BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/AA/MKG/2019-20/3271]

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

Amtek Auto Limited
(PAN: AAGCA4447E)

In the matter of Castex Technologies Ltd.

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation for the period March 23, 2015 to September 09, 2015 (hereinafter referred to as "Investigation Period/IP'') in the scrip of Castex Technologies Limited (hereinafter referred to as "CTL/Company/Target Company'') which is listed on the Bombay Stock Exchange (herein after referred to as 'BSE') and the National Stock Exchange (herein after referred to as 'NSE').

2. It was observed that pledged shares of Amtek Auto Limited (hereinafter referred to as 'AAL/Noticee'), which is the promoter of CTL, were invoked in the quarter ending on December 31, 2015. In terms of the provisions of Regulation 31(2) read with Regulation 31(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'SAST Regulations'), the Noticee was

required to disclose the aforesaid invocation of pledge, to the stock exchanges and the Company however it failed to do so. Further, prior to invocation, the Noticee was holding more than 5% of the paid up share capital of the company and the aforesaid invocation of pledged shares has caused a negative change of more than 2% shareholding of the Noticee in CTL. The Noticee was required to disclose the aforesaid change to the stock exchanges and Company in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulation but failed to make the aforesaid disclosure. It was also observed that the total value of the aforesaid shares was more than ₹ Ten Lakh (₹ 10,00,000/-) and the invocation of pledge of shares was required to be disclosed by the Noticee to the Company in terms of Regulation 7(2)(a) of Prohibition of Insider Trading Regulations, 2015 (hereinafter referred to as 'PIT Regulations'). However, the Noticee did not make the required disclosure. In view of the same, SEBI has initiated adjudication proceedings under Section 15A(b) of the SEBI Act, against the Noticee.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Suresh B. Menon was appointed as the Adjudicating Officer vide order dated April 02, 2018, under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI(Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that penalty is liable, impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and Section 15A(b) of the SEBI Act. Pursuant to the posting of Shri Suresh B. Menon to another department of the SEBI, the undersigned was appointed as the Adjudicating Officer vide order dated March 18, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A Show Cause Notice A&E/EAD-1/SBM/18300/1/2018 dated June 27, 2018 (herein after referred to as '**SCN**') was issued to the Noticee under Rule 4(1) of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed upon the Noticee under Section 15A(b) of the SEBI Act for the violations alleged to have been committed by the Noticee.

5. The details in respect of the alleged violation by the Noticee are as given below:

   a. *Six transactions with respect to invocation of pledge of shares in the scrip of CTL during December, 2015, totaling to 2,04,94,000 shares held by the Noticee were observed. In terms of Regulations 31(2) of SAST Regulations, the promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified. Further, Regulation 31 (3) of SAST Regulations, 2011, requires the reporting of such encumbered shares within seven working days from the creation or invocation or release of encumbrance, as the case may be to, (a) every stock exchange where the shares of the target company are listed; and (b) the target company at its registered office.*

   b. *It was further observed that, pursuant to the aforesaid invocation of pledge, the shareholding of Noticee in CTL had reduced from 13,61,76,272 shares (36.01%) to 11,56,82,272 shares (30.59%) (i.e. a change in shareholding by 5.42% of total shareholding of CTL). Since, the disposal of shares by Noticee, due to the invocation of pledge by the pledgee, was in excess of 2% of the total paid up share capital of the CTL. Noticee was required to make disclosure to the stock exchanges and to the target company in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations within two working days of the*

disposal of shares. Similarly, the Noticee was also required to disclose the number of such securities disposed off, to the company, within two trading days of such transaction as the value of securities traded/ disposed of shares exceeded the value as specified under Regulation 7(2)(a) of PIT Regulations.

c. *It is alleged that Noticee had failed to disclose the invocation of pledge of 2,04,94,000 shares during the quarter ended on December 31, 2015 to the stock exchanges and the Company and thereby, violated the provisions of Regulation 31(2) read with Regulation 31(3) of SAST Regulations. It is also alleged that Noticee had failed to disclose change in shareholding in the company by 5.42% to the stock exchanges and to the company as required under Regulation 29(2) read with 29(3) of SAST Regulation and also failed to disclose, the number of securities disposed, as per Regulation 7(2)(a) of PIT Regulations to the company as the value of transaction exceeded ten lakh rupees. Therefore, in view of the above observations, it is alleged that Noticee has violated provisions of Regulation 31(2) read with Regulation 31(3) & Regulation 29(2) read with 29(3) of SAST Regulation and Regulation 7(2)(a) of PIT Regulations.*

6. The SCN issued to the Noticee was duly delivered. The Noticee vide letter dated July 21, 2018 submitted reply to the SCN and *inter alia* made the following submissions:

i. *The Noticee denied all the allegations and observations against them in the Show Cause Notice.*
ii. *The Noticee submitted that it is undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency & Bankruptcy Code, 2016.*

iii. *That in terms of provisions of Section 14 of the IBC, a complete moratorium operates against companies undergoing CIRP till completion of CIRP period.*

iv. *That during the moratorium in respect of the Noticee, no proceedings of any nature can lie or can be proceeded with under any other enactment including Securities & Exchange Board of India Act, 1992 (SEBI Act) or Securities Contract (Regulations) Act, 1956 (SCRA) under CIRP as by virtue of Section 238 of the IBC, the provisions of IBC have been given an overriding effect over all laws.*

v. *That the proceedings against the Noticee should be kept on hold.*

7. In view of the change in the adjudicating authority and in the interest of principles of the natural justice, the Noticee was granted an opportunity of personal hearing on April 25, 2019 vide hearing notice dated April 04, 2019. The Authorized Representative of the Noticee (hereinafter referred to as 'AR') attended the hearing on the scheduled date and time. The Noticee was granted time till May 06, 2019 to make additional submissions. The Noticee vide email dated May 03, 2019, requested additional time of one week to make additional submissions. The request of the Noticee was acceded to. Thereafter, the Noticee submitted his reply dated April 27, 2019, which was received on May 15, 2019. The Noticee vide aforesaid letter dated April 27, 2019 made the following submissions-

i. *The Noticee admitted that the SCN has rightly identified that it has not made disclosures in terms of Regulation 31(2) read with Regulation 31(3) & Regulation 29(2) read with 29(3) of SAST Regulation and Regulation 7(2)(a) of PIT Regulations for the invocation of its 2,04,94,000 shares.*

ii. *The Noticee submitted that it did not receive any intimation regarding invocation of its pledged shares, by the pledgee, the State Bank of Bikaner and Jaipur. Therefore the need for complying with aforesaid SAST and PIT Regulations does not arise.*

iii. *The Noticee submitted that it is undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency & Bankruptcy Code, 2016.*

iv. *That in terms of provisions of Section 14 of the IBC, a complete moratorium operates against companies undergoing CIRP till completion of CIRP period.*

v. *That during the moratorium in respect of the Noticee, no proceedings of any nature can lie or can be proceeded with under any other enactment including Securities & Exchange Board of India Act, 1992 (SEBI Act) or Securities Contract (Regulations) Act, 1956 (SCRA) under CIRP as by virtue of Section 238 of the IBC, the provisions of IBC have been given an overriding effect over all laws.*

vi. *That the proceedings against the Noticee should be kept on hold and no penalty should be imposed on it.*

CONSIDERATION OF ISSUES

8. I have carefully perused the charges levelled against the Noticee, his reply and the documents / material available on record. The issues that arise for consideration in the present case are:

   (a) Whether the Noticee has violated Regulation 29(2) read with regulations 29(3), Regulation 31(2) read with Regulation 31(3) of SAST Regulation and Regulation 7(2)(a) of PIT Regulations?

   (b) Does the violation, if any, attract monetary penalty under Section 15A(b) of the SEBI Act?

   (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. I note that the Noticee in its reply has *inter alia* stated that it is undergoing insolvency proceedings in the Hon'ble NCLT. I observe that the Hon'ble NCLT, vide its order dated July 27, 2017 in the matter of Corporation Bank vs Amtek Auto Limited [in CP(IB) No. 42/Chd/Hry/2017], has ordered the initiation of corporate insolvency resolution proceedings against the Noticee and declared moratorium under Section 13(1) of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as '**IBC**') for a period of 180 days which was extended by 90 days i.e. till middle of April, 2018, by NCLT in its order dated January 17, 2018. I note from the NCLT order dated February 13, 2019 that it has excluded the period March 05, 2018 upto the date of receipt of the copy of its order dated February 13, 2019, while calculating the period of 270 days for completion of the resolution plan. Once a moratorium has been declared, Section 14(1) of the IBC *inter alia* prohibits the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority. I further note that Section 14(4) of the IBC states that – "*The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.*" I note from the website of the Hon'ble NCLT that, as on May 24, 2019, that the status of the insolvency proceedings in respect of the Noticee is being shown as 'Pending'.

10. In view of the above, it has to be first determined whether the present proceedings can be continued or not. In this regard, it may be mentioned that the Report (issued in March, 2018) of the Insolvency Law Committee, which was constituted by the

Ministry of Corporate Affairs, states the following with respect to the scope of moratorium declared under the IBC:

"….On a plain reading, section 14 is wider in its ambit as firstly, any suit or proceedings cannot be instituted or continued with the consent of the NCLT, and second, the bar on "the institution of suits or continuation of pending suits or proceedings against the corporate debtor" is on first blush, not linked to the assets of the corporate debtor.

The notes on clauses for section 14, read as follows (emphasis supplied): "the purposes of the moratorium include keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process and ensuring that the company may continue as a going concern while the creditors take a view on resolution of default" and "the moratorium on initiation and continuation of legal proceedings, including debt enforcement action ensures a stand-still period during which creditors cannot resort to individual enforcement action which may frustrate the object of the corporate insolvency resolution process." Thus, the intent does not appear to be to debar only those suits or proceedings which affect the assets of the corporate debtor, as these appear to be only one of the components that is barred.

Having said that, it is well understood that a proceeding to assess or determine liability, and a proceeding to recover the assessed or determined liability stand at a different footing. The realisation of the dues is a consequence to the determination of liability. Such an amount determined by any court or authority during the moratorium period may not form part of the insolvency resolution process, as the claims by a IRP/RP are verified as "on the insolvency commencement date"[1]. However, for such claims to be filed in liquidation, they should stand determined as on the liquidation commencement date. As per section 33(5) of the Code, in liquidation, no suit or other legal proceedings shall be instituted by or against the corporate debtor without the prior approval of the NCLT. Thus, it appears that suits or proceedings which were barred from being continued under CIRP

[1] Regulation 13(1), CIRP Regulations

can be re-started. However, since the claims in liquidation are determined as on the liquidation commencement date, the wider moratorium under section 33(5) may not be useful for a claim which could not be assessed due to the moratorium under CIRP.

Thus, if a purposive interpretation is given to section 14, a moratorium on the mere determination of the amount (and not its enforcement) may not have been the intent of the Code….."

11. I note from the above observations of the Insolvency Law Committee that a proceeding for assessing or determining the liability is different from a proceeding initiated to recover the assessed or determined liability. The Committee further observes that a moratorium on determination of the liability may not have been the intent of the IBC. Hence, I am of the view that the moratorium declared under Section 14 of the IBC will not prevent any proceeding from determining the liability of the corporate debtor and the moratorium declared under the IBC will be applicable to the enforcement / recovery of the determined liability. I note that the present adjudication proceedings against the Noticee are in the nature of determining the liability of the Noticee for the alleged non-compliance with the PIT and SAST Regulations. Further, it appears that no liquidation order in respect of the Noticee has been passed. In view of the above, I now proceed further with the merits of the matter.

12. Before proceeding further, I would like to refer to the relevant provisions of the SAST and PIT Regulations as below:

Relevant provisions of SAST Regulations:

Disclosure of acquisition and disposal

29.(1) ……..

(2) Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

Disclosure of encumbered shares.

31(1) ……...

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares 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 creation or invocation or release of encumbrance, as the case may be to,—
(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

Relevant provisions of PIT Regulations, 2015:

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

7. (2) Continual Disclosures.

(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

13. The first issue for consideration is whether the Noticee has violated the provisions of Regulation 29(2) read with regulations 29(3), Regulation 31(2) read with

Regulation 31(3) of SAST Regulation and Regulation 7(2)(a) of PIT Regulations. I note from the available records that the total paid up share capital of CTL for the quarters ending on September 30, 2015 and December 30, 2015 was 37,81,22,838. Further, the Noticee is a promoter of CTL and it was holding 13,61,76,272 shares (36.01% of paid up share capital of CTL) of CTL on quarter ending on September 30, 2015 and out of which 8,15,24,800 shares of the Noticee were pledged. I also note from the available records that on December 02, 2015, a total of 1,37,50,000 shares were debited, in three transactions, from the account of the Noticee by way of pledge invocation. Further, on December 03, 2015, a total of 67,44,000 shares were again debited, in three transactions, from the account of the Noticee by way of pledge invocation. Thus, a total of 2,04,94,000 shares were debited from the account of the Noticee and its shareholding in CTL reduced to 11,56,82,272 shares (30.59% of paid up share capital of CTL) during the quarter ending on December 31, 2015. A summary of the transactions as submitted by NSDL is provided in Table – 1, below-

