

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
ADJUDICATION ORDER NO. EAD/BJD/BKM/ 108-125 /2017-18**

**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:**

1. Bhanot Construction & Housing Ltd (PAN : AAACB0949A)	2. Bhanot Leasing Ltd (Not Available)
3. Eshan Bhanot (PAN : Not Available )	4. Rajeev Bhanot (PAN : ACSPB5918J)
5. RD Bhanot (PAN: Since Deceased)	6. Krishna Kumari Bhanot (Since Deceased)
7. Rekha Bhanot (PAN : ACTPB6692A)	8. Poonam Bhanot (PAN : Not Available )
9. Tania Bhanot (PAN: AJNPB3948C)	10. Palak Bhanot (PAN: Not Available)
11. Shruti Sharma (PAN: BOBPS9628J)	12. Baby Aditi Bhanot (PAN: AOUPB4442H)
13. Vijay Sharma (PAN: ALZPS7243M)	14. Dushyant Sharma (PAN: BOHPS2623K)
15. Arun Soni (PAN: AOGPS8166P)	16. Roma Soni (PAN: AQKPS9149Q)
17. Punit Soni (PAN: AATPS1307F)	18. Somia Sharma (PAN: BYGPS3685E)

**In the matter of Bhanot Construction Housing Ltd**

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') examined into the irregularity in the trading in the shares of Bhanot Construction & Housing Ltd (hereinafter referred to as BCHL) and into the possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there under for the period from financial year ending March 1998 onwards till March 2007 by Bhanot Construction & Housing Ltd (hereinafter referred to as Noticee 1), Bhanot

Leasing Ltd, Eshan Bhanot, Rajeev Bhanot, RD Bhanot, Krishna Kumari Bhanot, Rekha Bhanot, Poonam Bhanot, Tania Bhanot, Palak Bhanot, Shruti Sharma, Baby Aditi Bhanot, Vijay Sharma, Dushyant Sharma, Somia Sharma, Arun Soni, Roma Soni and Punit Soni(herein referred to as Noticee 2-18). All the Noticees collectively are hereinafter referred to as Noticees. The scrip of BCHL is listed on BSE and DSE (listed on BSE since November 21, 2012, SEBI vide order dated November 19, 2014 has derecognized DSE).

2. While examining the shareholding pattern of BCHL, it was observed that Noticee 1 was holding substantial number of shares from April 01, 1997 to March 31, 2007. However, it failed to make the annual disclosures for the financial years ending March 1998 onwards till March 2007 within the time line as required under law. It was therefore, alleged that Noticee 1 has violated Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as SAST Regulations, 1997). Further, the Noticee 1 with its promoters/PACs (Noticee 2-18) held 25.08% of the paid up equity share capital of the Company as on April 01, 2005. During financial year 2005-06, the promoters acquired 74,255 (8.85%) shares of the company and increased their shareholding to 33.93% of the paid up equity share capital as on March 31, 2006. However, they failed to disclose as required under the provision of law. Further, the shareholding of the promoters/PACs was 25.08% i.e. between 15% or more but less than 55% as on April 1, 2005 as the benchmark laid down in Regulation 11(1) SAST 1997 and further they breached the creeping limit of 5% on December 22, 2005 for the financial year and there is increase of more than 2% in the promoters/PACs shareholding as on December 1, 2005. However, they did not make disclosure as required under provision of law. It was, therefore, alleged that the promoters/Noticee 2-18 violated the provision of Regulation 7(1A) SAST 1997.

## **APPOINTMENT OF ADJUDICATING OFFICER**

3. SEBI has, therefore, initiated adjudication proceedings and I have been appointed as Adjudicating Officer vide Order dated August 8, 2017 under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of SEBI Act 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules 1995") to inquire and adjudge under Section 15 A(b) of the SEBI Act, for the alleged violations committed by the Noticees.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

