BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 87/2011]

ORDER 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

Vishal Concast Ltd
(Now known as **Auster Securities Ltd.)**

(Pan No. AABCV4254F)

In the matter of Ritesh Properties and Industries Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted investigation in respect of trading in the shares of Ritesh Properties and Industries Ltd (hereinafter referred to as **"RPIL/ Company"**) for the period from July 14, 2006 to May 20, 2008 (hereinafter referred to as the **Investigation Period**). During the investigation period the scrip of RPIL was listed at Bombay Stock Exchange Ltd (hereinafter referred to as '**BSE**'), Calcutta Stock Exchange (hereinafter referred to as '**CSE**'), Delhi Stock Exchange (hereinafter referred to as '**DSE**') and Ludhiana Stock Exchange (hereinafter referred to as '**LSE**'). As observed from the Annual Report of RPIL for 2006-2007, the company had already passed a resolution in the Annual General Meeting (AGM) of 2004 for delisting of shares from DSE, LSE and CSE.

2. Investigations observed that RPIL on December 23, 2006, passed a resolution by EGM to allot 12,50,000 shares each to Shree Atam Vallabh Polyplastic Industries Pvt Ltd (now known as Godwin Securities Pvt Ltd) and Vishal Concast Ltd, now known as Auster Securities Ltd (hereinafter referred to as the "**Noticee**") at ₹ 20. It was observed that on

March 23, 2007 the Noticee acquired 12,50,000 shares through the preferential allotment from RPIL. It was alleged that the above allotment was not made within prescribed 15 days and were further made without due approval from shareholders and also at manipulated and lower prices.

3. It was further alleged that the Noticee is connected to RPIL and gained from the above manipulative under pricing at the cost of other shareholders of the Company. Hence, the Noticee allegedly violated Regulation 3 (a), 3 (b), 3 (c), 3 (d), 4(1), 4(2)(b), 4(2)(d) and 4(2)(e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulation, 2003 (hereinafter referred to as '**PFUTP Regulation**') and Section 12 A (a), (b), (c), and (f) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**).

4. It was also observed that before the allotment the paid up capital of the company was 92,17,500 and such acquisition of 12,50,000 shares by the Noticee accounted for 13.56 % of the total share capital when allotted. As the Noticee's shareholding crossed 5% as well as 10% limit, the Noticee was required to make disclosure under Regulation 7 (1) and 7 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'SAST'**). Further it was observed that the above acquisition also required disclosure under Regulation 13 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT**'). It was further observed that the Noticee sold all 12,50,000 shares to Bhagyanagar India Ltd (**BIL**) in off market on April 19, 2008. As there was a change in the Noticees shareholding which crossed 2% of paid up capital of RPIL the Noticee was required to make disclosure under Regulation 13(3) of PIT. It is alleged that the Noticee did not make the above requisite disclosure under Regulation 7 (1) and 7 (2) of SAST and 13 (1), 13 (3) read with 13(5) of PIT.

5. Consequently, the above alleged violations make the Noticee liable for monetary penalty under 15 HA and 15 A (b) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

6. I was appointed as the Adjudicating Officer, vide order dated March 08, 2010, under Section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to

inquire into and adjudge under Section 15 A (b) and 15 HA of the SEBI Act for the alleged violation of the provision of SEBI Act, SAST, PIT and PFUTP Regulations as committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

7. Show Cause Notice No. EAD-6/BM/13751/2010 dated July 27, 2010 (hereinafter referred to as **"SCN"**) was issued to the Noticee to show cause as to why an inquiry should not be held against the Noticee and penalty be not imposed under sections 15 A(b) and 15 HA of SEBI Act for the alleged violations specified in the said SCN.

8. It was alleged in the SCN that the Noticee was connected to RPIL and the allotment of 12,50,000 shares of RPIL was not made within 15 days but were further made to the Noticee without due approval from shareholders and also at manipulated and lower prices. It was further alleged that the 12,50,000 shares acquired by the Noticee through the preferential allotment accounted for 13.56 % of the total share capital when allotted and failed to make the required disclosure under the SAST and PIT Regulation. Further it was alleged that the Noticee sold 12,50,000 shares to BIL in off market and failed to make the required disclosure under PIT for change in holding.

9. The Noticee vide letter dated August 03, 2010 sought six weeks time to reply to the SCN and consequently on September 20, 2010 the Noticee submitted interalia the following:

- *The company vide letter dated 24th November, 2006 consented to subscribe to the shares of RPIL and thereafter agreed to allot the shares in accordance with the provisions of the Companies Act, 1956 and other statutes and rules applicable on such allotment of shares by RPIL.*
- *RPIL vide letter dated November 29, 2006 informed BSE about convening EGM on December 23, 2006 for the purpose of seeking approval of shareholders for preferential allotment. The said details were posted on the BSE website on December 08, 2006.*
- *On December 23, 2006, a resolution was passed by the shareholders of RPIL in the EGM to allot 12,50,000 shares of ₹10 each at a premium of ₹ 10/- each to the Company as per SEBI pricing formula.*
- *After the allotment was approved in the EGM dated December 23, 2006 RPIL approached BSE for its in principle approval for listing of shares. BSE sought certified copy of the resolution passed in the EGM and also observed that RPIL had not made disclosures required under clause 13.1A of the SEBI (DIP) Guidelines. BSE further advised that RPIL should not proceed with the allotment of shares.*

- *Information sought by BSE was duly approved by RPIL on January 02, 2007 to which BSE replied vide letter dated January 05, 2007 that the notice served on the shareholder-rs on November 25, 2006 was not proper. Since RPIL had not complied with the formalities, RPIL was directed not to proceed with the allotment of shares.*
- *RPIL vide letter dated January 25, 2007 intimated BSE about another EGM scheduled to be held on February 28, 2007 incorporating the required disclosures for ratification by the shareholders of the resolution passed in the EGM of December 26, 2006.*
- *RPIL received another letter from BSE dated February 06, 2007, wherein BSE granted it in principle approval only for issue and allotment of shares to the Company, however sought shareholders resolution ratifying the disclosures for the purpose of listing of the shares.BSE vide letter dated March 13, 2007 granted the request of RPIL for extension and directed it to slot the shares by March 28, 2007.*
- *In the meantime the shareholders of RPIL in the EGM of February 28, 2007 ratified the resolutions passed in the EGM of December 23, 2006 and thereafter made allotment of the shares to the company and applied for listing of shares which were duly granted by BSE vide its letter dated June 01, 2007.*
- *It is humbly submitted that Mr. Fatehpuria is neither a shareholder nor a director of the Company. Therefore it cannot be construed that RPIL is connected to the company. Mr. Fatehpuria, being expert in the field of capital market, was asked to help us opening a DEMAT Account and being professionally known, he was authorized by the Board to sign for and on behalf of the Company to open a DEMAT account with Almondz Capital Market Private Limited. It is also submitted that the said person was not given an independent charge to handle the account. He was given authority for a limited purpose only and the resolution being standard in nature was passed by the Board.*
- *In so far as Ritesh Impex Private Ltd is concerned Mr. Sanjeev Arora is holding just 10 shares in the said Company. Ritesh Impex is holding 20% shares in the company which in turn was holding 13.565 percent shares in RPIL.*
- *Company further submits that Ritesh Spinning Mills was in need of funds and had approached for the same. The company during that time had pledged shares of RPIL with BIL and received an amount of Rs. 3,50,00,000. The company on receiving request of RSM granted a loan of Rs. 3,45,00,000 from the amount so received. The said transaction was an inter corporate loan and a bonafide transaction.*

10. In the interest of natural justice and in order to conduct an inquiry as per rule 4(3) of the Rules, an opportunity of personal hearing was granted to the Noticee on October 19, 2010 vide Hearing Notice dated October 06, 2010 at the SEBI, Northern Regional Office, Delhi. Mr. Rohit Alex, Authorized Representative of the Noticee (hereinafter referred to as an '**AR**') appeared on behalf of the Noticee and reiterated the submissions made in the Noticee's earlier submission dated September 20, 2010 to the SCN. The AR sought to make additional submissions by November 12, 2010.

11. Vide letter as received by SEBI dated November 15, 2010 the Noticee made further submissions stating inter alia the following:

- *The allotment of the shares made at Rs. 20/- per share to the Company was made after passing the resolution under section 81 (IA) of the Companies Act, 1956. Further the price of Rs. 20/- per share was arrived at after computing and determining the price in accordance with clause 13.3.1 of Chapter XIII of the SEBI (DIP) Guidelines, 2000. The price for preferential allotment was determined by a chartered accountant and the same was adopted by the shareholders of RPIL in the meeting held on December 23, 2006. The Copy of the valuation of the chartered accountant is annexed herewith as Annexure 1.*
- *The attention of Ld. Adjudicating officer is also invited to the correspondence exchanged between RPIL and the BSE. It is submitted that although BSE made an observation that RPIL has not given the disclosure required under clause 13.1A of the SEBI (DIP) guidelines in the notice dated November 25, 2006, however, it is pertinent to state that the BSE had not declared the resolution passed by the shareholders in the EGM of December 23, 2006 as null or void or non-est, but sought clarification from RPIL as to how it was to comply with aforesaid guidelines.*
- *In so far as Ritesh Impex Pvt Ltd is concerned, it is pertinent to mention that although the said company was incorporated on April 27, 1994 and Mr. Sanjeev Arora was a subscriber to the memorandum of association, however, till the time he and his brother were holding 10 shares each, the said company had not commenced business. Thereafter, on March 01, 1995, Mr. Sanjay Mahindru, Mr. Rajeev Mahindru and Mr. Sandeep Mahindru were allotted 15 shares each in the said company and the said shareholders became the majority shareholders and the control of the said company vested in them Mr, Sanjeev Arora became a minority shareholder.*
- *In the present case also Mr. Sanjeev Arora, though a subscriber to the MoA of Ritesh Impex was not a promoter as is evident from the balance sheets for the financial year 1994- 1995. Ritesh Impex had no assets or no income from its business till the time Mr. Sanjeev Arora and his brother were the only shareholders. Also it is pertinent to mention that the balance sheet for the year ending March 31, 1995 being the first balance sheet of the Ritesh Impex was signed by Mr. sanjay Mahindru after he acquired shares in Ritesh Impex and became director in the said Company. Further Mr. Arora was holding 10 shares in the Company. Though he is a Director in the said Company, however since the Board of Directors of the said Company is dominated by the Mahindru's group, he is a minority in so far as control and decision making powers of the said company are concerned. Hence, it is abundantly clear that Mr. Sanjeev Arora had no influence or control over the affairs of the said Company or its directors. Further it is pertinent to mention that Ritesh Impex became a shareholder in the Company only on 12.12.2002 after the Mahindru's became majority shareholders in Ritesh Impex, pursuant to a decision being taken in that regard by the majority shareholders and directors of the Company. Hence on the facts and circumstances narrated above, it would be too farfetched to assume that the Company and VCL are connected to one another on the premise that Mr. Sanjeev Arora was a subscriber to the MoA of Ritesh Impex or that he had in 1994 incorporated the said Company.*
- *RSM was in need of funds and had approached the Company for grant of loan. The company during that time had pledged the shares of RPIL with one Bhagyanagar India Ltd and received an amount of Rs. 3,50,00,000. The Company had granted the loan in view of the fact that the said intercorporate loan was fetching the Company a better and higher rate of return of 24% on the amount agreed to be disbursed and therefore as a*

prudent business decision, it was decided to grant the said loan to RSM. It is pertinent to mention that RSM had partially repaid the loan amount extended from time to time.

