

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 24/2011]

**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

Arvind Thesia

(PAN. Not Available)

In the matter of Baffin Engineering Projects Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted investigation in trading in the scrip of Baffin Engineering Projects Ltd. (hereinafter referred to as “**BEPL/company**”) during the period from October 21, 2004 to January 18, 2005 (hereinafter referred to as “**investigation period**”) The shares of BEPL were listed at the Bombay Stock Exchange (hereinafter referred to as “**BSE**”) at the relevant time. The price of the scrip opened at ₹4.41 on October 21, 2004 reached a high of ₹11.5 on December 15, 2004 and closed at ₹5.68 on January 18, 2005.
2. Investigation observed that BEPL made premature favourable announcements regarding improvement in income and profit of the company for the quarter ended December 2004, acquisition of stake of another unlisted company M/s Uniword Telecom Limited (UTL) and development of ‘Spider Cell Technology’.

These announcements prima facie appeared to be misleading. It was further observed that the promoters and directors of the company transferred their shares in the off market in physical form to certain entities before the above announcements were made by BEPL. These entities in turn after dematerializing the shares transferred to other entities or sold in the market. It was alleged that such announcements were made by BEPL to induce the investors into buying the shares of the company thereby enabling promoters/directors of the company to offload their stake.

3. It was observed that one of the promoters and director Arvind Thesia (hereinafter referred to as the “**Noticee**”) offloaded shares in the offmarket prior to the announcements and did not disclose the change in the holdings to the company under regulation 13(4) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “**PIT**”). It was alleged that the Noticee offloaded his holding before the false/misleading announcement/news to the market, did not make disclosures thereby hiding his identity and along with the company played fraud on the investors. It was, therefore, alleged that the Noticee had violated the provisions of regulations 3(a), 3 (c) and 4 (1) and 4 (2) (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Markets) Regulations, 2003 (hereinafter referred to as “**PFUTP**”) and section 12A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) and regulations 13 (4) read with 13(5) of **PIT**.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated April 27, 2010 under section 15 I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘**Rules**’) to inquire into and adjudge the alleged violation of PFUTP, SEBI Act and PIT committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice No. EAD-6/BM/JR/8096/2010 dated June 10, 2010 (hereinafter referred to as “**SCN**”) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed on the Noticee under sections 15HA and 15A(b) of SEBI Act for the alleged violation specified in the said SCN.
6. The SCN returned undelivered. Subsequently, the SCN was published in the Hindustan Times (Delhi Edition) and Gujarat Samachar on February 9, 2011 vide which it was informed that SCN was issued to the Noticee and the same may be collected from the office of the undersigned and the Noticee may collect the same by hand or through authorized representative. The Noticee was also advised to submit reply, if any, within 14 days from the date of publication. Further, a copy of the SCN dated June 10, 2010 was also uploaded on SEBI website under the heading “Unserved Summons/Notices”. However, despite the publication so made, the Noticee neither got the SCN collected nor submitted any reply.
7. The Noticee was also given an opportunity to appear for hearing before the undersigned on February 21, 2011 vide the same publication made on February 9, 2011 in the said newspapers. However, despite the publication so made, the Noticee did not appear for hearing. I note that the Noticee failed to submit the reply to the SCN and also failed to appear for hearing. For the reasons mentioned above, I observe that the Noticee was provided with enough opportunity to submit reply / be heard and hence, I am constrained to proceed with the matter on the basis of the material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully examined the SCN and the documents available on record. The allegations against the Noticee are as follows:

- i. The company made certain misleading announcements in December 2004 and January 2005 pertaining to acquisition of stake in UTL, improvement in profit and income as on quarter ending December 2004 and development of "SPIDER CELL" technology.
- ii. The Noticee along with other promoters held 2,53,10,000 shares as on September 30, 2004 which accounted for 25.31% of the paid up capital of BEPL. The Noticee transferred shares during the quarter ended December 31, 2004 and as on quarter ending December 31, 2004, his holding became nil. The shares thus transferred were offloaded in the market.
- iii. The Noticee did not make the requisite disclosure to the company and the exchange under PIT for change in holding.
- iv. The Noticee by off-loading shares before the alleged misleading announcements by the company and not making disclosures for change in holding thus hiding his identity was hand in gloves with the company in playing fraud on the investors.

In view of the above it has been alleged that the Noticee has violated the provisions of regulations 3(a), 3 (c) and 4 (1) and 4 (2) (e) of the PFUTP and section 12A of SEBI Act. Further by not making the required disclosure under PIT the Noticee have been alleged to have violated regulation 13 (4) read with 13(5) of PIT.

9. The issues that arise for consideration in the present case are:

- a) Whether the Noticee had violated regulations 3(a), 3 (c) and 4 (1) and 4 (2) (e) of the PFUTP and section 12A of SEBI Act?
- b) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 HA of SEBI Act?

- c) Whether the Noticee had violated regulation 13 (4) read with 13(5) of PIT?
- d) Does the violation, if any, on the part of the Noticee attract monetary penalty under section 15 A(b) of SEBI Act?
- e) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

10. Before moving forward, it will be appropriate to refer to the relevant provisions of PFUTP, SEBI Act and PIT which reads as under:

Prohibition of certain dealings in securities

3. No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (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;*

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 :—

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

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly –

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognised stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

Continual disclosure.

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 1% of total shareholding or voting rights, whichever is lower.

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

11. Upon careful perusal of the material available on record, I find the following:

- (i) Baffin Engineering Projects Ltd. (herein after referred to as BEPL) is a listed company in engineering sector with a paid-up equity capital of ₹10 Crs.
- (ii) List of Directors of BEPL during the relevant time were as follows:

Name	Designation
Arvind Thesia	Director
Bankim Patel	Director
Kirit Kotadia	Director
Mahendra Panchani	Director
Suresh Mavani	Director
Ashok B Motha	Director

- (iii) The shareholding pattern of BEPL are summarized below:

September 30, 2004			December 31, 2004			March 31, 2005		
	No. of shares	%		No. of shares	%		No. of shares	%
PROMOTER S*	25310000	25.31	PROMOTERS	0	0	PROMOTERS	0	0
NON-PROMOTERS			NON-PROMOTERS			NON-PROMOTERS		
Private Corporate Bodies	12297268	12.3	Private Corporate Bodies	7517965	7.52	Private Corporate Bodies	23315308	23.32
Chitrakut Computers Ltd	3481000	3.48	Chitrakut Computers Ltd	Not available	Less than 1% or nil	Chitrakut Computers Ltd	Not available	Less than 1% or nil
Goldfish Computers Ltd	3160000	3.16	Goldfish Computers Ltd	Not available	Less than 1% or nil	Goldfish Computers Ltd	Not available	Less than 1% or nil

Nakshtra Software Ltd	3218000	3.22	Nakshtra Software Ltd	Not available	Less than 1% or nil	Nakshtra Software Ltd	Not available	Less than 1% or nil
Public and others	62392732	62.39	Public and others	92482035	92.48	Public and others	76684692	76.68
Thakkar Group*	9355000	9.36	Thakkar Group	Not available	Less than 1% or nil	Thakkar Group	Not available	Less than 1% or nil

* Promoters were Suresh Mavani, Velji Nandani, Mamta Kotadia, Arvind Thesia, Chunibhai Thesia, Kirti Kotadia, Aja Raghav Kotadia, Bhoja Raghav, Velaben Thumar, Ashvin Kalu, Ranchod Raghav, Mahendra Panchani, Bankim Patel, Shantaben Kotadia, and Vira Hirapara. The Thakkar group consisted of Rajesh Thakkar, Akshat Thakkar, Chandresh Thakkar, Kiritbhai Thakkar, and Amrutlal Jayantilal Thakkar.

- (iv) Standalone financials of BEPL for the quarter ending June 04 through March 05 are given below:

(in ₹Crs.)

	Qtr ending March 31, 2005	Qtr ending December 31, 2004	Qtr ending September 30, 2004	Qtr ending June 30, 2004
Total Income	1.46	1.32	0.86	0.81
Expenditure	1.69	1.04	0.81	0.78
Gross Profit	-0.23	0.28	0.04	0.02
Profit after Tax	-0.18	0.27	0.04	0.02
Equity Capital	10	10	10	10
Audited or no.	Yes	No	No	No

- (v) As noted from above that the standalone financials of BEPL have not changed much over the above four quarters. Results of full financial years 2002-2003, 2003-2004, 2004-2005 and 2005-2006 are given below.

(in ₹Crs.)

	2005-2006	2004-2005	2003-2004	2002-2003
Total Income	1.97	4.45	3.31	3.36
Expenditure	1.93	4.35	3.31	3.36
Gross Profit	0.05	0.11	-0.0002	0.0003
Profit after Tax	0.01	0.03	-0.0002	0.0003
Equity Capital	10	10	10	9.02
Audited or no.	No	Yes	Yes	Yes
Source	BSE website		Letter dated January 18, 2005 from BEPL	

- (vi) It was observed from the price volume data during the investigation period that the price of the scrip opened at ₹4.41 on October 21, 2004 reached a high of ₹11.5 on December 15, 2004 and closed at ₹5.68 on January 18, 2005. The total quantity traded during the period was 5,81,94,725 shares.
- (vii) It was observed that BEPL made certain corporate announcements during the investigation period which are as given below:

Time	Announcements / News	Effect on prices
Tuesday January 18, 2005 11:56:29 AM	Meeting of Board of Directors of BEPL scheduled on January 24, 2005, to review proposal to amalgamate UTL with BEPL	On 17 th of January 2005, the price opened at ₹5.51 and closed at ₹5.41. On 18 th the price opened at ₹5.41 and closed at ₹5.68.
Thursday, January 13, 2005 Print media	Consolidated Financials showing manifold increase in profit for quarter ending December 2004.	On 12 th January, 2005 the opening price was ₹5.61 and closing was ₹5.09. On 13 th January, 2005 the opening price was ₹5.34 and closing was ₹5.34
Thursday January 06, 2005 5:50:02 PM	Board decided to appoint Mr. Ashok B Motha as the Additional director of BEPL, to manage day-to-day affairs.	On the 5 th January the price opened at ₹6.55 but closed at ₹6.47. On 6 th January 2005 the price remain unchanged at ₹6.15.
Friday December 31 2004 2:33:28 PM	Baffin Engineering acquires UTL	On the 30 th December 2004 the price opened at ₹8.05, went upto ₹8.25 but closed at ₹7.68. On the 31 st December 2004 the scrip opened at ₹7.95 and closed at ₹7.41 On January 03, 2005 the price opened at ₹7.78 and closed at ₹7.15

- (viii) As was observed from the shareholding pattern that the Noticee alongwith the other promoters viz: Vira Hirpara, Kirit Kotadia, Santaben Kotadia, Ashvin Kalu, Bhoja Raghav, Suresh Mavani, Velaben Thumar, Ajay Raghav Kotadia, Mamta Kotadia, Ranchhod Raghav, Velji Nandani, Chunibhai Thesia, Mahendra Panchani and Bankim Patel were holding 2,53,10,000 shares as on September 30, 2004 which accounted for 25.31% of the paid up capital of the company. These shares were held in physical form. The promoters/directors were observed to have transferred shares during the

quarter ended December 31, 2004 and as on quarter ending December 2004 their holding became nil. The details of transfers are as given below:

Name	Transferred to		
	Name	No of shares	Date
Ashvin Kalu	Ganesh S Raut	1250000	November 03, 2004
Bhoja Raghav	Chetan L Poddar	1000000	November 03, 2004.
Aja Raghav Kotadia	Mahesh H Mistry	1000000	November 30, 2004.
Mamta Kotadia		1351000	November 30, 2004.
Suresh Mavani		1551000	November 30, 2004.
Arvind Thesia	Dharmendra Thapa	1251000	November 30, 2004.
Santaben Kotadia		1250000	November 30, 2004
Chunibhai Thesia	Sushil S Raut	1250000	November 03, 2004.
Velaben Thumar		1000000	November 03, 2004.
Bankim Patel	Jitendra Patil	951000	November 30, 2004.
Mahendra Panchani		751000	November 30, 2004
Kirit Kotadia		1051000	November 30, 2004
Ranchhod Raghav	Ramdas Kshirs Agar	1000000	November 03, 2004
Velji Nandani	Santosh Marvekar	1500000	November 03, 2004
Vira Hirpara	Umesh B Choukekar	1100000	November 03, 2004