4. A common Show Cause Notice (hereinafter referred to as "SCN") bearing ref. no. EAD/BJD/BKM/22552/1-18 dated September 18, 2017 was issued to the Noticees under Rule 4 of SEBI Adjudication Rules to show cause as to why an inquiry be not held against it in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15 A(b) of the SEBI Act for the violations alleged to have been committed by the Noticees.
5. It was alleged in the SCN dated September 18, 2017 that the Noticee 1 had made disclosures required as per Regulation 8(3) of SAST 1997 on June 4, 2007 as against the due date of April 30, 1998, April 30, 1999, April 30, 2000, April 30, 2001, April 30, 2002, April 30, 2003, April 30, 2004, April 30, 2005, April 30, 2006, April 30, 2007 i.e. with a delay of 3319 days, 2954 days, 2589 days, 2224 days, 1859 days, 1494 days, 1129 days, 764 days, 399 days and 34 days for the financial year ending March 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, respectively.
6. Further, promoters/PACs held 25.08% of the paid up equity share capital of the Company as on April 01, 2005. During financial year 2005-06, the promoters acquired 74,255 (8.85%) shares of the company and increased their shareholding to 33.93% of the paid up equity share capital as on March 31, 2006. However, they failed to disclose as required under the provision of law.

7. Further on April 1, 2005, the promoters held 25.08% of share capital in the target company. On the basis of analysis of information provided, excluding the acquisition of 400 equity shares by Arun Soni, it was observed that, on December 16, 2005, the 4 promoters had accumulated shares which resulted in the promoter shareholding going up to 28.25% of share capital of the Target Company and on December 22, 2005, the accumulated shareholding of the promoters went up to 32.58%. Consequent to the above acquisition the promoters had to disclose under provision of Regulation 7(1A) SAST 1997. However, they failed to do the same.
8. It was, therefore, alleged in the SCN that Noticee 1 by failing to disclose to the stock exchange violated Regulation 8(3) of SAST 1997 and Noticee 2-18 by failing to disclose to the target company and stock exchange violated Regulation 7(1A) SAST 1997.
9. The aforesaid SCN was delivered to Noticee 1 & 2. In terms of Noticees 3-18 the SCN could not be delivered by post and by affixture. The SCN had been uploaded on the website of SEBI under the head of unserved Summons/Notices. The Notices were also published in the national edition of the Times of India and in the Delhi edition of Nav Bharat times, a hindi newspaper in Delhi.
10. In the interest of natural justice and in terms of Rule 4 (3) of the Adjudication Rules, vide notices dated December 12, 2017 Noticees were granted an opportunity of personal hearing on December 27, 2017. Since Notices could not be delivered or affixed on the addresses of Noticees, the same were published in the Times of India national edition and Nav Bharat Times of Delhi edition.
11. Consequent to the publication of hearing notice in the newspapers as per Adjudication Rules, the Noticee 4 prayed for another opportunity of personal

hearing. Accordingly, the another opportunity of personal hearing was granted to the Noticees on January 25, 2018.

12. Noticees except Noticee 8 & 10 have been represented by an advocate and the Authorized Representative (AR) on January 25, 2018 and the AR reiterated the submissions made earlier by the Noticee 1 and by other Noticees (other than Noticee 8 & 10) vide letter dated January 15, 2018. AR also submitted a copy of the letter dated July 18, 2009 from DSE wherein the last traded price of the share of BHCL as on March 27, 1998 was Rs 4/- per share.

13. Vide letter dated January 15, 2018, Noticee 1 submitted its reply and the salient points of the reply are as under:

- that the holdings of the persons specified in sub regulation (1) did not undergo any change during the financial year 2000 – 2001, 2001 – 2002 to warrant disclosure at its end, hence, the disclosure was not made.
- with regard to non- compliance with Regulation 8(3) of SAST Regulations, 1997 it submitted that the said disclosure is a consequential disclosure only required to be made by the company once it receives the same under Regulation 8(1) & 8(2) SAST 1997 from persons holding shares or voting rights of more than a specified percentage and from promoters or persons in control of the company respectively.
- there was no malafide intention on part of BCHL during the relevant years since this disclosure was not required to be disseminated in public domain and was only to be filed for compliance purposes. As the disclosure was not to be disseminated in public domain, BCHL did not hide or conceal any information nor did BCHL have any intention to conceal any information. This is only for academic purpose and does not have any serious consequences.