Table - 1

First Holder Name	Scrip Name	Date	Description	Opening Balance	Debit	Credit	End of the day Total debit	Total debit shares as a percentage of total paid up capital	Total value of debited shares* (₹)
Amtek Auto Limited	Castex Technologies Limited	02-Dec-2015	To Pledge Invocation, SBI-SG Global Securities Services Pvt Ltd.	81524800	6050000	0.00	13750000	3.636	25,16,25,000
		02-Dec-2015	To Pledge Invocation, SBI-SG Global Securities Services Pvt Ltd.	75474800	3800000	0.00			
		02-Dec-2015	To Pledge Invocation, SBI-Sg Global Securities Services Pvt Ltd.	71674800	3900000	0.00			
		03-Dec-2015	To Pledge Invocation, Sbicap Securities Limited.	67774800	2908000	0.00	6744000	1.784	12,47,64,000
		03-Dec-2015	To Pledge Invocation, Sbicap Securities Limited.	64866800	2304000	0.00			
		03-Dec-2015	To Pledge Invocation, Sbicap Securities Limited.	62562800	1532000	0.00			

First Holder Name	Scrip Name	Date	Description	Opening Balance	Debit	Credit	End of the day Total debit	Total debit shares as a percentage of total paid up capital	Total value of debited shares* (₹)
	Total				**2,04,94,000**				

*Calculated on the basis of closing shares price of CTL, at the end of the day, which was ₹ 18.30 and ₹ 18.50 on December 02 & 03, 2015, respectively.

14. I note from the reply of the Noticee that it has not disputed the facts of the case. Further, I note that Regulation 31(2) read with Regulation 31(3) of SAST Regulations gives a clear mandate to the promoter of the target company to disclose the details of invocation of the pledge of the shares to — (a) every stock exchange where the shares of the Target Company are listed; and (b) the Target Company at its registered office, within seven working days, from the invocation of pledge of the shares. Having invoked the pledge on December 02 & 03, 2015, the Noticee was duty bound to disclose the aforesaid six (6) transactions of invocation of pledge of the shares within seven working days to the stock exchanges and CTL in terms of Regulation 31(2) read with Regulation 31(3) of SAST Regulations.

15. Further, I note that a combined reading of Regulation 29(2) and Regulation 29(3) of SAST Regulations says that any person who is holding 5% or more than 5% of paid up share capital in the target company, shall disclose the number of shares held and change in shareholding to - (a) every stock exchange where the shares of the Target Company are listed; and (b) the Target Company at its registered office, within two working days, from receipt of intimation of the disposal of shares in the target company, when there is a change in its shareholding and such change exceeds 2% of total shareholding. I note that the Noticee was holding 36.01% of paid up share capital of CTL in quarter ending on September 30, 2015 which is much more than 5%. Further, I note from the Table – 1 that the shareholding of the Noticee reduced by 3.636% on December 02, 2015, i.e. a change of more than 2%. Therefore, the Noticee was required to make disclosures in this regard to the

stock exchanges and CTL in terms of Regulation 29(2) read with Regulation 29(3) of SAST Regulations.

16. I note that Regulation 7(2)(a) of the PIT Regulations states that every promoter of the Company shall disclose to the Company, the number of such securities acquired or disposed of within two trading days of such transaction, if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees. I note that the Noticee is a promoter of CTL and its 8,15,24,800 shares were pledged in the quarter ending on September 30, 2015. As seen from the Table – 1 that on December 02 & 03, 2015, the pledge was invoked and a total 1,37,50,000 & 67,44,000 shares were debited from the account of the Noticee on December 02 & 03, 2015. Further, the closing share price of CTL on December 02 & 03, 2015, was ₹ 18.30 and ₹ 18.50 respectively. The aggregate market value of invoked shares calculated on the basis of closing prices comes out to be ₹25,16,25,000/- and ₹12,47,64,000/- on respective days which is much more than threshold value of ₹10,00,000/- as specified in Regulation 7(2)(a) of PIT Regulations. Therefore, the Noticee was required to make disclosures in accordance with Regulation 7(2)(a) of PIT Regulations to the Company, for the pledge invoked on December 02 & 03, 2015.

17. I note from the email dated March 14, 2018 from NSE that it has not received any disclosure for the aforesaid transactions. NSE also informed vide aforesaid email that it had sent a letter dated February 19, 2016 to the Company wherein clarification with respect to the reduction in the shareholding of the Noticee along with necessary disclosures in terms of SAST and PIT Regulations, was sought from the Company. The Company in its reply vide letter dated March 01, 2016, to the NSE, informed that the State Bank of Bikaner and Jaipur (Herein after referred to as ‘SBBJ’) invoked the pledge and debited 2,04,94,000 shares from the account

of the Noticee. However, the Company has neither submitted copies of any disclosure in this regard nor furnished any information with respect to the required disclosures in terms of SAST and PIT Regulations.

18. I also note from the reply of the Noticee that it has admitted that it did not make any disclosure in terms of SAST and PIT Regulations with respect to the invocation of 2,04,94,000 pledged shares by SBBJ. In this regard, it is contended by the Noticee that the shares held by it were pledged with SBBJ and SBBJ had invoked the pledge without informing the Noticee. Having offered the shares on pledge, the Noticee cannot claim that the invocation of the pledge by the pledgee was without informing him. Further, I am of the view that the Noticee, as a promoter of the Company, was duty bound to make the necessary disclosures of invocation of pledge shares and cannot absolve himself from the statutory responsibility of making the requisite disclosures under the SAST Regulations. I note that a combined reading of Regulation 31(1) and Regulation 31(3) clearly obligates the promoter of the Company to make the disclosures regarding the pledge/encumbrance of shares to the Company and the stock exchanges in terms of the aforementioned Regulations. I also note that the Hon'ble SAT in its order dated September 25, 2017, in the matter of United Breweries (Holdings) Limited Vs SEBI had observed that-

> *"We also make it clear that the 4 transactions relating to the encumbrance of the shareholding of USL by the appellant were distinct events, each one needing disclosure within 7 working days from the date of each of the event and as such each one is a separate violation."*

Therefore, the Noticee ought to have made the disclosures of for the aforesaid six (6) transactions of invocation of the pledge of shares, to the Company and the

stock exchanges in accordance with Regulation 31(1) and Regulation 31(3) of SAST Regulations.

19. I note that the Noticee in its reply has admitted that he has failed to make disclosures to the stock exchanges and the Company in terms of Regulation 31(2) read with Regulation 31(3) & Regulation 29(2) read with 29(3) of SAST Regulation and Regulation 7(2)(a) of PIT Regulations. I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and the penalty is imposed for the non-compliance with the mandatory obligation. The Hon'ble SAT in its order dated September 30, 2014, in the matter of Akriti Global Traders Ltd. Vs SEBI had observed that "*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.*" I would further like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014*)*, wherein it was held that - *".. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate*

the obligation to make disclosures." The importance of disclosure obligations cannot be undermined by saying that they are merely technical in nature. Such obligations are created under respective regulations by SEBI in order to enable investors to take informed investment decisions.

20. Therefore, I find that the allegation of the violation of Regulation 31(2) read with Regulation 31(3) & Regulation 29(2) read with 29(3) of SAST Regulations and Regulation 7(2)(a) of PIT Regulations by the Noticee stands established. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

21. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of Section 15A(b) of the SEBI Act, which reads as under:

SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

…

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

…..

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

> ***Factors to be taken into account by the adjudicating officer.***
> *15J. 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.*

23. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the failure of the Noticee in making disclosures or the consequent loss caused to investors as a result of the default. The Noticee has failed to make required disclosures in terms of Regulation 31(2) read with Regulation 31(3) of SAST Regulation on six (6) occasions; in terms of Regulation 29(2) read with 29(3) of SAST Regulation on one (1) occasion and in terms of Regulation 7(2)(a) of PIT Regulations on two (2) occasions, as brought out above, which demonstrates the repetitive nature of the default on its part.

ORDER

24. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalties as shown in the table below on the Noticee viz. Amtek Auto Limited under the provisions of Section 15A(b) of the SEBI Act.

Regulation Violated	**Penalty (₹)**
Regulation 31(2) read with Regulation 31(3) of SAST Regulation	20,00,000/- (Twenty Lakh)
Regulation 29(2) read with 29(3) of SAST Regulation and Regulation 7(2)(a) of PIT Regulations	4,00,000/- (Four Lakh)

25. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

26. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Division of Regulatory Action-1, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051":

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/ disgorgement/recovery/ settlement amount and legal charges along with order details)	

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

28. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee viz. Amtek Auto Limited and also to the Securities and Exchange Board of India.

Date: May 24, 2019

Place: Mumbai

Dr. ANITHA ANOOP

CHIEF GENERAL MANAGER &

ADJUDICATING OFFICER