- (ix) The entities to whom the shares were transferred, got the shares dematerialized and off-loaded in the market either themselves or by transferring it to others.
- (x) It was observed that Dharmendra Thapa, to whom the Noticee had transferred the shares, dematerialized the shares on December 03, 2004 and transferred 10,00,000 shares in offmarket to Piyush Shah on January 3, 2005 and 1,68,500 shares in offmarket to Ramniklal Patel on January 11, 2005. He held rest of the shares till the end of the investigation period.

12. I would discuss the instant matter in two parts, first with respect to the alleged fraudulent activity of the Noticee and the second with respect to alleged non-disclosure under PIT. I now proceed to discuss the issue of alleged fraudulent and unfair trade practice by the Noticee.

- (i) As observed from above the company made announcements in December 2004 and January 2005 pertaining to acquisition of stake in UTL. Further the company advertised in the print media on January 13, 2005 the consolidated financials for the quarter ending December 31, 2004 which showed substantial improvement in income and profit compared to its standalone results for the same quarter as also the previous quarters. Comparison of standalone financial results with consolidated results published is given below.

(in ₹ Crs.)

	<u>Consolidated</u> Results published by EPL in print media for Qtr ending December 31, 2004	<u>Standalone</u> results for Qtr ending December 31, 2004 as filed with BSE
Total Income	45.93	1.32
Expenditure	39.27	-1.04
Gross Profit	6.66	0.28
Profit after Tax	4.43	0.27
Equity Capital	10.00	10.00
Audited or no.	No	No

- (ii) The non-statutory release published by the company showed substantial increase in its total income and profit in comparison to its standalone results. It was observed that the said improvement was due to purported acquisition of 91.4% of stake of UTL, an unlisted company bigger than BEPL. In the above mentioned advertisement the company had also mentioned that it had developed revolutionary "SPIDER CELL" technology. It was alleged that these announcements were misleading.

- (iii) It was observed that as per the sale agreement of the company with UTL, the company was required to pay a consideration of ₹53.75 per share of face value ₹10/- of UTL. Out of this ₹53.75, 50% of the sale consideration was slated to be paid within six months from date of allotment and

remaining 50% of the sale consideration was proposed allotment of debentures or preference shares of BEPL within six months of the date of agreement. The company had bought 30,60,000 equity shares of UTL for a proposed consideration of ₹16.4 Crores while its balance sheet size as on March 31, 2004 was ₹10.03 Crore (₹10 Crore: shareholder's equity and Reserves and surpluses: ₹3 lakh). It shows that the company did not have enough resources to acquire UTL.

- (iv) It was also noted that the company had applied to the BSE for NOC to draft scheme of amalgamation under section 391-394 of Companies Act, 1956 for merger of UTL with BEPL. BSE had rejected the application as it appeared to the exchange that this was a case of back door listing.
- (v) An announcement dated April 10, 2007 to BSE by the company stated that since the said Scheme of Arrangement and Amalgamation was not approved by the BSE, the Company tried to arrange funds through other means to pay the liabilities for 30,60,000 equity shares of UTL. Further since, the funds could not be arranged and the company was not in a position to pay to promoters of UTL for the aforesaid shares, it had decided to reverse the acquisition of shares of UTL by returning the same to the earlier shareholders of UTL. In the corporate announcements made by the company in December 2004 BEPL never mentioned that the acquisition was subject to approval of the scheme and failing approval shares will be returned to the shareholders of UTL.
- (vi) With a view to clarify the issues relating to acquisition of UTL, source of funds for acquisition, advertisement made in print media with improved financial position of the company, diminished shareholding of the promoters in quarter ending December, 2004 as compared with that of September, 2004, details of promoters/directors during the period, requisite disclosure to company and in turn to the exchange etc, several attempts were made to

get information from the company during investigation. Various details were sought from the Noticee vide letters dated October 13, 2004, March 16, 2005 and March 17, 2005. Out of which two letters dated October 13, 2004 and March 16, 2005 have been delivered. The company did not reply to any of these letters.

