

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: AO/SBM/EAD-1/346-347/2018)

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:

Ankush Ashok Gupta
(PAN: AHCPG2531K)

Meenal Apartment,
Shardhanand Road, Opp. Satelite Hotel,
Vile Parle East, Mumbai-400057

Akshat Ashok Gupta
(PAN: AMYPG2411K)

Guru Kripa,
6, Dixit Road,
Vile Parle East, Mumbai-400057

In the matter of

SVC Resources Ltd.

FACTS OF THE CASE

1. Company Law Board, New Delhi, upon observing certain irregularities in the decisions taken by the Board of Directors of SVC Resources Ltd. (hereinafter referred to as '**Company**' / '**SVCRL**'), froze 4,05,44,426 shares of the Company, vide its order dated June 12, 2013. The said order of the Company Law Board

(‘**CLB**’) was also confirmed by the Hon’ble Bombay High Court vide Order dated August 26, 2013. Thereafter, Company Law Board also approved change in the Board of Directors of the Company, vide its order dated April 04, 2014 and, thereby, appointed Mr. Mohd. Ali as the Managing Director and Compliance Officer of the Company. Subsequently, Company Law Board, vide its Order dated June 04, 2015, concluded that the allotment of 4,05,44,426 shares was illegal and the same was made without following the due process mentioned under the Companies Act, 1956 and ordered cancelation of the said shares. CLB also ordered rectification of the register of members of the company accordingly under the provisions of the Companies Act, 1956.

2. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received a letter dated May 06, 2014 from Mr. Mohd. Ali wherein it was mentioned that the promoters of the company had failed to make necessary disclosures to the company regarding change in their shareholding. Specifically, it was mentioned that Mr. Ankush Ashok Gupta (hereinafter referred to as '**Noticee 1**' / '**Ankush**') and Mr. Akshat Ashok Gupta (hereinafter referred to as '**Noticee 2**' / '**Akshat**' and hereinafter collectively referred to as '**Noticees**') had failed to make the necessary disclosures to the company pursuant to their transactions in the scrip of the company during the period January 01, 2014 to May 30, 2014 (hereinafter referred to as '**Examination Period**'). It was observed that the Noticees who were part of the promoter group of the company had sold significant quantities of shares of SVCRL during the above mentioned examination period.
3. In view of the above reasons, SEBI conducted an examination into the trading/dealings in the scrip of the company during the above period. It was observed that Noticees have allegedly failed to make the necessary disclosures to the company and Bombay Stock Exchange ('**BSE**'), which were required to be made by them under the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and also under SEBI (Prohibition of Insider Trading) Regulations,

1992 (hereinafter referred to as '**PIT Regulations**'). Therefore, it was alleged that Noticees have violated the provisions of SAST Regulations and PIT Regulations. In view of the above, adjudication proceedings were initiated against the Noticees under the provisions of section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

4. SVCRL is engaged in the business of extraction, processing and sale of ore and exploration and development of mining assets. Its activities include mining of iron ore and trading in minerals. It primarily operates in the business segment of mining and trading of iron ore, white earth, ochre, manganese and laterite. SVCRL is listed on BSE.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer, vide Order dated October 24, 2017 under Section 19 read with Section 15-I(1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15A (b) of the SEBI Act the alleged failure on the part of the Noticees to comply with the relevant provisions of SAST Regulations and PIT Regulations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. A common Show Cause Notice ref. SEBI/HO/EAD/2459/2018 dated January 23, 2018 (hereinafter referred to as '**SCN**') was issued to the Noticees under the provisions of Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on the Noticees under the provisions of section 15A(b) of the SEBI Act for their alleged violation of the relevant provisions of law, as mentioned in the SCN. The SCN issued to the Noticees, *inter alia*, mentioned the following:
 - a) *The Company had issued 11,00,77,759 shares of Rs. 1 each. However, 4,05,44,426 shares of Company were frozen vide Company Law Board order dated June 12, 2013 and Bombay High Court Order dated August 26,*

2013. Therefore, the total paid up capital of the company, during examination period, was Rs. 6,95,33,333 (represented by 6,95,33,333 shares of face value of Rs. 1/- each).

- b) It is observed from the shareholding pattern of the Company for the quarter ended December 2013 and March 2014, as available on BSE website, that Noticee 1 and Noticee 2 were part of the Promoter Group of SVCRL during the Examination Period.
- c) Upon examination of transaction statement and the trading data of Noticee 1, it is observed that Noticee 1 was continuously selling the shares of the Company during the examination period. The following transactions were done by the Noticee 1 during the examination period-

Table 1- transactions of Noticee 1 in shares of the Company

<i>Date of the Transaction</i>	<i>Shares Transacted</i>	<i>% of shares sold in the transaction</i>	<i>Cumulative sale off</i>	<i>Holding after sale</i>
<i>Holding in December 2013</i>		3.24%		22,53,833
21.04.2014	32,000	0.05%	0.05%	22,21,833
25.04.2014	1,30,000	0.19%	0.23%	20,91,833
28.04.2014	1,50,002	0.22%	0.45%	19,41,831
29.04.2014	1,50,000	0.22%	0.66%	17,91,831
30.04.2014	1,48,427	0.21%	0.88%	16,43,404
02.05.2014	21,145	0.03%	0.91%	16,22,259
05.05.2014	1,12,366	0.16%	1.07%	15,09,893
06.05.2014	196	0.00%	1.07%	15,09,697
07.05.2014	20	0.00%	1.07%	15,09,677
08.05.2014	1,50,826	0.22%	1.29%	13,58,851
09.05.2014	2,11,200	0.30%	1.59%	11,47,651
12.05.2014	80,100	0.12%	1.71%	10,67,551
13.05.2014	2,00,000	0.29%	1.99%	8,67,551
20.05.2014	38,260	0.06%	2.05%	8,29,291
21.05.2014	1,04,910	0.15%	2.20%	7,24,381
22.05.2014	3,02,928	0.44%	2.64%	4,21,453
23.05.2014	33,735	0.05%	2.68%	3,87,718
26.05.2014	1,02,000	0.15%	2.83%	2,85,718
29.05.2014	55,000	0.08%	2.91%	2,30,718
30.05.2014	89,911	0.13%	3.04%	1,40,718

- d) Similarly, Noticee 2 also sold shares of the Company during the examination period. The following transactions were observed to have been taken by Noticee 2 during the examination period-

Table 2- transactions of Noticee 2 in shares of the Company

<i>Date of Transaction</i>	<i>Shares Transacted</i>	<i>% of shares sold in the transaction</i>	<i>Cumulative sale off</i>	<i>Holding after sale</i>
<i>Holding in December 2013</i>		<i>1.13%</i>		<i>7,83,014</i>
18.02.2014	50,000	0.07%	0.07%	7,33,014
19.02.2014	50,000	0.07%	0.14%	6,83,014
<i>18.03.2014</i>	<i>100</i>	<i>0.00%</i>	<i>0.14%</i>	<i>6,82,914</i>
19.03.2014	73,495	0.11%	0.25%	6,09,419
<i>20.03.2014</i>	<i>5,000</i>	<i>0.01%</i>	<i>0.26%</i>	<i>6,04,419</i>
21.04.2014	1,87,203	0.27%	0.53%	4,17,216

- e) It is, therefore, observed that Noticee 1 sold more than 25,000 shares of SVCRL on 17 different occasions during the examination period. Similarly, Noticee 2 sold more than 25,000 shares of SVCRL on 4 different occasions during the examination period.
- f) Email was sent to SVCRL by SEBI on June 09, 2014 to confirm whether the Noticees had made the necessary disclosures under the relevant provisions of PIT Regulation and SAST Regulations. SVCRL, vide its email dated June 09, 2014, forwarded SEBI the disclosures received by it from the Noticees under the provisions of PIT Regulations in the scrip of SVCRL.
- g) Similarly, another Email was sent to BSE by SEBI on July 17, 2014 to ascertain whether Noticees had made the necessary disclosures under the relevant provisions of PIT Regulation and SAST Regulations. BSE, vide its Email dated July 24, 2014, forwarded to SEBI the disclosures received by it from the Noticees under the provisions of PIT Regulations in the scrip of SVCRL.
- h) On perusal of the said disclosures, as submitted by BSE and the Company and details available on BSE website, it is observed that Noticee 1 made the following disclosures-

Table 3-status of disclosures as submitted by Noticee 1

<i>Transaction date</i>	<i>Disclosure date to SVCRL (delay)</i>	<i>Disclosure date to BSE (delay)</i>
21.04.2014	No disclosure	25.04.2014 (2)
25.04.2014	05.05.2014 (4)	02.05.2014 (3)
28.04.2014	05.05.2014 (3)	In time
29.04.2014	05.05.2014 (2)	In time
30.04.2014	05.05.2014 (1)	In time
05.05.2014	No disclosure	In time
08.05.2014	No disclosure	In time
09.05.2014	No disclosure	In time
12.05.2014	No disclosure	In time
13.05.2014	No disclosure	In time
20.05.2014	No disclosure	In time
21.05.2014	No disclosure	In time
22.05.2014	No disclosure	In time
23.05.2014	No disclosure	In time
26.05.2014	No disclosure	In time
29.05.2014	No disclosure	In time
30.05.2014	No disclosure	In time

- i) From Table 3, it can be noted that Noticee 1 made delayed disclosure under Regulation 13(4A) of PIT Regulations with the Company on 4 different occasions while, on 13 other occasions, he did not file any disclosures to the Company under Regulation 13(4A). Similarly, he filed delayed disclosures under Regulation 13(4A) of PIT Regulations with BSE on 2 different occasions. However, it is observed, from all those disclosures filed by the Noticee 1, that he had made false disclosures in Form D as he had wrongly given the percentage of shares sold. Therefore, it is alleged that Noticee 1 has failed to make proper and timely disclosures, under Regulation 13(4A) of PIT Regulations, to the Company and BSE on all the above mentioned 17 occasions.
- j) Further, on perusal of the said disclosures, as submitted by BSE and the Company and details available on BSE website, it is observed that Noticee 2 made the following disclosures-

Table 4-status of disclosures as submitted by Noticee 2

<i>Transaction date</i>	<i>Disclosure date to SVCRL (delay)</i>	<i>Disclosure date to BSE (delay)</i>
<i>18.02.2014</i>	<i>In time</i>	<i>21.02.2014 (1)</i>
<i>19.02.2014</i>	<i>In time</i>	<i>In time</i>
<i>19.03.2014</i>	<i>No disclosure</i>	<i>In time</i>
<i>21.04.2014</i>	<i>No disclosure</i>	<i>In time</i>

- k) *From Table 4, it can be noted that Noticee 2 made delayed disclosure under Regulation 13(4A) of PIT Regulations with BSE on one (1) occasion. Further, on 2 occasions, he did not file any disclosures to the Company under Regulation 13(4A) of the PIT Regulations. Therefore, it is alleged that Noticee 2 has failed to make proper and timely disclosures, under Regulation 13(4A) of PIT Regulations, to the Company and BSE on 3 different occasions.*
- l) *Further, it is observed that the combined shareholding of the promoter group was 40.93% of total shareholding of the Company as on the quarter ended December 2013. Due to regular selling of shares of SVCRL by the Noticees, the combined shareholding of Noticees was reduced by more than 2% on May 09, 2014 when Noticee 1 sold 2,11,200 shares of SVCRL in an on market transaction.*
- m) *It is observed from the Email dated June 09, 2014 of SVCRL and Email dated July 24, 2014 of BSE that Noticees did not make any disclosures under Regulation 29(2) read with Regulation 29(3) of SAST Regulations even when their combined shareholding reduced by more than 2%.*
7. The SCN dated January 23, 2018 was served on the Noticees and the proof of service of the SCN is available on record. Thereafter, the letters/emails sent to the Noticees during the course of the proceedings and the replies received from the Noticees in this regard are mentioned as under :-
- a) In response to the SCN, the Noticees, vide their email dated February 24, 2018, requested for two weeks' time to submit their reply.
- b) Since the Noticees failed to submit any reply, vide letter dated April 02, 2018, the Noticees were granted time till April 16, 2018 to make their submissions.

Vide the aforementioned letter, the Noticees were also provided with an opportunity of personal hearing in the matter on April 24, 2018.

- c) The Noticees, vide their Email dated April 24, 2018, again requested for two weeks' time to submit their reply.
- d) Thereafter, vide their letter dated May 07, 2018, the Noticees requested for an opportunity of inspection of documents which was provided to them vide letter dated May 14, 2018.
- e) The inspection of documents was completed by the Noticees on August 13, 2018 and the concerned department of SEBI i.e EFD also confirmed the same. During the course of inspection of documents, it was informed to the Noticees by EFD that all the relevant documents in the matter and as relied upon in the SCN were already provided to the Noticees along with the SCN and therefore, no additional documents were provided to the Noticees at the time of inspection.
- f) In view of the above, vide letter dated September 04, 2018, Noticees were advised to submit their reply to the SCN on or before September 21, 2018. Vide letter dated September 4, 2018, the Noticees were also provided with another opportunity of personal hearing in the matter on September 27, 2018.
- g) In response, the Noticees, vide their email dated September 12, 2018, requested for a copy of the complaint filed by Mr. Mohd. Ali in the matter, which was also provided to them vide Email on the same day.
- h) Thereafter, vide their Email dated September 21, 2018, the Noticees again requested for extension of time of four weeks to make their submissions in the matter.
- i) Vide letter dated September 25, 2018, the Notices were provided with a final opportunity to submit their reply to the SCN on or before October 05, 2018. Vide the aforesaid letter, the Noticees were also provided with a final opportunity of personal hearing in the matter on October 10, 2018.

j) However, the Noticees, despite being informed about the fact that no further extension would be granted to them under any circumstances, again requested for extension of time to submit their reply vide their email dated October 09, 2018. Thereafter, there was no communication in the matter from the Noticees.

8. In view of the abovementioned series of communications with the Noticees, I am convinced that ample opportunities to make their submissions and also to appear for the personal hearings were provided to the Noticees during the course of the proceedings. However, it is on record that Noticees have not only failed to submit their replies to the SCN but also failed to appear for the personal hearing on the stipulated dates. Clearly, from the series of correspondences exchanged with the Noticees, as mentioned above, it is very evident that Noticees were employing tactics to procrastinate the proceedings. In this context, I would like to place reliance on the Order dated February 11, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal and Ors. vs SEBI (Appeal No 68 of 2013), wherein Hon'ble SAT had observed that

“..... As rightly contended by Mr. Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the 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 the charges leveled against them in the show cause notices”

In view of the above reasons/observations, I am compelled to proceed further in the matter on the basis of material/facts available on record.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case and the material available on record. I note that the allegations levelled against the Noticees are that they have failed to make the necessary disclosures under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations and

Regulation 29(2) read with 29(3) of the SAST Regulations w.r.t their transactions in the scrip of SVCRL during the examination period. In view of the above, the issues for consideration before me are:-

- a. Whether the Noticees have violated the provisions of Regulations 13(4A) read with 13(5) of PIT Regulations?
- b. Whether the Noticees have violated the provisions of Regulations 29(2) read with 29(3) of SAST Regulations?
- c. If yes, whether the Noticees are liable for penalty and what should be the quantum of penalty that should be imposed on the Noticees?

10. Before moving forward, the relevant extracts of the provisions of the PIT Regulations and SAST Regulations allegedly violated by the Noticees are mentioned as under-

PIT Regulations, 1992

13(4A) *Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

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

SAST Regulations, 2011

29(2) *Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares*

or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this subregulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

a. Whether the Noticees have violated the provisions of Regulations 13(4A) read with 13(5) of PIT Regulations?

11. In terms of the provisions of Regulation 13(4A) of PIT Regulations, any person, who is a promoter or part of promoter group of a Company, is required to disclose any change in his shareholding in the company from last disclosure if the change in his shareholding exceeds Rs. 5 lakh in value or 25,000 shares or 1% of the total shareholding or voting rights, whichever is lower.

12. From the material/facts on record, I observe that Noticee 1 who is part of the promoter group of SVCRL was continuously selling the shares of the company through market transactions during the examination period, details of which are mentioned as under:-

Table 1- transactions of Noticee 1 in shares of the Company

Date of Transaction	Shares Transacted	Holding after sale
Holding in December 2013		22,53,833
21.04.2014	32,000	22,21,833
25.04.2014	1,30,000	20,91,833

28.04.2014	1,50,002	19,41,831
29.04.2014	1,50,000	17,91,831
30.04.2014	1,48,427	16,43,404
02.05.2014	21,145	16,22,259
05.05.2014	1,12,366	15,09,893
06.05.2014	196	15,09,697
07.05.2014	20	15,09,677
08.05.2014	1,50,826	13,58,851
09.05.2014	2,11,200	11,47,651
12.05.2014	80,100	10,67,551
13.05.2014	2,00,000	8,67,551
20.05.2014	38,260	8,29,291
21.05.2014	1,04,910	7,24,381
22.05.2014	3,02,928	4,21,453
23.05.2014	33,735	3,87,718
26.05.2014	1,02,000	2,85,718
29.05.2014	55,000	2,30,718
30.05.2014	89,911	1,40,718

13. From the above Table, it is clear that there were 17 instances wherein Noticee 1 sold more than 25,000 shares of the Company, details of which have been highlighted above. Therefore, in view of the disclosure requirements mandated under Regulation 13(4A) of PIT Regulations, Noticee 1 was required to disclose details of such change of his shareholding, which has resulted in transactions involving more than 25,000 shares, to the Company and BSE, within 2 working days of such transactions. Upon perusal of the disclosures made by Noticee 1 to BSE and to the Company in this regard, I find that Noticee 1 has made the following disclosures-

Table 2-status of disclosures as submitted by Noticee 1

Transaction date	Disclosure date to SVCRL (delay)/ disclosures not made	Disclosure date to BSE (delay)/ disclosures not made
21.04.2014	No disclosure made	25.04.2014 (delay of 2 days)
25.04.2014	05.05.2014 (4 days delay)	02.05.2014 (delay of 3 days)
28.04.2014	05.05.2014 (3 days delay)	In time
29.04.2014	05.05.2014 (2days delay)	In time

30.04.2014	05.05.2014 (1 day delay)	In time
05.05.2014	No disclosure made	In time
08.05.2014	No disclosure made	In time
09.05.2014	No disclosure made	In time
12.05.2014	No disclosure made	In time
13.05.2014	No disclosure made	In time
20.05.2014	No disclosure made	In time
21.05.2014	No disclosure made	In time
22.05.2014	No disclosure made	In time
23.05.2014	No disclosure made	In time
26.05.2014	No disclosure made	In time
29.05.2014	No disclosure made	In time
30.05.2014	No disclosure made	In time

14. Therefore, from the facts mentioned in the above Table, I observe that Noticee 1 made delayed disclosure under Regulation 13(4A) of PIT Regulations to the Company on 4 occasions while, on 13 other occasions, he failed to make any disclosures to the Company in terms of the above mentioned Regulation. Further, I also note that Noticee 1 made delayed disclosures to BSE under Regulation 13(4A) of PIT Regulations on 2 different occasions. In view of the above observations, I hold that Noticee 1 has failed to comply with the requirements of Regulation 13(4A) r/w Regulation 13 (5) of the PIT Regulations and therefore, Noticee 1 has violated the provisions of the said Regulations.
15. Similarly, Noticee 2 who was also part of the promoter group of SVCRL sold shares of the company on 4 different occasions through market transactions, which had exceeded 25,000 shares in terms of quantity of shares traded, details of which are brought out as per the Table below:--

Table 3- Transactions of Noticee 2 in shares of the Company

Date of Transaction	Shares Transacted	Holding after sale
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Holding in December 2013		7,83,014
18.02.2014	50,000	7,33,014
19.02.2014	50,000	6,83,014
18.03.2014	100	6,82,914
19.03.2014	73,495	6,09,419
20.03.2014	5,000	6,04,419
21.04.2014	1,87,203	4,17,216

16. In this regard, I have perused the details of the disclosures made by Noticee 2 in terms of Regulation 13(4A) of the PIT Regulations and observe that Noticee 2 failed to make the necessary disclosures to BSE within the prescribed time period on one occasion i.e. regarding his transaction executed on February 18, 2014 and also failed to make the necessary disclosures to the Company on two occasions i.e. w.r.t. his transactions done on March 19, 2014 & April 21, 2014. The details of disclosures made by Noticee 2 are mentioned in the Table below:-

Table 4-status of disclosures as submitted by Noticee 2

Transaction date	Disclosure date to SVCRL (delay)	Disclosure date to BSE (delay)
18.02.2014	In time	21.02.2014 (1 day delay)
19.02.2014	In time	In time
19.03.2014	No disclosure made	In time
21.04.2014	No disclosure made	In time

17. Therefore, in view of the above facts, I note that Noticee 2 has failed to comply with the provisions of Regulation 13(4A) r/w Regulation 13(5) of the PIT Regulations and hold that Noticee 2 has violated the provisions of the aforementioned Regulations.

b. Whether the Noticees have violated the provisions of Regulations 29(2) read with 29(3) of SAST Regulations?

18. The next issue to be examined is whether the Noticees have failed to make the necessary disclosures under Regulation 29(2) r/w Regulation 29(3) of SAST

Regulations w.r.t their transactions in the scrip of SVCRL during the examination period. Before dealing with the above allegation against the Noticees, I note that the Company in its shareholding filings made to BSE for the quarter ended December 2013 had declared its issued & paid up share capital as Rs 11,00,77,759 (represented by 11,00,77,759 shares of face value of Rs 1 each). Thereafter, in all the subsequent shareholding filings made by the company to BSE, the company had declared its issued and paid up share capital as Rs. 6,95,33,333 (represented by 6,95,33,333 shares of face value of Rs. 1/- each). It is noted that the company has made the disclosures on share capital, as mentioned above, based on Company Law Board (**CLB**) Order dated June 12, 2013, which froze 4,05,44,426 shares of the company due to irregularities in the functioning of the Board of Directors of the company and also irregularities in the allotment process that were observed w.r.t the above shares.

19. Further, in this regard, it is also pertinent to mention the observations of CLB vide its Order dated June 04, 2015, details of which are as under:--

“11.A perusal of the record makes it obvious that the allotments were made without the approval of the Central Government and without the members’ approval as per Section 81 of the Companies Act, 1956 and are not in compliance with takeover and ICDR Regulations of SEBI. It is also pertinent to note that no loan has been shown against the allotments made, as per section 81(3) of the Companies Act, 1956. A detailed affidavit in this regard has been filed by the Petitioners in C.P. No. 10(MUM) of 2014 on 05.11.2014 bringing forth the malafide of the said allotments. In the light of the facts stated in the petition and applications, the said allotments dated 08.05.2013 and 05.08.2013 are thus liable to be cancelled.....

13.I have therefore no hesitation in coming to the conclusion that the following allotment of shares by the R-1 company is illegal and therefore stands cancelled:-

- (i) 1,08,44,426 equity shares on 08.05.2013 in favour of Sushma Gupta and Ashok Gupta, Ashok Gupta HUF, Sushanku Enterprises Ltd, Ashok B. Gupta, Akshat A. Gupta and Ashok Gupta, and
- (ii) 2,97,00,000 equity shares on 05.08.2013 in favour of M/s. Subhtex (India) Ltd.

14. In the light of the above order, I order rectification of register of members of the company accordingly under section 111(3) of the Companies Act 1956 as sought by the new Board of Directors in the Company Petition CP No. 10 of 2014. I also grant extension of six months to the company to hold the AGM and file the Annual Reports for the year ended 31.03.2014 as sought in the CA No.29 of 2015.”

20. In view of the above observations, the company in its shareholding filings made to BSE from the quarter ended March 2013 disclosed its issued & paid up share capital as Rs. 6,95,33,333 (represented by 6,95,33,333 shares of face value of Rs 1/- each). I now proceed to deal with the allegation levelled against the Noticees that they had failed to make relevant disclosures under Regulation 29(2) of SAST Regulations.

21. I note that, as per the requirement prescribed under Regulation 29(2) of the SAST Regulations, any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, is required to disclose the number of shares or voting rights held by him along with the persons acting in concert and change in shareholding or voting rights if such change is more than 2% of total shareholding of the Company, even if such change results in shareholding falling below five per cent. Further, in terms of Regulation 29 (3) of the SAST Regulations, such disclosures are required to be made by the acquirer together with PACs to the Stock Exchange and to the Target Company within two working days of the change in shareholding.

22. I note that the promoters of SVCRL (which includes Noticee 1 & Noticee 2) were holding 45,09,379 shares of SVCRL as on February 17, 2014 which

amounts to 6.48% of total share capital of the Company. I observe that the Noticees had sold the shares of SVCRL during the examination period and the transactions of the Noticee have resulted in change in the shareholding of the Noticees, which required them to make the necessary disclosures under the provisions of Regulation 29(2) r/w Regulation 29(3) of SAST Regulations. The transactions of the Noticees in the scrip of SVCRL during the examination period are mentioned below:-

Table 5 - Transactions of the Promoter Group entities (including the Noticees) during the Examination period

Date of Transaction	Seller	Shares Sold	% of shares sold in the transaction	Cumulative sale off	Holding after sale
Holding of the Promoter Group (including the Noticees) as on February 17, 2014					45,09,379 (6.48% of the total share capital of SVCRL)
18.02.2014	Noticee 2	50,000	0.072%	0.07%	44,59,379
19.02.2014	Noticee 2	50,000	0.072%	0.14%	44,09,379
18.03.2014	Noticee 2	100	0.00%	0.14%	44,09,279
19.03.2014	Noticee 2	73,495	0.106%	0.25%	43,35,784
20.03.2014	Noticee 2	5,000	0.007%	0.26%	43,30,784
21.04.2014	Noticee 2	1,87,203	0.27%	0.53%	41,43,581
21.04.2014	Noticee 1	32,000	0.046%	0.57%	41,11,581
25.04.2014	Noticee 1	1,30,000	0.187%	0.76%	39,81,581
28.04.2014	Noticee 1	1,50,002	0.216%	0.98%	38,31,579
29.04.2014	Noticee 1	1,50,000	0.216%	1.19%	36,81,579
30.04.2014	Noticee 1	1,48,427	0.213%	1.41%	35,33,152
02.05.2014	Noticee 1	21,145	0.030%	1.44%	35,12,007
05.05.2014	Noticee 1	1,12,366	0.162%	1.60%	33,99,641
06.05.2014	Noticee 1	196	0.00%	1.60%	33,99,445
07.05.2014	Noticee 1	20	0.00%	1.60%	33,99,425
08.05.2014	Noticee 1	1,50,826	0.217%	1.81%	32,48,599
09.05.2014	Noticee 1	2,11,200	0.304%	2.12%	30,37,399
12.05.2014	Noticee 1	80,100	0.115%	2.23%	29,57,299
13.05.2014	Noticee 1	2,00,000	0.288%	2.52%	27,57,299
20.05.2014	Noticee 1	38,260	0.055%	2.58%	27,19,039
21.05.2014	Noticee 1	1,04,910	0.151%	2.73%	26,14,129
22.05.2014	Noticee 1	3,02,928	0.436%	3.16%	23,11,201

23.05.2014	Noticee 1	33,735	0.049%	3.21%	22,77,466
26.05.2014	Noticee 1	1,02,000	0.147%	3.36%	21,75,466
29.05.2014	Noticee 1	55,000	0.079%	3.44%	21,20,466
30.05.2014	Noticee 1	89,911	0.129%	3.57%	20,30,555

23. From the above table, I note that the shareholding of the promoter group of SVCRL changed by more than 2% as on May 09, 2014 when Noticee 1 sold 2,11,200 shares of the Company by way of market transaction. Therefore, Noticees were required to make the disclosure under Regulations 29(2) read with 29(3) of SAST Regulations to the stock exchange i.e. BSE as well as to the Company within two working days of the said transaction. I note that SVCRL, in its Email dated June 09, 2014, and BSE, in its Email dated July 24, 2014, have submitted that the Noticees did not make any disclosures under Regulation 29(2) read with Regulation 29(3) of SAST Regulations even when their combined shareholding reduced by more than 2%.. Therefore, I hold that Noticees have violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations

24. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI* observed that-

"Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

c. If yes, whether the Noticees are liable for penalty and what should be the quantum of penalty that should be imposed on the Noticees?

25. As the violations of the aforementioned provisions of the SAST Regulations and PIT Regulations by the Noticees have been established, I am of the view that it is a fit case to impose monetary penalty on the Noticees in terms of Section 15A(b) of the SEBI 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 there under-*

(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.

26. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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. With regard to the above factors, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticees. I am of the view that by not complying with the relevant provisions of SAST Regulations and PIT Regulations, the Noticees have failed to comply with the mandatory statutory obligation. I further note that Noticee 1 has violated the provisions of Regulation 13(4A) of PIT Regulations on 19 different occasions and Noticee 2 has violated the same on 3 different occasions. Therefore, I am

of the view that the Noticees have repeatedly violated the provisions of law as established above.

28. Further, in the context of present proceedings, reliance is placed upon the order of The Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India 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.....”*

29. I am of the view that the details of the shareholding of the promoter group, any change therein and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant matter, the Noticees have regularly sold the shares of the company and the disclosure obligation arose as a result of these transactions of the Noticees. The timely disclosures of the same by the Noticees under the relevant provisions of SAST Regulations and PIT Regulations were of significant importance from the point of view of the investors. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

ORDER

30. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs. 2,00,000/- (Rs. Two Lakh only) on Noticee 1 and Rs. 1,00,000/- (Rs. One Lakh only) on Noticee 2 under section 15A(b) of the SEBI Act for their failure to comply with the relevant provisions of SAST Regulations and PIT Regulations.

31. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI- Penalties Remittable to Government of India", A/C No 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payments made (in the format as given in the table below) should be forwarded to The Division Chief, Enforcement Department (EFD), Securities and Exchange Board of India, SEBI Bhavan, C-4A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051

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 the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees viz, Mr. Ankush Ashok Gupta and Mr. Akshat Ashok Gupta and also to Securities and Exchange Board of India.

Place: Mumbai
Date: 30.11.2018

SURESH B MENON
ADJUDICATING OFFICER