- as per records available, BCHL was regularly filing the shareholding pattern as stipulated which inter alia contained all this information. Hence the information regarding shareholding pattern etc. was being disclosed to the stock exchanges and also to the investors at large. In view of the fact that BCHL was carrying out other compliances, the non-compliance under Regulation 8(3) of SAST Regulations, 1997 was not intentional but due to oversight.
- that no trading in the scrip of BCHL took place and the scrip was not traded during most of the relevant period at DSE since the exchange was not functional. It reiterated that neither any harm or loss was caused to the investors from non-disclosure of the said information nor the noticee had any unfair gain or advantage. Further, it is submitted that scrip was not listed at BSE during the period the alleged violation took place.
- that SEBI Regularization Scheme, 2002 provided for payment of Rupees Ten Thousand only (Rs 10,000/-) for failure in each year to adhere to disclosure requirements under Regulation 8(3) of SAST Regulations, 1997. In view of the same, it is submitted that a lenient view may be taken and penalty may not be imposed.
- that Regulation 8(3) of SAST Regulations, 1997 mandated the company to make the annual disclosure by April 30 of the said financial year. However, as per the extant takeover regulations, the requirement for the Company to file such return has been dispensed with and the persons in control has to disclose the annual information directly to the stock exchange as well as to the target company. The regulations have been subsequently changed in SEBI (Substantial Acquisition of Shares and Takeover Regulations) 2011, since it was thought of that the earlier condition resulted in unnecessary additional compliance for the companies.
- In this connection the Noticee has cited order February 02, 2017 passed by Hon'ble WTM, SEBI in the case of Refex Industries Limited (formerly known

as Reflex Refrigerants Limited), wherein Hon'ble WTM did not issue any directions against the promoter and director and inter-alia held that

“that the violation is un-intentional and not for consolidation; that the violation is technical and venial in nature; and that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation”.

- that the alleged violation, if any, is technical and venial in nature, same is unintentional and there are clear mitigating circumstances in the form of subsequent amendments to the SAST Regulations, 2011 which further lessens the gravity of the violation.

14. Vide letter dated January 20, 2018 Noticee 4 filed reply on behalf of himself and other Noticees namely Noticees nos. 2, 7, 9 and 11 to 18. The salient points of the reply are as under:

- They denied all the statements, submissions, contentions, allegations and averments contained in the said notice.
- that at the time when the transaction took place, admittedly the scrip was not listed at BSE and same got listed at BSE only on November 21, 2012. Hence, the allegation that no disclosures are available on BSE website is unwarranted since the Noticees were not required to disclose the acquisition, if any to BSE. DSE has confirmed that despite putting best efforts they were not able to locate the records with respect to disclosures in the matter of target company.
- that R D Bhanot (noticee no. 5) and Krishna Kumari Bhanot (noticee no. 6) have expired. The copies of their death certificates have also been submitted in support thereof.

- that the name of noticee no. 2 i.e. Bhanot Leasing Limited was changed to Bhanot Infrastructure and Hospitalities Limited in the year 2006. A copy of fresh certificate of incorporation dated 22.07.2006 has also been submitted in support thereof.
- that vide order dated 09.10.2009 passed by Hon'ble High Court of Delhi, Bhanot Infrastructure and Hospitalities Limited was amalgamated with Bhanot Construction and Housing Limited. A copy of order dated 09.10.2009 passed by Hon'ble High Court of Delhi has also been submitted in support thereof.
- that consolidated disclosures were filed by BCHL to DSE by their letter dated 19th March, 2013
- that at the relevant time the scrip of the company was only listed at Delhi Stock Exchange ("DSE") and since the scrip was not traded at the DSE since DSE itself was not functional at that point in time, as such no harm, loss or damage has been caused to any investor and there is no complaint in this regard.
- that their intention was not to conceal any information/detail and at most it was a procedural lapse on part of the Noticees to not to disclose the information as specified under SAST Regulations, 1997.

15. I note that the Noticee 8 & 10 also have been granted sufficient time to attend the personal hearing in the matter and the SCN in the present case was issued on September 18, 2017. Therefore, I am proceeding further against the said Noticees on the basis of written and oral submission and material available on record.

16. I note that Noticee 8 & 10 did not file any reply to SCN although same was served on them at the last known address and public advertisement issued thereafter in accordance with the Adjudication Rules. As stated above, sufficient opportunities to submit reply and appear in personal hearing have been given to the Noticee 8 &



10, none of which were availed by them. Therefore, I find it pertinent to refer to the judgment dated December 08, 2006 of Hon'ble Securities Appellate Tribunal in the matter of Classic Credit Ltd. v SEBI (Appeal No. 68 of 2003) wherein, it observed, "... the appellants 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". I also observe that the Hon'ble Securities Appellate Tribunal in the matter of Sanjay Kumar Tayal & Ors. v SEBI (Appeal 68 of 2013 dated February 11, 2014) had inter alia observed that, "...As rightly contended by Mr. Rustomjee, learned senior counsel for respondents, appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges leveled against them in the show cause notices..." Thus, I am of the view that the allegations levelled in the SCN against Noticee 8 & 10 and the evidences therewith are not in dispute in absence of any reply from them.

### **CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS**

17. I have carefully perused the charges levelled against the Noticees in the SCN, written submissions made and all the documents available on record. In the instant matter, the following issues arise for consideration :

- a. Whether the Noticee 1 has violated Regulation 8(3) of SAST 1997?*
- b. Whether the Noticees 2-18 violated Regulation 7(1A) of SAST 1997?*
- c. Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15 A(b) of the Act?*
- d. If so, what would be the quantum of monetary penalty that can be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the Act?*

## **FINDINGS**

18. Before proceeding further, I would like to refer to the relevant provisions of the SAST 1997 which read as under:

### **Continual disclosures**

Regulation 8(3) reads as under:-

*"Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March."*

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

Regulation 7(1A) reads as under:-

*"Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale."*

Regulation 11(1) reads as under:-

*"No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent in any financial year ending*

*on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations."*

19. In the instant proceedings, the charges before me to be inquired and adjudged, as per SCN, are as under:

**Charge I - Noticee 1 failed to disclose shareholding annually for the financial years ending March 1998 to March 2007 on BSE and DSE and violated Regulation 8(3) of SAST 1997.**

20. Regulation 8(3) of SAST Regulations, 1997 deals with yearly disclosure, by the company to the stock exchange/s where the shares of the company are listed, of the changes, if any, in respect of the holdings of the persons referred to under Regulation 8(1) and in respect of holdings of promoters or persons having control over the company within 30 days from (i) the financial year ending March 31, as well as (ii) the record date for dividend declaration.
21. Before I proceed further, I note that BCHL was listed on DSE in the year 1997 till DSE was derecognized, vide SEBI Order dated November 19, 2014. The shares of Noticee 1 were listed on BSE on November 21, 2012. Considering that period of non-compliances relate to the period 1998 to 2007, I conclude that charges of non-compliance of Regulations 8(3) pertains only to non-disclosure to DSE and not BSE, as alleged.
22. With regard to non-compliance with Regulation 8(3) of SAST Regulations, 1997, Noticee 1 submitted that disclosure under Regulation 8(3) is a consequential disclosure which will be required to be made by them only after the entities mandated, under Regulation 8(1) & 8(2) SAST 1997, make disclosure to them.

## **Whether Consequential or Independent Disclosure**

23. As per Regulation 8 (1) of SAST 1997 every person, including a person mentioned in Regulation 6 who holds more than 15% percent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March. According to Regulation 8(2) SAST 1997, a promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.
24. Plain reading of Regulations 8(3) mandates a company to make yearly disclosures to all stock exchange where shares are listed “ the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March." It is clear that Regulations 8(3) casts obligation on listed company to make disclosures annually to stock exchanges where shares are listed within 30 days from the end of financial year, the changes, if any, with respect to holdings of promoters or persons having control.
25. In case Regulation 8(3) were to be consequential, same would have been specifically mentioned in the Regulations and mandated accordingly. I am of the view that regulation 8(3) contemplates that listed company should independently monitor shareholding of each class of shareholders especially promoters and persons acting in concert and report any changes in their shareholding annually to stock exchange. In this context, I note that Regulation (4) of SAST 1997 mandates every company whose shares are listed on a stock exchange to maintain a register in the specified format to record the information received under sub-regulation (3) of Regulation 6,

sub-regulation (1) of Regulation 7 and sub-regulation (2) of Regulation 8. Further, Clause 35 of the Listing Agreement, mandates listed company to file with the stock exchange, quarterly shareholding separately for each class of equity shares/security in the formats specified in this clause including promoter holdings. I also note that Regulations 8(3) mandates that as on the record date of the company for the purposes of declaration of dividend, listed company shall make disclosure to stock exchange the changes in holding of its shareholders, which implies that obligation has been cast on listed company to indicate changes in holdings of its shareholders and therefore listed company are and will be in a position to ascertain the changes in shareholding of shareholders including holdings of promoters. Thus, I conclude that Regulation 8(3) are not consequential to triggering of event but independent and continuous requirement to be complied by listed companies.

26. I note from records that there were changes in shareholding pattern during the financial year 2005-06, due to the acquisition by the promoters. During financial year 2005-06, the promoters acquired 74,255 (8.85%) shares of the company and increased their shareholding from 25.08% of the paid up equity share capital of the Company as on April 01, 2005 to 33.93% of the paid up equity share capital as on March 31, 2006. Besides, I also note from the letter dated February 14, 2012, filed before SEBI that there were changes in shareholding of promoters /PAC during 8 years during the period April 1, 1997 to March 31, 2007. Therefore, Noticee 1 was required to be disclosure to DSE under Regulation 8(3) of SAST 1997 with respect to changes in shareholding of promoters / PAC.

27. Based on documents available on record, I note that DSE, vide its letter dated July 11, 2011 and August 8, 2011 in the context of listing at Bombay Stock Exchange, addressed to Noticee 1 that it should file for consent proceedings for condonation of delay in disclosures made under 8(3) of SAST 1997 for the year 1998 to 2007. Further, Noticee 1 had also filed status of various compliance with SAST 1997

wherein it was sated that Actual date of compliance was on June 4, 2007. I thus note that Noticee 1 had admitted made delayed disclosures under regulations 8(3) of SAST 1997 to DSE. The details of the delay in filing the disclosures are as follows:

Sr. No.	SAST Regulation 1997	Due Date of compliance	Actual date of filing	Delay in days
1	8(3)	30.04.1998	04.06.2007	3319
2	8(3)	30.04.1999	04.06.2007	2954
3	8(3)	30.04.2000	04.06.2007	2589
4	8 (3)	30.04.2001	04.06.2007	2224
5	8 (3)	30.04.2002	04.06.2007	1859
6	8 (3)	30.04.2003	04.06.2007	1494
7	8 (3)	30.04.2004	04.06.2007	1129
8	8 (3)	30.04.2005	04.06.2007	764
9	8 (3)	30.04.2006	04.06.2007	399
10	8 (3)	30.04.2007	04.06.2007	34

28. From the oral and written submissions of the Noticee 1, it is noted that the compliance of Regulation 8(3) of SAST 1997 by Noticee was done with a considerable amount of delay. Therefore, it can be inferred that the Noticee 1 has admitted that it had failed to comply with Regulation 8(3) of SAST 1997 within the stipulated time as mentioned in the Regulations. Therefore, I conclude that Noticee 1 had failed to made annual disclosure to DSE as mandated under Regulation 8(3) of SAST 1997 for the years 1998 to 2007 and thus charges stand established and violated Regulation 8(3) of SAST 1997.

***Charge II - Noticee 2-18 failed to disclose pursuant to the acquisition of shares and violated Regulation 7(1A) of SAST 1997?***

29. As per Regulation 7(1A) of SAST 1997 an acquirer who has acquired shares shall disclose, purchase or sale aggregating 2% or more, to the target company and the

stock exchanges where the shares of the target company are listed, within two days of such purchase or sale.

30. I note that promoters/PACs held 25.08% of the paid up equity share capital of the Company as on April 01, 2005. During financial year 2005-06, the promoters acquired 74,255 (8.85%) shares of the company and increased their shareholding to 33.93% of the paid up equity share capital as on March 31, 2006. These facts have not been disputed by Noticee and also admitted that they failed to disclose to DSE as required under the Regulation 7(1A) of SAST 1997.
31. I note SEBI, vide letter dated July 16, 2014, sought details regarding date of acquisition of shares by the promoters in the Target Company and compliance with SAST Regulations 1997 from Noticee 1. However, Noticee 1, vide letter dated August 11, 2014 provided partial information regarding the dates of acquisition of shares by the promoters. Reminders were sent on September 16, 2014 and October 14, 2014 to the company. However, no further information was received.
32. I note that the shares were acquired by 5 promoters. However, information regarding the date of acquisition of shares was provided for only 4 promoter viz. Rajeev Bhanot, R. D. Bhanot, Krishna Kumari Bhanot and Shruti Sharma. Date of acquisition by Arun Soni was not provided.
33. It is noted that on April 1, 2005, the promoters held 25.08% of share capital in the target company. On the basis of analysis of information provided, excluding the acquisition of 400 equity shares by Arun Soni, it was observed that, on December 16, 2005, the 4 promoters had accumulated shares which resulted in the promoter shareholding going up to 28.25% of share capital of the Target Company and on December 22, 2005, the accumulated shareholding of the promoters went up to

32.58%. The details of acquisition by promoters during the year 2005-06 are as follows:

Promoters	Holding as on April 1, 2005		Shares acquired during 2005-06		Holding as on March 31, 2006	
	No. of shares	% of shares	No. of shares	% of shares	No. of shares	% of shares
Rajeev Bhanot	16,950	2.02	6,150	0.73	23,100	2.75
R. D. Bhanot	15,950	1.90	26,925	3.21	42,875	5.11
Krishna Kumari Bhanot	15,410	1.84	33,230	3.96	48,640	5.80
Shruti Sharma	2,725	0.32	7,550	0.90	10,275	1.22
Arun Soni	3,200	0.38	400	0.05	3,600	0.43
Other promoters	1,56,215	18.62	-	-	1,56,215	18.62
<b>Total</b>	<b>2,10,450</b>	<b>25.08</b>	<b>74,255</b>	<b>8.85</b>	<b>2,84,705</b>	<b>33.93</b>

34. Consequent to the aforesaid acquisitions, the promoters had to disclose under provision of Regulation 7(1A) of SAST Regulations 1997. Noticee submitted that it had disclosed to DSE on March 13, 2013 which were also duly acknowledged by DSE. I pursued the letter and noted that Noticee 1 had submitted a consolidated disclosures of Noticee 2-18 to DSE. However, there are no documents submitted before me which evidences that Noticee 2-18 made individual disclosures to DSE and Noticee 1 within the prescribed timeframe as required under Regulations 7(1A). Therefore, the Noticee 2-18 had to disclose to the Target Company and DSE within 2 days from the acquisition of shares which they failed to do.

35. I note that promoters have triggered regulation 7(1A) on 2 occasions viz. December 1, 2005 and December 22, 2005. The details of transaction dated December 1, 2005 are given below:



Promoters	Holding as on 01.04.05		Holding as on 01.12.05		Increase in holding	
	No. of shares	% of shares	No. of shares	% of shares	No. of shares	% of shares
Rajeev Bhanot	16,950	2.02	16,950	2.02	0	0.00
R. D. Bhanot	15,950	1.9	20,750	2.47	4,800	0.57
K K Bhanot	15,410	1.84	23,010	2.74	7,600	0.91
Shruti Sharma	2,725	0.32	8,125	0.97	5,400	0.64
Arun Soni	3,200	0.38	3,200	0.38	0	0.00
Other promoters	156215	18.62	156,215	18.62	0	0.00
<b>Total</b>	<b>210,450</b>	<b>25.08</b>	<b>228,250</b>	<b>27.20</b>	<b>17,800</b>	<b>2.12</b>

36. Details of transaction dated December 22, 2005 are given below:

Promoters	Transaction date	Shareholding as on April 1, 2005	Pre-transaction shareholding (%) on Dec 22, 2005	Post-transaction shareholding (%) after Dec 22, 2005	% change in Shareholding since April 1, 2005
Rajeev Bhanot	December 22, 2005	2.02	2.51	3.13	0.61
R. D. Bhanot		1.90	2.60	4.92	2.23
K K Bhanot		1.84	2.92	6.59	3.66
Shruti Sharma		0.32	1.21	2.11	0.90
Arun Soni		0.38	0.38	0.38	0
Other promoters		18.62	18.62	18.62	0
<b>Total</b>		<b>25.08</b>	<b>28.26</b>	<b>32.58</b>	<b>7.50</b>

37. I note from the above that promoters and PAC were holding 25.08% shareholding as on April 1, 2005 i.e. between 15 % or more but less than 55% as the benchmark laid down in Regulation 11(1) SAST 1997. I note that Noticee 2-18 have acquired shares on December 1, 2005 and December 22, 2005 shares aggregating more than two per cent of the share capital of target company and therefore required to disclose, within two days of such purchase or sale, under Regulations 7 (1A) of

SAST 1997 to the target company and the stock exchanges. However, Noticee 2-18 failed to make disclosure under Regulations regulation 7(1A) as required under provision of law. It is, therefore, concluded that the promoters/Noticee 2-18 have violated the provisions of Regulation 7(1A) SAST 1997 as follows:

Acquirers	Regulation	Date of transaction	Due date of compliance
Rajeev Bhanot, R. D. Bhanot, Krishna Kumari Bhanot, Shruti Sharma, Arun Soni & other promoter.	7(1A) of SEBI (SAST) Regulations, 1997	December 1, 2005	December 5, 2005
		December 22, 2005	December 26, 2005

38. I note from the submission of the Noticee 4 that Noticee 5 & 6 have expired and the copy of the death certificate issued by the concerned authority has also been submitted in support thereof. Therefore, the proceedings against Noticee 5&6 stand abated.

39. In view of above, I conclude that belated non-disclosure by the Noticee 1 is in violation of Regulation 8(3) of SAST 1997 and non-disclosure by Noticee 2-4 & 7-18 to the company and the DSE is in violation of Regulation 7(1A) of SAST 1997. Thus, liable for monetary penalty as prescribed under Section 15A(b) of the Act which reads as under:

***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, –*

*a. ....*

*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.*

40. Noticees' submission that they did not have any intention to violate the said provisions of law and no unfair gain or advantage was made by the promoters nor did any investor suffer any loss by not making the prescribed disclosures within stipulated time. In this context, I note that the Hon'ble Securities Appellate Tribunal in the matter of **Komal Nahata Vs. SEBI** vide order dated January 27, 2014 has observed that: "Argument that no investor has suffered on account of nondisclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such nondisclosure." Further, I also note that in Appeal No. 78 of 2014 in the case of **Akriti Global Traders Ltd. Vs. SEBI**, the Hon'ble Securities Appellate Tribunal vide order dated September 30, 2014 has observed that:

*".....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".*

41. The Hon'ble SAT, in Appeal No.66 of 2003 order dated April 15, 2005 - **Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, has also observed that, "the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature".

42. The Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006]** 68 SCL 216(SC) has held that "In our considered opinion, penalty is

attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant...”.

43. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, 1992, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 which reads as under:-

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

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

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

***Explanation:*** *For removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under Sections 15A to 15E, Clauses (b) and (c) of Section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

44. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. I note that the defaults of the Noticees are repetitive in nature. I note that correct and timely disclosures play an essential role in the proper functioning of the securities market and failure to do so results in depriving the investors from taking well informed investment decisions. I, therefore, conclude that the Noticees, by making the disclosures under SAST Regulations, 1997 with a very long delay with respect to annual disclosure and continuing delay with respect to failure to disclose on acquisition of shares, are liable for monetary penalties under the SEBI Act, 1992. I note that Hon'ble SAT in

**Gopalakrishnan Raman and Ors Vs SEBI (vide order dated 20.11.2015)** inter-alia, observed as under:

"To sum up, the obligation to make yearly disclosure under Regulation 8(2) and Regulation 30(2) of the Takeover Regulations framed by SEBI in the year 1997 & 2011 respectively is on the promoter/ promoter group. If the promoters of a listed company are individual promoters then the obligation is on the individual promoters and in case there is a 'promoter group' then the promoter group is required to make yearly disclosure. If the promoter group fails to disclose the shares or voting rights held by the promoters in the promoter group as also their PAC's within the time stipulated under the SAST, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's"

45. Before arriving to the quantum of penalty in matter, it is necessary to refer the importance of such disclosures. The main objective of SAST 1997 is to afford fair treatment for shareholders who are affected by the change in control. The Regulations seek to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision.

46. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of default by the Noticees, the details of the

shareholding of the persons having substantial stake, promoter-group and persons in control over the Noticees and timely disclosure thereof, were of some importance from the point of view of investors as that would have prompted them to buy or sell shares of the Noticees. The disclosures made under Regulations 8(3) and 7(1A) of SAST, 1997 by a company and acquirers respectively are made public only through Stock Exchange. Therefore, it is mandatory for the company and acquirers to give the required information under the aforesaid SAST, 1997 to the Stock Exchange, so that the said information becomes known to all the investors at large. Therefore, 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 purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. The Noticees could not pre-judge the reaction of the investors. However, by virtue of the failure on the part of the Noticees to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time.

47. In order to assess whether such non-disclosures would have had material impact on investors, I have considered that the submission made by the Noticees that there was no trading in the scrip of DSE since 1998 and the last traded price was Rs 4. However, I cannot ignore that fact that acquisition of shares by promoters and persons acting in concert have resulted in consolidation of shares from 25.08% of share capital to 32.58% of shares capital of company. There are no record before me to indicate that shares acquired by Noticee 2- 18 in accordance with Regulations 11(1) of SAST 1997. I am of the view that acquisition of shares beyond threshold limits prescribed SAST 1997 would be material, relevant and significant for investors. However, considering that there was no trading in the scrip and also that shares were listed only on DSE during the relevant period, I am of the view that

non-disclosures may not have impacted interest of investors as much as they were not denied to deal in the shares on stock exchange platform.

48. I find that there is a delay by the Noticee 1 in submission of the disclosures to Stock Exchange required under Regulation 8(3) of SAST, 1997 for the years 1998 to 2007. Similarly Noticee 2-4 and 7-18 repetitively failed to disclose on acquisition made by them on different occasions. This indicates the repetitive nature of the default committed by the Noticee 1, 2-4 and 7-18.

### ORDER

49. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of Adjudication Rules 1995, I hereby impose a monetary penalties on the Noticees as under:

Sr.	Noticees	Violation/Penal provisions as per the SEBI Act	Penalty Amount (in Rs)
1	Bhanot Construction & Housing Ltd (Noticee 1)	Regulation 8(3) SAST 1997/Section 15A(b) SEBI Act	Rs 2,00,000/-
2	Bhanot Leasing Ltd (Noticee 2)	Regulation 7(1A) SAST 1997/Section 15A(b) SEBI Act	Rs 5,00,000/-
3	Eshan Bhanot (Noticee 3)		
4	Rajeev Bhanot (Noticee 4)		
5	Rekha Bhanot (Noticee 7)		
6	Poonam Bhanot (Noticee 8)		
7	Tania Bhanot (Noticee 9)		
8	Palak Bhanot (Noticee 10)		
9	Shruti Sharma(Noticee 11)		
10	Baby Aditi Bhanot (Noticee 12)		

11	Vijay Sharma (Noticee 13)		
12	Dushyant Sharma (Noticee 14)		
13	Somia Sharma (Noticee 15)		
14	Arun Soni (Noticee 16)		
15	Roma Soni (Noticee 17)		
16	Punit Sini (Noticee 18)		
	Total		Rs 7,00,000 (Seven Lac Only)

50. I am of the view that the said penalty would be commensurate with the violations committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors and markets.

51. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

52. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, Enforcement Department (DRA-1), SEBI, Mumbai as per the following format.

Case Name	
Name of Payee	



Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for (like penalties/disgorgement/recovery/Settlement amount and legal charges along with order details)	Penalty

53. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

**Date: January 29, 2018**

**Place: Mumbai**

**B J DILIP**

**ADJUDICATING OFFICER**