- (vii) a) With regard to the acquisition of stake in UTL I find that according to the sale agreement, the company was supposed to pay a consideration of ₹ 53.75 per share of face value of ₹10 of UTL. As part of the consideration BEPL bought 30,60,000 equity shares for a proposed consideration of ₹16.4 crore. However, the balance sheet size of the company was just ₹10.03 crore. Hence the company did not have the resources to buy the stake in UTL. Further from the available records I observe that the company had applied to BSE for NOC to draft scheme of amalgamation under section 391-394 of Companies Act, 1956 for merger of UTL with BEPL. However, BSE had rejected the application as it appeared to the exchange that this was a case of back door listing. Subsequently the company made an announcement dated April 10, 2007 to BSE stating that as the said Scheme of Arrangement and Amalgamation was not approved by the BSE, the company had decided to reverse the acquisition of shares of UTL by returning the same to the earlier shareholders of UTL. I find that the company while making announcement on December 2004 and January 2005 about acquisition of stake in UTL did not make the disclosure that the acquisition was subject to approval of scheme of amalgamation failing which the shares acquired will be returned to UTL shareholders and also about the clauses of the agreement entered into. Hence the announcement made by the company is indeed misleading.
- b) With regard to consolidated financials for the quarter ended December 2004 announced by the company in the print media on January 13, 2005 it is observed that the income and profit showed substantial increase in comparison to standalone financials for the same quarter i.e. December

2004. I observe that the standalone financials of the company shows very meager profit and income as also the previous years and previous quarters income and profits are also not impressive. The substantial improvement in the financials was due to the purported acquisition of the stake in UTL. It is further observed that the acquisition of the stake in UTL was in the process and was not finalized as it was subject to approval of the scheme of amalgamation. The company had combined the financials of the UTL when the process of acquiring stake into UTL was far from over. This definitely has been done with the intent of projecting a rosy picture with the sole purpose of luring the investors to buy shares of the company. It was also mentioned in the advertisement that the company developed revolutionary "SPIDER CELL" technology however no further information was available in this regard.

It was thus observed that the announcement made by the company was premature and misleading and the same has been established vide adjudication order dated February 24, 2011.

(viii) I observe that the Noticee was the director of the company when the misleading and premature announcements were made in December 2004 and January 2005. The company can and does act only through the directors. He being the director of the company would thus be liable for the fraud played on the investors through those misleading announcements made by the company.

(ix) In order to establish the fraudulent intent of the Noticee reference may also be made to the definition of fraud laid down in regulation 2 (1) (c) of the PFUTP, which reads as follows:

"2 (1)(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss,"

- (x) In view of the aforesaid I find that the Noticee was part of the fraudulent activity of the company in making premature and mischievously misleading announcements in a distorted manner which may influence the decision of the investors. I, thus, hold the Noticee guilty of violating the provisions of section 12A (a), (b) and (c) of SEBI Act and regulation 3 (c) and 4(1) of PFUTP.
- (xi) It has also been alleged that the Noticee dealt in the shares in fraudulent manner and influenced the price of the scrip. I find that the Noticee was holding 12,51,000 shares as on quarter ended September 30, 2004 and transferred these shares to Dharmendra Thapa on November 30, 2004. The misleading announcements were made by the company on December 31, 2004. It is thus observed that the shares were transferred by the Noticee long before the company made such announcements. Dharmendra Thapa transferred the shares in off-market to Piyush Shah and Ramniklal Patel. Further, no information is available in the investigation report as to how these entities dealt with the said shares. There was no market transactions observed by the Noticee before or after the announcements were made by the company. Moreover it is observed in the investigation report that no manipulative pattern of trading was observed by the clients who received shares in the off-market from the promoters/directors. There is no evidence/materials available to show that there was manipulation in the price of the scrip.
- (xii) In absence of any corroborative evidence or materials available before me, to show as to how the Noticee have fraudulently traded in the scrip and influenced the price of the scrip I am not inclined to hold the Noticee guilty of violating the provisions of 3(a) and 4 (2) (e) of PFUTP.

- (xiii) In view of the above, I find that the allegations of the violation of regulations 3(a) and 4 (2) (e) of the PFUTP against the Noticee does not stand established.

Alleged violation of PIT

- (xiv) During the quarter ended September 31, 2004, the Noticee was holding 12,51,000 shares. The paid up equity shares of the company was 10,00,00,000. Hence, the Noticee was holding 1.251% of the paid up capital of the company. The Noticee had transferred his entire shareholding, i.e., 12,51,000 (1.251%) shares of BEPL to Jitendra Patil on November 30, 2004. According to regulations 13(4) and 13(5) of PIT, any director of the company whose change in shareholding exceeds ₹5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower since his last disclosure to the company shall intimate the company about the change within four working days of the change in shareholding.
- (xv) Letter was written to the Noticee asking whether he had intimated the company about the said change in shareholding. Although the letter was delivered, the Noticee did not reply to the same. Further, no information could be obtained from the company. BSE had confirmed that they have not received any disclosure.
- (xvi) In the light of the above, I find that the allegations of violation of regulation 13(4) read with 13(5) of PIT stands established.

13. The object of disclosure of shareholdings and its change at regular intervals is to give equal treatment and opportunity to all shareholders and protect their interest. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. The Noticee was under statutory obligation to make the required disclosure which he has failed to do. In this regard I would like to rely

upon the findings of Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd Vs. SEBI (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that, *“the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market”*.

14. The Noticee did not reply to the SCN in order to defend himself against the alleged charges of PFUTP and PIT. The Noticee also failed to appear for the personal hearing to defend his case. Hence, it can be presumed that the Noticee is admitting the charges leveled against him. In this regard, I would like to rely upon the findings of the Hon'ble SAT in the matter of *Classic Credit Limited Vs. SEBI* (Appeal No. 68 of 2003 order dated December 8, 2006 reported on January 8, 2007) regarding the significance of filing the reply to the SCN, in which it stated that *“the appellant did not file any reply to the second show cause notice. This being so, it has to be presumed that the charges alleged against them in the show cause notice were admitted by them”*.
15. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow”*.
16. It has been established that the Noticee has violated provisions of section 12A (a), (b) and (c) of SEBI Act and regulations 3 (c) and 4(1) of PFUTP and regulation 13(4) read with 13(5) of PIT. Thus, the aforesaid violations by the Noticee make him liable for penalty under sections 15HA and 15A(b) of SEBI Act, 1992 which read as follows:

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.*

15A(b). Penalty for failure to furnish information, return, etc.- 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;

17. While determining the quantum of penalty under sections 15HA and 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

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

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

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

18. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains made as a result of such misleading announcements and default by the Noticee in making disclosure. Even though the exact monetary loss to the investors cannot be computed, such inaccurate and misleading disclosures by a listed company tend to mislead gullible investors and place them in a precarious position. Such a misleading disclosure always erodes investor confidence in the market and totally defeats the process of disclosure regime which is one of the most important pillars of the Indian Securities Market. It is of utmost importance that a sense of fair play be maintained in the market so that innocent investors do not find themselves at the receiving end and ought to be protected from any kind of fraud in the market. It is also observed that the nature of default by the Noticee was repetitive

ORDER

19. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) under section 15HA and ₹1,50,000 /- (Rupees One Lakh and Fifty Thousand only) under section 15A(b) of SEBI Act, {i.e. a total of ₹ 6,50,000/- (Rupees Six Lakh and Fifty Thousand only)} on the Noticee which will be commensurate with the violation/s committed by him.
20. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Mr. G Ramar, General Manager, Investigations Department - 03, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
21. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **March 10, 2011**
Place: **Mumbai**

BARNALI MUKHERJEE
ADJUDICATING OFFICER