

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

**[ADJUDICATION ORDER Ref No.: EAD-2/SS/VS/2018-19/1465-1472]**

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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.**

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In respect of:

1. **Mr. Rajkumar Manmal Thard**
2. **Ms. Pushpa Rajkumar Thard**
3. **Nupur International Pvt. Ltd.**
4. **Ms. Nidhi Abhinav Aggarwal**
5. **Mr. Anil Ratanlal Saraf**
6. **Mr. Dutta Prasad Narhar Kulkarni**
7. **Ms. Ophelia Rodrigues**
8. **Mr. Virendra Pandya**

In the matter of  
**Nidhi Granites Limited**

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1. Nidhi Granites Limited (hereinafter referred to as 'NGL/the Company') is a company listed on the Bombay Stock Exchange Limited (BSE). During examination in the scrip for the period July-September, 2010, SEBI observed that during the quarters ending June-2010 and September-2010 two of the promoters of the NGL viz: Mr. Rajkumar Manmal Thard and Ms. Pushpa Rajkumar Thard had, respectively, acquired 3.42% and 6.32% shares of NGL from another promoter Mr. Manmal Thard. Consequently, the shareholding of Mr. Rajkumar Manmal Thard and Ms. Pushpa Rajkumar Thard increased from 12.1% to 15.52% and 14.65% to 20.97%, respectively. Further, the combined shareholding of the promoters (other than seller) increased from 48.76% to 58.50%.
2. Consequent change in shareholding of the promoters/promoter group of NGL during the period June 2010 to September 2010 as disclosed in the shareholding pattern of the promoter's holding at BSE web site are shown in the following table:-

Sr. No.	Name of Shareholder	June-2010		September-2010	
		No. of shares held	% to total shares	No. of shares held	% to total shares
1	Mr. Rajkumar Manmal Thard (Noticee 1)	90,731	12.10	1,16,406	15.52
2	Ms. Pushpa Rajkumar Thard (Noticee 2)	1,09,900	14.65	1,57,300	20.97
3	Mr. Manmal Thard	73,075	9.74	0	0
4	Other Promoters (Nupur International Pvt. Ltd., Ms. Nidhi Abhinav Aggarwal, Mr. Anil Ratanlal Saraf, Mr. Dutta Prasad Narhar Kulkarni, Ms. Ophelia Rodrigues and Mr. Virendra Pandya) (Noticee 3-8)	1,65,025	22.01	1,65,025	22.01
	Total	4,38,731	58.50	4,38,731	58.50

3. During aforesaid examination it was observed that :-

- a) Out of total 73,075 (9.74%) shares of NGL transferred to Mr. Rajkumar Manmal Thard (Noticee 1) and Ms. Pushpa Rajkumar Thard (Noticee 2), 25,675 shares (3.42%) were held in Trivenidevi Family Trust in the name of Mr. Manmal Thard (since deceased). These 25,675 shares were transferred to Mr. Rajkumar Manmal Thard as a beneficiary of the said Trust on July 19, 2010 after death of Mr. Manmal Thard on May 17, 2010. SEBI was satisfied that since the aforesaid shareholdings were disclosed as promoters' shareholding for more than 3 years, the said increase in promoters' shareholding was exempted under regulation 3(1) (e) (iii)(b) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations'). However, it was observed that the requisite disclosures under regulation 3(3) were not made and report under regulation 3(4) read with regulation 3(5) of the SAST Regulations was not filed with SEBI by the promoter group of NGL with respect to such increase in their shareholding. The provisions of regulation 3(1)(e)(iii)(b), 3(3), 3(4) and 3(5) as applicable at the relevant time provided as follows:

**SAST Regulations, 1997**

**Applicability of the regulation**

**3. (1) Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:**

*(e) inter se transfer of shares amongst—*

*(iii) (a) ...;*

*(b) qualifying promoters:*

*Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition.*

*Explanation.— For the purpose of the exemption under sub-clause (iii) the term qualifying promoter means*

- (i) any person who is directly or indirectly in control of the company; or*
- (ii) any person named as promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later; .....,*

*Explanation.—(1) The exemption under sub-clauses (iii) and (iv) shall not be available if inter se transfer of shares is at a price exceeding 25% of the price as determined in terms of sub-regulations (4) and (5) of regulation 20.*

*2) The benefit of availing exemption under this clause, from applicability of the regulations for increasing shareholding or inter se transfer of shareholding shall be subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8;*

**3. (3)** *In respect of acquisitions under clauses 3 (e), (b) and (i) of sub-regulation (1), the stock exchanges where the shares of the company are listed shall, for information of the public, be notified of the details of the proposed transactions at least 4 working days in advance of the date of the proposed acquisition, in case of acquisition exceeding 5 per cent of the voting share capital of the company.*

**(4)** *In respect of acquisitions under clauses (a), (b), (e) and (i) of subregulation (1), the acquirer shall, within 21 days of the date of acquisition, submit a report along with supporting documents to the Board giving all details in respect of acquisitions which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him) would entitle such person to exercise 15 per cent or more of the voting rights in a company.*

*Explanation -For the purposes of sub-regulations (3) and (4), the relevant date in case of securities which are convertible into shares shall be the date of conversion of such securities.*

**(5)** *The acquirer shall, along with the report referred to under sub-regulation (4), pay a fee of twenty five thousand rupees to the Board, either by a banker's cheque or demand draft in favour of the Securities and Exchange Board of India, payable at Mumbai.*

- b) Further, Mr. Rajkumar Manmal Thard was under obligation to make requisite disclosure to BSE under regulation 7(1) read with regulation 7(2) of the SAST Regulations when his shareholding crossed 14% benchmark in terms of regulation 7(1) as aforesaid. The relevant provisions of regulation 7 of the SAST Regulations are reproduced hereunder:

**SAST Regulations, 1997**

***Acquisition of 5 per cent and more shares or voting rights of a company***

*7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

*(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.*

- c) With regard to aforesaid increase in Mr. Rajkumar Manmal Thard's shareholding, he was also required to make disclosures, in terms of regulation 13(3) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'the PIT Regulations') which reads as under:-

**PIT Regulations, 1992**

***Continual disclosure.***

*13. (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

- d) BSE, vide its emails dated February 09 and February 13, 2015 had submitted that no reports were filed with it under regulation 7 and 3(3) of the SAST Regulations with respect to above change in shareholding of Mr. Rajkumar Manmal Thard. As per

SEBI records no report was filed under regulation 3(4) of the SAST Regulations by the promoter group of NGL.

- e) With respect to transfer of remaining 47,400 (6.32%) share of NGL shown in the name of Mr. Manmal Thard and transfer to Ms. Pushpa Rajkumar Thard on September 28, 2010, the concerned department in SEBI had noted that those shares were held jointly by Mr. Manmal Thard, Ms. Pushpa Rajkumar Thard and Ms. Nidhi Abhinav Aggarwal. After the demise of Mr. Manmal Thard, a Trust named Manmal Thard Family Trust (the Thard Trust) was formed for all the shareholdings held by the deceased Mr. Manmal Thard in NGL, wherein Ms. Pushpa Rajkumar Thard and Ms. Nidhi Abhinav Aggarwal are the Trustees. From the submissions made by Ms. Pushpa Rajkumar Thard vide her email dated December 03, 2015, it was noted that as the demat account cannot be opened in the name of a Trust, the said 47,400 share (6.32%) of NGL are held in the name of Ms. Pushpa Rajkumar Thard and Ms. Nidhi Abhinav Aggarwal, but, in actual it is a property of the Thard Trust.
- f) SEBI noted that said transaction with respect to 6.32 % shares does not qualifies for the automatic exemption under regulation 3(1)(e)(iii) of the SAST Regulations since the shares held by individuals have been transferred to a newly created Thard Trust. Thus, the said increase in promoter group holding would be treated as trigger of regulation 11(2) of the SAST Regulations. The provisions of regulation 11(2) of the SAST Regulations are reproduced hereunder:

**SAST Regulations, 1997**

***Consolidation of holdings***

**11. (2)** *No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:*

*Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted*

*from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures seventy-five per cent (75%)', the words and figures 'ninety per cent (90%)' were substituted.*

*Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11 without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-*

