. SEBI had failed to produce any evidence as to substantiate its allegation and bring on record evidence regarding sale / transfer proceeds that the noticee ought to have received on the sale / transfer of the alleged shares and that the Agarwal family ought to have paid the noticee.

- In so far as the allegation that the noticee acquired 2,15,500 (43.01%) shares on 31.3.2005 mainly from connected entities by off market trades is concerned the noticee denied the existence of the so called "connected clients". In any event the notice is silent on the so called "connected clients."

- The noticee had not acquired any shares to come under the purview of Regulation 7(1A). Acquisition is a corollary to a purchase. As the noticee had not purchased any shares but just received back shares given as collateral for a loan there cannot be any violation of the Regulation.

- Further, Regulation 11(1) is not attracted to the case as the noticee had not acquired any shares either by himself or with the help of any alleged persons acting in concert. Only when there is acquisition, acquirer has to make public announcement of his intention to do so otherwise there is no necessity to make any announcement. There is neither any allotment nor any acquisition of shares or voting rights. Regulation 11 (2) of the Takeover Regulations calls for public announcement when shares are acquired either singly or with the aid of persons acting in concert beyond the prescribed percentage of shares. That is not the case as the noticee had neither acquired any shares nor did he have any person acting in

concert with him. Therefore there is no necessity to make any public announcement.

11. From the records it is noted that the noticee has replied to the SCN but has failed to attend any of the personal hearings granted to him inspite of service of the notices as stated above. In light of this fact, I am convinced that the Principles of Natural Justice have been complied with and I am compelled to pass an order against the noticee based on the material made available on record.

CONSIDERATION OF EVIDENCE AND FINDINGS

12. I have taken into consideration the facts and circumstances of the case and the material made available on record. The first issue in the present matter is whether the noticee was instrumental in issuing misleading corporate announcement on March 02, 2005 of preferential / rights issue, which did not materialize and which had lured investors, leading to creation of artificial volumes.

13. It is observed from the investigation report (hereinafter referred to as '**IR**') that during the investigation period following announcements were made by the company:

Sr. No	Date & time of anncmnt.	Subject	Effect of price/volume
1	02.03.05 at 11:02 AM & 4:44 PM	The board meeting to be held on 08.03.2005 to consider the pricing of the issue and also to consider the options and ways for expansion plans, acquisition and any other related matter for growth of the company and to consider the increase in authorized capital and issue of rights/preferential	Price increased from closing price of ₹ 100.15 on March 1, 2005 to ₹ 101.90 on next trading day. Volume increased from average daily trading volume of 3,685 shares to average daily trading volume of 22,606 shares for remaining investigation period.

		shares.	
2	11.03.05 at 04:31PM	The Board meeting which was scheduled to be held on March 08, 2005 has been postponed as the directors of the company have gone out of station.	The price came down from closing price of ₹ 113.96 on March 11, 2005 to ₹ 110.75 on next trading day. There was negligible effect on the volume.

14. At the time of investigation when the company was questioned for the reasons for not proceeding with the issue of rights / preferential shares, the company stated that it had considered the equity expansion by rights / preferential issue but the same could not be proceeded with because of the lack of number of allottees and non-finalization of the terms and conditions of the issue. The company was asked for the list of allottees, quantum of the issue, however no details was received for the same. Over here it may be added that the issue of lack of number of allottees does not hold good when for rights issue since rights issue is offered to the existing shareholders of the company.

15. Further, when the company / noticee was asked to give explanation as to why the intimation was not given to the stock exchange for cancellation of the rights / preferential issue due to non-finalization of the terms and conditions and lack of number of allottees, the company / noticee explained that it had intimated to the stock exchange about the postponement / cancellation of such preferential issue through the intimation of the cancellation of board meeting. It also explained that the company / noticee was under impression that the cancellation of the board meeting on a particular date leads to cancellation of the meeting and cancellation of the agenda proposed to be considered in the meeting.

16. The IR observed that the postponement of the board meeting cannot be presumed to be cancellation of the board meeting and of the agenda items.

In this regard, a copy of the letter (which was received by BSE on 11.03.2005) submitted by the company to stock exchange for announcements was obtained and it was found that the company in its intimation for postponement of the board meeting also stated that “any further notice in this regard will be given to you (stock exchange) in due course”. This statement reflects the intention of the company for postponement of the meeting and not the cancellation of the meeting. BSE was also asked as to whether this announcement was treated as postponement or cancellation of the board meeting. In response to the same, BSE vide its email dated 18.12.2007 stated that the announcement was treated as postponement only. It is observed from the IR that the company had no material on table to proceed or to consider the rights / preferential issue.