- *In the hearing held on 19 October 2010, the Ld Adjudicating Officer had asked the Company to submit a DEMAT account showing the lien/pledge created against the pledged shares. It is pertinent to mention that a formal pledge in relation to the shares in favour of BIL could not be created, however the shares were transformed under a loan/financing agreement. It is denied that the Company had sold shares to BIL. The contents of reply are reiterated and the same are not reproduced herein for the sake of brevity. The Company was constrained to transfer the shares to BIL under a loan agreement as the terms of the agreement provided and envisaged transfer of shares. Since the loan was granted without any collateral security, BIL in order to secure its interest and safeguard itself, sought transfer of the said shares. The intention of the parties was clear that the said transfer is in nature of security/margin and the same would not be used or appropriated by BIL for any other purpose.*
- *It is humbly submitted that the Company was under bonafide belief that the security arrangement with BIL with respect to transfer of shares of RPIL to BIL did not call for any disclosure requirement and therefore, the said disclosures were not made.*

CONSIDERATION OF ISSUES AND FINDINGS

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

    a) It is alleged that Noticee is connected to RPIL and were allotted shares under preferential issue at manipulated lower price and thus gained from the manipulative under pricing at the cost of other shareholders of the Company.

    b) It is alleged that the Noticee failed to make required disclosure under the regulation of PIT and SAST after the allotment of shares and further failed to make required disclosure under PIT after transferring all the shares to BIL.

    In view of the above it is alleged that the Noticee violated the provisions of Regulation 3 (a), 3 (b), 3 (c), 3 (d), 4(1), 4(2)(b), 4(2)(d) and 4(2)(e) of PFUTP Regulation, Section 12 A (a), (b), (c), and (f) of the SEBI Act, Regulation 7(1) and 7(2) of SAST and Regulation 13 (1), 13 (3) and 13 (5) of PIT.

13. Now the issues that arise for consideration in the present case are :

    a. Whether the Noticee has violated Regulation 3 (a), 3 (b), 3 (c), 3 (d), 4(1), 4(2) (b), 4(2)(d) and 4(2)(e) of PFUTP Regulation?

    b. Whether the Noticee has violated Section 12 A (a), (b), (c), and (f) of the SEBI Act?

c. Whether the Noticee failed to make required disclosure and violated Regulation 7(1) and 7(2) of SAST and Regulation 13 (1), 13 (3) and 13 (5) of PIT?

d. Does the violation, if any, on the part of the Noticee attract monetary penalty under sections 15 A (b) and 15 HA 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 the SEBI Act?

14. Before moving forward, it will be appropriate to refer to the above relevant provisions which reads as under:

SEBI ACT:-

PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITON OF SECURITIES OR CONTROL

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;

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.]

SEBI (PFUTP) Regulation:

PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO THE SECURITIES MARKET

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made thereunder;

(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;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

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 :—

(a) ….

(b) dealing in a security not intended to effect transfer of beneficial ownership but intended to operate only as a device to inflate, depress or cause fluctuations in the price of such security for wrongful gain or avoidance of loss;

(c) …..…

(d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;

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

SEBI (SAST) Regulations:

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

7. *1[(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent 2[or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.]*

(2) The disclosures mentioned in sub-regulations (1) 3[and (1A)] shall be made within [four days] of,— (a) the receipt of intimation of allotment of shares; or (b) the acquisition of shares or voting rights, as the case may be.

(SEBI) PIT Regulation:

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

13. *(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company [in Form A], the number of shares or voting rights held by such person, on becoming such holder, within 4 working days of :—*

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

(2)…

Continual disclosure.

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company [in Form C] the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.
(4)…
(5) The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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.

15. Upon careful perusal of the documents available on record and the written submission made by the Noticee, I find the following:-

Allegation of fixing the price of the preferential allotment at a manipulated lower price and connection of the Noticee with RPIL:

a. It was alleged in the SCN that RPIL made allotment of 12,50,000 equity shares at ₹. 20 to its associated entity i.e the Noticee and that the allotment was not made within the prescribed limit of 15 days from the EGM dated December 23, 2006. It was further alleged that when the actual allotment was made to the Noticee i.e on March 23, 2007, the shares of RPIL were trading around ₹ 43.85. It was observed that if RPIL had to follow the procedure for pricing the preferential allotment, the same would have been priced around ₹ 74 per share, depending on the exact date of AGM/EGM. Hence, allegedly by receiving these allotments at ₹.20, the Noticee made a gain of around ₹.54 per share, amounting to about ₹.6,75,00,000 at the cost of other shareholders. It is also alleged that the Noticee and RPIL were connected entity as Mr. Roop Kishore Fatehpuria, director and compliance officer of RPIL was also authorized signatory for the Noticee. Further, Ritesh Impex Pvt. Ltd. also promoted by Mr. Sanjeev Arora (promoter of RPIL) held 20% of the total shareholding of the Noticee. Further, it was alleged that the Noticee transferred around ₹ 3,45,00,000 into the account of Ritesh Spinning Mills another company promoted by RPIL

b. From the submissions made by the Noticee and documents available on records I observe that RPIL allotted 12,50,000 shares to the Noticee on March 28, 2007 at ₹.20/- per share and the relevant date for fixing the price was taken 30 days before the EGM held in December 2006 and not the date of EGM held in

February 2007. With regard to the connection of the Noticee with RPIL I observe that Mr. Roop Kishore Fathepuria director and compliance officer of RPIL, was the authorized person to open the demat account and deal through Almondz Capital Markets Pvt Ltd on behalf of the Noticee. Also from the shareholding pattern of the Noticee, I find that Ritesh Impex Pvt Ltd a group company of RPIL, held 19.72% of the equity shares of the Noticee. In addition to this there was transfer of fund to Ritesh Impex Pvt Ltd by the Noticee which was given to Ritesh Impex as inter corporate deposits.

c. In view of the above it is observed that the Noticee is connected to the RPIL. However there is no sufficient evidence on record to show how the price fixed for the preferential allotment w.r.t. the relevant date has been manipulated by the Noticee.

d. Further there is no allegation available on records to state that the Noticee had any role to play with respect to fixing the date of the EGM so that the pricing for the preferential allotment would be in favour of the Noticee.

e. Furthermore there is no evidence whatsoever to show the connivance as is alleged, of the Noticee with the company for fixing the date of EGM and consecutively the price of the preferential issue in favour of the Noticee.

f. I therefore hold that the allegation of manipulation against the Noticee does not stand established and thus absolve the Noticee of the charges of violation of PFUTP Regulation and SEBI Act.

<u>Disclosure under SAST and PIT Regulations:</u>

a. It was alleged in the SCN that the Noticee acquired 12,50,000 shares through the preferential allotment on March 23, 2007. The paid up capital of the company was 92,17,500 and such acquisition of the Noticee accounted for 13.56 % of the total share capital when allotted. As the Noticees shareholding crossed 5% as well as 10% limit, the Noticee was required to make disclosure under Regulation 7 (1) and 7 (2) of SAST. Further the above acquisition also required disclosure under Regulation 13 (1) of PIT. It was further observed that the Noticee transferred all 12,50,000 shares to BIL in off market on April 19, 2008. As there was a change in the Noticees shareholding which crossed 2% of paid up capital of the company the Noticee was required to make disclosure under Regulation 13(3) of PIT Regulation. Hence it was alleged that the Noticee did not make the

requisite disclosure under Regulation 7 (1) and 7 (2) of SAST and 13 (1), 13 (3) read with 13(5) of PIT.

b. The Noticee in its reply submitted a copy of a letter dated March 30, 2007 to BSE making necessary disclosure under Regulation 7 (1) of SAST to BSE. On perusal of the Noticee's reply, I find that the Noticee has made the required disclosure under SAST to BSE however it is observed that no required disclosure of the aggregate shareholding was made to the Company. In view of the above, I find that the Noticee has partially complied with the SAST Regulation. I observe from the documents submitted by the Noticee that it had made the disclosure in the requisite format to the exchange in the requisite format under Regulation 7(1) of SAST though it has failed to disclose its holding to the company. In my view the failure of the Noticee to disclose to the company is only technical. I am therefore inclined to give benefit of doubt to the Noticee and do not hold the Noticee guilty of violating the provisions of Regulation 7(1) of SAST Regulation and Section 12(f) of SEBI Act.

c. The above acquisition also required disclosure under Regulation 13 (1) of PIT. With regard to the disclosure under PIT for the acquisition of the above 12,50,000 shares, I observe that the Noticee did not make the requisite disclosure. The Noticee has also not offer any comments for not making disclosure under the aforesaid Regulation. It is therefore presumed that Noticee is admitting to the charges leveled against it. Therefore, the Noticee has failed to comply with 13 (1) of PIT.

d. I further find that the Noticee transferred 12, 50,000 shares to BIL in off market on April 19, 2008 and since there was a change in shareholding which crossed 2% of paid capital of the company, the Noticee was required to make disclosure under Regulation 13 (3) of PIT to the company. The Noticee in its reply dated November 15, 2010 has submitted that the Noticee was under a bonafide belief that the security arrangement with BIL with respect to transfer of shares of RPIL did not call for any disclosure requirement and therefore, the said disclosures were not made. It further submitted that non compliance, if any, was unintentional and inadvertent, under a bonafide belief that the said formalities were not applicable to the Company, as the shares were transferred under a loan/financing agreement.

e. I observe that 12,50,000 shares of RPIL was transferred from the depository account of the Noticee to the account of BIL on April 19, 2008 and there was change in the Noticee's ownership and shareholding which crossed 2% of paid up capital of the company. I note that in terms of Section 10 of the Depository Act, 1996, the beneficial owner is the person whose name is recorded as such with a depository and is entitled to all rights and benefits and also subjected to all liabilities in respect of its/his securities held by a depository. Further, any transfer of securities from the beneficial owner account would be construed as change in ownership in respect of those securities which have been transferred to another beneficiary account. I have also perused the agreement dated April 19, 2008 entered into between the Noticee and BIL. As per clause 13 of the agreement, "*the lender shall have the absolute power and authority to use its discretion to sell and dispose of the shares or any part thereof if the borrower fails to make the payment balance or any component thereof*." Thus it can be seen that the shares were transferred by the Noticee to BIL and there was change in beneficial ownership. Hence the submission made by the Noticee cannot be accepted. The Noticee was therefore required to make necessary disclosure under Regulation 13(3) of PIT Regulation within 4 working days as required under 13 (5) of PIT. However the Noticee failed to make the said disclosure.

16. The object of the PIT Regulation mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. 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. 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*". In terms of regulation 13(3) of PIT, disclosure is required to be made to the company within 4 working days. Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation13 (1), 13(3) read with 13(5) of PIT Regulations.

17. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

18. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15 A(b) of the SEBI Act, which reads as follows;

> ***15A. Penalty for failure to furnish information, return, etc.-*** *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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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];*

19. While determining the quantum of monetary penalty under section 15 A(b), I have considered 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."*

20. In view of the charges as established, and the facts and circumstances of the case, and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The aforesaid regulations have been framed in order to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. By virtue of the failure on the part of the Noticee to make the necessary disclosure on time, the fact remains that the

shareholders/investors were deprived of the important information at the relevant point of time. Under these circumstances, the compliance with the disclosure requirements under PIT assumes significance and the Noticee's failure to do so have to be viewed seriously and accordingly, punished in an exemplary manner.

21. In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find from the records that the default of the Noticee is not repetitive in nature.

ORDER

22. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹.2,00,000/- (Rupees Two lakh only) under Section 15 A(b) of the SEBI Act on the Noticee which will be commensurate with the violations committed by it.

23. 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. Biswajit Choudhury, Deputy General Manager, Investigations Department- 6, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

24. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: May 30 , 2011 **BARNALI MUKHERJEE**
Place: Mumbai **ADJUDICATING OFFICER**