

**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 AND UNDER SECTION 23-I (1)
AND (2) OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5
OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY
AND IMPOSING PEENALTIES BY ADJUDICATING OFFICER) RULES, 2005**

In respect of:

1. Aftek Limited (PAN: AAACA4711B);
2. Shri Ranjit Dhuru (PAN: AADPD1238L);
3. Shri Nitin Shukla (PAN: AAJPS8470M);
4. Shri Mukul Dalal (PAN: AAGPD2925H); and
5. Shri C.G. Deshmukh (PAN: ADFPD4130J)

In the matter of Aftek Limited

BACKGROUND

1. Based on findings of the investigations, Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted into the dealings in the FCCBs of Aftek Limited, a company listed at BSE and NSE, it was alleged that there was failure to make required corporate announcement / disclosures to the Stock Exchanges regarding the default in redemption of FCCBs on slated maturity date i.e. June 25, 2010 and on revised maturity date i.e. December 21, 2012 which were price sensitive information (hereinafter, referred to as "**price sensitive information**").
2. In this regard, it was alleged that Aftek Limited, its Directors and Compliance Officer have, therefore, failed to make the necessary corporate announcement / disclosure of price sensitive information to Stock Exchanges, and hence violated following provisions:
 - a) Provisions of Clause 2.1 and Clause 7 (ii) of Code of Corporate Disclosure Practices for Prevention of Insider Trading (hereinafter, referred to as "**Code of Corporate Disclosure Practices**") provided in Schedule II read with regulation 12(2) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter, referred to as "**PIT Regulations**"), and provisions of Clause 21 and Clause 36 of the listing agreement read with section 21 of the Securities Contracts (Regulation) Act, 1956 (hereinafter, referred to as "**SCR Act**") by Aftek Limited, its CMD / Executive Directors during relevant period (having requirement for

making corporate announcement / disclosure of price sensitive information to the stock exchanges) viz, Shri Ranjit Dhuru, CMD, Shri Nitin Shukla, Executive Director, Shri Mukul Dalal, Executive Director, and Compliance Officer during relevant period (having requirement for making corporate announcement / disclosure of price sensitive information to stock exchanges) viz, Shri C.G. Deshmukh (hereinafter, individually referred to by their **respective names** and jointly (all five) referred to as **“Noticees”**).

- b) Provisions of Clause 3.2 of Code of Corporate Disclosure Practices provided in Schedule II of the PIT Regulations by Compliance Officer during relevant period (having requirement for making corporate announcement / disclosure of price sensitive information to the stock exchanges) viz, Shri C.G. Deshmukh.
- 3. SEBI initiated the instant adjudication proceedings to inquire into and adjudge under section 15A(b) of SEBI Act, 1992 (hereinafter, referred to as **“SEBI Act”**) and Section 23A(a) of SCR Act, the alleged violations of the provisions as mentioned above.

APPOINTMENT OF ADJUDICATING OFFICER

- 4. Given the above, SEBI, on May 8, 2015, under section 19 of the SEBI Act, read with section 15-I(1) of the 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 under SEBI Act”**), and under Section 23I(1) of the SCR Act and Rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter, referred to as **“Adjudication Rules under SCR Act”**), appointed an Adjudicating Officer to inquire and adjudge under section 15A(b) of SEBI Act and under Section 23A(a) of SCR Act in respect of the Noticees for violation of provisions as mentioned above in point 2 for failure to make the necessary corporate announcement / disclosure of price sensitive information to the Stock Exchanges.
- 5. Consequent upon change in Adjudicating Officers, the instant matter was referred to the present Adjudicating Officer vide order / communicate dated May 18, 2017, to inquire into and adjudge under the provisions as mentioned above for the original appointment of Adjudicating Officer.

SHOW CAUSE NOTICE, WRITTEN SUBMISSIONS, PERSONAL HEARING

- 6. Show Cause Notice No. EAD-8/JJS/DJ/OW/P/15055/1/2017 dated June 29, 2017 (hereinafter referred to as **“SCN”**) was issued to the Noticees to show cause as to why

an inquiry should not be held and penalty be not imposed under section 15A(b) of SEBI Act and Section 23A(a) of SCR Act for the alleged violations against the Noticees as mentioned above.

7. Noticees vide their separate letters dated July 18, 2017, denied the allegations made in the SCN and requested for extension by two weeks to file their reply to the SCN. The request was acceded to. Subsequently, Noticees, vide separate letters dated August 1, 2017, sought extension of time by another one week to submit reply to the SCN and also requested for opportunity of personal hearing after submission of their reply. The request for extension of time was acceded to and the Noticees were advised to submit their reply by August 10, 2017.
8. Aftek Limited, Shri Ranjit Dhuru, Shri Nitin Shukla and Shri Mukul Dalal filed their reply to the SCN vide separate letters, each dated August 8, 2017. Shri C. G. Deshmukh filed his reply to the SCN vide letter dated August 9, 2017. Key submissions from the above mentioned replies of the Noticees are mentioned as follows (indicative details are also given for the sake of objectivity):

- a) **Aftek Limited:** Following key submissions were made in reply dated August 8, 2017:

"We deny all the allegations levelled against us in the SCN, save and except those, which are specifically admitted herein. We specifically deny having violated Clause 2.1 and Clause 7.2 of the Code for Corporate Disclosures under PIT Regulations, and Clause 21 and Clause 36 of the listing agreement read with section 21 of the SCR Act, as alleged in SCN. We have not indulged in any violation for which any penalty should be imposed.

Submissions were provided informing details of circumstances leading to default in redemption FCCBs, reset of price, allotment of shares on conversion, etc.

Company has been communicating about the developments regarding the FCCBs to Stock Exchanges / Shareholders through disclosure made to Stock Exchanges (details of disclosures regarding FCCBs made to Stock Exchanges during 27/6/2005 to 18/10/2012 were provided in a table), disclosure in Annual Reports of the Company (details of extracts in annual report for 2010, 2011, 2012 and 2013 were provided in a table), disclosures in chairman speech in 2012 (date not mentioned), details in minutes of the AGM dated 28/09/2012, postal ballot, etc. From the aforesaid disclosures pertaining to FCCBs at multiple places, it is clear that we had religiously made the requisite disclosures regarding FCCBs. It may be appreciated that the failure to redeem the FCCBs was due to genuine reasons which were beyond the control of the company and that there was nothing for the company to hide or suppress in this regard.

The alleged non-disclosure to the exchanges with regard to failure to redeem was inadvertent and un-intentional. Same was merely a technical and venial lapse and the same has not affected anybody's interest, including shareholders / investors. There are no complaint in this regard from anybody.

We have not indulged in any manipulative, fraudulent or unfair trade practices. We have not made any gains or derived any unfair advantage as result of alleged technical and minor lapse. Even there is no allegation that we / our promoters / directors have gained in any manner as a result of alleged lapse. The company is going through a rough financial patch due to various factors including a poor

cash situation whereby we are unable to pay our statutory dues. In the circumstances, any imposition of monetary penalty would further exacerbate and aggravate the financial misery of the company, which would not be anybody's interest. The alleged lapse has already been cured by the company by filing the requisite disclosure, albeit belatedly vide our letter to Stock Exchanges dated August 08, 2017.

In view of the foregoing, alleged lapse be viewed leniently and no penalty be imposed on us.

Without prejudice to our submission that no penalty be imposed, we also submit that for the same violation i.e, non-disclosure regarding failure to redeem outstanding FCCB's on maturity date / revised maturity date, in the Notice penalty is propose to be imposed under two different sections viz, Sec 23A of SCRA (for the alleged violation of provisions of Listing Agreement) and sec 15A(b) of SEBI Act (for the alleged violation of provision of Insider Trading Regulations). We respectfully submit since the violation is same, penalties be not multiplied by invoking different sections. In this context your attention is invited to the observations made by the Hon'ble Tribunal vide its Order dated 4.9.13 in the matter of Vitro Commodities Pvt Ltd Vs SEBI (SAT Appeal no. 118 of 2013) under similar circumstances, wherein it has inter alia been observed that"..... it is adequate to impose a token penalty of Rs. 1 lac on appellant for technical and inadvertent violation of Regulation 7(1) of Takeover Regulations, 1997 and for violation of Regulation 13(1) of PIT Regulations, 1992".

Since in the matter under reference, the disclosure requirements under Insider Trading Regulations also triggers the disclosure requirement under Listing Agreement, there is no need for multiplying the penalty by imposing the same under different sections separately."

- b) Shri Ranjit Dhuru, Shri Nitin Shukla and Shri Mukul Dalal:** Following common key submissions are made in separate letters dated August 8, 2017:

"With regard to the specific allegations in the Notice against the Company, it is submitted that Aftek Ltd has already filed a detailed reply to the captioned notice inter alia dealing with each of the allegations and denying all the allegations levelled against it and placing on record the correct factual position on record. I adopt the submissions made by Aftek in its reply, in support of my contention.

It is denied that I have violated the provisions as alleged in the SCN. I have not indulged in any violation for which any penalty should be imposed. It is submitted that the allegations pertain to technical and procedural lapses which are venial in nature. The alleged technical lapse was not deliberate and intentional and in contumacious disregard of provisions of law. Further, I have not indulged in any manipulation. Admittedly, there is no allegation in the Notice of me indulging in any kind of fraudulent, manipulative or unfair trade practices in the market. While appreciating my submissions, it be kept in mind that I have not compromised or adversely affected the interests of the shareholders or the investors in any manner. As a result of the alleged violations, I have not made any gains or derived any unfair advantage. I am committed to complying with the law and request that the procedural lapses be viewed leniently. I assure you that it will be my persistent endeavor that the stray lapses as stated in the Notice do not occur in future.

Without prejudice to my contention that I have not violated any provisions as alleged and no monetary is warranted, on the alleged violation. That imposition of monetary penalty on me would be disproportionate and excessive and would severally prejudice not only the interest of the Company but also interest of the shareholders."

- c) Shri C.G. Deshmukh:** Following key submissions are made in reply dated August 9, 2017:

"With regard to the specific allegations in the SCN against the Company, it is submitted that Aftek has already filed a detailed reply to the captioned SCN inter alia dealing with each of the allegations and denying all the allegations levelled against it and placing on record the correct factual position. I adopt the submissions made by Aftek in its reply, in support of my contention.

It is denied that I have violated the provisions of Clause 2.1 and Clause 7(ii) of Code of Corporate Disclosure Practices for Prevention of Insider Trading of Clause 21 and 36 of the listing agreement read with section 21 of the SCRA as alleged. I submit that I have not indulged in any violation for which any penalty should be imposed on me.

With regard to specific allegation against me i.e, alleged contravention of Clause 3.2 of Code of Corporate Disclosure Practices for Prevention of Insider Trading provided in Schedule II of Insider Trading Regulation it is submitted that in view of the circumstances as stated in Aftek's reply inadvertently, I had missed making the disclosure regarding the failure to redeem the outstanding FCCBs as on June 25, 2010 i.e, maturity date and December 21, 2012 i.e, revised maturity date to the Stock Exchange.

It is submitted that the allegations pertain to technical and procedural lapses which are venial in nature. The alleged technical lapse was not deliberate and intentional and in contumacious disregard of provisions of law. Further, I have not indulged in any manipulation. Admittedly, there is no allegation in the Notice of me indulging in any kind of fraudulent, manipulative of unfair trade practices in the market. While appreciating my submissions, it be kept in mind that I have not compromised adversely affected the interests of the shareholders or the investors in any manner. As a result of the alleged violations, I have not made any gains or derived any unfair advantage. I am committed to complying with the law and request that the procedural lapses be viewed leniently.

Without prejudice to my contention that I have not violated any of the provisions as alleged and no monetary penalty is warranted, on the alleged violation. It is submitted that my monthly income is only about Rs. 20,000/- therefore imposition of any monetary penalty on me would be disproportionate and excessive."

9. Opportunity of personal hearing was granted to the Noticees on September 14, 2017 vide hearing notice dated August 22, 2017. In response, Aftek Limited, Shri Ranjit Dhuru and Shri C.G. Deshmukh availed the opportunity of personal hearing on September 14, 2017, and made following common submissions:

"I / We wish to reiterate the submissions made in reply dated August 9, 2017, and it is submitted that the default in making disclosure to Stock Exchange was inadvertent and not deliberate. I / We hope that you will take lenient view in this regard."

10. Shri Mukul Dalal vide his e-mail and letter dated September 4, 2017 requested for rescheduling of personal hearing to a date after September 17, 2017, and the same was acceded to and he was given another opportunity of personal hearing on September 18, 2017. The second opportunity of personal hearing was not availed. Subsequently, Shri Mukul Dalal, vide e-mail dated September 22, 2017 inter-alia submitted that he has nothing additional to submit in addition to the submissions already made by Aftek Limited, Shri Ranjit Dhuru and Shri C.G. Deshmukh on September 14, 2017, hence, he does not anymore seek personal hearing.
11. Shri Nitin Shukla vide his e-mail and letter dated September 11, 2017 requested to postpone the personal hearing scheduled on September 14, 2017 by two weeks on medical / health related grounds, which was acceded to, and vide e-mail dated September 19, 2017, he was advised to seek the opportunity of personal hearing by

providing two convenient date options within next 10 days. Vide above e-mail, it was also mentioned that in case of failure to do so, it will be construed that no hearing is required by him, and then the matter will be decided based on submissions and evidence available on record. Shri Nitin Shukla did not respond to the above e-mail and has not sought further opportunity for personal hearing. Given the above the instant proceedings are now being continued further.

CONSIDERATION OF ISSUES AND FINDINGS:-

12. Charges levelled against the Noticees as per SCN, submissions of the Noticees in reply to SCN, and the documents available on record have been perused. The issues that arise for consideration in the present case are :
 - a. Whether there were failure to make the corporate announcements / disclosures of price sensitive information to Stock Exchanges?
 - b. If yes, whether Noticees are in violation of Clause 2.1 and Clause 7 (ii) of Code of Corporate Disclosure Practices provided in Schedule II read with regulation 12(2) of the PIT Regulations and provisions of Clause 21 and Clause 36 of the listing agreement read with section 21 of the SCR Act?
 - c. If yes to a) above, then whether Shri C.G. Deshmukh is in violation of provisions of Clause 3.2 of Code of Corporate Disclosure Practices provided in Schedule II of the PIT Regulations?
 - d. If yes to b) and c) above, then, does the violation, on the part of the Noticees attract monetary penalty under section 15A(b) of SEBI Act and Section 23A(a) of SCR Act?
 - e. If yes to d) then, what would be the monetary penalty that can be imposed upon the Noticees?
13. Before going forward, it is important to refer the following relevant provisions alleged to have been violated:

Clause 2.1 and Clause 7 (ii) of Code of Corporate Disclosure Practices provided in Schedule II read with regulation 12(2) of the PIT Regulations

PIT Regulations

12(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

SCHEDULE II

[See under regulation 12(2)]

CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

.....

3.1 Listed companies shall designate a senior official (such as compliance officer) to oversee corporate disclosure.

3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.

.....

7(ii) Corporates shall ensure that disclosure to stock exchanges is made promptly.

Listing Agreement

21. The Company will fix and notify the Exchange at least twenty-one days in advance of the date on and from which the interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds will be payable and will issue simultaneously the interest warrants and cheques for redemption money of redeemable shares or of debentures and bonds, which shall be payable at par at such centres as may be agreed to between the Exchange and the Company and which shall be collected at par, with collection charges, if any, being borne by the Company, in any bank in the country at centres other than the centres agreed to between the Exchange and the Company, so as to reach the holders of shares, debentures or bonds on or before the date fixed for interest on debentures or bonds or redemption money, as the case may be.

36. The Issuer will intimate to the Stock Exchanges, where the company is listed immediately of events such as strikes, lock outs, closure on account of power cuts, etc. and all events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the security holders and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities. In addition, the Issuer will furnish to Stock Exchange on request such information concerning the Issuer as the Stock Exchange may reasonably require.

SCR Act

Conditions for listing

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Issue a) - Whether there were failure to make the corporate announcements / disclosures of price sensitive information to Stock Exchanges?

14. As per the Regulation 2(ha) of PIT Regulations, ““Price sensitive information “means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.” Information about default in redeeming the FCCBs reflects negatively on the issuer company as it indicate poor financial health of the company. Such information, if published, has strong potential to negatively impact on price of the shares of the company, hence, can be termed as a price sensitive information.

15. Aftek Limited in its reply to the SCN, has made submissions inter-alia detailing the circumstances leading to default in redemption of FCCBs, and contended that it made various other disclosure on FCCBs to the Stock Exchange viz, revision of conversion price, conversion into shares, etc. Such detailed submissions of Aftek Limited about the FCCB issue has been adopted / accepted by other Noticees viz, Shri Ranjit Dhuru, Shri Mukul Dalal, Shri Nitin Shukla and Shri C. G. Deshmukh, as submitted in their replies to the SCN.
16. The Noticees have admitted that the relevant disclosures was not made to the Stock Exchange at the appropriate point of time. Aftek Limited in its reply has not contested the price sensitivity of the information, it has however been argued that the updates about FCCB payments were made to Stock Exchange and Shareholders by way of disclosure in Annual Reports, undated Chairman speech, etc. It is noted that such disclosure were periodic affairs giving periodic / year end status about FCCBs issue and didn't gave immediate information of default in redeeming FCCBs. Nevertheless, the information provided in annual reports, speeches, etc, is not the substitute for the mechanism put in place where listed companies are required to make immediate disclosure to Stock Exchange for wider attention of investors and other stakeholders.
17. Based on reply of the Noticees to the SCN, it is an admitted fact that there was failure on part of the Noticees in making disclosure to stock exchanges about default in redemption of FCCBs on maturity and revised maturity dates, though the Noticees have termed this act as an inadvertent, procedural lapse and venial in nature. As per admission of Aftek in its reply to the SCN, the disclosure has been belatedly made to the Stock Exchanges on August 8, 2017 i.e, after delay of more than four and six years from the dates of default, and only after the institution of the present proceedings.

Issue b) – If yes to a), whether Noticees are in violation of Clause 2.1 and Clause 7 (ii) of Code of Corporate Disclosure Practices provided in Schedule II read with regulation 12(2) of the PIT Regulations and provisions of Clause 21 and Clause 36 of the listing agreement read with section 21 of the SCR Act?

18. Clause 2.1 of the Code of Corporate Disclosure Practices under PIT Regulations provide that *"Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis"*. Further, Clause 7(ii) of the same, provides that *"Corporates shall ensure that disclosure to stock exchanges is made promptly"*. Since the corporate announcement / disclosure of price sensitive information was not made on immediate basis, but made with substantial delay of over four and six years from the dates of such defaults, it is established that the above requirements were not complied with, and being the entity / persons responsible to ensure such compliances, hence, they have violated the provisions as mentioned hereinabove.

19. Clause 21 of the Listing Agreement required that the “*The Company will fix and notify exchange at least twenty-one days in advance of the date on and from which interest on debentures and bonds, and redemption amount of redeemable shares or of debentures and bonds will be payable and will issue simultaneously the interest warrants and cheques for redemption money or redeemable shares or debentures and bonds.....*”. There is no information on record including from the submissions of the Noticees, if this requirement was complied with. Further, Clause 36 of the Listing Agreement required that the listed company shall intimate various events to the Stock Exchange immediately inter alia including “*...all events which will have a bearing on the performance / operations of the company as well as price sensitive information both at the time of occurrence of event and subsequently after the cessation of the event in order to enable the security holders and the public to appraise the position of the Issuer and to avoid the establishment of a false market in its securities...*”. Section 21 of the SCR Act provides that “*Where securities are listed on the application of any person in any recognised Stock Exchange, such person shall comply with the conditions of the listing agreement with that Stock Exchange*”.
20. It is noted that there was a clear requirement as per above provisions to make disclosure to Stock Exchange in advance about redemption plan. Further, it was also required to make immediate corporate announcement / disclosure to Stock Exchange on failure in redemption of FCCBs, same being a price sensitive information. However, it is observed that the above requirements were not complied with, and being the entity / persons responsible to ensure such compliances, Noticees, hence, have violated the provisions as mentioned hereinabove.

Issue c) – If yes to a), whether Shri C.G. Deshmukh is in violation of provisions of Clause 3.2 of Code of Corporate Disclosure Practices provided in Schedule II of the PIT Regulations?

21. As regards role of Compliance Officer, Clause 3.2 of the Code of Corporate Disclosure Practices under PIT Regulations provide that “*This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and coordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.*” From the allegations and submissions of the Noticees in reply to same, while there is no credible evidence that there was a failure by the Compliance Officer in educating the staff about disclosure procedures and policies, however, it is noted that Shri C.G. Deshmukh, being the Compliance Officer has failed to the extent to oversee and co-ordinate to ensure that Aftek Limited complies with the requirement of making corporate announcement / disclosure of price sensitive information to the Stock Exchange, hence, he has violated the provisions mentioned hereinabove.

Issue d) – If yes to b) and c), does the violation, on the part of the Noticees attract monetary penalty under section 15A(b) of SEBI Act and Section 23A(a) of SCR Act?

22. On the contention that Noticees have not compromised or adversely affected the interests of the shareholders or the investors in any manner, it is noted that time is of the essence with regard to disclosures required to be made to Stock Exchanges. Failure to make available the price sensitive information at relevant time has the potential to adversely affect the interest of investors / shareholders.
23. On the contention of Noticees that as a result of the alleged violations, the Noticees have not made any gains or derived any unfair advantage, reference is made to the observations made by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014** :- *"... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*
24. The judgement of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund (Appeal no. 9523-9524) decided on May 23, 2006**, is very clear that *"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..."*.
25. As noted above, there is no doubt that Noticees have violated the provisions as alleged in the SCN, and that the violation committed by the Noticees can't be ignored and make a fit case for imposing monetary penalty under 15A(b) of SEBI Act and Section 23A(a) of SCR Act. Such sections provides as mentioned hereunder:

Section 15A(b) of 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;

Section 23A(a) of SCR Act

Penalty for failure to furnish information, return, etc.

23A. Any person, who is required under this Act or any rules made thereunder,—
a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, 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] for each such failure;

Issue e) – If yes to d), what would be the monetary penalty that can be imposed upon the Noticees?

26. While determining the quantum of penalty under section 15A(b) of SEBI Act and section 23A(a) of the SCR Act, it is important to consider the factors stipulated in section 15J of SEBI Act and section 23J of the SCRA read with rule 5(2) of the Adjudication Rules under SEBI Act and SCR Act, which has common read as under:-

Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I of SEBI Act / section 23-I of SCR Act, 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.”*
27. There is no information available on record indicating disproportionate gains or unfair advantage made by the Noticees, or specific loss suffered by the investors due to violation as established above. However, it is noted that the occurrence of the violation has been repetitive since no immediate corporate announcement / disclosure of price sensitive information was made to Stock Exchange after relevant dates viz, June 25, 2010 and December 21, 2012. Further, as submitted by Aftek Limited, the disclosure belatedly made on August 8, 2017 is for default in redemption of FCCBs on December 21, 2012, however, no specific information has been provided in their submissions, about any delayed disclosure with regard to default in redemption of FCCBs on June 25, 2010.
28. It is noted that same act of failure to make necessary corporate announcement / disclosure of price sensitive information to Stock Exchanges, has violated provisions of both PIT Regulations and listing agreement which are punishable under different provisions of SEBI Act and SCR Act. Considering this factor, the quantum of the penalty should be justifiable, and not unreasonable. Therefore, taking into consideration the facts / circumstance of the case and mitigating factors, a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

29. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act and Section 23(J) of SCR Act, in exercise of the powers conferred upon under Section 15-I(2) of the SEBI Act read with Rule 5 of the Adjudication Rules under SEBI Act and under Section 23-I(2) of SCR Act read with Rule 5 of Adjudication Rules under SCR Act, conclude that the proceedings against the Noticees stands established in terms of the provisions of Section 15A(b) of SEBI Act and Section 23A(a) of SCR Act. Hence, in view of the charges

established under the said provisions of the SEBI Act and SCR Act, hereby impose monetary penalty of:

- a) Rs.1,50,000/-(Rupees One Lakh Fifty Thousand) on Aftek Limited
- b) Rs.1,50,000/-(Rupees One Lakh Fifty Thousand) on Shri Ranjit Dhuru
- c) Rs.1,50,000/-(Rupees One Lakh Fifty Thousand) on Shri Mukul Dalal
- d) Rs.1,50,000/-(Rupees One Lakh Fifty Thousand) on Shri Nitin Shukla
- e) Rs.1,50,000/-(Rupees One Lakh Fifty Thousand) on Shri C.G. Deshmukh

30. The Noticees shall remit / pay the said respective amounts of penalty in total Rs.7,50,000/-within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through e-payment facility into Bank Account, the details whereof are as follows:-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	BandraKurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

31. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department 1, Division of Regulatory Action - I [EFD1-DRA-I] SEBI Bhavan, Plot No.C4-A, ' G' Block, Bandra Kurla Complex, Bandra (East), Mumbai – 400 051. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under;
1. Case Name :
 2. Name of Payee:
 3. Date of payment:
 4. Amount Paid:
 5. Transaction No:
 6. Bank Details in which payment is made:
 7. Payment is made for: (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)
32. In terms of rule 6 of the Adjudication Rules, copies of this order is being sent to the Noticees and also to the SEBI.

Date: October 27, 2017
Place: Mumbai

Jeevan Sonparote
Adjudicating Officer