17. The noticee has submitted that the Board was of the opinion that such expansion/ acquisition will not benefit the company as a whole and also the shareholders of the Company. However, even after making the Corporate Announcement, no action was taken in Board meeting by the company (refer para 10 at page no. 5). This submission gives an impression that the Board meeting was held wherein the Board discussed the proposal and came to the aforesaid conclusion. However, it is observed that the noticee has not submitted any material / documents as to when and how the Board arrived at such a conclusion and also whether the information about the said Board meeting was given to the stock exchange. This entire episode gives a contradictory picture regarding noticee’s claim of cancellation of Board meeting.

18. Noticee’s submission that the prices were going up irrespective of the announcement albeit more than the rate at which it did after the aborted announcement is not acceptable. It is observed from the IR that one month before the investigation period the scrip was traded with the daily average

volume of 2,365 shares per day and the price of the shares increased from ₹ 61.00 on 13th January, 2005 to ₹ 79.50 on 9th February, 2005 (an increase of ₹ 18.50 in 20 trading days). During the investigation period the price rose from ₹ 81.00 to ₹ 113.00 during 18 trading sessions (an increase of ₹ 32). Subsequent to the corporate announcement there was sudden spurt in the volume and also increase in price of the scrip. The average volume before the corporate announcement by the company (upto 01.03.2005) was 3,685 shares per day and after the corporate announcement (after 02.03.2005) volume increased to an average of 22,606 shares per day. During the investigation period there was a consistent increase in price and it increased by 39.50%. One month after the investigation period the scrip was traded with the average trading volume of 13,773 shares per day and the price of the scrip came down to ₹ 97.80 on 11th April, 2005 as against ₹ 110.75 on 14th March, 2005 (Decrease of 13.29% during one month after investigation period). Thus, the price – volume data clearly suggests that the corporate announcement had an impact on the trading of the scrip (price and volume).

19. From the above it can be concluded that that by the first disclosure about the rights / preferential issue, it is but natural that the investors will have a positive reaction with regard to the price of the shares of the company. By withholding the information from the stock exchange that the rights / preferential issue is not being considered or that it has been dropped, the noticee has misled share holders and investors. Making a declaration with regard to the rights / preferential issue and then not proceeding with the issue is nothing but a way to lure investors, leading to creation of artificial volumes.

20. At this juncture I would like to quote the observations made by the Hon'ble Securities Appellate Tribunal in the matter of *Rich Capital & Financial Services Limited et al.* V. *SEBI* decided on 14.11.2012 has observed as follows:

"…. By putting the item of rights issue on the agenda note and informing stock exchange about it, surely creates interest in the investors in the shares of the company and thereafter by not taking up the issue at all and not furnishing any reasons therefor and not informing stock exchange about the outcome of the board meeting, in our view, will fall within the definition of fraud under the regulations…"

21. In view of the above facts and circumstances of the case it can be concluded that the noticee has violated Regulations 3 (b), 3 (c), 3 (d) and 4 (1), 4 (2) (d), 4(2)(e), 4(2)(k) and 4(2)(r) of 'PFUTP Regulations and therefore attract penalty under 15HA of SEBI Act. Text of the provisions of said regulations are given below:

PFUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

1. Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

2. Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely :—

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

(e) any act or omission amounting to manipulation of the price of a security;

(k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;

(r) planting false or misleading news which may induce sale or purchase of securities.

22. The said violation attracts penalty under Section 15HA of the SEBI Act which provides that:

"15HA. Penalty for fraudulent and unfair trade practices- If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher."

23. The second issue in the matter is whether the noticee has failed to make required disclosures under Takeover Regulations and PIT Regulations.

24. It is observed from the IR that the noticee as a Promoter - Director of the company was holding 2,65,050 shares (53.01% of paid up capital) as on 31st December, 2004. Thereafter 2,40,500 shares were rematerialized on 31.01.2005 and 2,13,000 shares (42.60% of the paid up capital) were transferred by off market transfers on 25th February, 2005 to various entities in physical form. The noticee also transferred 2,500 shares on 27th January, 2005 in demat form by off market trades. Further, it is also observed from the IR that on March 31, 2005, the noticee acquired 2,15,500 (43.10%) shares

by off market trades (both in physical form and demat), thereby crossing the threshold limit of 15% under the Takeover Regulations.

25. Noticee's submission that the shares were given as collateral for the loan that the noticee had taken from Shri Deepak Agarwal (Goel) or that the shares were under pledge does not hold good since there is nothing on record to prove that the noticee had entered into loan agreement or has pledged his shares. The noticee has not produced any evidence / material / any communication with share transfer agent with respect to his so called creation of pledge / loan / his dealings with respect to the shares of EIIL with Shri Deepak Agarwal (Goel). On the other hand there are transaction details obtained from Sharex Dynamic (India) Pvt. Ltd. and transaction statement obtained from Central Depository Services (I) Ltd. which supports the findings of IR and the allegations made in the SCN.

26. Over here I would like to quote the observations made by the Hon'ble Securities Appellate Tribunal in the matter of *Parsoli Corporation Limited et al.* V. *SEBI* decided on 12.08.2011 has observed as follows:

"…There is no material on the record to show that the shares were ever pledged. The mere ipse dixit of the appellants cannot be accepted. It is pertinent to mention that there is a procedure prescribed under the Depositories Act and the regulations framed there under for pledging shares and when a pledge is created the same is recorded in the records of the depository. Had a pledge been created, as is now sought to be argued, the appellants would have produced the records from the depository…"

27. It is seen from the records that on 31.03.2005 when noticee had acquired 43.10% of paid up share capital of EIIL, he already had 9.91% of the paid up share capital of EIIL. Thus, the noticee by acquiring 2,15,500 shares (43.10%) had crossed the threshold limit of 15% under Takeover Regulations. These transactions required him to make a public announcement / open offer under Regulations 10 and 11 of the Takeover Regulations which he failed to do so. Thus, the noticee has violated

Regulations 10 and 11 (1) of the Takeover Regulations. The text of the said provisions are given below:

> **Takeover Regulations**
>
> **Regulation 10 - Acquisition of [fifteen] per cent or more of the shares or voting rights of any company**
>
> No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.
>
> **Regulation 11 - Consolidation of holdings.**
>
> (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, [15 per cent or more but less than [fifty five per cent (55%)]] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5] per cent of the voting rights, [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

28. The said violations attracts penalty under Section 15H(ii) of the SEBI Act. The text of the said provision is as follows:

> **Regulation 15H(ii)** - Penalty for non-disclosure of acquisition of shares and takeovers.
>
> If any person, who is required under this Act or any rules or regulations made there under, fails to,—
> …..
> (ii) make a public announcement to acquire shares at a minimum price;
> …..
> he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

29. It is also observed from the IR that initially the noticee's shareholding reduced from 53.01% on 31.12.2004 to 9.91% on 25.02.2005 and then finally increased from 9.91% to 53.01% on 31.03.2005 in EIIL. The said change in the shareholding required noticee to make disclosures under

Regulation 7(1A) read with 7(2) of Takeover Regulations and Regulation 13 (4) read with 13 (5) of PIT Regulations which the noticee failed to do so.

30. In light of the above, it can be concluded that the noticee has violated Regulations 7(1A) read with 7(2) of Takeover Regulations and Regulations 13 (4) read with 13 (5) of PIT Regulations. The text of the said provisions are as follows:

Takeover Regulations

Regulation 7(1A) - Acquisition of 5 per cent and more shares or voting rights of a company

Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

Regulation 7(2)

The disclosures mentioned in [sub-regulations (1) and (1A)] shall be made within [two 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.

PIT Regulations

Regulation 13(4)

Any person who is a director or officer of a listed company, shall disclose to the company [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 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 [2%] of total shareholding or voting rights, whichever is lower.

Regulation 13(5)

The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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.

31. The said violations attract penalty under Section 15A(b) of the SEBI Act. The text of the said provisions is as follows:

Regulation 15A - Penalty for failure to furnish information, return, etc.

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.

32. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules require that while adjudging the quantum of penalty, 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

33. It may be added that it is difficult to quantify the profit/ loss for the nature of violations committed by the noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the noticee's violations. Therefore, in view of the abovementioned conclusion and after considering all the factors mentioned under Section 15J of the SEBI

Act, I hereby impose a penalty of ₹ 20,00,000/- (Rupees Twenty Lakh only) on the noticee under Section 15HA of the Securities and Exchange Board of India Act, 1992 for the violation of Regulations 3 (b), 3 (c), 3 (d) and 4 (1), 4 (2) (d), 4(2)(e), 4(2)(k) and 4(2)(r) of PFUTP Regulations, a penalty of ₹ 75,00,000/- (Rupees Seventy Five Lakh only) on the noticee under Section 15H(ii) of the Securities and Exchange Board of India Act, 1992 for the failure to make public announcement / open offer under Regulations 10 and 11(1) of Takeover Regulations and a penalty of ₹ 5,00,000/- (Rupees Five Lakh only) on the noticee under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for failure to make disclosures under Regulation 7(1A) read with Regulation 7(2) of SAST Regulations and Regulation 13(4) read with Regulation 13(5) PIT Regulations which is appropriate in the facts and circumstances of the case.

ORDER

34. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a consolidated penalty of ₹ 1,00,00,000/- (Rupees One Crore only) on Shri Devang D Master in terms of the provisions of Sections 15HA, 15H(ii) and 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of Regulations 3 (b), 3 (c), 3 (d) and 4 (1), 4 (2) (d), 4(2)(e), 4(2)(k) and 4(2)(r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Regulations 10 and 11(1), Regulation 7(1A) read with Regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13(4) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the

view that the said penalty is commensurate with the violations committed by the noticee.

35. The penalty shall be paid by way of Demand Draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to General Manager- ID-6, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

36. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this order are being sent to Shri Devang D Master having address at 16-A, Tower C, Viceroy Park, Thakur Palace, W E Highway Kandiwali (E), Mumbai - 400101 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: January 31, 2013

D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER