BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.EAD-5/SVKM/DS/AO/ 90 /2017-18]

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

Against:

New Era Advisors Pvt. Ltd.
PAN No. AABCN2448P
Plot No. R-802 TTC, Industrial Area,
Thane Belapur Road, MHAPE
Navi Mumbai 400 701

In the matter of M/s Maharashtra Polybutenes Limited

FACTS

1. Securities and Exchange Board of India (hereinafter referred to as **'**SEBI**'**) conducted investigation into the alleged irregularities in the trading in the shares of Maharashtra Polybutenes Ltd. (hereinafter referred to as **'**MPL**'**) for the period February, 2009 to July, 2009 (hereinafter referred to as 'relevant period') and into the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act, 1992') and Regulations made thereunder. MPL had incurred losses till the financial year 2006-07 and made a meagre profit of ₹ 2.87 crore and ₹ 2.91 crore for the financial years 2007-08 and 2008-09 respectively. MPL shares were infrequently traded but during the relevant period, there was a spurt in the volumes traded and prices. A total of 53,51,932 shares were traded and the price increased

from ₹ 53.35 to ₹ 79.95, an increase of 49.85% in a span of 5 months without there being any change in the economic fundamentals of the company.

2. It is alleged that New Era Advisors Pvt. Ltd. (hereinafter referred to as 'Noticee'), one of the promoters of MPL, had created false and misleading appearance of trading in the securities market by entering into ‘circular trades’ and therefore violated provisions of Section 12A(a) to (c) of SEBI Act, 1992, Regulations 3(a) to (d), 4(1) and 4(2) (a) and (g) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as 'PFUTP Regulations, 2003'). It was further alleged that Noticee did not disclose more than 2% change in its shareholding pattern to MPL in violation of Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading Regulations, 1992 (hereinafter referred to as 'PIT Regulations, 1992').

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide order dated July 22, 2013, SEBI appointed Shri Piyoosh Gupta as the Adjudicating Officer. Consequent to the transfer of Shri Piyoosh Gupta, Shri A. Sunil Kumar was appointed as Adjudicating Officer vide order dated November 08, 2013. Pursuant to the transfer of Shri A. Sunil Kumar, the undersigned has been appointed as Adjudicating Officer vide order dated June 22, 2015 to inquire and adjudge under Sections 15A(b) and 15HA of the SEBI Act, 1992 for the violations specified in the SCN.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. ASK/RGA/25485/2014 dated August 28, 2014 (hereinafter referred to as 'SCN') was issued to the Noticee in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15I of SEBI Act, 1992 for the violations as specified in the SCN. Vide notice dated January 02, 2015, an opportunity of personal hearing was also granted to the Noticee on January 28, 2015. The Authorized Representative of the Noticee

appeared and sought time for filing reply to the SCN. Vide letter dated February 11, 2015, Noticee filed its reply to the SCN. Vide notice dated March 09, 2015, another opportunity of hearing was scheduled on March 25, 2015. Vide letter dated March 11, 2015, Noticee filed further reply to the SCN. On March 25, 2015, the Authorized Representative of the Noticee sought time for filing additional submissions. Subsequent to the transfer of erstwhile Adjudicating Officer, another opportunity of hearing was also provided to the Noticee on June 29, 2015 vide notice dated June 22, 2015. The Noticee requested for rescheduling of the hearing. Accordingly, the hearing was rescheduled to July 06, 2015. The Authorized Representative of the Noticee appeared for the hearing and reiterated the submissions made vide letter dated March 11, 2015. In the hearing dated July 06, 2015, Noticee submitted the following:

a. *On the charge of creation of artificial volume and price manipulation against Noticee as detailed at para no.6 of the SCN, the Authorized Representative submitted that he will file reply latest by July 10, 2015.*

b. *With regard to the charge of non-disclosure of change in shareholding pattern it was admitted that the disclosure was incomplete in terms of the prescribed Regulations to the company. However, it was contended that disclosure to the Stock Exchange was made and supporting documents will be filed by July 10, 2015.*

5. The gist of submissions of the Noticee vide its letter dated March 13, 2015, July 06, 2015, July 09, 2015 and in the course of personal hearing are as under:

a. Since no commercial banks were willing to finance the company, because of the BIFR background of the company, the promoters of MPL had to arrange funds for the working capital requirement as well as long term fund requirement of MPL by pledging their equity shares in MPL.

b. Pledges are different from sales. In a sale both possession and ownership of property are permanently transferred to the buyer. In a pledge only possession passes to the second party, the first party retains ownership of property in question while the second party takes possession of the property until the terms of the contract are satisfied.

c. During the investigation period, until May 25, 2009, the company was under the purview of BIFR and section 22(1) of SICA was applicable. Therefore, SEBI must have obtained consent of BIFR before carrying out any such investigation for the period.

d. As per Regulation 28(3) of SAST Regulations, 2011 the term "encumbrance" shall include a pledge, lien or any such transaction, by whatever name called. As per Regulation 31(1) of SAST Regulations, 2011 the promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified. Thus, a company has to report to the stock exchange not only a pledge created through a depository but also a pledge or encumbrance created otherwise. The shares were transferred with an intention to create an encumbrance or pledge on the shares so transferred. So, the promoters and company have rightly disclosed the shareholding pattern so that the investors can take an informed decision.

e. It was agreed upon and understood between the financiers and the promoters that the transfer of shares for raising loans is merely a transaction of pledge by way of transfer and such transfer of shares cannot be construed as sale. It was agreed upon and understood between the financiers and the promoters that the financiers will keep such transferred shares in their custody in good faith and will not re-pledge or sale or transfer such shares.

f. Shares so transferred were off-market. The shares were not sold through stock exchange mechanism. Instead the company received the loan amount directly from the pledgee.

g. There is no wrong disclosure from the company or the promoters. The share transfer transactions were legitimate pledge transfers and loan amount was received or shares were returned back to the pledgor.

h. The company acted in good faith and relied upon the information given by the promoters and accordingly informed the BSE of shareholding pattern. *The shareholding pattern received from registrar and Transfer Agent did not show the alleged transactions as pledged therefore the shareholding pattern was edited to give effect to the alleged sale transactions.*

i. The allegation that there was creation of artificial volume is baseless and untrue. shares were sold through stock exchange, so buyer is not known.

6. Noticee was given opportunity of making additional written submissions, if any, vide letter dated April 27, 2017. No additional submissions, though, were made by the noticee.

CONSIDERATION OF ISSUES AND FINDINGS

7. The issues that arise for consideration in the present case are :

a. Whether Noticee violated the provisions of section 12A(a) to (c) of SEBI Act, 1992, Regulations 3(a) to (d), 4(1) and 4(2) (a), and (g), PFUTP Regulations, 2003?

b. Whether Noticee violated the provisions of Regulation 13(3) read with 13(5) of PIT Regulations, 1992?

c. Does the violation, if any, attract monetary penalty under Sections 15HA and 15A(b) of SEBI Act, 1992?

8. It would be appropriate here to refer to the aforesaid provisions of the PIT Regulations, 1992 which reads as under:

SEBI Act, 1992

Section 12

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—

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

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

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

PFUTP Regulations, 2003

Regulation 3

Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in

contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

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

Regulation 4

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;
…

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

PIT Regulations, 1992

Regulation 13
(1)……
(2)……..
(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such

change exceeds 2% of total shareholding or voting rights in the company.
(4) ……..
(4A).....

(5) The disclosure mentioned in sub-regulations (3), (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.

Findings

9. The issues for examination in this case and the findings thereon are as follows:

(a) Whether the Noticees had violated the provisions of Regulation 13(3) read with Regulation 13(5) of PIT Regulations, 1992, Section 12A(a) to (c) of SEBI Act, 1992, Regulations 3(a) to (d), 4(1) and 4(2) (a) and (g) of PFUTP Regulations, 2003?

- **Creation of Artificial Volume**

10. Noticee had sold one lakh shares of MPL as under between June 16, 2009 to June 18, 2009 :

Trade Date	Trade Number	Trade Time	Buy Client Name	Sell Client Name	LTP%	Trade Qty	Trade Rate	Order Time	CP Order Time	Time Diff	Order Qty	CP Order Qty	Order Rate	CP Order Rate
16-June-2009	33	15:21:37	ROY CHAND OSATWAL	NEW ERA ADVISORS PVT LTD	-0.51%	25000	67.75	15:21:10	15:21:37	00:00:27	25000	50000	67.75	67.75
18-June-2009	16	13:22:25	SUNIL CHAND OSATWAL	NEW ERA ADVISORS PVT LTD	-1.16%	25000	72.25	13:20:33	13:22:25	00:01:52	25000	50000	72.25	72.25
18-June-2009	17	13:22:25	MANJU OSATWAL	NEW ERA ADVISORS PVT LTD	0.00%	24989	72.25	13:20:47	13:22:25	00:01:38	25000	50000	72.25	72.25
16-June-2009	34	15:21:37	DEBJANI OSATWAL	NEW ERA ADVISORS PVT LTD	0.00%	24643	67.75	15:21:23	15:21:37	00:00:14	25000	50000	67.75	67.75
16-June-2009	31	15:21:37	JINDAL ROADWAYS LIMITED	NEW ERA ADVISORS PVT LTD	0.00%	347	71.00	11:56:42	15:21:37	03:24:55	1000	50000	62.20	67.75
16-June-2009	32	15:21:37	RENU MUNDRA	NEW ERA ADVISORS PVT LTD	-4.08%	10	68.10	12:26:16	15:21:37	02:55:21	10	50000	71.05	67.75

18-June-2009	15	13:22:25	MUKHERJEE ANDHIWAL CHANDRA	NEW ERA ADVISORS PVT LTD	0.00%	10	73.10	11:58:40	13:22:25	01:23:45	10	50000	73.10	72.25
18-June-2009	14	13:22:25	MUKHERJEE ANDHIWAL CHANDRA	NEW ERA ADVISORS PVT LTD	0.00%	1	73.10	10:55:01	13:22:25	02:27:24	10	50000	73.10	72.25

Buy Client Name	Sum of Trade Qty
SUNIL CHAND OSATWAL	25000
ROY CHAND OSATWAL	25000
MANJU OSATWAL	24989
DEBJANI OSATWAL	24643
TOTAL	**99632**

11. Out of 1,00,000 shares sold by Noticee, 99632 shares were purchased by Osatwal family. Osatwal family is connected to Noticee since they had received the preferential allotment of MPL shares.

12. It was therefore, alleged that Noticee had executed the circular trades with Osatwal family for 1,00,000 shares and created the artificial volume in violation of Section 12 A(a) to (c) of SEBI Act, 1992, Regulation 3(a) to (d), 4(1) and 4(2)(a) and (g) of PFUTP Regulations, 2003.

13. Before we proceed further, it is important to understand as to what constitutes circular trades. Hon'ble SAT in the matter of Ketan Parekh v. SEBI (Appeals nos. 2 to 10 of 2004) noted the following:

"..one of the methods commonly employed by manipulators to create an impression of high trade volumes and rising prices is circular trading. This is how it works: a manipulator targets a scrip and acquires as much of the floating stock as is necessary to ensure his profits and creates an illusion of high trading volumes at the counter. He indulges in what is called circular trading where a few of them get together and buy and sell large blocks of shares among themselves. The shares are sold to associates at a price higher than what is prevailing in the market who in turn sell them to another associate for even a higher price. All transactions usually cancel out each other and the shares remain within the circle without any genuine trading transaction. This creates an impression that the stock is an actively traded one and sought after and, therefore, such transactions attract those outside the circle to buy the stocks. In

other words, the general investing public gets induced to buy such stocks. The manipulators not only increase artificially the trading volumes but also benchmark the price because every trade establishes the price of the scrip. Circular trading is among the easiest ways to increase volumes." (Emphasis supplied)

14. Hon'ble SAT in the matter of Monica Jain v. SEBI dated February 11, 2011 noted that "*A circular trade is a fictitious trade which is executed on the trading screen of exchange which does not result in the transfer of beneficial ownership of the traded scrip*."

15. On perusal of material available on record it is observed that the Noticee sold 1,00,000 shares on 16 June 2009 and 18 June 2009. The counter party for 99,632 shares was Osatwal family and the rest of the sale was scattered. There is no evidence on record showing that the Noticee received back those very shares (99,632 shares) from the Osatwal family. Hence, the 'circle' is not complete as happens normally in such circular trades amongst related entities. Further, usually in such trades, more than two parties are involved with the same shares being churned amongst the same group to create an illusion of volumes traded. In the present case, there were only two parties on any day in the transaction. Under these facts and circumstances, no allegation of circular trading in violation of Section 12 A(a) to (c) of SEBI Act, 1992, Regulation 3(a) to (d), 4(1) and 4(2)(a) and (g) of PFUTP Regulations, 2003 is established.

- **Non- Disclosure of change in shareholding pattern**

16. MPL had reported various corporate announcements to BSE including the disclosure pertaining to "pledge" of shares by the Noticee, Sunciti Financial Services Pvt Ltd, New Era Advisors Pvt Ltd. and. Brijmohan -HUF (hereinafter referred to as 'promoter group entities'). It is seen from the de-mat statement that pledge was not created in terms of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 (hereinafter referred to as 'DP Regulations, 1996') but the shares were transferred to various entities by the Noticee as under:

Total no. of company shares							1,55,90,457	
Transaction date	Transferred From	Transferred To	Opening balance	**Transferred shares**	Balance shares	Opening balance %	Transferred shares %	Balance shares %
16-Jun-09	New Era Advisors Private	Shriram Insight Share Brokers	25,00,000	**1,00,000**	24,00,000	16.04	0.64	15.39
15-Jul-09	New Era Advisors Private	Aryavart Overseas	24,00,000	**5,00,000**	19,00,000	15.39	3.21	12.19

17. It is not disputed that Noticee was holding more than 5% shares in MPL. It is observed that before June 16, 2009, Noticee was holding 25,00,000 shares constituting 16.04% of the share capital of MPL. However, as a result of transfer of 1,00,000 shares constituting 0.64% of the share capital of MPL on June 16, 2009, shareholding of the Noticee reduced to 24,00,000 shares constituting 15.39% of the share capital of MPL. It is further observed that before July 15, 2009, Noticee was holding 24,00,000 shares constituting 15.39% of the share capital of MPL. However, as a result of transfer of 5,00,000 shares constituting 3.21% of the share capital of MPL on July 15, 2009, shareholding of the Noticee further reduced to 19,00,000 shares constituting 12.19% of the share capital of MPL. Hence, there was a change exceeding 2% in the shareholding.

18. As per Regulation 13(3) read with 13(5) of the PIT Regulations, Noticee was required to disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights

19. It was noted that under Regulation 13(3) of PIT Regulations, instead of making disclosure in Form C, Noticee made the said disclosure in Form D which is not consistent with the above Regulations.

20. Noticee in its reply dated March 11, 2015 admitted the aforesaid and submitted that the disclosure in Form D was inadvertent, unintentional, minor and venial. Noticee further submitted that to arrange funds for the working capital requirement as well as long term fund requirement of MPL, promoters of MPL including Noticee pledged their shares.

21. Had the Noticee created pledge of aforesaid shares in accordance with the provisions of Depositories Act, 1996, DP Regulations, 1996 and Bye-laws of Depositories, the

same would have been reflected in the books of the depository by marking a lien and in the demat statement of the Noticee.

22. In terms of section 10 of the Depositories Act, 1996, the beneficial owner is the person whose name is recorded as such with a depository and is entitled to all the rights and benefits and also subjected to all liabilities in respect of its securities held by a depository. As per section 41(3) of the Companies Act, 1956, every person holding shares of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company. Further, as per section 152A of the Companies Act, 1956, the register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996 shall be deemed to be an index of members and register and index of debenture holders, as the case may be. Therefore, an electronic credit entry in a depository account is a sine qua non for any individual/entity to declare that he is a beneficial owner of shares in a company. Further, any transfer of securities from the beneficial owner account to another beneficiary account would result in change of ownership. *Therefore, it is not open for the Noticee to transfer his shares to various entities and still claim that such transfer is not a sale but only a pledge and declare his holdings to the stock exchange as if there is no change in the holdings held by the promoter group. This is a serious irregularity as the general public would believe that there is no change in the shareholding of promoters whereas actually it has transferred the shares. Further, to make the matter worse, the figures received from the R&TA were fudged so as not to reflect the share transfers made by promoters in favour of third parties and showed them as pledge.*

23. The Noticee also contended that the share transfer transactions were legitimate pledge transactions as loan amount was received. In support of his contention, Noticee had submitted copy of a loan agreement dated September 01, 2006 of MPL with Sikhar Merchandise Pvt Ltd. Noticee has contended that it was because the lender insisted on transfer of shares as security, the shares were transferred. However, the Noticee has admitted that there was no pledge created in terms of the Regulations. It is noted that the said loan agreement was valid for two years from

September 01, 2006 to August 31, 2008. But the transactions in question relate to subsequent period i.e. from February, 2009 onwards. Noticee has also submitted a renewal agreement with the same lender. On perusal of the renewal agreement, it is noted that the said agreement was not stamped, dated or notarised. It is also noted that no sanction letter for the loan granted by the NBFC was submitted. The so called agreement does not contain important details like terms and conditions of loan, period of loan, rate of interest and repayment schedule. These are important covenants to be found in any normal commercial loan transaction which are missing in the present case. Thus, the evidence produced by the Noticee to contend that it was a pledge does not inspire confidence. The Noticee has attempted to create a facade of pledge where none exists by producing fabricated copy of loan agreement. Hence, the so called loan agreement as such cannot be admitted to be case of pledge when infact the title in the shares has already passed on. In such a case, it can no longer be called as pledge and has to be treated as sale. As per Regulation 58 of DP Regulations, 1996 the shares pledged have to be identified separately as 'pledged' shares. However, no such pledge can be seen in the de-mat statement of the Noticee. In this regard, I also refer to the observations made by Securities Appellate Tribunal (SAT) in Appeal No. 83 of 2010 in Liquid Holdings Pvt Ltd. v. SEBI decided on 11.03.2011-

"The law also prescribes a mode for the creation and revocation of a pledge. The parties cannot agree to create a pledge contrary to the provisions of Regulation 58... In the case of shares held in demat form, the Depositories Act and the Regulations framed there under provide the manner in which the pledge is to be created and invoked..."

24. Thus, the contention of the Noticee that the share transfer transactions were in the nature of pledge cannot be accepted. Hon'ble Securities Appellate Tribunal (SAT) in *Premchand Shah and Others* v. *SEBI* dated February 21, 2011, held that "…*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner…"*

25. Noticee has also contended that during part of the investigation period, i.e. until May 25, 2009, the company was still under the purview of BIFR and section 22(1) of SICA was applicable. Therefore, SEBI must have obtained consent of BIFR before carrying out any such investigation for the period. The relevant provision to refer to is Section 22(1) of SICA which reads as under:-

> *"**Suspension of legal proceedings, contracts, etc.** – (1) Where in respect of an industrial company, an inquiry under section 16 is pending or any scheme referred to under section 17 is under preparation or consideration or a sanctioned scheme is under implementation or where an appeal under section 25 relating to an industrial company is pending, then, notwithstanding anything contained in the Companies Act, 1956 (1 of 1956), or any other law or the memorandum and articles of association of the industrial company or any other instrument having effect under the said Act or other law, no proceedings for the winding up of the industrial company or for execution, distress or the like against any of the properties of the industrial company or for the appointment of a receiver in respect thereof and no suit for the recovery of money or for the enforcement of any security against the industrial company or of any guarantee in respect of any loans or advance granted to the industrial company shall lie or be proceeded with further, except with the consent of the Board or, as the case may be, the Appellate Authority."*

26. A reading of the aforesaid provision makes it clear that where an enquiry is pending under section 16 of the SICA before the Board (read BIFR) or any scheme referred to in section 17 of the SICA is under preparation or consideration or a sanctioned scheme is under implementation relating to an industrial company, or an appeal is pending under Section 25 of the SICA Act, then no proceedings would lie against it for its winding up or for execution, distress or the like against any of its properties except with the consent of the Board. Hence, only those proceedings would be barred

which are in the nature of winding up or for recovery of monies or are for the enforcement of any security against the sick company.

27. In this context, reliance is placed on judgment of Hon'ble Supreme Court in the matter of KSL & Industries Ltd. v. M/s Arihant Threads Ltd. & Ors. Civil Appeal No. 5225 of 2008 dated October 27, 2014 wherein it was observed that

"*.... the purpose of laying down that no proceedings for execution and distraint or the like or a suit for recovery shall not lie, is to protect the properties of the sick industrial company and the company itself from being proceeded against by its creditors who may wish to seek the winding up of the company or levy execution or distress against its properties. But as is apparent, the immunity is not absolute. Such proceeding which a creditor may wish to institute, may be instituted or continued with the consent of the Board or the Appellate Authority."*

28. Initiation of adjudication proceedings by the statutory Regulators in respect of misconduct relating to wrong disclosure of shareholding to the stock exchange by the promoters is not barred by the said provision. Moreover, as admitted by the Noticee, vide order dated May 25, 2009, of BIFR, MPL has ceased to be a sick industrial company. Thus, the contention of the Noticee is devoid of any merit.

29. If 2 forms i.e. Form C and D are compared, it is noted that the disclosure made by the Noticee in Form D did not contain necessary details such as PAN No., and percentage of voting rights held by the promoter/person, Mode of acquisition (market purchase/ public/ rights/ preferential offer), No. and percentage of shares/voting rights post acquisition/sale and sell value as required in Form C. Thus, the disclosure by the Noticee to the company was not compliance with regulation 13(3) of PIT Regulations, 1992. It misses out on important parameters. Noticee has admitted that the disclosure was incomplete in terms of the prescribed Regulations to the company. Hence, it has to be treated as a case of 'no disclosure' for the aforesaid reasons.

30. It is pertinent to mention order of Hon'ble SAT in the matter of Alpha Hi-Tech Fuel Ltd. v. SEBI (Appeal No. 142 of 2009), wherein it was observed :

.. It is also admitted that the information was not furnished by the company in the prescribed formats. It is thus, clear that the provisions of the Regulations stand violated. This being so, penalty must follow."

31. Further, Hon'ble SAT in Premchand Shah and Others V. SEBI dated February 21, 2011, held that

"*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner.....Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments*.".

32. Thus, the aforesaid violations of Regulation 13(3) read with 13(5) of the PIT Regulations, by the Noticee make him liable for penalty under Section 15A(b) of SEBI Act, 1992 which read as follows:

"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,-*

(a) ……..

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

(c) ……..

33. In this context, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund wherein it was inter alia held that

"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."

34. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the 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

35. There is no material on record that quantified the profit made by the Noticee. Wrong disclosures to the company regarding shares held by the Noticee which belongs to the promoter group is a matter to be viewed seriously. Here, the steep reduction of the shareholding of the promoter group was withheld from the public. The shareholding of the Noticee which belongs to the promoter group was reduced from 16.04% to 12.19%. By failure to make necessary and timely disclosures, the investors were deprived of the correct information to make their investment decisions. Therefore, the Noticee has violated Regulation 13(3) read with 13(5) of SEBI (PIT) Regulations, 1992 which is punishable under Section 15A(b) of SEBI Act, 1992.

ORDER

36. After taking into consideration the nature and gravity of the charges established and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Rules, I hereby impose a penalty of ₹ 5,00,000 /- (Rupees Five Lakhs only) on the Noticee in terms of Section 15A(b) of the SEBI Act for the violation of Regulation 13(3) read with Regulation 13(5) of PIT Regulations.

37. 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 confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Chief General Manager (Enforcement Department), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), 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)	

38. In terms of rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Place: Mumbai
DATE: 25.07.2017

S V KRISHNAMOHAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER