

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/RK/2020-21/8511-8528]

**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) RULES, 1995.**

In respect of

Noticee No.	Noticee Name	Noticee No.	Noticee Name
1	Naaz Trading & Finance Ltd (name changed to Powerhouse Fitness Limited) [PAN:AACCN0015B] 1 st Floor, Mahavir apartments, Near Vodafone gallery, Vile Parle East, Mumbai, 400057	10	Raj Sureka HUF [PAN: Not available] 7,Swastik society, Gulmohar Road, Vile Parle West, Mumbai,400056
2	Vinay Poddar [PAN: AADPP7891B] A/6, Sunita Apartments, 62A, Peddar Road, Mumbai-400036	11	Sashi Sureka [PAN: AACPN9753B] 7,Swastik society, Gulmohar Road, Vile Parle West, Mumbai, 400056
3	Ashok Gupta [PAN:AAIPG7033R] Gurukripa, 6 , Dixit Road, Vile Parle (east),	12	Akshat Gupta [PAN:AMYPG2411K],

	Mumbai-400057		Gurukripa, 6, Dixit Road, Vile Parle (east), Mumbai-400057. Alternate address: 403,Sears towers, Off C G Road, Gulbai Tekra, Ahemdabad-380006.
4	Sushma Gupta [PAN:AAJPG9621K] Gurukripa, 6, Dixit Road, Vile Parle (east), Mumbai-400057	13	Simmi poddar [PAN:AAFPP3705N], A/6, Sunita Apartements, 62A, Peddar Road,Mumbai-400036.
5	Ankush Gupta [PAN:AHCPG2531K] Minal apartements, Shradhanand Road, Vile Parle(east), Mumbai-400057	14	SVC Resources Ltd. [PAN:AAACP7022N] Corp. office address: C-1, Fortune Delight, Hoshangabad Road, Bhopal, M.P.- 462026 Reg. Office address: Unit no. 42, Citi mall, Link Road, Andheri west, Mumbai-400053
6	Mohit Sureka [PAN:AQRPS0406P] 7, Swastik society, Gulmohar Road, Vile ParleWest, Mumbai, 400056	15	Ashok Gupta HUF [PAN:AAAHA4357A] Gurukripa 6, Dixit Road, Vile Parle east, Mumbai-400057
7	Raj Sureka [PAN: AARPS8838F]	16	Lemon Diversified Fund [PAN: AABCL8363M]

	7,Swastik society, Gulmohar Road, Vile Parle West, Mumbai,400056		Harel Mallac Global Services Ltd., Harel Mallac building, 18 Edith Cavell Street, Port Louis, Mauritius.
8	Rashi Sureka [PAN:AEFPS4958A] 7,Swastik society, Gulmohar Road, Vile ParleWest, Mumbai,400056	17	Sushanku Enterprises Ltd. [PAN: AAECs4434R] Shop no.4, Shiv smurti chamber, 9 A , Dr. A.B. Road, Worli, Mumbai- 400018.
9	N S Sureka HUF [PAN: Not available] 7,Swastik society, Gulmohar Road, Vile Parle West, Mumbai,400056	18	Subhtex India Ltd. [PAN: AABCS3969E] 18, Shruti Chamber, 2 nd Dhobi Talao, Mumbai-400002

In the matter of **SVC Resources Ltd**

(The aforesaid entities are hereinafter referred to by their respective names/numbers/ or collectively as “the Noticees”)

FACTS OF THE CASE

1. The Securities and Exchange Board of India (“**SEBI**”) had received a Draft letter of offer (“**DLO**”) filed by Lorgan Lifestyle Ltd in respect of SVC Resources Ltd. (herein referred to as “**SVC**” /the “**Target Company**”). On perusal of the letter of offer, SEBI had

observed that the Noticees had *prima facie* failed to comply with the provisions of SEBI (Prohibition of Insider Trading) Regulations 1992 (“**PIT Regulations**”), Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (“**SAST Regulations, 1997**”), Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (“**SAST Regulations, 2011**”), SEBI (Issue of capital and disclosure requirements) 2009 (“**ICDR Regulations**”). In view of the same, SEBI initiated adjudicating proceedings against the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI in exercise of powers conferred upon it under Section 19 of the SEBI Act, 1992 read with Section 15(I) of the SEBI Act 1992 (hereinafter referred to as “**SEBI Act**”) and Rule 3 of SEBI (Procedures for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') had earlier appointed Shri Satya Ranjan Prasad, Chief General Manager (as he then was) as the Adjudicating Officer vide order dated December 24, 2018. Subsequent to his transfer, the undersigned was appointed as the Adjudicating Officer (hereinafter referred to as “**AO**”) vide order dated May 17, 2019 and conveyed vide communique dated May 27, 2019 , to inquire into and adjudge under section 15I of the SEBI Act for the alleged violation of Regulations 13(1), 13(2A), 13(3), 13(4) and 13(4A) of PIT Regulations, Regulation 12 read with 7(1), 7(1A), 7(2), 7(3), 8(3) of SAST Regulations, 1997, Regulations 3(1), 3(3), 29(2), 29(3) & 31(1), 31(2), 31(3) of SAST Regulation 2011, Regulation 72(1)(a) 73(1), 73(2), 73(3), 74(1), 77(1), 77(6), 78(1) of ICDR Regulations, by the Noticees and to impose penalties, if any, under Sections 15 A(b), 15H, 15HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as ‘SCN’) dated November 13, 2019 was issued by the AO to the Noticees in terms of Section 15I of the SEBI Act, 1992 read with Rule 4 of SEBI Adjudication Rules for the violations as specified in the SCN and reproduced herein below:
- (a) Acquisition of more than 5% shares of the Target Company by Noticees No. 1 to 5 were not disclosed to the target company and the stock exchanges within the stipulated time period or even any time thereafter. Further, no public announcement after acquisition of these shares were by the said Noticees.
 - (b) Non-disclosure of sale of more than 5% shares of the Target Company by Noticees No. 6-11 to the target company and the stock exchanges within the stipulated time period or even any time thereafter.
 - (c) Acquisition of more than 2% shares of the Target Company by Noticees No. 1-5, 7, 12 and 13 were not disclosed to the target company and the stock exchanges within the stipulated time period or even any time thereafter. Such acquisition was also not disclosed to the stock exchanges by the Target Company.
 - (d) Non-disclosure of creation and invocation of pledge of shares of the Target Company by Noticees No. 2,3,4,5,12 and 13 to the stock exchanges and the Target Company.
 - (e) Acquisition of more than 2% shares of the Target Company by Noticees No. 2, 3, 4,5,12 and 13 were not disclosed to the target company and the stock exchanges on 2 instances within the stipulated time period or even any time thereafter.
 - (f) The Target Company had failed to make requisite disclosures under Regulation 8(3) of the SAST 1997 about the change in the shareholding of the promoters in the said Financial Year.

- (g) Delayed disclosure/ Non-disclosure of the change in shareholding amounting to more than 25000 shares of the Target Company by the Noticees No. 2, 3, 5, 12, 13 to the Target Company and the stock exchanges on various dated between June 1, 2012 and September 12, 2014.
 - (h) Non-disclosure of sale of more than 5% shareholding in the Target Company by the Noticee No. 16 to the stock exchanges and the Target Company.
 - (i) Non-disclosure of change in shareholding after acquisition of shares on 2 instances, to the Target Company and the stock exchanges and non-compliance with open offer obligation by Noticees No. 2,3,4,5,12,13,15,17,18 in the second instance.
 - (j) Non-disclosure of acquisition of shares of the target company made through preferential allotment, to the Target Company and the stock exchanges by Noticees No. 3,4,12,15,17,18.
 - (k) Non-compliance with various provisions of ICDR Regulations by Noticee No. 14 with respect to preferential allotments done by the target company on 2 instances.
4. In reply to the SCN, Noticee No. 3 (Mr. Ashok Gupta) vide email dated November 30, 2019 and again vide email dated December 03, 2019 on behalf of all the Noticees submitted that the company was taken over in a hostile manner by one Mr. Rajesh Baheti and others and requested to order inquiry for this issue. In addition to this, the Noticee sought an extension of time for 1 month to file a detailed reply in the matter. However, even after expiry of the requested time of 1 month, there was no response received from him.
5. Subsequently, in the interest of natural justice, an opportunity of personal hearing was given to the Noticees on January 22, 2020 vide hearing notice (“**HN**”) dated January 10, 2020. It was mentioned in the HN that if the Noticees fail to appear before the undersigned on the

date, time and venue as mentioned, the matter would be decided on the basis of documents available on record.

6. In reply to the HN, Noticee No. 3 vide email dated January 21, 2020 reiterated the submission made earlier and requested for the postponement of the hearing by 4 weeks. Also, vide email dated January 20, 2020, Noticee No. 2 (Mr. Vinay Poddar) on behalf of all the Noticees requested a time of two weeks to attend the hearing. Hence, the Noticees were granted another opportunity of personal hearing on February 6, 2020 and the same was communicated vide e-mail dated January 23, 2020.
7. The said hearing on February 6, 2020, was only attended by Authorised Representative (“AR”) of Noticee No.16 and she sought some time to submit her reply and necessary documents in the matter. However, Noticee No.3 vide email dated February 06, 2020 sought an adjournment for one more week for self as well as on behalf of the other Noticees. Hence, once again, all the Noticees were granted another final opportunity of personal hearing on February 13, 2020 and the same was communicated to them vide email dated February 06, 2020.
8. Subsequently, Noticee No. 16 submitted its reply to the SCN vide letter dated February 12, 2020, which is summarized as below :

“On December 20, 2013 the Noticee sold its entire shareholding being 5.38% through open market. Pursuant the same, the Noticee had caused a statement of disclosure to be prepared under Regulation 29(2) of SAST Regulations. The Noticee was under a bona fide belief that the statement of disclosure in relation to the transaction had been filed with BSE. However, despite rigorous research, the Noticee has not been able to trace the receipt and acknowledgement of the filing of its statement of disclosure.”

9. The said hearing dated February 13, 2020 was attended by the AR of only Noticee No. 16 in which she reiterated her earlier submissions made by letter dated February 12, 2020.

However, the other Noticees once again failed to appear for the said hearing and Noticee No. 3 vide email dated February 13, 2020 submitted a reply summarized as below :

“We are submitting herewith the interim reply with a request to further adjourn the personal hearing for another 4 weeks.

The Annexure-1 to the part of the SCN on which you have relied upon is based upon Board order dated May 27, 2019 which is based upon facts presented by new management of SVC Resources Limited. The new management has blatantly misrepresented the facts before you with mala fide intention and ulterior motive. The criminal complaint against this is lying with the Andheri Court for criminal action as well as with Economic Offence Wing, Crime branch.

All the records and statutory registers were stolen from the registered office of the company in the year 2012-2013 against which an FIR has been filed against Mr. Nitish Bangera, the erstwhile Company Secretary and others.

You have alleged violations of Regulations Regulations 72(1)(a) 73(1), 73(2), 73(3), 74(1), 77(1), 77(6), 78(1) of SEBI ICDR Regulations, 2009 which pertains to facts of quarter ending June and September 2006, thereby these provisions were not applicable at that point of time.”

10. In view of the above, I am of the view that principles of natural justice have been duly complied with, as sufficient opportunities have been provided to the Noticees to appear for hearing. As discussed in the preceding paragraphs, I note that all the Noticees have responded to the SCN but other than the Noticee No.16, all other Noticees have failed to appear for the hearings granted to them. The Noticee No. 16 alone appeared for personal hearing and submitted its written reply to the SCN. Therefore, I am proceeding further in the matter on the basis of available documents and information on record.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are :
- (a) Whether the Noticees have violated the provisions of Regulations 13(1), 13(2A), 13(3), 13(4) and 13(4A) of PIT Regulations, Regulation 12 read with 7(1), 7(1A), 7(2), 7(3), 8(3) of SAST Regulations, 1997, and Regulations 3(1), 3(3), 29(2), 29(3) & 31(1), 31(2), 31(3) of SAST Regulations 2011, Regulation 72(1)(a) 73(1), 73(2), 73(3), 74(1), 77(1), 77(6), 78(1) of ICDR Regulations, 2009?
 - (b) Do the violations, if any, attract monetary penalty under Section 15A(b), 15H, and 15HB of the SEBI Act?
 - (c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?
12. Before moving forward, it is pertinent to refer to the relevant provisions of the Takeover Regulations and the PIT Regulations, which read as under:

1. SAST Regulations, 1997

Regulation 10

“No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.”

Regulation 12

“Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the regulations:

Provided that nothing contained herein shall apply to any change in control which takes place in pursuance to a special resolution passed by the shareholders in a general meeting;

Regulation 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.

(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.

*(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.*

(2A) The stock exchange shall immediately display the information received from the acquirer under sub-regulations (1) and (1A) on the trading screen, the notice board and also on its website.

(3) Every company, whose shares are acquired in a manner referred to in sub-regulations (1) and (1A), shall disclose to all the stock exchanges on which the shares of the said company are listed the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations (1) and (1A).

Regulation 8(3):

“Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.”

2. SAST Regulations, 2011

Regulation 3

(1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

(3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

Regulation 29

(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

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

- (a) every stock exchange where the shares of the target company are listed; and*
- (b) the target company at its registered office.*

Regulation 31:

(1) 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.

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

- (c) every stock exchange where the shares of the target company are listed; and*
- (d) the target company at its registered office.*

3. SEBI PIT Regulations 1992:

Regulation 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 of :—

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

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

(2)

(2A) Any person who is a promoter or part of promoter group of a listed company shall disclose to the company in Form B the number of shares or voting rights held by such person, within two working days of becoming such promoter or person belonging to promoter group.

(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) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2)

or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

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

4. SEBI (ICDR) Regulations, 2009

Regulation 72.

(1) A listed issuer may make a preferential issue of specified securities, if:

(a) a special resolution has been passed by its shareholders;

(b)

Regulation 73

(1) The issuer shall, in addition to the disclosures required under section 173 of the Companies Act, 1956 or any other applicable law, disclose the following in the explanatory statement to the notice for the general meeting proposed for passing special resolution:

(a) the objects of the preferential issue;

(b) the proposal of the promoters, directors or key management personnel of the issuer to subscribe to the offer;

- (c) the shareholding pattern of the issuer before and after the preferential issue;*
- (d)) the time within which the preferential issue shall be completed;*
- (e) the identity of the natural persons who are the ultimate beneficial owners of the shares proposed to be allotted and/or who ultimately control the proposed allottees, the percentage of post preferential issue capita that may be held by them and change in control, if any, in the issuer consequent to the preferential issue*
Provided that if there is any listed company, mutual fund, bank or insurance company in the chain of ownership of the proposed allottee, no further disclosure will be necessary.
- (f) an undertaking that the issuer shall re-compute the price of the specified securities in terms of the provision of these regulations where it is required to do so;*
- (g) an undertaking that if the amount payable on account of the re-computation of price is not paid within the time stipulated in these regulations, the specified securities shall continue to be locked in till the time such amount is paid by the allottees.*
- (h) disclosures, similar to disclosures specified in Part G of Schedule VIII, if the issuer or any of its promoters or directors is a wilful defaulter.*

(2) The issuer shall place a copy of the certificate of its statutory auditor before the general meeting of the shareholders, considering the proposed preferential issue, certifying that the issue is being made in accordance with the requirements of these regulations.

(3) Where specified securities are issued on a preferential basis to promoters, their relatives, associates and related entities for consideration other than cash, the valuation of the assets in consideration for which the equity shares are issued shall be done by an independent qualified valuer, which shall be submitted to the recognised stock exchanges where the equity shares of the issuer are listed:

Provided that if the recognised stock exchange is not satisfied with the appropriateness of the valuation, it may get the valuation done by any other valuer and for this purpose it may obtain any information, as deemed necessary, from the issuer.

Regulation 74 (1)

Allotment pursuant to the special resolution shall be completed within a period of fifteen days from the date of passing of such resolution:

Provided that where any application for exemption from the applicability of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 or any approval or permission by any regulatory authority or the Central Government for allotment is pending, the period of fifteen days shall be counted from the date of order on such application or the date of approval or permission, as the case may be:

Provided further that where the Board has granted relaxation to the issuer in terms of regulation 29A of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, the preferential issue of equity shares and compulsorily convertible debt instruments, whether fully or partly, shall be made by it within such time as may be specified by the Board in its order granting the relaxation:

Provided further that requirement of allotment within fifteen days shall not apply to allotment of specified securities on preferential basis pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India.

Regulation 77

(1) Full consideration of specified securities other than warrants issued under this Chapter shall be paid by the allottees at the time of allotment of such specified securities:

Provided that in case of a preferential issue of specified securities pursuant to a scheme of corporate debt restructuring as per the corporate debt restructuring framework specified by the Reserve Bank of India, the allottee may pay the consideration in terms of such scheme

(2)

(3)

(4)

(5)

(6) *The issuer shall submit a certificate of the statutory auditor to the stock exchange where the equity shares of the issuer are listed stating that the issuer is in compliance of sub-regulation (5) and the relevant documents thereof are maintained by the issuer as on the date of certification.*

Regulation 78 (1)

The specified securities allotted on preferential basis to promoter or promoter group and the equity shares allotted pursuant to exercise of options attached to warrants issued on preferential basis to promoter or promoter group, shall be locked -in for a period of three years from date of trading approval granted for the specified securities or equity shares allotted pursuant to exercise of the option attached to warrant, as the case may be Provided that not more than twenty percent of the total capital of the issuer shall be locked-in for three years from the date of trading approval.

Provided further that equity shares allotted in excess of the twenty percent shall be locked - in for one year from the date of trading approval pursuant to exercise of options or otherwise, as the case may be.

FINDINGS

13. It is observed that there was change in management and control of the Target Company. Acquirers were deemed to be person acting in concert with the continuing promoters and accordingly, the acquirers were under obligation to make public announcement to acquire

shares under Regulation 12 of SAST Regulations, 1997. Details pertaining to the said change in management and control of the Target Company is provided herein below:

- (a) As per the shareholding details of the company disclosed on the BSE website (as summarized in the below table) for the Quarter ended June 2006 and September 2006, it was observed that there was change in promoters group. As per the said disclosure it is observed that some of the promoters i.e. Noticee No. 6 to 11, namely Sureka Mohit, Sureka Raj, Surekha Rashi, Raj Surekha-HUF, Sureka Sashi and N S Sureka – HUF (“**selling promoters**”) were replaced by Noticee No. 3 to 5, Ashok Gupta, Sushma Gupta and Ankush Gupta (“**acquirers**”).

(Table No. 1)

Details of promoters as disclosed quarter ended June 2006		Details of promoters as disclosed quarter ended September 2006*	
Name	Holding (%)	Name	Holding (%)
Raj Sureka	15,68,100 (4.48%)	Raj Sureka	7,84,050 (4.48%)
Sureka Mohit	1,12,700 (3.22%)	-	-
Sureka Raj	37,000 (1.06%)	-	-
Surekha Rashi	53,000 (1.51%)	-	-
Raj Surekha HUF	36,500 (1.04%)	-	-
Naaz Trading & Finance Ltd	1,75,000 (5%.00)	Naaz Trading & Finance Ltd	8,75,000 (5%)
Sureka shashi	3,500 (0.10%)	-	-

N S Sureka HUF	1,000	(0.03%)	-	-
Poddar Vinay	100	(0.00%)	Poddar Vinay	500 (0.00%)
			Ashok Gupta	67,500 (0.39%)
			Sushma Gupta	5,81,000 (3.32%)
			Ankush Gupta	5,70,000 (3.26%)
Total	5,75,610	(16.45%)		28,78,050 (16.45%)

*the face value of shares has been split from Rs. 10/- to Rs. 2/- per equity shares hence there is increase in no. of shares.

(b) From the said disclosures as summarized in above Table No. 1, it is observed that prior to said transaction, the promoter group were holding 16.45% equity share of the Target Company. Out of 16.45 %, the selling promoters (Noticee No. 6 to 11) collectively held 11.44% and the other promoters namely Naaz Trading & Finance Ltd (Noticee No. 1) and Vinay Poddar (Noticee No. 2) (“**continuing promoters**”) held 5.01%, details of which is summarized in below table :

(Table No. 2)

Details of promoters	
Name	Holding (%)
Selling Promoters	
Raj Sureka	156810 (4.48%)
Sureka Mohit	112700 (3.22%)

Sureka Raj	37,000	(1.06%)
Sureka Rashi	53,000	(1.51%)
Raj Sureka HUF	36,500	(1.04%)
Sureka Shashi	3,500	(0.10%)
N S Sureka HUF	1,000	(0.03%)
Total shareholding % of seller promoters (approx)		11.44 %
Continuing Promoters		
Naaz Trading & Finance Ltd	175000	(5.00%)
Poddar Vinay	100	(0.002%)
Total shareholding % of continuing promoters (approx)		5.01 %
Total (approx)	5,75,610	(16.45%)

(c) From Table No. 1, it is observed that the Acquirers (Noticee No. 3 to 5) acquired 6.97 % equity share of the Target Company from seller promoters. After acquisition, the Acquirers became promoters of the Target Company along with the continuing promoters (Noticee No. 1 and 2). Therefore, it is observed that Acquirers were deemed to be person acting in concert with the continuing promoters and hence, there was change in management and control of the Target Company. Accordingly, the acquirers i.e. Noticee No. 1 to 5 were under obligation to make public announcement to acquire shares under Regulation 12 of SAST Regulations, 1997. However, as per the letter dated June 16, 2015 received from the target company,

and email dated January 20, 2016 received from the BSE, no such announcement was made by them under the said Regulation and hence, Noticee No. 1 to 5 have violated the said Regulation.

(d) It is further observed that the Acquirers (Noticee No. 3 to 5) did not hold any share in the target Company (except Mr. Ashok Gupta (Noticee No. 3) holding 50 shares) prior to the said acquisitions. The shareholding of promoters group (excluding sellers holding) was 5.01%. Pursuant to said acquisition, the holding of Acquirers along with the holding of continuing promoters group i.e. (Noticee No. 1 to 5) increased from 5.01% to 11.98% between the Quarter ended June 2006 and September 2006. This increase is beyond the threshold limit of 10% mentioned under regulation 7(1) of SAST Regulations, 1997. Accordingly, the acquirers/promoters i.e. Noticee No. 1 to 5 were under obligation to file disclosure to the company and the stock exchange under Regulation 7(1) of SAST Regulations, 1997 within two days of such purchase. However, as per email dated January 20, 2016, received from BSE and email dated June 16, 2015, received from the target company, no such disclosure was filed by them to the stock exchange and the company under the said Regulation and hence, Noticee No. 1 to 5 are found to have violated the Regulation 7(1) read with 7(2) of SAST Regulations, 1997.

(e) Similarly, the seller promoters i.e. Noticee No. 6 to 11 who had together sold more than 2% (6.97%) shares of the Target Company in the aforesaid transaction were under the obligation to file disclosure to the company and the stock exchange under Regulation 7(1A) of SAST Regulations, 1997 within two days of such sale. However, as per the email mentioned above, no disclosures were made by them under the said

Regulations and hence, Noticee No. 6 to 11 have violated Regulation 7(1A) read with 7(2) of SAST Regulations, 1997.

- (f) Again, from the holding statements received from the Registrar of the Company vide email dated August 11, 2017, it is observed that during the Quarter ended June, 2007, the erstwhile promoters of the Target Company (Noticee No. 2,3,5 and 13) acquired 4,17,000 (2.38%) equity share of The Target Company. Pursuant to said acquisition the aggregate holding of promoter group had increased from 16.45% to 18.83% which was more than 2% and detailed in the **Table No. 3** below. Accordingly, the acquirers i.e., the Noticees No. 2,3,5 and 13 along with continuing promoters (Noticee No. 1,4, 7 and 12) were under collective obligation to file disclosure to the company and the stock exchange under Regulation 7(1A) of SAST Regulations, 1997 within two days of such acquisition. However, no such disclosures were made by them under the said Regulation. Hence, it is observed that Noticee No. 1 to 5, 7, 12, and 13 have violated Regulation 7(1A) read with 7(2) of SAST Regulations, 1997.

(Table No. 3)

Name of the Acquirer / Continuing Promoter	Date of acquisition	No. of Shares acquired	Shareholding of the acquirer & (%)	
			Before Acquisition	After Acquisition
Acquirer				
Simmi Poddar	30.06.2007	87000	0	0.50

Ashok Gupta	30.06.2007	53500	0.39	0.69
Akshat Gupta	30.06.2007	220000	0	1.26
Vinay poddar	30.06.2007	56500	0.00002	0.33
Continuing Promoters				
Naaz Trading & Finance Ltd	30.06.2007	-	5	5
Raj Sureka	30.06.2007	-	4.48	4.48
Sushma gupta	30.06.2007	-	3.32	3.32
Ankush Gupta	30.06.2007	-	3.26	3.26
		Total (approx.)	16.45	18.83

14. It is observed that the Board of Directors of the Target Company allotted shares to erstwhile promoters/its relatives and entity controlled by promoters that resulted in change in shareholding which required disclosure Regulations 3 and 29 of Takeover Regulations 2011. The details pertaining to this is stated herein below:

- a) From the email dated June 16, 2015 received from the target company, it was observed that the Board of Directors of the Target Company allotted 1,08,44,426 equity shares to erstwhile promoters, its relative and entity controlled by promoters i.e. Noticee No. 4,12,15 and 17 on May 08, 2013. Pursuant to the aforesaid allotment the aggregate holding of erstwhile promoters i.e. Noticee No. 2,3,4,5,12,13,15 and 17 was increased from 6.19% to 18.86%. Accordingly, the said promoters were under an obligation to file disclosure to the company and the stock exchange under Regulation 29(2) of SAST Regulations 2011 within two working days of such purchase as the change in shareholding exceeded 2% of total shareholding from the last disclosure. However, as per the email dated January 20, 2016 received from the BSE, no such disclosures were made by them under the said Regulation and hence ie Noticee No. 2,3,4,5,12,13,15 and 17 are found to have violated Regulation 29(2) read with 29(3) of SAST Regulations 2011.
- b) Subsequently, from the aforementioned email dated June 16, 2015, it was also observed that on August 05, 2013, the Board of directors of the Company further allotted 2,97,00,000 (26.98%) equity shares to Noticee No. 18. As disclosed on BSE, the said Noticee has been shown as a part of 'promoter group' in the Quarter ended September 2013. Pursuant to the said allotment the aggregate holding of the promoters i.e. Noticee No. 2,3,4,5,12,13,15,17 and 18 further increased from 18.86% to 40.93% resulting in open offer obligation under regulation 3(1) of Takeover regulations 2011 (for holding more than 25% shares) and disclosure obligations under regulation 29(2) of Takeover regulations 2011 (for change in more than 2% shareholding). Accordingly, the promoters were under a collective obligation to make open offer under regulation 3(1) read with 3(3) of the Takeover Regulations, 2011 and file disclosure to the company and the stock exchange within two working days of such purchase. However, as per the email dated January 20, 2016, received

from BSE, it appears that no such open offer was made by them and hence the Noticees No. 2,3,4,5,12,13,15,17 and 18 are found to have violated Regulations 3(1) read with 3(3) and 29(2) read with 29(3) of the Takeover Regulations, 2011.

15. From the order of the Hon'ble Company Law Board dated 04.06.2015, it was observed that the aforesaid allotments (mentioned at preceding paragraphs no. 13 and 14 in this order) on May 08, 2013 and August 05, 2013 were also not in compliance of ICDR Regulations. Details of such violations is provided herein below:

- (i) Regulation 72(1)(a) - Special resolution was not passed for approving the said preferential allotment.
- (ii) Regulation 73(1) – Non-disclosure of specified details in the explanatory statement to the notice for the general meeting proposed for passing the special resolution.
- (iii) Regulation 73(2) – failure to place copy of certificate from statutory auditor certifying compliance with regulations before the general meeting of the shareholders.
- (iv) Regulation 73(3) – failure to submit to the stock exchanges a report by an independent qualified valuer on the valuation of the assets in consideration for which the equity shares are issued.
- (v) Regulation 74(1) – Non-compliance with the requirement to complete allotment within 15 days from the date of passing of the special resolution.
- (vi) Regulation 77(1) – Non-receipt of full consideration from the allottees at the time of allotment.

(vii) Regulation 77(6) Non-submission of certificate to stock exchanges regarding compliance with regulation 77(5).

(viii) Regulation 78(1) – failure to lock-in the securities for a period of three years from the date of grant of trading approval.

The aforesaid non-compliances are mentioned in the order of the Hon'ble CLB as well as admitted by the Target Company in its letter dated 23.03.2017. I therefore, hold that the target company had violated the aforesaid provisions of ICDR Regulations.

16. It is observed that due to pledging of shares by one of the promoters (Noticee No.12) on February 02, 2012 and invoking of pledge on May 10, 2012 by Stock Holding Corporation of India Ltd, a change in shareholding of more than the prescribed limit had occurred, which required disclosure that has not been effected, as described herein below.

- a) After examination of transactions statements received from NSDL, vide letter dated August 01, 2017, it was observed that Akshat Gupta (Noticee No.12) had pledged 16,00,000 shares to Stock Holding Corporation of India Ltd., on February 02, 2012. The pledge was invoked on May 10, 2012. Henceforth, during the Quarter March to June 2012 erstwhile promoters holding changed by more than 2% due to invocation of the said pledge. Accordingly, the promoters i.e. Noticee No. 2,3,4,5,12 and 13 were under obligation to file disclosure to the company and the stock exchange within seven working days under Regulation 31(1) (for creation of pledge) and 31(2) (for invocation of pledge) of SAST Regulations 2011. However, no disclosures were made by them either at the time of creation and/or at the time of invocation of the pledge and hence it is observed that Noticee No. 2,3,4,5,12

and 13 have violated Regulation 31(1) and 31(2) read with 31(3) of SAST Regulations 2011.

- b) Again, from the aforementioned transactions statements received from NSDL, it was further observed that, subsequently, on July 05, 2012, Ashok Gupta and Sushma Gupta (Noticee No.3&4) together sold 22,60,270 (3.25%) equity shares of the Target Company, which is more than 2% of the threshold limit prescribed under Regulation 29(2) of SAST Regulation, 2011. Accordingly, the promoters i.e. Noticee No. 2,3,4,5,12 and 13 were under obligation to file disclosure to the company and the stock exchange under Regulation 29(2) of SAST Regulations 2011 within two working days of such sale as the change in shareholding exceeded 2% of total shareholding from the last disclosure and hence it is observed that Noticee No. 2,3,4,5,12 and 13 have violated Regulation 29(2) read with 29(3) of SAST Regulations 2011.
- c) Similarly, from the statement of holding provided by the Registrar and Transfer Agent (“RTA”) of the company vide email dated August 11, 2017 and transactions statements received from CDSL vide email dated July 20, 2017, it was observed that during the March 2014 to June 2014, erstwhile promoters sold more than 2% equity shares of the Target Company .Hence, the limit of 2% was breached on May 13, 2014 and accordingly, the erstwhile promoters i.e. Noticee No. 2,3,4,5,12 and 13 were under obligation to file disclosure to the company and the stock exchange under Regulation 29(2) of SAST Regulations 2011 within two working days of such sale as the change in shareholding exceeded 2% of total shareholding from the last disclosure. However, no such disclosure was made by them and hence it is observed that Noticee No. 2,3,4,5,12 and 13 have violated Regulation 29(2) read

with 29(3) of SAST Regulations 2011. The details of these transactions is mentioned in below table:

S. N	Name of promoter	no shares	%	no shares	%	no shares	%	no shares	%	no shares	%
		Mar-12		Jun-12		Sep-12		Mar-14		Jun-14	
1	Ashok Gupta	23,33,020	3.36	22,93,290	3.29	10,33,020	1.49	10,33,020	1.49	10,33,020	1.49
2	Sushma Gupta	11,06,846	1.59	11,06,846	1.59	1,06,846	0.15	1,06,846	0.15	1,06,846	0.15
3	Ankush Gupta	22,53,333	3.24	22,53,333	3.24	22,53,333	3.24	22,53,333	3.24	0	0
4	Akshat Gupta	21,80,666	3.14	5,80,666	0.84	5,80,666	0.84	6,04,419	0.86	3,83,222	0.55
5	Simmi Poddar	1,82,000	0.26	1,82,000	0.26	1,82,000	0.26	1,82,000	0.26	1,82,000	0.26
6	Poddar Vinay	1,50,666	0.22	1,50,666	0.22	1,50,666	0.22	1,50,666	0.22	1,50,666	0.22
	Total	82,06,531	11.81	65,66,801	9.44	43,06,531	6.20	43,30,284	6.22	18,55,754	2.67
	Change in %			-2.37 (pledge)		-3.24				-3.55	

17. It is also observed that there is a delay/ non-compliance in making the annual disclosures by the company to stock exchange. From the email dated November 18, 2015 received from the BSE, it was observed that the company had delayed to make disclosures on 2 instances and had also not made disclosures on another 2 instances to BSE (as mentioned in the below table) and thus failed to comply with provisions of Regulation 8(3) of the SAST Regulations 1997.

Regulation	Due date for compliance	Date of receipt by BSE	Status
8(3)	30.04.2004	23/09/2004	Delayed
8(3)	30.04.2005	19/09/2005	Delayed
8(3)	30.04.2010	Not complied	Not complied
8(3)	30.04.2011	Not complied	Not complied

18. From the email dated June 26, 2015 received from the BSE, it was observed that Noticee No. 16, namely Leman Diversified Fund, was holding more than 5% shareholding of target Company. Subsequently, on December 20, 2013, it sold its entire holding, details of which is summarized in the below table. However, no disclosure was made by Noticee No. 16 under 29(2) of SAST Regulations and 13(3) of PIT Regulations and hence, it is observed that Noticee No. 16 has violated Regulation 29(2) r/w 29(3) of SAST Regulations and 13(3) of PIT Regulations.

Name of the Seller	Date of sell	Pre holdin	Post holdin	Regulation applicable but not complied
Leman Diversified	20/12/ 2013	59,25,236 (5.38%)	0	29(2) r/w 29(3) of SAST Regulations and 13(3) of PIT

In this regard, the Noticee in its written submissions dated February 12, 2020 has stated that it is not being able to retrieve the documentary evidence to establish that it had indeed made the requisite disclosures. This submission taken together with the email received from BSE, clearly establishes that the Noticee No. 16 has violated the said Regulations.

19. From the email dated June 26, 2015 received from the BSE and email dated June 16, 2015, received from the Target Company, it was observed that promoters of the Target

Company had failed/delayed to disclose their transactions (as mentioned in the below table) to the company and the BSE, and thus failed to comply with relevant provisions of PIT Regulations as mentioned below:

Name of the person/entit	Date of transaction	Transaction	Regulation applicable	Compliance status
Ashok Gupta	1/6/2012	Sold 39730 (0.06%) shares in 3 transaction	13(4) & 13(4A)	Not complied
Akshat Gupta	12/8/2013	Bought 140596 (0.2%) shares	13(4) & 13(4A)	Not complied
Akshat Gupta	02/9/2013	Bought 51,652	13(4) & 13(4A)	Not complied
Ankush Gupta	17/6/2014	Sold 139807 (0.2%)	13(4A)	Not complied
Vinay Poddar	16/7/2014	Sold 109000 (0.16%) shares	13(4A)	Not complied
Simmi Poddar	21/7/2014	Sold 100000 (0.14%)	13(4A)	Not complied
Simmi Poddar	19/8/2014	Sold 50000 0.07%) shares	13(4A)	Not complied
Akshat Gupta	09/9/2014	Sold 135000 (0.19%) shares	13(4A)	Disclosed with the delay of 1

20. Hence, from the above table, it is observed that Notice No. 3 and 12 have violated Regulations 13(4) and 13(4A) of PIT Regulations and Noticee No. 2, 5 and 13 have violated Regulation 13(4A) of PIT Regulations.

21. Further, with respect to allotment of shares to promoters and its relatives made on May 08, 2013 and August 05, 2013, which was subsequently cancelled by the Hon'ble CLB vide order dated June 05, 2015, it was observed from the email dated June 16, 2015,

received from the Target Company as well as from the aforesaid order of the Hon'ble CLB, that the Noticee No. 3, 4,12,15,17 & 18 have failed to make disclosures to the company and the BSE under PIT Regulations (as detailed in the table below). :

Allotment made on May 08, 2013		
Name	No. of shares	Violation of PIT reg.
Sushma Gupta	3992335 (4.97%)	13(3) & 13(4A)
Ashok Gupta HUF	1929658 (2.40%)	13(2A)
Ashok Gupta	1557034 (1.94%)	13(4) & 13(4A)
Akshat Gupta	711407 (0.89%)	13(4) & 13(4A)
Sushanku Enterprices Ltd	2653992 (3.30%)	13(2A)
Allotment made on August 05, 2013		
Subhtex India Ltd	2,97,00,000 (26.98%)	13(1) and (2A)

Hence, from the above table, with respect to aforementioned allotment of shares on May 08, 2013 and August 05, 2013 it is observed that Noticee No. 3 and 12 have violated Regulations 13(4) and 13(4A) of PIT Regulations, Noticee No. 4 has violated Regulations 13(3) and 13(4A) of PIT Regulations, Noticee No. 15 and 17 have violated Regulations 13(2A) of PIT Regulations and Noticee No. 18 has violated Regulations 13(1) and 13(2A) of PIT Regulations.

22. I find that the Noticee No. 16 in their reply dated February 12, 2020 have submitted pursuant to the sale of its entire shareholding being 5.38% through open market, the Noticee had caused a statement of disclosure to be prepared under Regulation 29(2) read with Regulation 29 (3) of SAST Regulations, 2011, and the Noticee was under a *bona fide* belief that the statement of disclosure in relation to the transaction had been filed with BSE. However, the Noticee has not been able to trace the receipt and acknowledgement of the filing of its statement of disclosure and has not submitted any proof to substantiate its claim.

23. I find that the Noticee No. 3 in its reply has contended that the company was taken over by the management in a hostile manner and therefore an inquiry should be initiated against the company for the defaults and not against the shareholders who have lost heavily. However, these facts do not pertain to the present case and the Noticee has not refuted any allegations in the SCN, hence I don't find any merit of this contention of the Noticee No. 3.
24. Noticee No. 3 in its reply has further contended that violations of Regulations 72(1)(a), 73(1), 73(2), 73(3), 74(1), 77(1), 77(6), 78(1) of SEBI (ICDR) Regulations 2009 were alleged for the facts pertaining to quarter ending June and September 2006. However, violations of these Regulations were alleged for the allotment of equity shares by the company to its erstwhile promoters on May 08, 2013 and August 05, 2013 and not for the violations committed prior to the commencement of the ICDR Regulations, as alleged by the Noticee or at all. Therefore I do not find any merit in this contention of the Noticee.
25. I further note that none of the aforesaid observations pertaining to the non-compliance of disclosure requirements have been specifically controverted by any of the Noticees in any of their responses to the SCN. This further strengthens the conclusions arrived at with respect to such non-compliances in this order.
26. Hence, as explained in the above paragraphs, I find that the Noticees have violated following Regulations through the aforesaid actions :

- a. M/s Naaz Trading & Finance Ltd has violated regulation 12, regulations 7(1) and 7(1A) read with 7(2) of SEBI SAST Regulations 1997,
- b. Mr. Vinay Poddar has violated regulation 12, regulation 7(1) read with 7(2), 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(4A) of PIT Regulations,
- c. Mr. Ashok Gupta has violated regulation 12, regulation 7(1) read with 7(2), 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(4), 13(4A) of PIT Regulations, and
- d. Ms. Sushma Gupta has violated regulation 12, regulation 7(1) read with 7(2), 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(3), 13(4A) of PIT Regulations, and
- e. Mr. Ankush Gupta has violated regulation 12, regulation 7(1) read with 7(2), 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(4A) of PIT Regulations, and
- f. Mr. Mohit Sureka has violated regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997, and
- g. Mr. Raj Surekha has violated regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997, and
- h. Ms. Rashi Surekha has violated regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997, and
- i. M/s. N S Surekha HUF has violated regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997, and

- j. M/s. Raj Surekha HUF has violated regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997, and
- k. Ms. Sashi Surekha has violated regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997, and
- l. Mr. Akshat Gupta has violated regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulations 13(4),13(4A) of PIT Regulations, and
- m. Ms. Simmi Poddar has violated regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(4A) of PIT Regulations, and
- n. SVC Resources Ltd. has violated regulations 8(3) of SEBI SAST Regulations 1997, and Regulations 72(1)(a), 73(1), 73(2), 73(3), 74(1), 77(1), 77(6), 78(1) of SEBI (ICDR) Regulations 2009, and
- o. Leman Diversified Fund has violated regulations regulation 29(2) read with 29(3) of SEBI SAST Regulations 2011, and regulation 13(3) of PIT Regulations, and
- p. Sushanku Enterprises Ltd. has violated regulations 3(1) read with 3(3) and 29(2) read with 29(3) of SEBI SAST Regulations 2011 and 13(2A) of PIT Regulations, and
- q. Subhtex India Ltd. has violated regulations 3(1) read with 3(3), and 29(2) read with 29(3) of SEBI SAST Regulations 2011 and 13(1), 13(2A) of PIT Regulations, and
- r. M/s. Ashok Gupta HUF has violated regulations 3(1) read with 3(3), 29(2) read with 29(3) of SEBI SAST Regulations 2011 and regulation 13(2A) of SEBI (PIT) Regulations 1992.

27. In view of the above, I find that the violations of Regulations 13(1), 13(2A), 13(3), 13(4) and 13(4A) of PTT Regulations, Regulation 12 read with 7(1), 7(1A), 7(2), 7(3), 8(3) of SAST Regulations, 1997, and Regulations 3(1), 3(3), 29(2), 29(3) & 31(1), 31(2), 31(3) of SAST Regulation 2011, Regulation 72(1)(a) 73(1), 73(2), 73(3), 74(1), 77(1), 77(6), 78(1) of SEBI ICDR Regulations, 2009 is established against the Noticees. The Hon'ble Supreme Court of India in the matter of Chairman, **SEBI vs. Shriram Mutual Fund** {[2006] 5 SCC 361} held that “ *In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*”.
28. In view of the same, I am convinced that it is a fit case to impose monetary penalty on the Noticee No. 6 to 11 and 16 under section 15 A(b); on Noticee No. 1 to 5, 12 to 13, 15, 17-18 under section 15 H(ii) and 15 A(b) and on Noticee No. 14 under section 15 HB and 15 A(b) of SEBI Act, 1992 respectively, which reads as follows:

15A. Penalty for failure to furnish information, return, etc.-

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

thereunder,-

(a)...

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

Penalty for non-disclosure of acquisition of shares and takeovers.

15H. *If any person, who is required under this Act or any rules or regulations made thereunder,*

fails to, -

(ii) make a public announcement to acquire shares at a minimum price;

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations*

made or directions issued by the Board thereunder for which no separate penalty has been

provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

29. While determining the quantum of penalty under Section 15A(b), 15H, 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

Section 15J - 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

30. The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee and the loss suffered by the investors as a result of the non-compliance committed by the Noticee. The violations of the disclosure requirements by the Noticees have happened continuously over a long period of time from 2006 to 2014. This continuous chain of non-compliances in disclosure and open offer obligations by the promoters of a listed entity cannot be viewed lightly as the same adversely affects the disclosure based regime of the securities market and the rights of investors at large.

ORDER

31. I note that each of the Noticees have several counts of non- disclosures under relevant Regulations and/or non-compliance of open offer obligations established against themselves. Accordingly, the number of instances of violations of disclosure norms and/or open offer obligations are being taken into account for computation of the amount of penalty in accordance with the minimum amount of penalty stipulated under the statute for such violations. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act read with the interpretation of the said provision of law by the Hon'ble Supreme Court of India in the matter of *Bhavesh Pabari Vs. SEBI* (decided on February 28, 2019) and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalties on the Noticees :

Noticee	Violation	Penal Provisions	Penalty (Rs.)
Naaz Trading & Finance Ltd (name changed to Powerhouse Fitness Limited)	regulation 12, regulations 7(1) and 7(1A) read with 7(2) of SEBI SAST Regulations 1997	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 3,30,000/- (Rs. Three lacs and thirty thousand only)
Vinay Poddar [PAN: AADPP7891B]	regulation 12, regulation 7(1) read with 7(2), 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(4A) of PIT Regulations,	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 6,40,000/- (Rs. Six lacs and forty thousand only)
Ashok Gupta [PAN:AAIPG7033R]	regulation 12, regulation 7(1) read with 7(2), 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 6,60,000/- (Rs. Six lacs and sixty thousand only)

	29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(4), 13(4A) of PIT Regulations,		thousand only)
Sushma Gupta [PAN:AAJPG9621K]	regulation 12, regulation 7(1) read with 7(2), 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(3), 13(4A) of PIT Regulations,	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 6,40,000/- (Rs. Six lacs and forty thousand only)
Ankush Gupta [PAN:AHCPG2531K]	regulation 12, regulation 7(1) read with 7(2), 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(4A) of PIT Regulations,	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 6,40,000/- (Rs. Six lacs and forty thousand only)

Mohit Sureka [PAN:AQRPS0406P]	regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997,	Section 15A(b) of the SEBI Act	Rs. 1,00,000/- (Rs. One lacs only)
Raj Sureka [PAN: AARPS8838F]	regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997	Section 15A(b) of the SEBI Act	Rs. 1,00,000/- (Rs. One lacs only)
Rashi Sureka [PAN:AEFPS4958A]	regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997	Section 15A(b) of the SEBI Act	Rs. 1,00,000/- (Rs. One lacs only)
N S Sureka HUF [PAN: Not available]	regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997	Section 15A(b) of the SEBI Act	Rs. 1,00,000/- (Rs. One lacs only)
Raj Sureka HUF [PAN: Not available]	regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997	Section 15A(b) of the SEBI Act	Rs. 1,00,000/- (Rs. One lacs only)
Sashi Sureka [PAN: AACPN9753B]	regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997	Section 15A(b) of the SEBI Act	Rs. 1,00,000/- (Rs. One lacs only)
Akshat Gupta [PAN:AMYPG2411K],	Regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 4,80,000/- (Rs. Four lacs and eighty thousand only)

	2011, and regulations 13(4),13(4A) of PIT Regulations		
Simmi poddar [PAN:AAFPP3705N],	regulations 7(1A) read with 7(2) of SEBI SAST Regulations 1997 and regulations 31(1) & 31(2) read with 31(3), regulation 29(2) read with 29(3), 3(1) read with 3(3) of SEBI SAST Regulations 2011, and regulation 13(4A) of PIT Regulations,	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 4,40,000/- (Rs. Four lacs and forty thousand only)
SVC Resources Ltd. [PAN:AAACP7022N]	regulations 8(3) of SEBI SAST Regulations 1997, and Regulations 72(1)(a), 73(1), 73(2), 73(3), 74(1), 77(1), 77(6), 78(1) of SEBI (ICDR) Regulations 2009,	Section 15A(b) of the SEBI Act	Rs. 3,30,000/- (Rs. Three lacs and thirty thousand only)
Ashok Gupta HUF [PAN:AAAHA4357A]	regulations 3(1) read with 3(3), 29(2) read with 29(3) of SEBI SAST Regulations 2011 and regulation 13(2A) of SEBI (PIT) Regulations 1992	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 2,60,000/- (Rs. Two lacs and sixty thousand only)

Lemon Diversified Fund [PAN: AABCL8363M]	regulations 29(2) read with 29(3) of SEBI SAST Regulations 2011, and regulation 13(3) of PIT Regulations,	Section 15A(b) of the SEBI Act	Rs. 2,00,000/- (Rs. Two lacs only)
Sushanku Enterprises Ltd. [PAN: AAECs4434R]	regulations 29(2) read with 29(3) of SEBI SAST Regulations 2011, and regulation 13(3) of PIT Regulations,	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 2,60,000/- (Rs. Two lacs and sixty thousand only)
Subhtex India Ltd. [PAN: AABCS3969E]	regulations 3(1) read with 3(3), and 29(2) read with 29(3) of SEBI SAST Regulations 2011 and 13(1), 13(2A) of PIT Regulations,	Section 15A(b), 15H(ii), of the SEBI Act	Rs. 2,40,000/- (Rs. Two lacs and forty thousand only)

32. 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.
33. 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 Division Chief, Enforcement

Department (EFD1 – DRA III), 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	

34. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.
35. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: July 31, 2020

G Ramar

Place: Mumbai

ADJUDICATING OFFICER