*(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal / block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;*  
*(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).*

g) In this regard, concerned department has observed that since no public announcement has been made under regulation 11(2) of the SAST Regulations pursuant to this transaction, action against the 'acquirer' needs to be taken. It has also observed that in a number of cases of proposed acquisitions by family Trusts, SEBI has granted exemption from making open offer under regulation 11 of the SAST Regulations and the instant case falls on a similar lines since shares were transferred from a promoter to a Trust, in which same members who were joint holders of the shares are the Trustees. Therefore, SEBI has not insisted on making open offer by the promoter group in this case and has deemed appropriate to initiate inquiry and adjudication proceedings with regard to this alleged violation of regulation 11(2) of the SAST Regulations.

h) Further, with regard to aforesaid transaction dated September 28, 2010, Ms. Pushpa Rajkumar Thard was also required to make disclosures in terms of regulation 13(3) of the PIT Regulations.

i) BSE vide email dated September 04, 2015 had informed that no disclosures were received under PIT Regulations for any of the aforesaid transaction.

4. The Whole Time Member, SEBI, felt *prima facie* satisfied to initiate inquiry and adjudication proceedings in this case and on January 20, 2016 approved the proceedings with regard to the following :-

Noticee No.	Name of Noticee	SAST Regulations violated	PIT Regulations violated
1	Mr. Rajkumar Manmal Thard	3(3) and 3(4) read with 3(5), 7(1) read with 7(2) and 11(2)	13(3)
2	Ms. Pushpa Rajkumar Thard	3(3) and 3(4) read with 3(5) and 11(2)	13(3)
3	Nupur International Pvt. Ltd.	3(3) and 3(4) read with 3(5) and 11(2)	-
4	Ms. Nidhi Abhinav Aggarwal	3(3) and 3(4) read with 3(5) and 11(2)	-
5	Mr. Anil Ratanlal Saraf	3(3) and 3(4) read with 3(5) and 11(2)	-
6	Mr. Dutta Prasad Narhar Kulkarni	3(3) and 3(4) read with 3(5) and 11(2)	-
7	Ms. Ophelia Rodrigues	3(3) and 3(4) read with 3(5) and 11(2)	-
8	Mr. Virendra Pandya	3(3) and 3(4) read with 3(5) and 11(2)	-

5. Accordingly, Mr. Suresh Gupta, Chief General Manager, was appointed as Adjudicating Officer (erstwhile AO) on August 01, 2016 to inquire and adjudge under section 15A (b) and 15H (ii) of the SEBI Act the aforesaid alleged violations by the respective Noticees and the matter was referred to him on October 05, 2016. Thereafter, the erstwhile AO sought evidence from the concerned department for non-disclosures to BSE under regulation 13(3) of the PIT Regulations and evidence with respect to date of acquisitions of shares by Mr. Rajkumar Manmal Thard and Ms. Pushpa Rajkumar Thardhad and PACs.
6. SEBI, vide letters dated June 05 and June 28, 2017 sought information from NGL regarding disclosure under regulation 13(3) of the PIT Regulations for the aforementioned acquisitions. NGL, vide its letter dated July 07, 2017 *inter-alia* submitted that “..... the increase in % of shareholding of the Shri Rajkumar Thard and Smt. Pushpa Thard is internal change not affecting or increasing Promoter's share which continues to be 57.89% subsequent to the change after to 31<sup>st</sup> March 2010”.
7. National Securities Depository Limited (NSDL), vide its email dated September 12, 2017 provided the details of transaction in the account of Mr. Manmal Thard, Mr. Rajkumar Manmal Thard and Ms. Pushpa Rajkumar Thard. From the documents submitted by NSDL, SEBI noted that the aforesaid transactions were carried out by Mr. Rajkumar Manmal Thard and Ms. Pushpa Rajkumar Thard on July 19, 2010 and September 28, 2010 in their respective Beneficiary Accounts.

8. Concerned department in SEBI noted that the promoters other than sellers are part of the promoter group and hence they are deemed to be persons acting in concert (PACs) with regard to the acquisition of Mr. Rajkumar Manmal Thard and Ms. Pushpa Rajkumar Thard. Thus, they are liable for alleged non-compliance of disclosures obligation under regulation 3(3) and regulation 3(4) read with regulation 3(5) of the SAST Regulations with regard to acquisition of Mr. Rajkumar Manmal Thard and they all are liable for alleged violation of regulation 11(2) of the SAST Regulations with regard to the acquisition of Ms. Pushpa Rajkumar Thard.
9. Subsequently, by a communication-order dated April 02, 2018, this case has been transferred to me. It has been advised that except for the change of the Adjudicating Officer the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers were appointed) *'shall remain unchanged and shall be in full force and effect'*. It has also been advised that *I should proceed in accordance with the terms of reference made in the original orders*. After receipt of the record as aforesaid, the notice to show cause no. EAD-2/SS/VS/22789/1-8/2018 dated August 13, 2018 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Adjudication Rules') read with section 15I of the SEBI Act and the terms of reference advised vide communication dated April 02, 2018. By the SCN the Noticees were called upon to show cause as to why an inquiry should not be held against them in terms of rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A(b) and 15H(ii) of the SEBI Act. The provisions of section 15A(b) and 15H(ii) of the SEBI Act are as under:

**Penalties and Adjudication**

**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*

**Penalty for non-disclosure of acquisition of shares and takeovers.**

**15H.** *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,*



*(ii) make a public announcement to acquire shares at a minimum price; or  
he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

10. The SCN was sent at the last known address of the Noticees through Speed Post / Hand Delivery Acknowledgement Due, which was duly served upon them. The Noticee No. 6 requested additional time for 15 days. However, the said request was rejected as no valid reasons for granting such extension of time was shown. However, in the interest of natural justice, vide notice dated September 24, 2018 issued under rule 4(3) of the Adjudication Rules, the Noticees were granted another opportunity to file their reply and appear before undersigned on October 05, 2018. The notice of hearing was duly served upon the Noticees.
11. Noticee No.8 neither filed reply to the SCN nor did he availed the opportunity of hearing despite service of respective notices upon him. I, therefore deem it appropriate to proceed *ex- parte qua* Notice No. 8 in terms of rule 4(7) of the Adjudication Rules.
12. On the schedule date of hearing on October 05, 2018 the Noticee No. 6 and Authorized Representatives of the Noticees No. 1 to 7 appeared and made oral submissions on behalf of them. The Noticees No. 1 to 7 vide common email dated October 20, 2018 made their additional submissions to the SCN and provided the evidence relied upon by them.
13. The Noticees No. 1 to 7 have *inter alia* submitted as follows:
  - a. **With respect to violation of regulation 3(3) and 3(4) read with regulation 3(5) of the SAST Regulations**
    - i. Ms. Trivenidevi Manmal Thard, wife of Mr. Manmal Thard was holding 25,675 shares of NGL and there was no change in her shareholding till her death. She expired on April 8, 1997 leaving behind a will and testament having been executing on October 10, 1994 in the presence of two witness being the last will and testament. Later as per her will the Trivenidevi Trust was formed on October 3, 1997 with Mr. Manmal Thard, Mr. Rajkumar Thard and Ms. Pushpa Rakjumar Thard being the Trustees of the Trust.
    - ii. Therefore, the shares were initially transmitted to the Trust being the property of the said Trust. The Demat Account was opened in the names of Trustees as per order of aforesaid Trustees i.e, the first name of Mr. Manmal Thard and other Trustees as joint holders (as Demat Account in the matter of Trust is not allowed to be opened).

- iii. Consequent to Mr. Manamal Thard's death (the first shareholder of the Trust) on May 17, 2010, his name could not be removed from the Demat Account as stated by the Depository Participant, thus the remaining Trustees opened a separate Demat Account having the name of Mr. Rajkumar Thard (Trustee, the Noticee No. 1) as the first shareholder and transferred the shares from earlier Demat Account to the new Demat Account. It was not a transfer by act but by law due to death of Mr. Manmal Thard, first Trustee of Trivenidevi Family Trust.
- iv. The Trust has a PAN Number being AAAAT0757E and the Trust has disclosed aforesaid in the income Tax Return filed with the Income Tax Department.
- v. Therefore, taking into consideration the above facts and circumstance, the given case is of transmission of shares and not of acquisition by way of *inter se* transfer. Hence, the consequent change of shareholders on account of transmission of shares amongst family members will fall under regulation 3(1)(g) of the SAST Regulations being acquisition of shares by way of transmission on succession or inheritance.
- vi. Regulations 3(3) and 3(4) of the SAST Regulations are not applicable to acquisitions covered under regulation 3(1) (g) of the SAST Regulations. Hence, the charges under regulation 3(3) and 3(4) read with regulation 3(5) of the SAST Regulations be dropped for all the Noticees.

**b. With respect to violation of regulation 7(1) read with regulation 7(2) of the SAST Regulations**

- i. Mr. Rajkumar Manmal Thard is not the acquirer as he is holding shares in the capacity of Trustee for and in the name of Trivenidevi Trust. The shares were transferred from one Demat Account to another Demat Account being due to death of Mr. Manmal Thard.
- ii. There was no acquisition by Mr. Rajkumar Thard and the entitlement of the shares remained with Trust only and there was change in Trustees due to death of first Trustee. It did not enhance the shareholding or voting rights of Mr. Rajkumar Manmal Thard who, was otherwise, entitled to vote at the general meeting as a second shareholder in case of first shareholder does not vote or dose not attend to the general meeting.

- iii. Therefore, the disclosures under regulation 7 of the SAST shall not apply in this case and charges under regulation 7(1) read with regulation 7(2) of the SAST be dropped for all the Noticees.

**c. With respect to violation of regulation 11(2) of the SAST Regulations**

- i. Mr. Manmal Thard was holding 47,400 shares of the NGL. He expired on May 17, 2010 leaving behind a will dated July 28, 2006. Later, as per his will the Manmal Thard Family Trust was formed on August 23, 2010, with Mr. Rajkumar Thard, Ms. Pushpa Rajkumar Thard and Ms. Nidhi A. Aggarwal being the Trustees of the Trust.
- ii. Therefore, the shares were transmitted to the Trust but the Demat Account was in the name of Two Trustees being Ms. Pushpa Rajkumar Thard and Ms. Nidhi A. Aggarwal. The same was in furtherance to the object and intent of the will. It was not a transfer by act but by law due to death of Mr. Manmal Thard.
- iii. There was no fresh acquisition by Ms. Pushpa Rajkumar Thard and the entitlement of the shares remains with Trust.
- iv. Therefore, taking into consideration the above facts and circumstance, the given case is of transmission of shares and not transfer. Hence, it will fall under regulation 3(1)(g) of the SAST Regulations being acquisition of shares by way of transmission on succession or inheritance.
- v. Regulations 11(2) of the SAST Regulations is not applicable to acquisition covered under regulation 3(1) (g) of the SAST Regulations. Hence, the charges under regulation 11(2) of the SAST Regulations be dropped for all the Noticees.

**d. With respect to violation of regulation 13(3) of the PIT Regulations**

- i. As mentioned hereinabove, Mr. Rajkumar Manmal Thard and Ms. Pushpa Rajkumar Thard are not the acquirer as they are holding the shares as Trustee for and in the name of Trivendivi Family Trust and Thard Family Trust, respectively. The shares were transferred from one Demat Account to another as explained hereinabove due to death of Mr. Manmal Thard.

- ii. There was no fresh acquisitions by Mr. Rajkumar Thard and Ms. Pushpa Rajkumar Thard. There was no change in the shareholding of Mr. Rajkumar Thard as the entitlement shares remained with Trust only and there was change in Trustees due to death of the first Trustee. Further, there was no change in the shareholding of Ms. Pushpa Rajkumar Thard and the entitlement of shares remains with Trust only by way of succession.
  - iii. Therefore, the disclosures under regulation 13 of the PIT Regulations shall not apply in their respective cases and charges under regulation 13(3) of the PIT Regulations be dropped for Mr. Rajumar Manmal Thard and Ms. Pushpa Rajkumar Thard.
14. I have considered the allegations levelled against the Noticees, the submissions of the Noticees No.1 to 7 and the relevant material available on record. In this case, it is admitted fact that the acquisitions of 25,675 shares of the NGL by Mr. Rajkumar Manmal Thard and 47,400 shares by Ms. Puhpa Rajkumar Thard were pursuant to rearrangement of shareholding amongst the family members consequent to the death of respective promoters/ Trustee namely, Ms. Trivenidevi Manmal Thard and Mr. Manmal Thard, respectively. The arrangement of shares in the name of Mr. Rajkumar Manmal Thard on July 19, 2010 and by Ms. Pushpa Rajkumar Thard on September 28, 2010 were pursuant to transmission of those shares. I find merit in the submissions of the Noticees that these arrangements of share transfer by way of transmission of shares amongst family members and were thus covered under the automatic exemption provided under regulation 3(1) (g) of the SAST Regulations. I note that the obligation under regulation 3(3) of the SAST Regulations applies in case of acquisitions under regulation 3(1)(e), (h) and (i) of the SAST Regulations. Further, the obligation under the regulation 3(4) of the SAST Regulations to file report with the Board applies in respect of regulation 3(1) (a), (b), (c) and (i) of the SAST Regulations. Thus, these disclosures obligations do not apply in respect of acquisition covered under regulation 3(1) (g) of the SAST Regulations. The spirit of this exclusion seems to be that the disclosures in respect of such transmission, inheritance etc. is immaterial and inconsequential. Thus, the obligation to make disclosures under regulation 3(3) and file report under regulation 3(4) of the SAST Regulations was not triggered with regard to the acquisition dated July 19, 2010 of the Noticee No. 1. Therefore, the matter cannot be proceeded for adjudication under section 15 A (b) of the SEBI Act

in respect of this allegation. As the acquisition dated September 28, 2010 of the Noticee No. 2 was covered under automatic exemption provided in regulation 3(1) (g), the question of failure to make public announcement under regulation 11(2) of the SAST Regulations with regard to this acquisition does not arise. Hence, the matter cannot proceed under section 15H (ii) of the SEBI Act with regard to this allegation.

15. Coming to the second limb of the charge i.e. the alleged failures in compliance of the disclosure obligations, it is noted that the allegation is that the Noticees No. 1 had not made disclosure in terms of regulation 7(1) read with regulation 7(2) of the SAST Regulations and under regulation 13(3) of the PIT Regulations with regard to his acquisition dated July 19, 2010 and Noticee No. 2 had not made disclosure in terms of regulation 13(3) of the PIT Regulations with regard to her acquisition dated September 28, 2010 .
16. In terms of regulation 7(1) read with regulation 7(2) of the SAST Regulations, any acquirer, who acquires shares or voting right which would entitle him to more than 5% or 10% or 14% or 54% or 74% shares or voting rights in a company in any manner whatsoever, shall disclose at every stage that aggregate his shareholding or voting rights in that Company to the Company and to the Stock Exchange where shares of the Company are listed within two days of receipt of the acquisitions of shares. Similarly, in terms of regulation 13(3) of the PIT Regulations, a person who holds more than 5% shares in any listed Company is under obligation to make disclosures in specified Form C to the Company, in case of any change in his shareholding and such change exceeds 2% of total shareholding or voting rights in the Company.
17. It is noted that provisions of regulation 13(3) of the PIT Regulations and provisions of regulation 7(1) read with regulation 7(2) of the SAST Regulations are similar as regards disclosure obligation of the acquirer is mandated to the Company. In this regard, it is relevant to refer to the order of Hon'ble SAT in the matter of *Vitro Commodities Private Limited Vs. SEBI (Appeal No. 118 of 2013)* wherein, in respect of regulation 13(1) of the PIT Regulations and regulation 7(1) of the SAST Regulations it held that - “... provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been

*imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.”*

18. Considering the said *ratio decidendi*, I am of the view that the aforesaid allegation of violations of regulation 7(1) read with regulation 7(2) of the SAST Regulations and regulation 13(3) of the PIT Regulations be considered as a single violation if Noticee No.1 is found to have failed to make prescribed disclosures to the Company in this case. It is also pertinent to note that the disclosure obligation under SAST Regulations and the PIT Regulations are not dependent upon the mode of acquisition and the obligation is triggered in case of any change of shareholding beyond the prescribed threshold.
19. In this case, the acquisition of Noticee No. 1 dated July 19, 2010 triggered the threshold of 14% shareholding (increase from 12.10 to% 15.52%) under regulation 7(1) and he was required to make requisite disclosures to NGL and BSE within 2 working days from July 19, 2010 as stipulated in regulation 7(2) of the SAST Regulations and to also to the Company in Form C specified in regulation 13(3) of the PIT Regulations. Similarly, pursuant to the acquisition dated September 28, 2010, shareholding of the Noticee No. 2 changed from 14.65% to 20.97% which triggered her obligation to make requisite disclosure in Form C to the Company under regulation 13(3) of the PIT Regulations. In this case, the disclosure as required under regulation 7(1) of the SAST Regulations was not made to Company and to BSE with regard to change in shareholding of Noticee No. 1 within the time as stipulated in regulation 7(2) of the SAST Regulations. Further, disclosures in Form C stipulated in regulation 13(3) pf the PIT Regulations was also not made by Noticee No. 1 and 2 with regard to their respective acquisition as Trustees.
20. Coming to the adjudication of the default, I note that the aforesaid acquisitions were through transmission of shares among legal heirs as Trustees of Trusts created under a family arrangement. In this regard, it is a settled position that the property of the deceased member vests in the legal members of the deceased and transmission of shares to legal heirs of deceased shareholder is not a voluntary act as in case of transfer of shares. As held by the Company Law Board, in the matter of *S. Kanthimathy, S. Lakshmi, S. vs. The Woodlands Estates Limited (decided on 20 August, 2007)* 2008 144 Comp Cases 830 CLB, 2008 83 SCL 491 CLB when a shareholder dies his legal representatives represent the estate of that shareholder and that when a member dies, his estate is entrusted in the legal representatives. It is sufficient if one's predecessor in interest had invested the funds and

any person who succeeded to shares by way of operation of law can be treated as shareholder representing the estate of deceased shareholder.

21. Further, Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter of *Mrs. Devyani Chandrakant Doshi Vs. SEBI (Appeal No. 64 of 2014 decided on May 08, 2014)* had concurred with the view of an Adjudicating Officer in the matter of *D Sarojanamma* dated November 29, 2013 that "...while transfer of shares relates to a voluntary act on the part of the shareholder, transmission is brought about by the operation of law." In *Mrs. Devyani Chandrakant Doshi's* case, the Adjudicating Officer of SEBI had imposed monetary penalty upon Mrs. Devyani Chandrakant Doshi for making delayed disclosures about her acquisition of shares in Rajoo Engineers Ltd. by way of transmission of shares from her husband (since deceased). In appeal filed by the said Mrs. Devyani Chandrakant Doshi, Hon'ble SAT remanded back the matter to the Adjudicating Officer who, later, by an order dated March 24, 2015 held that the charge against said Mrs. Devyani Chandrakant Doshi was not established and exonerated her. Further, by an order dated December 28, 2017, passed by another Adjudicating Officer in the matter of *Sanwaria Agro Oils Ltd.* it was concluded that non-disclosure of acquisition by way of transmission of shares sans any voluntary act on the part of promoter was not a fit case for imposition of monetary penalty and exonerated the concerned promoter from the charges levelled against her.
22. In the instant case also, the acquisition by Mr. Rajkumar Manmal Thard and Ms. Pushpa Rajkumar Thard were by way of transmission of shares to them from erstwhile Trustee Mr. Manmal Thard (*since deceased*). There was no change in the promoter shareholding *per se* and acquisition of shares was not a transfer by act but by way of operation of law. Further, from the submissions of the NGL vide its letter dated July 07, 2017 it can be reasonably be inferred that the NGL was aware of the change in shareholding of Noticees No. 1 and 2 at the relevant times. From the Shareholding pattern of the NGL as on September 2010 as available on BSE website it is noted that change in shareholding of the Noticees No. 1 and 2 pursuant to aforesaid arrangement of transmission of share have been disclosed in public domain as on September 30, 2010 within a reasonable time and without creating any information asymmetry to the detriment of investors and securities market.
23. I am of the view that in the facts and circumstances of this case, the lapse of the Noticees in making disclosures strictly and absolutely as per regulation 7(1) read with regulation 7(2)

of the SAST Regulations and regulation 13(3) of the PIT Regulations cannot be said to be blameworthy. In my view the default in this regard, if any, is technical and venial. Considering the aforesaid principles of law endorsed by Hon'ble SAT, I am of the view that the present case also would not be a fit case for imposition of section 15A (b) of the SEBI Act. The SCN is disposed of accordingly.

24. In terms of Rule 6 of the Adjudication Rules, copies of this order is sent to the Noticees and also to SEBI.

**Date: October 31, 2018**  
**Place: Mumbai**

**Santosh Shukla**  
**Chief General Manager &**  
**Adjudicating Officer**