

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: EAD-9/AO/SM/ 41-43 /2018-19]

UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23 I OF SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of:

S.No	Name of the Noticees	S.No	Name of the Noticees
1	M/s Alchemist Realty Ltd. (Pan No. AABCP7594E)	2	M/s KDS Corporation Pvt. Ltd. (Pan No. AACCK4674P)
3	M/s Endogram Leasing & Trading Co. Ltd. (Pan No. AAACE6313P)		

In the matter of M/s Alchemist Realty Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted investigation into the alleged irregularity in the trading of the scrip of M/s Alchemist Realty Ltd (hereinafter referred to as 'Alchemist/Company/ARL'). The examination period during investigation was January 01, 2006 to March 31, 2011 (hereinafter referred to as "Investigation Period"). Alchemist is listed at Bombay Stock Exchange (hereinafter referred to as "BSE").
2. During the course of investigation, it was found that the following Noticees have violated the provision of Regulations mentioned therein:

Name of the Noticee	Violation of the Provisions of SEBI and SCRA
Alchemist Realty Ltd (hereinafter referred to as "ARL")	Section 21 of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as " SCRA ") read with Clause 35 of the Listing Agreement
M/s KDS Corporation P. Ltd. (hereinafter referred to as "KDS")	Regulations 7(1), 7(1A), 8(2), 16 (v) and (vi) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "SAST 1997") and Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT 1992")

M/s Endogram Leasing & Trading Co. Ltd., (hereinafter referred to as "ELT")	Regulation 7(1) of the SAST 1997 and Regulation 13(3) read with Regulation 13(5) of the PIT 1992
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3. In this order wherever PIT 1992 is mentioned it should be referred to as PIT 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.
4. In this order wherever SAST 1997 is mentioned it should be referred to as SAST 1997 read with Regulation 35(2) of (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Appointment of Adjudication Officer:

5. SEBI had appointed Shri D.S. Reddy as Adjudicating Officer vide order dated September 19, 2014 under Section 23-I of SCRA read with Rule 3 of Securities Contracts (Regulation) (Procedure For Holding Inquiry And Imposing Penalties By Adjudicating Officer) Rules, 2005 (hereinafter referred to as SCRA Rules) to inquire and adjudge under Section 23A(a) of the SCRA 1956 on ARL and under Section 19 of the SEBI Act, 1992 read with Section 15-I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as AO Rules) to inquire and adjudge under section under Section 15A(b) of SEBI Act on KDS and ELT for the alleged provisions of law. Subsequently, pursuant to the transfer of the case, the undersigned have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017 for the aforesaid Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. A Show Cause Notice dated March 12, 2015 (hereinafter referred to as 'SCN') was served on ARL in terms of Rule 4 of the SCRA Rules, read with Section 23I of the SCRA, 1956 and on Noticee(s) KDS and ELT in terms of Rule 4 (1) of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticees to show cause as to why an inquiry should not be held against them and penalty should be not imposed under section 23A(a) of the SCRA 1956 on ARL and under Section 15A(b) of SEBI Act on KDS and ELT for the alleged provisions of law.

7. Status of the SCN:

- 7.1. The SCN issued to ARL, KDS and ELT was delivered and all Noticees had sought extension of time to reply to SCN.
- 7.2. No reply was received thereafter and reminder for the same was sent on June 16, 2017 at the last address known of the Noticees. The letters issued were undelivered and attempt was made through ARL (Mumbai office) to serve the Notice to other Noticees. On June 30,

2017, ARL agreed to provide the correct address of the other Noticees. ARL served the Notice to its New Delhi Office and other Noticees.

8. Allegations in the SCN broadly are as follows:

KDS

- 8.1. *It was observed that the promoter, KDS since acquiring ARL in January 2006 has been continuously increasing its stake in the company. It was observed that the promoter, KDS has disclosed a shareholding of 39.34% in March 2006, 37.51% in March 2007, 39.27% in March 2008, 42.30% in March 2009 and 45.45% in March 2011. The remaining shareholding of ARL was shown under public shareholding category.*
- 8.2. *On August 18, 2010, KDS had purchased 23, 34,335 shares (3.15%) on market thus having the shareholding of 3, 36, 77,535 shares (45.45% of the total share capital of the company) as on March 31, 2011 for which no disclosure was made by KDS.*
- 8.3. *The list of disclosures provided by ARL filed by it with the stock exchange does not reflect the abovementioned acquisition of KDS. The list of disclosures provided by the exchange also does not have disclosures of KDS with regard to this acquisition.*
- 8.4. *On analysis of the annual returns filed by ELT, at ROC-West Bengal for the period under investigation, it was observed that, KDS was holding more than 99% in the share capital of ELT and thus it was observed that KDS being a holding company of ELT during the investigation period and thereby ELT was PAC with KDS.*
- 8.5. *Shareholding of KDS and ELT in ARL (source BSE website & demat statements of ELT) is as under:*

Particulars	KDS (Promoter)		ELT (PAC)		Total shareholding	
	No. of shares	(%)	No. of shares	(%)	No. of shares	(%)
As on January 2006	2128320	39.34	742900	13.73	2871220	53.07
As on March 2007	2412320	37.51	742900	11.55	3155220	49.06
As on March 2008	5528640	39.27	1806716	12.83	7335356	52.10
As on March 2009	31343200	42.30	8605580	11.61	39948780	53.91
As on March 2010	31343200	42.30	8605580	11.61	39948780	53.91
As on March 2011	33677535	45.45	8605580	11.61	42283115	57.06

- 8.6. *It was observed that the promoter, KDS in its Corporate Announcement dated January 10, 2006 announced that its post offer shareholding in the company ARL (earlier known as Pan Packaging Industries Ltd.) was 21, 28,320 shares i.e. 39.34% of the share capital of the company. It was observed from the table above that ELT, has a holding of 7, 42,900 shares (13.73%) of the total shareholding in ARL as on date of Corporate Announcement by ARL. However, KDS had failed*

to disclose the shareholding of its PAC, i.e., ELT at the post offer corporate announcement dated January 10, 2006.

ARL

- 8.7. ELT being PAC with the promoter, KDS. Therefore in accordance with the provisions of Clause 35 of Listing Agreement, ARL should have included the shareholding of ELT under the promoter category in the scrip of ARL. Hence it was alleged that ARL failed to disclose correct shareholding as per Clause 35 of the listing agreement.

ELT

- 8.8. ELT acquired 5, 43,000 shares (10.04%) of ARL and therefore its total shareholding had become 7, 42,900 shares (13.73%) as on March 25, 2005.
- 8.9. Further on October 17, 2007, ELT disposed 1, 60,458 shares which resulted into change in its shareholding by 2.28%.
- 8.10. On the above mentioned both instances, no disclosure was done by ELT. Hence it was alleged that ELT failed to make disclosures in terms of 7(1) of SAST 1997 and Regulation 13(3) read with 13(5) of PIT 1992, by failing to provide disclosures both to the stock exchange and to the company within 2 working days from the date of acquisition /disposal of shares in the scrip of ARL.

Personal Hearing:

9. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Noticees on July 06, 2017 granting an opportunity of personal hearing before the undersigned on August 03, 2017 along with the reminder to reply to SCN. None of the Noticees appeared for the personal hearing. Subsequently reply was received from the Noticees which are as follows:

10. Reply of ARL dated July 24, 2017 inter alia stated the following:

- 10.1. "M/s KDS is a promoter group company and other entity M/s Endogram Leasing and Trading Co Private limited is Non Promoter entity for our Company M/s Alchemist Realty Limited . The same has been shown in the Shareholding Pattern submitted under Clause 35 of the Listing Agreement to the Stock Exchange from time to time.
- 10.2. KDS was not the shareholder of ELT during the investigating period which starts from January 1, 2006 to March 31, 2011. KDS had transferred its shares to the individual shareholders much before. To give the effect of correct shareholding the Company ELT had duly accepted and registered the Share Transfer Deeds in its record and to do the Compliance correct Annual Returns have been filed/submitted with the office of Registrar of Companies which are showing the correct shareholding pattern of the ELT and the same is being forwarded to you for your record. Hence, Promoter Group Company "KDS" was not the holding Company of ELT. ELT should not be termed as "Person Acting in Concert" with KDS as per SEBI Act and Regulations.

- 10.3. *ELT is only Non-Promoter Company for our Company, Hence to treat the company ELT as Person acting in Concert with our Company KDS is neither correct nor justify.*
- 10.4. *No relationship between KDS with Alchemist and ELT.*

11. KDS and ELT also replied in the similar lines of ARL vide their letter dated July 24, 2017 and July 21, 2017 respectively

12. Another chance of personal hearing was granted on September 20, 2017 but the same was postponed due to the letter received from ARL on September 14, 2017, seeking extension of 2 months to file detailed reply to SEBI and request to conduct Personal Hearing thereafter. Noticees KDS and ELT also requested for adjournment of hearing vide communication dated September 15, 2017.

13. **On January 22, 2018**, ARL replied enclosing letter dated July 24, 2017 and stated that *"We are doing the regular communications with other companies including Depository Participant with regard to the details of the transactions among themselves as mentioned in the earlier SCN issued in the matter. In view of the above requested 60 days more time to submit more facts and information with comprehensive reply in this matter. Till such time adjourn the hearing to bring correct facts of the matter in SEBI's knowledge"*.

14. **On February 22, 2018, ARL inter-alia submitted and requested for documents mentioned in the SCN to provide detail reply and reiterated to the submission provided on July 24, 2017.**

15. Last and final opportunity of Personal Hearing:

Finally personal hearing was granted on March 23, 2018 to the Noticees and the hearing notice was also issued through E-mail with digital signature, which was duly delivered. ARL appeared for the Personal Hearing and Authorized Representative (hereinafter referred to as "AR") of ARL reiterated to the submission made on February 22, 2018. KDS and ELT did not appear before me for the hearing.

16. **Reply of KDS and ELT dated March 23, 2018:** *vide letter dated March 23, 2018, KDS and ELT reiterated the submission made on July 24, 2017 and July 21, 2017 respectively*

17. I am convinced that sufficient opportunities have been given to the Noticees KDS and ELT to explain their case. As per rule 4(7) of the Rules, if any person fails, neglects or refuses to appear as required by sub-rule (3) before the Adjudicating Officer, he may proceed with the inquiry in the absence of such person after recording the reasons thereof. Despite having been given the opportunities of being heard, the Noticee(s) KDS and ELT had failed to avail of the same. I am therefore proceeding in the matter based on reply given by KDS and ELT.

Consideration of Issues, Evidences and Findings:

18. I have carefully perused the charges levelled against the Noticees as per the SCNs and written submissions made by the Noticees and the materials/documents available on record. The issues that arise for consideration in the present case are :

Issue I: Whether the following was violated :

- a) Regulations Section 21 of SCRA read with Clause 35 of the Listing Agreement by ARL
- b) Regulations 7(1), 7(1A), 8(2), 16 (v) and (vi) of the SAST 1997 and Regulation 13(3) read with 13(5) of PIT 1992 by KDS.
- c) Regulation 7(1) of the SAST 1997 and Regulation 13(3) read with Regulation 13(5) of the PIT 1992 by ELT.

Issue II: Does the violation, if any, attract monetary penalty under Section 23A(a) of the SCRA 1956 against ARL and under Section 15A(b) of SEBI Act against Noticee(s) KDS and ELT.

Issue III If so, what should be the quantum of monetary penalty?

19. Before proceeding further, it is pertinent to refer to the relevant provisions of the SCRA, SAST Regulations and PIT 1992 which read as under:

Relevant provision of SAST 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.

7. (1A). Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

Continual disclosures.

8. (1) Every person.....

(2) A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

Contents of the public announcement of offer.

16. The public announcement referred to in regulations 10 or 11 or 12 shall contain the following particulars, namely:—

(i)

(ii)

(iii)

(iv)

(v) the identity of the acquirer(s) and in case the acquirer is a company or companies, the identity of the promoters and, or the persons having control over such company(ies) and the group, if any, to which the company(ies) belong;

(vi) the existing holding, if any, of the acquirer in the shares of the target company, including holdings of persons acting in concert with him.

Relevant provision of PIT Regulations, 1992:

Continual disclosure.

13(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.

13(5) The disclosure mentioned in sub-regulations (3) and (4) 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.

Relevant provision of SCRA 1956:

Conditions for Listing.

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

Listing Agreement:

Clause 35

35. The company agrees to file with the exchange the following details, separately for each class of equity shares/security in the formats specified in this clause, in compliance with the following timelines, namely :-

a) One day prior to listing of its securities on the stock exchanges.

b) On a quarterly basis, within 21 days from the end of each quarter.

c) Within 10 days of any capital restructuring of the company resulting in a change exceeding +/-2% of the total paid-up share capital”.

Relevant provision of SAST Regulations, 2011:

Repeal and Savings.

35.(1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

Relevant provision of PIT Regulations, 2015

Repeal and Savings:

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

Findings:

20. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

Findings in respect to Noticee ARL:

Whether Noticee ARL had violated Regulations Section 21 of SCRA read with Clause 35 of the Listing Agreement.

21. Before dealing with the charges, I note that ARL had requested SEBI to provide the documents to rebut the allegations made against it, I note that the findings of the investigation and the documents relied upon were already furnished to the Noticee along with the SCN dated March 12, 2015 and hence I find that there is no prejudice caused to the Noticee by not furnishing of documents which were already served.
22. I note from the investigation report that based on copies of annual return filed by ELT from the year 2006-2011 submitted to SEBI by ROC West Bengal vide its letter dated August 23, 2013, it was learnt that KDS was shown as the shareholder holding 99% in the share capital of ELT, thus, it was concluded that KDS was the holding company of ELT.
23. As per Regulation 2(b) of SAST 1997 defines Acquirer as *“any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer”*.
24. Regulation 2(e)(2)(i) of SAST Regulation, 1997 defines PAC as *“a company, its holding company, or subsidiary or such company or company under the same management either individually, or together with each other”*.
25. I find from the investigation report that during the corporate announcement made by KDS about its post offer shareholding in the company was 21, 28,320 shares i.e. 39.94% of the share capital of the company, I note ELT as a PAC was holding 7, 42,900 shares i.e. 13.73% of the total shareholding in the company as on date of corporate announcement by ARL.
26. In view of the above, I find that KDS being a holding company of ELT and since KDS had acquired ARL in January 2006 and ELT being a PAC in the company, ARL should have included ELT as part of acquirer while disclosing to Stock Exchange on quarterly basis, within 21 days from the end of each quarter and any capital restructuring of the company resulting in a change exceeding +/- 2 of the total paid up share capital within 10 days. I also note that ELT had filed Annual Return with RoC, West Bengal for continuous five years 2006-2011 showing KDS as its holding company.

27. I find that Alchemist is a listed company and was under an obligation in terms of Section 21 of SCRA to comply with the conditions of Listing Agreement. Specifically, Clause 35 of Listing Agreement mandates the listed companies to file inter alia its shareholding pattern including the shareholding of its promoters, with the exchanges on a quarterly basis. Needless to say, the ARL was required to make true and correct disclosure regarding shareholding pattern. Periodic disclosures under Clause 35 of the listing agreement serve a very important purpose of informing the market and the investors about the shareholding of the company i.e. names and holdings of the promoters and significant shareholders. The shareholding and names of promoters and significant shareholders form a very important criterion for the public to make their investment decisions. Hence, I find that ARL by making incorrect disclosure and failing to disclose to the Stock Exchange to include ELT in the Promoter Category as a PAC with Promoter, ARL has violated the provision under Section 21 of SCRA read with Clause 35 of Listing Agreement.

Findings in respect to Noticee(s) KDS and ELT:

28. I note that KDS in its post offer was holding 39.34% of the share capital of the company, ELT was holding 13.73% of the share capital of the company. The promoter has acquired along with ELT as PAC 53.07% of the share capital of the company. Thus, KDS failed to disclose ELT as PAC post offer corporate announcement.

29. In this context, I would like to rely on observation of ***Hon'ble SAT in Mega Resources Limited v. SEBI (Appeal No. 49/2001 decided on March 19, 2002)*** wherein similar contention with respect to regulation 7(1) had been raised. SAT observed "*....In the light of the definition of the expression 'acquirer' and the 'persons acting in concert' and also taking into consideration the purpose of regulation 7, I am of the view that the acquisition of shares by persons acting in league, is very relevant and the disclosure of such concerted acquisition to the target company and the company in turn to the concerned stock exchange is in tune with the objective of the said disclosure.*"

30. I note from the RoC certified documents (submitted by KDS) that the revised annual return was submitted by KDS on or after August 29, 2016 as the date mentioned on the annual return was August 29, 2016 of Board authorizing the director to file such return. KDS was also communicated dated May 02, 2018 to confirm the date of revised filing to RoC, however KDS did not send any confirmation in this regard. Therefore the contention of KDS that it has subsequently made correct disclosure about shareholding in ELT in the Annual Returns filed

to RoC, wherein it has informed that KDS had sold its shares to individual shareholders before the IP and rectified the same in RoC, does not hold good. I note that the allegation in the Investigation Report is based on the receipt of copy of Annual Return filed by ELT during the IP to ROC. It appears that subsequent correct disclosure to RoC, was done by KDS only after the receipt of SCN by KDS. Hence, I conclude that revised filing now presented before me was made by KDS on August 29, 2016 only or thereafter.

31. I conclude that KDS has violated Regulation 7(1) of the SAST 1997 and Regulation 13(3) read with Regulation 13(5) of the PIT 1992

32. I also note that the Hon'ble SAT in the matter of **O.P. Gulati v. SEBI (Appeal No. 185 of 2011 decided on January 11, 2012)** has laid down a test to determine which of acquirers need to make disclosure under Regulation 7(1A) of SAST 1997. The SAT stated: "... *The next question that arises is whether it casts an obligation on her to make a disclosure under regulation 7(1A) of the takeover code. Does the said regulation require each and every acquirer within the meaning of the takeover code to make a declaration to the stock exchanges is the moot question. We are of the view that it is not so. The said regulation casts an obligation to disclose purchase or sale of the share capital of the target company to the target company and to the stock exchanges within two days of such purchase or sale if:*

- 1) person is an acquirer;*
- 2) that person has acquired shares or voting rights;*
- 3) such acquisition is under sub-regulation (1) to regulation 11; and*
- 4) purchase or sale aggregates two per cent or more of the share capital of the target company.*

To attract the provisions of regulation 7(1A), it is necessary that all the four conditions stipulated above are satisfied. ... The purpose of declaration to the target company and to the stock exchanges where shares of the target company are listed is well served by the disclosure to be made by the acquirer who acquires the shares of the target company".

33. I note that from Investigation Report that KDS on August 18, 2010 had entered into a block deal on BSE with M/s Manbhavan Buildwell Pvt Ltd for purchase of 23,34,335 shares (i.e 3.15%) of the total share capital of the company. With the acquisition of these shares by KDS, there is a change in the shareholding of KDS by more than 2% of the share capital in the company. Even the holding of KDS along with its PAC ELT exceeding 55% (i.e promoter, KDS having 45.45% and its PAC, ELT having 11.61% thus aggregating to 57.06% of the total share capital in the company). The holding of KDS along with its PAC increased from 53.91% to 57.06% clearly establishes that the promoter while acting in concert had made acquisitions whilst their holding was between 15% to 55%.

34. Thus, KDS in the present case fulfills all the requirements of the test laid down by SAT in O.P. Gulati case. Hence, KDS who have contributed to this change of 2% should have made a disclosure under Regulation 7(1A) of SAST Regulation, 1997 and Regulation 13(3) read with Regulation 13(5) of PIT, 1992 within 2 days. However, I find that no disclosure as stipulated under the aforementioned Regulations was made by the KDS. In view of the abovementioned observations and findings, I hold that the charges leveled against KDS are established and that the allegation of violation of provisions of Regulation 7(1A) of the SAST regulations Regulation 13(3) read with 13(5) of PIT Regulations, by the Noticee stands established.
35. I am of the opinion that KDS cannot absolve from its duties of making disclosures under Regulation 8(2) of SAST 1997 in the proper format and within the prescribed time limit. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market and therefore, there can be no dispute that compliances of regulations is mandatory and it is duty of SEBI to enforce compliance of these regulations. The timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance.
36. In view of the above, I hold that KDS was under obligation to make the required disclosures under Regulation 8(2) of SAST 1997 within the prescribed time limit, which KDS have failed to do. Therefore, the allegation of violation of provision of Regulation 8(2) of SAST 1997 by KDS to provide disclosures with regard to the holding of its PAC, ELT as a promoter group in the ARL stands established.
37. I note that KDS has been alleged for the violation of Regulation 16(v) and (vi) of SAST 1997 which deals with the content of public announcement referred to in Regulations 10/11/12 shall contain the following particulars namely
- 16(v) "the identity of the acquirer(s) and in case the acquirer is a company or companies, the identity of the promoters and, or the persons having control over such company(ies) and the group, if any, to which the company(ies) belong; and*
- 16(vi) the existing holding, if any, of the acquirer in the shares of the target company, including holdings of persons acting in concert with him.*
38. I note from the material that KDS in the public announcement made by it in the year 2005 while acquiring shares of ARL had not disclosed the shares of ARL held by ELT and not

included the name of ELT as per Regulation 16(v) and (vi) of SAST 1997. Hence I conclude that KDS has not complied with Regulation 16(v) and (vi) of the SAST 1997 while making public announcement while acquiring the shares of ARL.

Findings in respect to ELT

39. I note from the investigation report that the shareholding pattern for the quarter ended December 2004, ELT was holding 1, 99,900 shares of ARL (i.e 3.69%) of the share capital of ARL. It was observed that as on March 25, 2005, ELT acquired 5,43,000 shares (i.e 10.04%) of the total share capital of ARL. The total share capital of ELT in ARL was 13.73%, Thus, ELT has acquired the shares of ARL and have crossed more than 5%, wherein, ELT is obliged to make disclosure at every transactional stage prescribed under Regulation 7(1) of SAST Regulation, 1997 which was not adhered by ELT.

40. Further, ELT acquired 2.28% additional shares of ARL on October 17, 2007, thus triggering Regulation 13(3) read with Regulation 13(5) of the PIT Regulations, 1992, wherein, *any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company.....such change exceeds 2% of total shareholding or voting rights in the company shall disclose within two working days of the acquisition or sale of shares or voting rights, as the case may be.*

41. In view of the above and relying on SAT's Ruling in Appeal No. 66 of 2003 - **Milan Mahendra Securities Pvt. Ltd. Vs SEBI**, wherein the Hon'ble SAT has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."*

42. Having established that ELT had not made the disclosure and adhered to timeline, I find that ELT has contravened the provisions of Regulation 7(1) of the SAST 1997 and Regulation 13(3) read with Regulation 13(5) of the PIT 1992 and hence liable for penalty.

Issue II: Does the violation, if any, attract monetary penalty under Section 23A(a) of the SCRA 1956 against ARL and under Section 15A(b) of SEBI Act against Noticee(s) KDS and ELT

Section 15A(b) of the SEBI Act reads as under:

If any person, who is required under this Act or any rules or regulations made thereunder,—

(a)

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within time specified therefor 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.

Section 23A (a) of SCRA 1956 reads as under.

*Any person, who is required under this Act or any rules made thereunder,—
to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during such failure continues or one crore rupees, whichever is less for each such failure.*

43. By not making the disclosures, the Noticee(s) ARL, KDS and ELT have failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)** wherein it was 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”.

Issue III: If so, what should be the quantum of monetary penalty?

44. While determining the quantum of penalty under Section 15A(b), it is important to consider the factors stipulated in Section 15J of SEBI Act, which read 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.

45. 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. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. The Noticees, by its failure to make true and correct disclosures, have severely impaired the integrity of the disclosure system put in place by the regulator and has deprived the investors of the significant information at the relevant time. Hence its actions warrant the imposition of penalty.

ORDER

46. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticees, in exercise of the powers conferred upon me under Section 23-I of SCRA on Noticee ARL and Section 15-I of SEBI Act, 1992 on Noticee(s) KDS and ELT

Sl. No.	Name of the Noticees	Violation Provisions of	Penal Provision	Amount of Penalty (Rs.)
1	Alchemist Realty Ltd	Regulations Section 21 of SCRA read with Clause 35 of the Listing Agreement	Section 23A(a) of SCRA	Rs.1,00,000/- (Rupees One Lakh only)
2	KDS Corporation Pvt. Ltd.	Regulations 7(1), 7(1A), 8(2), 16 (v) and (vi) of the SAST1997 and Regulation 13(3) read with 13(5) of PIT 1992	Section 15A(b) of SEBI Act	Rs.4,00,000/- (Rupees Four Lakh only)
3	Endogram Leasing & Trading Co. Ltd.,	Regulation 7(1) of the SAST 1997 and Regulation 13(3) read with Regulation 13(5) of the PIT 1992	Section 15A(b) of SEBI Act	Rs.1,00,000/- (Rupees One Lakh only)

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

Account No. for remittance of penalties levied by Adjudication Officer

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

48. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- IV) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	

SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually)	
Bank Name and Account Number from which payment is remitted	
UTR No	

49. 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: May 30, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER