BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-73/2015]

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

Mr. Madhukar Chimanlal Sheth (PAN ANXPS1972P)

In the matter of

M/s.Fact Enterprise Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') observed that Mr. Madhukar Chimanlal Seth (hereinafter referred to as **'the Noticee'**) had acquired and sold shares of M/s. Fact Enterprise Ltd. (hereinafter referred to as **'Fact'**/'**the company'**) in 2008 and 2010 respectively. These acquisition and/ or sale, however, were not disclosed, and thus, the Noticee was alleged to have violated the provisions of Regulation 7 (1) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'SAST Regulations, 1997'**) and Regulation 13 (1) and 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**).

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer vide Order dated January 28, 2014 under Section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Rules'**) to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violations of SAST Regulations, 1997 and PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. A Show Cause Notice No. EAD-6/AK/VG/6398/2014 dated February 28, 2014 (hereinafter referred to as **'SCN'**) was issued to the Noticee under Rule 4 of the Rules. The Noticee was called upon to show cause as why an inquiry should not be held against him in terms of Rule 4 of the Rules read with Section 15I of the SEBI Act and why penalty should not be imposed on him under Section 15A(b) of the SEBI Act.

4. The Noticee failed to reply within the specified time, hence vide letter dated April 2, 2014, the Noticee was advised to file his reply at the earliest. The Noticee was also granted an opportunity for personal hearing on April 15, 2014. Thereafter, vide letter dated April 3, 2014, the Noticee requested for extension of time to file his reply. The Noticee also requested that he be granted a personal hearing in the first week of May. The request of the Noticee was acceded to and vide letter dated April 16, 2014, he was granted an opportunity of hearing on May 02, 2014. The Noticee appeared for personal hearing on May 02, 2014 and also filed written submissions dated May 02, 2014. The Noticee *inter alia* made the following submissions vide letter dated May 02, 2014:

4.1 That he had purchased 2,25,000 shares of the company, and the balance 2,74,673 shares were given to him as a security, off market;

4.2 That it is the duty of the company to inform all so he should not be exonerated;

4.3 That the exchange has already reported this bulk deal;

4.4 That the requirement of disclosure under SAST Regulations was made in 1995, when the trading was paper based and information was not available as to who bought what and how much. With the intent of bringing this data to public notice, buyers and sellers were asked to submit details of large purchases to the exchange and company. However, from 2000-2001, trading became screen based and paperless. The data as to who bought how much and when, became available immediately. The Exchanges are already releasing the data of bulk purchase and sale, the same day evening. Both the depositories have this information. Thus (disclosure) requirements under the SAST Regulations have become largely useless, except when an acquirer crosses 25% limit and open offer is triggered;

4.5 That hence his lack of action is required to be treated at best as 'not necessary' and at worst 'an oversight' only.

5. At the time of the hearing, the Noticee requested that the charges against him be explained. Accordingly, the nature of allegation against the Noticee was explained to him in detail. The Noticee stated that he was considering availing the consent process and that in case he desired to go ahead with the consent mechanism, he would file application in terms of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 by May 15, 2014. The Noticee also stated that he would file further written submissions in the matter by May 15, 2014. The Noticee was *inter alia* advised to submit details of the transfer such as purpose, mode, price etc. However, since neither any submissions nor copy of the consent application made, if any, was received from the Noticee, a reminder was sent to him vide email dated June 13, 2014.

6. Vide letter dated June 23, 2014, the Noticee filed additional written submissions *inter alia* submitting as follows:

   (i) That Mr. Rajiv Kashyap, Managing Director (MD) of the company had approached the Noticee to buy some shares of the company, as he was in need of funds. Mr. Rajiv Kashyap promised to take back the shares in about six months;

   (ii) That Mr. Rajiv Kashyap gave the Noticee 2,74,673 shares of the company as margin shares between February 19, 2008 and February 21, 2008 through off market transactions, to enable the Noticee to buy 2,25,000 shares for him, which he did later. Thus, the act of MD of the company caused Noticee's crossing of 5%;

   (iii) That in July 2009, Mr. Rajiv Kashyap gave him a letter and six cheques amounting to Rs.5,80,00,000/- to take back those shares on cost and compensation basis. However, these cheques were dishonoured, and the Noticee has filed a criminal case against Mr. Rajiv Kashyap under Section 138 of the Negotiable Instruments Act;

   (iv) That the 5% limit was crossed when Mr. Rajiv Kashyap, MD of the company gave shares to the Noticee. The Noticee has questioned the relevance of the disclosure to the company as it would be akin to a disclosure to Mr. Rajiv Kashyap.

7. The Noticee has along with his aforesaid letter, provided a copy of a letter dated July 14, 2009 from Mr. Rajiv Kashyap addressed to the Noticee, in support of Noticee's aforesaid claim that 2,74,673 shares were given to him by Mr. Rajiv Kashyap to ensure safety of his money for buying

2,25,000 shares of the company on behalf of Mr. Rajiv Kashyap in 2008. Further, along with his additional submissions dated June 23, 2014, the Noticee also submitted details of the criminal case filed by him against Mr. Rajiv Kashyap under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) including the complaint before the Hon'ble Metropolitan Magistrate, Notice of Demand under Section 138 of NI Act, the details of the cheques and dishonor thereof.

8. Thereafter vide letter dated July 03, 2014, the Noticee *inter alia* stated that he has come to understand that the action against him was initiated on the basis of a complaint by Mr. Rajiv Kashyap and requested for a copy of the complaint. The Noticee also requested for copy of any other evidence relied on, but, not provided to him. The Noticee also stated that he wanted to examine Officers of National Securities Depository Ltd. (hereinafter referred to as **'NSDL'**), his depository participant (hereinafter referred to as **'DP'**) who received the shares, Officer of his DP who was in charge of his account, and one Mr. Girish Patel, to prove his innocence.

9. Thereafter, the Noticee was *inter alia* informed that all the documents that were relied upon in the SCN had already been provided to him. The Noticee was informed that as per ***Order of the Hon'ble SAT in Appeal Nos. 08 & 09 of 2011 (Price Waterhouse Vs SEBI, decided on 01.06.2010),*** SAT had observed as follows:

"....it is not appropriate nor is it the requirement of principles of natural justice that appellant should be allowed inspection of all the material that might have been collected during the course of investigation but has not been relied upon in the show cause notice… There is no provision in the Act that all material collected during the course of investigation should be made available to the appellant".

10. Further, the Noticee was also informed that the Hon'ble Supreme Court in the case of Krishna Chandra Tandon Vs Union of India {(1974) 4 SCC 374} has observed that there is no denial of natural justice on account of denial of inspection of records and copies of documents which were not relied upon by the Enquiry Officer. In respect of the witnesses that the Noticee sought to examine, he was informed that no statements had been relied upon in the SCN, hence his request for examining the witnesses could not be acceded to. The Noticee was also granted another opportunity for personal hearing on December 19, 2014, which was adjourned to January 14, 2015 on his request.

11. On the scheduled date, the Noticee appeared for hearing, reiterated his earlier submissions and also filed additional written submissions. Vide written submissions dated January 14, 2015, the Noticee *inter alia* stated that 2,74,673 shares were given to him by way of security and was not a purchase. He stated that these were pledged shares, he had not paid for the shares, and that pledged shares do not trigger the disclosure requirements. The Noticee also submitted a copy of the consent application dated January 09, 2015 filed on January 14, 2015.

12. Thereafter vide email dated January 27, 2015, the Noticee *inter alia* pointed out that Section 12 of the Depositories Act does not state anything about direct pledge between pledgor and pledgee. Hence vide email dated February 12, 2015, extract of Regulation 58 of SEBI (Depositories and Participants) Regulations, 1996 which lays down the manner of creating a pledge or hypothecation was emailed to the Noticee.

13. Thereafter, it was learnt that the consent application filed by the Noticee was returned due to deficiencies. It was also noted that Noticee had not filed any further settlement application in the matter. Accordingly vide email dated May 19, 2015, the Noticee was advised that if he desired to make any additional written submissions, he should file the same latest by May 25, 2015. It was communicated therein that in case no reply was received by May 25, 2015, it would be presumed that he had no further submissions to make and the matter would be proceeded with on the basis of the material available on record. Vide email dated May 21, 2015, the Noticee requested for time till June 10, 2015 to file a reply and the same was granted.

14. The Noticee vide letter dated June 10, 2015 filed further additional submissions. The Noticee reiterated his earlier submissions and stated further that he had not 'acquired' the shares. The Noticee again reiterated the sequence of events resulting in his receiving 2,74,673 from Mr. Rajiv Kashyap in off market transaction. The Noticee *inter alia* further stated that the proceedings were time barred. The Noticee vide the said letter again requested for a copy of the complaint filed by Mr. Rajiv Kashyap and any evidence relied upon but not revealed to him, and also once again stated that he wanted to examine the following witnesses to prove his innocence: Officer of NSDL and his DP India Infoline Ltd. (IIFL) who received shares, Officer of IIFL Mr. Ketan Malkan in charge of his account and one Mr. Girish Patel, a witness to prove his innocence.

15. Vide email dated July 6, 2015, the Noticee was again informed that all documents relied upon in the SCN had already been provided to him. With respect to the request to examining certain witnesses, the Noticee was informed that no statements had been relied upon in the SCN, hence the request for examining witnesses could not be acceded to. However, the Noticee was advised that if he desired to submit statements from any person in his defense, he could file affidavit from such persons, latest by July 15, 2015. Once again, the Noticee requested for an extension of time to file the affidavit. The request of the Noticee was granted and he was given time upto July 22, 2015 to file the same.

16. Thereafter, vide letter dated July 20, 2015, the Noticee filed an affidavit dated July 10, 2015 signed by one Mr. Girish Patel *inter alia* stating as follows:

i. That he has been associated with the Noticee for the last 20 years and also knew Mr. Rajiv Kashyap, MD of the Company;

ii. That Mr. Rajiv Kashyap persuaded the Noticee to buy some shares of the company and gave the Noticee some more shares as safety against fall in price, in case it had to be sold;

iii. That the holding of the Noticee exceeded 5% only due to the shares given by the MD of the company, Mr. Rajiv Kashyap and not due to purchase by the Noticee;

iv. That on or around July 14, 2009, Mr. Rajiv Kashyap gave the Noticee six cheques to pay all dues and take back his shares. The cheques were issued from an account seized by Income Tax Authority, hence got dishonoured. Thus Mr. Rajiv Kashyap cheated and trapped the Noticee and then he complained to SEBI through his employee about the Noticee exceeding 5% and not informing the company/Exchange when the Noticee gave him notice for dishonoured cheques;

v. That on dishonor of cheques, all shares were sold and credit given to his account against dishonoured cheques which account is accepted by Mr. Rajiv Kashyap, thus shares were given by Mr. Rajiv Kashyap as back-up to his dues.

CONSIDERATION OF ISSUES AND FINDINGS

17. I have examined the SCN, the submissions made by the Noticee in his replies and during the personal hearings and the documents available on record. I observe that the allegation against

the Noticee is that the Noticee failed to make the relevant disclosures under the SAST Regulations, 1997 and PIT Regulations, as applicable.

18. The violation by the Noticee as set out in the SCN is that the Noticee had acquired and sold shares of Fact in 2008 and 2010 respectively. These acquisition and/or sale, however, had not been disclosed, thus the Noticee is alleged to have violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations, 1997 and Regulation 13(1) and 13(3) read with 13(5) of PIT Regulations. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulation, 1997 and the PIT Regulations, which read as under:

SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

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

7(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 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) and (1A) shall be made within two 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 (Prohibition of Insider Trading) Regulations, 1992

Disclosure of interest or holding in listed companies by certain persons - 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 [2 working days][1] of :—*

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

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

[1] Substituted for the figure and words "4 working days" by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 w.e.f. 19-11-2008.

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.

(5) The disclosure mentioned in sub-regulations [(3), (4) and (4A)][2] shall be made within [two][3] 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.

19. The issues that, therefore, arise for consideration in the present case are:

19.1 Whether the Noticee violated the provision of Regulation 7(1) read with 7(2) of SAST Regulations, 1997 and Regulation 13(1) of PIT Regulations due to acquisition of 2,74,673 shares during the first quarter of 2008, thereby entitling the Noticee more than 5% shares or voting rights of the company?

19.2 Whether the Noticee violated the provision of Regulation 13(3) read with 13(5) of PIT Regulations by failing to disclose the acquisition of 2,25,000 shares between March 2008 to September 2008?

19.3 Whether the Noticee violated the provision of Regulation 13(3) read with 13(5) of PIT Regulations by failing to disclose the sale of shares exceeding 2% during the first quarter of 2010?

19.4 Do the violations, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?

19.5 If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

[2] Substituted for the symbols, numbers and word "(3) and (4)" by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

[3] Substituted for the number "4" by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 w.e.f. 19-11-2008.

20. I note from the BSE website that the shareholding of the Noticee in the company at the end of the relevant quarters was as follows:

Name	Qtr. Ended Mar, 2008	Qtr. Ended Sept, 2008	Qtr. Ended Mar, 2010
Madhukar Sheth	2,74,673 shares (5.44%)	4,99,673 shares (9.90%)	Nil

The share capital of the company at that time period was 50,47,800 shares.

21. The first issue for consideration is whether the Noticee violated Regulation 7(1) read with 7(2) of SAST Regulation, 1997 and Regulation 13(1) of PIT Regulations. As observed from quarterly shareholding report disclosed in BSE, the Noticee acquired 5.44% (2,74,673 shares) of the total paid up equity capital of the company during the first quarter of 2009. However, no disclosure was made by the Noticee under Regulations 7(1) read with 7(2) of SAST Regulation, 1997 and Regulations 13(1) of PIT Regulations. I note that Regulation 7(1) read with 7(2) of SAST Regulations, 1997 *inter alia* requires that 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 shares or voting rights in a company, in any manner whatsoever, shall disclose 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 within two days of the receipt of intimation of allotment of shares; or the acquisition of shares or voting rights, as the case may be. Similarly, as per Regulation 13(1) of PIT Regulations, any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company, the number of shares or voting rights held by such person, on becoming such holder, within four working days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be.

22. I note from the submissions made by the Noticee that he has denied having acquired these 2,74,673 shares. The Noticee has repeatedly stated that these shares were given to him by Mr.

Rajiv Kashyap, MD of the company, as a security through off-market transaction for further purchase of 2,25,000 shares on his behalf.

23. The Noticee has submitted the statement of transaction of his beneficiary account held with Depository Participant (DP) M/s. India Infoline Ltd. along with his reply dated June 10, 2015. The details of credit of 2,74,673 shares to the Noticee's Beneficiary account on February 19, 20 and 21, 2008 are as given below:

Date	Number of Shares Credited to Account	Remarks, if any
19-Feb-2008	40,000	By Inter Depository Transfer
19-Feb-2008	34,673	By Inter Depository Transfer
20-Feb-2008	35,000	By Inter Depository Transfer
21-Feb-2008	1,65,000	Off-market
	2,74,673	

24. The Noticee, I find, has contended that that these were pledged shares, he had not paid for the shares, and that the pledged shares do not trigger the disclosure requirements. The Noticee also submitted that the Depositories Act, 1996 states that one may make a pledge through a depository, however, it is not mandatory. In this regard in the matter of ***Jry Investments Private Limited vs. Deccan Leafine Services Ltd (Bombay High Court, date of decision 11 March, 2003)*** it was held that:

"21. It is, therefore, clear that the [Depositories] Act and the [SEBI (Depositories and Participants)] Regulations contain a whole and self-contained procedure for the creation of pledges. In any case, since it is not possible to physically deliver demated shares and therefore pledge them in accordance with the Indian Contract Act, 1872, it must be held that a pledge of such shares can only be validly created in accordance with the provisions of the Depositories Act, 1996.

22. In the present case, it is an admitted fact by the plaintiffs that the plaintiffs did not make any application to the depository for the creation of a pledge as contemplated by regulation 58. In any case, there is no dispute about the fact that after the plaintiffs transferred the shares in favour of defendant No. 1 under the loan agreement, the shares were held with the depository, i.e. National Securities Depository Ltd. and defendant No. 1 was shown as the beneficial owner of the shares with the depository participant, i.e., defendant No. 22. It is the depository participant

who holds the account of various beneficial owners for the purpose of transfer of share transactions of the clients with the depository.

23. It is, therefore, evident that the plaintiffs conveyed their property in the shares to defendant No. 1 and defendant No. 1 has been shown as a beneficial owner in the depository participant account. If the plaintiffs intended to transfer the shares in favour of defendant No. 1 on account of the pledge they could have done so in the manner provided by regulation 58, i.e., by making an application to the depository through defendant No. 2 depository participant, whereupon the depository participant would have made a note that the securities are available in the pledge in accordance with Section 58(2). The important thing is that the security would have been accepted by the depository as a pledger and the record would have shown the plaintiffs as the pledger, and defendant No. 1 as pledgee. This has an important bearing on the question whether the plaintiffs intended to convey title in the shares in favour of defendant No. 1, or merely intended to create a pledge. In view of the fact that the plaintiffs did not follow the procedure provided by regulations for creating pledge, I am of the view, prima facie, that the plaintiffs had not intended to create a pledge but intended to transfer and that in any case has been the effect. In any case, in fact they did not create a pledge, but transferred the shares."

25. In view of the above, the argument made by the Noticee that the shares were only transferred for the purpose of security by the MD of the company to enable the Noticee to buy 2,25,000 shares on behalf of the MD of the company and there was no acquisition of shares and/ or voting rights does not hold any merit. As stated above, I note that these shares were held in dematerialized form in the Noticee's beneficiary account. Hence, if the claim of the Noticee were to be true, then while accepting the shares as a security i.e. while creating a pledge, the Noticee/ the transferor ought to have complied with Regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996 (hereinafter referred to as *the* **'DP Regulations'**), which sets out the manner of creating pledge or hypothecation in respect of dematerialized shares.

26. Regulation 58 of the Securities and Exchange Board of India (Depositories and Participants) Regulations 1996 is verbatim reproduced below for reference purpose:

*"**Regulation 58***

Manner of creating pledge or hypothecation.

58. (1) If a beneficial owner intends to create a pledge on a security owned by him, he shall make an application to the depository through the participant who has his account in respect of such securities.

(2) The participant after satisfaction that the securities are available for pledge shall make a note in its records of the notice of pledge and forward the application to the depository.

(3) The depository after confirmation from the pledgee that the securities are available for pledge with the pledger shall within fifteen days of the receipt of the application create and record the pledge and send an intimation of the same to the participants of the pledger and the pledgee.

(4) On receipt of the intimation under sub-regulation (3) the participants of both the pledger and the pledgee shall inform the pledger and the pledgee respectively of the entry of creation of the pledge.

(5) If the depository does not create the pledge, it shall send along with the reasons and intimation to the participants of the pledger and the pledgee.

(6) The entry of pledge made under sub-regulation (3) may be cancelled by the depository if the pledger or the pledgee makes an application to the depository through its participant:

Provided that no entry of pledge shall be cancelled by the depository with the prior concurrence of the pledgee.

(7) The depository on the cancellation of the entry of pledge shall inform the participant of the pledger.

(8) Subject to the provisions of the plegde document, the pledgee may invoke the pledge and on such invocation, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.

(9) After amending its records under sub-regulation (8) the depository shall immediately inform the participants of the pledger and pledgee of the change who in turn shall make the necessary changes in their records and inform the pledger and pledgee respectively.

(10) (a) If a beneficial owner intends to create a hypothecation on a security owned by him he may do so in accordance with the provisions of sub-regulations (1) to (9).

(b) The provisions of sub–regulations (1) to (9) shall mutatis mutandis apply in such cases of hypothecation:

Provided that the depository before registering the hypothecatee as a beneficial owner shall obtain the prior concurrence of the hypothecator.

(11) No transfer of security in respect of which a notice or entry of pledge or hypothecation is in force shall be effected by a participant without the concurrence of the pledgee or the hypothecatee as the case may be."

27. However, this was not done, and the shares were transferred to the account of the Noticee. ***The Hon'ble SAT in the case of Classic Credit Ltd. Vs. SEBI (date of judgment- January 9, 2007) as well as N.E. Electronics Ltd. Vs. SEBI (date of judgment- November 11, 2008)*** noted that a valid pledge (in respect of dematerialized shares) can only be created under the Depositories Act, 1996 and the regulations framed thereunder. If that procedure has not been followed then no pledge is created. In such a case, shares have to be treated as transferred rather than pledged. Thus, in the absence of compliance with Regulation 58 of the DP Regulations, I find that the Noticee had not received the shares by way of pledge, but, the Noticee in fact had acquired the shares.

28. Hence, having acquired more than 5% of the shares of the company, the Noticee was required to make a disclosure to the company within four working days (as it stood then) of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be, under Regulation 13(1) of the PIT Regulations. Also the Noticee was required to make disclosure to the company and stock exchange where the shares of the company were listed, within two days of the receipt of intimation of allotment of shares or the acquisition of shares or voting rights, as the case may be, under Regulation 7(1) read with 7(2) of the SAST Regulations, 1997. However, no such disclosure was made by the Noticee. Hence, I am of the view that the Noticee failed to comply with Regulation 7(1) read with 7(2) of SAST Regulation, 1997 and Regulation 13(1) of PIT Regulations.

29. The next issue for consideration is whether the Noticee violated the provisions of Regulation 13(3) read with 13(5) of PIT Regulations. As observed from quarterly shareholding report disclosed in BSE, Shareholdings of the Noticee increased from 5.44% to 9.90% of the paid up capital of the company during March 2008 to September 2008. However, I find that no disclosure was made by Noticee under Regulation 13(3) read with 13(5) of PIT Regulations in

relation to the same.I note that Regulation 13(3) read with 13(5) of PIT Regulations requires that any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company 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 sub-regulation (3); and such change exceeds 2% of total shareholding or voting rights in the company within four working days (as it stood then) of the receipt of intimation of allotment of shares or the acquisition or sale of shares or voting rights, as the case may be.

30. As established above, the Noticee had acquired more than 5% of the shares of the company in the quarter ended March 2008 due to acquisition of 2,74,673 shares. The Noticee further acquired 2,25,000 shares, thus at the end of the quarter ended September 2008, the Noticee's total shareholding in the company stood at 4,99,673 shares (9.90% of the paid capital).

31. I note that the Noticee in his replies has highlighted the fact that he had bought 2,25,000 shares on behalf of and at the behest of Mr. Rajiv Kashyap, the MD of the company. Further, that Mr. Rajiv Kashyap had undertaken to purchase the shares from the Noticee at the end of six month period on cost and compensation basis. The Noticee, as discussed above, has submitted that Mr. Rajiv Kashyap, MD of the company had transferred 2,74,673 shares to him as security for the same. The Noticee has also submitted a copy of letter dated July 14, 2009 purportedly written by Mr. Rajiv Kashyap to the Noticee supporting his aforesaid claim. Irrespective of whatever business arrangement the Noticee may have had with Mr. Rajiv Kashyap, since the shares were transferred to the beneficiary account of the Noticee, only the Noticee can be responsible for disclosure requirements that are triggered by his purchases, and the Noticee is liable for any lapse in making the said disclosure. Having acquired more than 2% while already holding in excess of 5% of the shares of the company, the Noticee ought to have made disclosure under Regulation 13(3) read with 13 (5) of the PIT Regulations. Not having done so, I find that it is established without doubt that the Noticee has failed to comply with the provisions of Regulation 13(3) read with 13(5) of PIT Regulations.

32. Further, under Regulation 13(3) of the PIT Regulations, any person who holds more than 5% shares for voting rights in any listed company has to disclose to the company any change of

more than 2% in shareholding or voting rights, even if such change results in shareholding falling below 5%. As observed from trading data and quarterly shareholding report as available on the BSE website, the Noticee sold his entire holding of 4,99,673 shares (9.90% of paid capital) during the first quarter of 2010. The Noticee was required to make a disclosure within two days under 13(3) read with 13(5) of PIT Regulations. However no disclosure was made by the Noticee as required under 13(3) read with 13(5) of PIT Regulations. Hence, the Noticee again failed to comply with provision of Regulation 13(3) read with 13(5) of PIT Regulations.

33. The Noticee has submitted that it was due to the off market delivery of shares by Mr. Rajiv Kashyap, MD of the company that his holding crossed 5%. The argument put forth by the Noticee that since the shares were received from the MD of the company, he need not have made the relevant disclosure. However, this argument is entirely without merit. There is no exception to disclosure requirements if shares are transferred/ received/ purchased from an MD of a company. Whatever be the source of the shares, the disclosure requirement must be complied with. In fact, if one is in acting on behalf of/ at the behest of a director/ promoter/ MD of a company, as is the submission of the Noticee, in my view, the disclosure of the same is even more significant. The Noticee appears to have misunderstood the point and reason of the disclosure requirements under the PIT Regulations and SAST regulations. These disclosures are not meant merely to keep the management of a company abreast with its shareholders' list, but, rather to inform the shareholders and investors at large about the significant changes in a company. It ensures that the investors have timely and equal access to materially price sensitive information in relation to securities traded on secondary markets. Hence, the submission of the Noticee that since the shares were acquired from/ on behalf of the MD of the company, a disclosure of the same is redundant, is completely misplaced and cannot be accepted.

34. Further, the Noticee has submitted details of cheques issued by Mr. Rajiv Kashyap to him which were dishonored and also the criminal complaint filed by the Noticee against Mr. Rajiv Kashyap under Section 138 of the NI Act. The Noticee *inter alia* has stated that he has been cheated by Mr. Rajiv Kashyap, and after the Noticee filed a complaint under Section 138 of the NI Act, Mr. Rajiv Kashyap has filed a complaint against him with SEBI. I am of the view that the matter regarding criminal complaint filed by the Noticee against Mr. Rajiv Kashyap is a separate issue

altogether, and has no bearing and relevance to the disclosure required to be made under the SAST and PIT Regulations by the Noticee, upon acquisition of shares above a set threshold.

35. The Noticee has also submitted that when the SAST Regulations were introduced, trading was paper based and information regarding who bought what shares and how much was not available, hence, the disclosures were meant to bring to public notice this data. However, pursuant to the introduction of paperless trading, such data has become available with exchanges immediately. The exchanges publish information on bulk deals the same evening for the public. Depositories, too, come to know of this within 48 hours, and companies whose shares have been transacted in, come to know of the same through their accounts with the depositories soon thereafter. The Noticee has submitted that there should not be a demand for such data from investors who may not have knowledge of the law.

36. I note here that the requirements under both the SAST Regulations as well as the PIT Regulations are triggered when a minimum of 5% of the shares of a company is acquired. Hence, these requirements are not onerous burdens on small investors. Further, the disclosures under SAST and PIT Regulations are intended with a particular purpose and the same gets defeated if these disclosures are not made. The fact that Exchanges release the data on bulk purchases/ sale and such information is also available with the depositories does not undermine the requirement stipulated under SAST and PIT Regulations as argued by the Noticee. The data on bulk deals released by the Exchanges does not take into consideration the cumulative holding of an individual/ entity in the Target Company and subsequent changes thereof, and only discloses details of bulk purchases/ sales made by an individual/ entity at a particular point of time. Further, as regards off market transactions in respect of shares held in physical mode, only the buyers and the sellers involved in the transaction are within knowledge of such transactions. The purpose underlying the requirement of making disclosures by persons acquiring shares above a threshold limit to the company/ stock exchange, as applicable, is to bring about greater transparency in the functioning of the companies and facilitate the investors take an informed investment decision.

37. The Noticee has also argued that the proceedings are time barred as the proceedings were initiated five years after the event. In the matter, I find that under the SEBI Act there is no

limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. Further, the provisions of Limitation Act apply only to proceedings in Courts and have no application to Quasi Judicial Bodies, notwithstanding the fact that such bodies may be vested with certain specified powers conferred on Courts under the Civil or Criminal Procedure. Further, In the matter of ***Radheyshyam Chiranjilal Goenka Vs. Adjudicating Officer, SEBI, the Hon'ble SAT*** held that –

"… adjudication under section 15I for default under section 15F cannot be said to be hit by Article 14 of the Limitation act, as the default identified thereunder being a continuing one, till such time it is made good. In the instant case the default was made good only in September 1999, whereas the adjudication proceedings had commenced much earlier as way back in the year 1998."

Similarly, in the case at hand too the default is one that continues till date. In such a case, there can be no question of the proceedings being barred by limitation.

38. In view of all of the above, I conclude that the Noticee has failed to make the relevant disclosures under Regulations 7(1) read with 7(2) of the SAST Regulations, 1997 on one occasion, Regulation 13(1) of PIT Regulations on one occasion and Regulation 13(3) read with 13(5) of PIT Regulations on two occasions.

39. 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…".* Further in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*."

40. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under 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 thereunder,—*

(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.

41. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J 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."

42. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. 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. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be affected by the change in control. The Regulation seeks 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. The disclosures under Regulation 13 of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby serving as a deterrent. 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. Thus, the cornerstone of the Takeover regulations and PIT Regulations is investor protection.

43. As per Section 15A(b) of the SEBI Act, the Noticees are liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticees.

44. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the Company at the relevant point of time; b) the trading volumes of the Company's shares on the exchange, where the shares were listed, during the relevant period; and c) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations.

45. The paid up capital of the Company was 50,47,800 shares of Rs. 10/- each aggregating Rs. 5,04,78,000/-. The market capitalization of the company during the relevant period was approx. Rs. 45 crore. Further, during the relevant period from March 2008 to March 2010, the public shareholding increased from 62% (1,165 public shareholders) as at quarter ended March 2008 to approx. 96.8% (1,802 public shareholders) as at quarter ended March 2010. I note further that the average daily trading volumes on BSE was approx. 20,000 shares during the relevant period when disclosures were required to be made by the Noticee. I note that the Noticee has failed to make the relevant disclosures under Regulations 7(1) read with 7(2) of the SAST Regulations, 1997 on one occasion, Regulation 13(1) of PIT Regulations on one occasion and Regulation 13(3) read with 13(5) of PIT Regulations on two occasions.

ORDER

46. After taking into consideration all the facts and circumstances of the case, I impose the following penalty under Section 15 A(b) of SEBI Act on the Noticee, **Mr. Madhukar Chimanlal Sheth,** which will be commensurate with the violations committed by him:

REGULATION VIOLATED	PENALTY (RS.)
7 (1) read with 7(2) of SAST Regulations, 1997 and 13 (1) of PIT Regulations	**6,50,000 (Rupees Six Lakh, Fifty Thousand Only**)
13 (3) read with 13(5) of PIT Regulations	**6,50,000 (Rupees Six Lakh, Fifty Thousand Only**)
Total	**13,00,000 (Rupees Thirteen Lakh Only)**

47. 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 Chief General Manager, Integrated Surveillance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: August 31, 2015 **Anita Kenkare**

Place: Mumbai **Adjudicating Officer**