

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. EAD/BJD/VS/14-19/2017-18]

**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.**

In respect of:

Sr. No.	Name	PAN No.
1	M/s. Anand Credit Limited	AABCA3027D
2	Shri Ramesh L Shah	AFQPS2500E
3	M/s. Anand Finstock Services Limited	AABCA6413F
4	Shri Mafatbhai L Desai	AMWPD9977F
5	Shri Samir S Shah	AGEPS0157L
6	Shri Halari Brijesh Ashok	ACHPH4369L

In the matter of

**ANAND CREDIT LIMITED**

**Background**

1. Securities and Exchange Board of India (**SEBI**), conducted an investigation into the alleged irregularity in the trading in the shares of Anand Credit Limited (**ACL / Company**), for any possible violation of the provisions of the Securities and Exchange Board of India Act 1992 (hereinafter referred to as the 'SEBI Act') and various Rules and Regulations made there under during January 27, 2010 to December 31, 2010 (hereinafter referred to as the 'Investigation Period').
2. The investigation, inter alia, revealed that the scrip was suspended from trading on Bombay Stock Exchange (BSE) w.e.f. September 10, 2001 on account of non-payment of annual listing fees. The suspension was revoked by BSE w.e.f. January 27, 2010. It is observed that promoter's holdings were reduced from 54.11% to 5.35% during the investigation period. The reduction in promoters holding was due to sell-off of holdings by 5 promoters out of the 8 promoters. Investigation revealed that the promoters who have sold their shares made various disclosures in terms of SEBI (Substantial

Acquisition of Shares and Takeovers) and SEBI (Prohibition of Insider Trading) Regulations to ACL (hereinafter referred to as the "Noticee 1") and also to BSE, wherever applicable, except in the following instances:

**Table No. 1**

Date	Entity Name	Transaction	Qty.
27/08/2010	Ramesh L Shah (MD & Promoter)	Market Sale	34,605
08/10/2010	Ramesh L Shah (MD & Promoter)	Market Sale	37,480

3. It was observed that Noticee 1 received disclosure of reduction in holding from Shri Ramesh L Shah, MD & Promoter (hereinafter referred as Noticee 2) for the above sale transactions and also submitted during investigations that it had disclosed the same to BSE. In this regard, Noticee 1 failed to provide proof of delivery of having submitted the disclosure made by Noticee 2, to BSE.
4. It was also observed that Noticee 1 failed to make continual disclosure for the year ended March 2010 to exchange, regarding promoter holdings and also failed to make disclosures to BSE, after having received the same from Anand Finstock Services for its change in shareholding.
5. Investigation revealed that Noticee 2 being MD & Promoter of the ACL, disclosed the above change in holding of shares to ACL but failed to disclose the same to BSE.
6. Further it is observed that M/s. Anand Finstock Services Ltd. (AFSL) (hereinafter referred to as Noticee 3) and Shri Mafatbhai L Desai (hereinafter referred to as Noticee 4), held 12,25,500 shares (20.42%) and 5,37,000 shares (8.95%) of share capital respectively on January 27, 2010 (i.e., the day on which the suspension was revoked by BSE). Noticees 3 & 4 had reduced their holding in the scrip of ACL, as per the following details.

**Table No. 2**

Transaction Date	Entity Name	Transaction	Qty (% to Share Capital)	Date of disclosure to Company by Entity	Sold to (in case of Off-market)
27/01/2010	Anand Finstock Services Ltd.	Sell-Off market	4,25,500 (7.09%)	-	All sold to Samir S Shah
27/01/2010	Anand Fintock Srvices Ltd.	Sell-Exchange	8,00,000 (13.33%)	-	Sold to 150 entities with highest contribution being 4.56% of share capital

Transaction Date	Entity Name	Transaction	Qty (% to Share Capital)	Date of disclosure to Company by Entity	Sold to (in case of Off-market)
27/01/2010	Mafatbhai Desai	Sell-Off Market	5,37,000 (8.95%)	-	To 4 different entities with highest contribution being 3.33% of share capital

7. However, the investigation revealed that Noticee 3 and Noticee 4 disclosed the above transaction to ACL but failed to disclose the same to BSE.
8. As per Table No. 2, Noticee 3 transferred 4,25,500 shares (7.09% of share capital) to Shri Samir S Shah (hereinafter referred as Noticee 5). Also it was observed that Noticee 5 sold all the above shares to three different entities through off-market with highest contribution of being 3.33% of share capital. Noticee 5 neither disclosed the change in shareholding to the Company nor to BSE.
9. It was observed that, promoters and non-promoters holding for the quarter ending December 2010 and March 2011 was 5.35% and 94.65% of the share capital respectively. Out of 94.65%, it was observed that India Advantage Securities Ltd. (IASL, Stock broker) as on March 31, 2011, held 9,11,906 shares (15.19% of share capital) in ACL. During investigation, IASL informed that all shares belongs to their clients and lying in the pool account of IASL. It was also observed that 7,22,280 shares (12.03% of share capital) were held by Shri Halari Brijesh Ashok (hereinafter referred as Noticee 6). Noticee 6 neither disclosed same to the Company nor to the BSE.
10. Thus it was alleged that the Noticee(s) had not disclosed the change in shareholding in to ACL to BSE, wherever applicable and thus it was alleged that the Noticee(s) have violated the provisions of SEBI (SAST) Regulations and SEBI (PIT) Regulations.

### **Appointment of Adjudicating Officer**

11. Shri Prasad Jagadale was appointed as the Adjudicating Officer vide Order dated July 15, 2015 under Section 19 of the SEBI Act, 1992 read with Section 15-I (1) of SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "Adjudication Rules") to inquire and adjudge under Sections 15A(b) of the SEBI Act, 1992, for the alleged violations committed by the Noticee(s). Subsequently, vide order dated December 14,

2016, Ms. Anita Kenkare, was appointed as the Adjudicating Officer to inquire into and adjudge under Section 15A(b) of the SEBI Act, 1992. Further, Vide Order dated May 18, 2017 the undersigned was appointed as Adjudicating officer to adjudge the said matter.

### **Show Cause Notice, Reply and Personal Hearing**

**12.** Show Cause Notice dated November 30, 2015 (hereinafter referred to as SCN) were issued to the Noticee(s) in terms of Rule 4 of the said Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of provisions of law. A common SCN bearing No. EAD/PJ/JAK/OW/33139/2015/1-6 were sent to last known address(s) of Noticee(s). The said SCNs were duly delivered to all the Noticee(s) through the Department of Post.

**13.** As per the SCN, the Noticee(s) have not disclosed the change in shareholding as per SEBI (SAST) and SEBI (PIT) Regulations, the allegations levelled against the Noticee(s) are mentioned hereunder:

<b>Sr. No.</b>	<b>Name of Noticee</b>	<b>Nature of violation</b>	<b>Regulation Violated</b>
1	<b>M/s. Anand Credit Limited (Noticee 1)</b>	Failed to disclose the disclosure received from Ramesh L Shah (change in share holdings)	Regulations 13(6) of SEBI (Prohibition of Insider Trading) Regulation, 1992
		Failed to make continual disclosure for the year ended March 2010 to exchange, for promoter holdings.	Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Transfer) Regulation, 1997 read with Regulation 35 (2) of SEBI (SAST), 2011
		Failed to make disclosure received from Anand Finstock services for change in shareholding	Regulation 7(3) of SEBI (SAST) Regulation, 1997 read with Regulation 35 (2) of SEBI (SAST), 2011
2	<b>Shri Ramesh L Shah (Noticee 2)</b>	Failed to disclose the disclosure for the change in shareholding to the exchange	Regulation 13(4) read with Regulation 13(5) of SEBI (PIT) Regulation, 1992
3	<b>M/s. Anand Finstock Services Limited (Noticee 3)</b>	Failed to disclose the disclosure for the change in shareholding to the company	Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulation, 1992
4	<b>Shri Mafatbhai L Desai (Noticee 4)</b>	Failed to disclose the disclosure for the change in shareholding to the company	Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulation, 1992
5	<b>Shri Samir S Shah (Noticee 5)</b>	Failed to disclose the disclosure for the change in shareholding to the Company and to Exchange	Regulation 13(1), 13 (3) read with Regulation 13(5) of SEBI (PIT) Regulation, 1992 and 7(1)

Sr. No.	Name of Noticee	Nature of violation	Regulation Violated
			of SEBI (SAST) Regulations, 1997 read with Regulation 35 (2) of SEBI (SAST), 2011 Regulation 13(3) read with Regulation 13(5) of SEBI (PIT) Regulation, 1992
6	<b>Shri Halari Brijesh Ashok (Noticee 6)</b>	Failed to disclose the disclosure for the change in shareholding to the Company and to Exchange	Regulation 13(1) read with Regulation 13(5) of SEBI (PIT) Regulation, 1992 and 7(1) of SEBI (SAST) Regulations, 1997 read with Regulation 35 (2) of SEBI (SAST), 2011

14. It was stated in the SCN that if the aforesaid violations, if established, it would make the Noticee(s) liable for monetary penalty under section 15A (b) of the SEBI Act.

15. The aforesaid provisions of law alleged to have been violated by the Noticee(s) are mentioned below.

### **SEBI (Prohibition of Insider Trading) Regulations**

- 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 :—
  - (a) the receipt of intimation of allotment of shares; or
  - (b) the acquisition of shares or voting rights, as the case may be.
- 13 (3) - Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company [in Form C] the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.
- 13 (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.
- 13 (5) - The disclosure mentioned in sub-regulations (3) and (4) shall be made within [two] working days of:
  - (a) the receipts of intimation of allotment of shares, or
  - (b) the acquisition or sale of shares or voting rights, as the case may be.

- 13 (6) - Every listed company, [within two working days] of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (3) and (4) [in the respective formats specified in Schedule III.

### **SEBI (Substantial Acquisition of Shares and Takeovers) Regulations**

- 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 2[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, 1[or under second proviso to sub-regulation (2) of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.]

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

- 7 (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 1[sub-regulations (1) and (1A)].
- 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.
- 35 (2) of SEBI(SAST) Regulations 2011
  - (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
  - (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

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

**16.** In reply to SCN, only Noticee 5 vide letter dated December 21, 2015 replied and made submission as under:

- a)** *“No disclosure were filed or required to be filed for the transaction carried out during the month of January 2010 in terms of SEBI (PIT) Regulations, 1992, since the same were entered as a broker being a member of Vadodra Stock Exchange Limited”.*
- b)** SEBI has considered him as promoter entity without any documentary proof.
- c)** Annexure -1 as mentioned in SCN was not provided, which was subsequently provided, vide letter dated February 09, 2016.

**17.** In the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the said Rules, an opportunity of personal hearing was granted by erstwhile AO to Noticee 5 on February 23, 2016 and to rest of the Noticee(s) on March 01, 2016. However, only Noticee 5 replied with request for postponement of hearing for three weeks. Further, another opportunity of hearing was granted to Noticee 5 on March 11, 2016 and on March 9, 2016 to rest of Noticee(s). In reply to notice of hearing, Noticee(s) made their submissions are as follows:

**a) M/s. Anand Credit Limited (Noticee 1):**

Vide letter dated May 09, 2016, it was submitted that Noticee had made necessary disclosure and enclosed following proof of disclosure made by them to exchange:

- i. Disclosure under Regulation 13(6) of the PIT, 1992 was made to exchange vide letter dated August 28, 2010 and October 09, 2010
- ii. Disclosure under Regulation 8(3) of the SAST, 1997 was made to exchange vide letter dated April 06, 2010
- iii. Disclosure under Regulation 7(3) of the SAST, 1997 was made to exchanges vide letter dated January 29, 2010

**b) Shri Ramesh L Shah (Noticee 2):**

Vide letter dated May 06, 2016, it was submitted that Noticee had made necessary disclosure to exchange and enclosed the proof of disclosure made by him to Exchange.

**c) M/s. Anand Finstock Services Limited (Noticee 3):**

Vide letter dated May 09, 2016, it was submitted that Noticee had made necessary disclosure to company and enclosed the proof of disclosure made by them to Company.

**d) Shri Mafatbhai L Desai (Noticee 4):**

Vide letter dated May 09, 2016, it was submitted that Noticee had made necessary disclosure to company and enclosed the proof of disclosure made by him to company.

**e) Shri Sameer S Shah (Noticee 5):**

Vide email dated March 7, 2016, it was submitted Mr. Umesh Ved had been nominated as his Authorised Representative (AR) to present his case. On March 11, 2016 Hearing was conducted, where AR has submitted that, direction of Noticee was awaited to present case and sought for adjournment. Vide letter dated March 16, 2016 Noticee reiterated that as per SEBI SAST Regulations ...

*"An Acquired means an individual/company/any other legal entity which intends to acquires substantial quantity of shares or voting rights of Target Company or acquires or agrees to acquire control over the target company. It includes persons acting in concert with the acquirer which includes a person"*

And he acted only as a broker and never held the voting rights or shares for a single day, was never an acquirer.

**f) Shri Halari Brijesh Ashok (Noticee 6):**

Vide letter dated March 17, 2016 Noticee 6 requested for the relevant document considered during the investigation and same were provided to him vide letter dated July 13, 2017. Which was duly delivered through department of post. The Noticee furnished no reply.

**18.** Pursuant to transfer of Adjudicating Officer (AO), newly appointed AO, in the interest of natural justice, another opportunity of Personal Hearing to all Noticee(s) on July 05, 2017. The notice of hearing duly delivered to all the Noticee(s) through department of Post. However, only Noticee 5 reverted and avail the opportunity of personal hearing on July 05, 2017. During the hearing, AR made submissions as hereunder:



- a) *...I am a registered share broker since the year 1996 and in transaction under reference, I acted only as a broker and in no other capacity...*
- b) *...I have been issued the SCN as combined SCN t issued to promoters and directors of ACL.*
- c) *Noticee submitted that ...on the provisions of section 4 and section 19 of the Sale of Goods Act, 1930 which are pre-requisite laws of the land for analysing this transaction..... no provision of SEBI (PIT).....SEBI(SAST) become applicable on me.*
- d) Noticee was advised to submit the certain information/clarification which was submitted by Noticee vide letter dated July 07, 2017.

### **Consideration of Issues**

19. After perusal of the material available on record I have the following issues for consideration, viz.,

- a) Whether the Noticee(s) has failed to make required disclosures under (PIT) Regulations, SAST Regulations as alleged in SCN?
- b) Whether the failure, if any, on part of Noticee(s) would monetary penalty under Section 15A(b) of the SEBI Act, 1992?
- c) If yes, what would be the quantum of monetary penalty that can be imposed on the Noticee(s)?

### **Facts and Findings**

20. The first issue for consideration is **Whether the Noticee(s) has failed to make required disclosures under (PIT) Regulations, SAST Regulations as alleged in SCN?**

#### **a) With respect to Noticee 1:**

As per records, Noticee 2 disclosed the change in shareholding as per Table No. 1 to Noticee 1 (company) wherein Noticee 1 was required to disclose to exchange under Regulation 13 (6) of SEBI (PIT) Regulation 1992 within two days from receipt of disclosures. Noticee, in reply to notice of hearing issued by Erstwhile AO, vide letter dated May 9, 2016, submitted letter dated August 28, 2010 addressed to BSE along with the copy of disclosure made in prescribed form D under Regulation 13

(6) of SEBI (PIT) Regulation 1992. However, no proof of dispatch and delivery of said letters to BSE were submitted as evidence.

Noticee 3 and 4 disclosed the change in shareholding as per Table No 2 to Noticee 1, wherein Noticee 1 was required to disclose to exchange under Regulation 13 (6) of SEBI (PIT) Regulation 1992 and also under Regulation 7 (3) of SEBI (SAST) Regulation, 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation, 2011 within seven days of receipt of disclosure. Noticee, in reply to notice of hearing before Erstwhile AO, vide letter dated. May 9, 2016, submitted letter dated January 29, 2010 addressed to BSE wherein disclosures in prescribed form were made under Regulation 13(6) of SEBI (PIT) Regulations, 1992 and Regulation 7 (3) of SEBI (SAST) Regulation 1997. However, no proof of dispatch and delivery of said letters to BSE were submitted.

Noticee 1 was also required to make continual disclosure for the year ended March 31, 2010 to exchange under Regulation 8 (3) of SEBI (SAST) Regulation, 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation, 2011. Noticee in reply to notice of hearing before Erstwhile AO, vide letter dated. May 9, 2016, submitted letter dated April 6, 2010 addressed to BSE wherein disclosure were made in prescribed form under Regulation 8 (3) of SEBI (SAST) Regulation 1997. However, no proof of dispatch and delivery of said letters to BSE were submitted.

I note from above, that although noticee submitted letters addressed to BSE, no proof of dispatch and delivery were submitted. In this regard, I relied on Judgement of Hon'ble SAT in the matter of Mega Resources Ltd. v. SEBI (Appeal No. 49/2001) wherein it was observed:

*"Mere dispatch of the information is short of the said requirement. ....According to Black's Law Dictionary "Disclosure" means –act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox."(Emphasis supplied) The requirement is not mere dispatch of the disclosures, but the disclosures should reach the recipient(s). In the present case BSE have submitted that they did not receive any disclosures from Noticees."*

Further, the agency through which the document is sent, acts as the agent of the sender and if a dispute were, to arise whether the said document has been received by the addressee or not, the onus would be on the sender to establish the fact by clear and cogent evidence in this regard. The Noticee have not submitted any acknowledgements received from the BSE in this regard. However, I note that BSE vide various emails available on record, denied having received any of the aforesaid disclosures alleged to be have been sent to the BSE.

Therefore, based on the documentary evidences available on record, I conclude that Noticee 1 did not make various mandatory disclosures to the BSE as required in respect of various disclosures made by Noticee 2, 3 and 4 and thus violated Regulations 13 (6) of SEBI (PIT) Regulation 1992 and Regulation 7(3), 8(3) of SEBI (SAST) Regulation 1997 read with Regulation 35(2) of SEBI (SAST) Regulation 2011

### **Impact on Investors**

I am of the view that disclosures based regulations are meant for enhancing fairness and transparent in the dealing of securities market, which also aims to ensure following:

- Access to the capital market for investors / companies is conditional upon the full, timely and accurate disclosure of relevant information so that investors can make informed and reasoned investment decision; and
- Continuous flow of relevant information, about the affairs of companies whose securities are being publicly traded, is being provided in a timely manner so that the secondary securities market operates efficiently and investors are adequately informed.

It is the responsibility of directors of public companies to ensure that all material information required by the public to make investment decisions is provided accurately, in full and on a timely basis. Investors rely on available information when deciding where and when they should invest their money. There is a need for information when dealing in securities in the secondary market. Disclosure of information therefore benefits investors by facilitating them to make investment decisions.

I now proceed to assess the materiality of the disclosures not made by Noticee 1 to BSE and also decide whether it would have been relevant for the investors, for taking informed decisions, had it been disclosed. In this regard, price volume data and deliverable quantity during the period when the disclosure were not made were examined.

**Impact of non-disclosure of sale transaction of Noticee 2 -**

I note that Noticee 2 is the Managing Director and Promoter of Anand Credit Ltd during the relevant period. Noticee 2 sold shares on August 27, 2010 and October 8, 2010. The total traded quantity on August 27, 2010 of 1,74,305 shares, out of which deliverable quantity was 1,23,966 shares. Further, sale of 34,605 shares of Noticee constitutes around 28% out of the total deliverable quantity. Similarly, on October 8, 2010, sale of 37,480 shares by Noticee 2 constitutes around 36% out of the total deliverable quantity of 1,03,669 shares

It is implicit that any dealings by key management personnel (Noticee 2) of company would influence the price of the scrip and facilitates investors to decide further course of action. Given that the contribution of sale transactions of Noticee 2 to the total deliverable quantity is substantial, I consider that it would be a material information for investors.

I also observe that Noticee being Managing Director of Anand credit was also in charge of day to day operation to ensure various regulatory compliances including timely disclosure to exchange for the benefit of investors.

**Impact of non-disclosure of sale transaction of Noticee 3 and 4 -**

Noticee 3 sold 8,00,000 shares on January 27, 2010 through market at Rs. 30.89 and 4,25,500 shares through off market at the rate of Rs 5 for total consideration of Rs. 2,47,12,000 /- and Rs. 21,27,500/- respectively. Noticee 4 sold 5,37,000 shares on January 27, 2010 through off market at Rs 5 for total consideration of Rs 26,85,000/ -.

12,25,500 shares sold by Noticee 3 constitutes 20.42% of the share capital, and sale of 5,37,000 shares by Noticee 4 constitutes 8.95 % of shares capital.

The shares of Anand Credit resumed trading at BSE on January 27, 2010. Total deliverable quantity on January 27, 2010 was 12,85,200, out of which 8,00,000 shares sold by Noticee 3 constitutes 63% of deliverable quantity. Given that the contribution of market sale transactions of Noticee 3 to the total deliverable quantity is substantial, I consider that it would be a material information for investors. Further, Noticee 3 and 4 (director of Noticee 3) together sold 9,62,500 shares constituting 16 % of shares capital in off market transaction.

In view of above, I conclude that non-disclosure of aforesaid market sale by Noticee 2, 3, 4 and off market transactions of Noticee 3, by Noticee 1 to BSE is material information which if disclosed would have impacted the interest of investors.

**b) With respect to Noticee 2:**

As per Share Holding pattern of quarter ending June 2010 and September, 2010, Noticee was holding 7,02,110 share (constituting 11.70% of share capital) and 2,21,655 share (constituting 3.69% of share capital) of M/s. Anand Credit Limited under the category of Promoter and Promoter Group. During investigation it was observed that on August 28, 2010 and October 08, 2010 sold 34,605 (constituting 0.58% of Share capital) and 37,480 (constituting 0.62% of Share capital) was sold through open market.

As per the provision of Regulation 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992, Noticee being managing Director and Promoter of company was required to make disclosure to the company and as well as to stock exchange within two days of sale transactions.

With respect to disclosure to be made to company, I note that Noticee didn't submit the proof of disclosure made to the company during the course of investigation. However, Noticee in response to notice of hearing, vide letter dated May 6, 2016, submitted letter dated August 28, 2010 and October 09, 2010, along with Form D addressed to Anand Credit Ltd, as proof of disclosure made to company under Regulation 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992. I note that the letter was duly acknowledged by Anand Credit, with company seal affixed, on August 28, 2010.

With respect to disclosure to be made to exchange, I note that Noticee did not submit proof of disclosure made to the exchange during the course of investigations. However, Noticee in response to notice of hearing, vide letter dated May 6, 2016, submitted letter dated August 28, 2010 and October 09, 2010, along with Form D addressed to BSE, as proof of disclosure made to Exchange under Regulation 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992. I note that Noticee did not submit any proof of dispatch and delivery made to the exchange. During investigation, BSE, vide email dated January 19, 2015, has informed that no disclosure were received for the above change in holding of Noticee. Therefore, I conclude that Notice failed to disclose aforesaid changes in holding to exchange and thus violated the Regulation 13 (4) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992

**c) With respect to Noticee 3:**

As per Share Holding pattern of quarter ending December 2009, Noticee was holding 12,25,000 share (constituting 20% of share capital) of M/s. Anand Credit Limited under the category of Public and holding more than 1% of the total number of shares. On January 27, 2010, out of 12,25,0000 shares, 4,25,000 shares (constituting 7.09% of Share capital) was sold to Shri Samir S Shah through Off market, and 8,00,000 shares (constituting 13.33% of share capital) were sold to 150 entities through on-market. As per the provision of Regulation 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992, Noticee was required to make disclosure to the company with-in two days of transaction, i.e. on or before January 29, 2010.

I noted that Noticee didn't submit the proof of disclosure during the course of investigation. However, Noticee in response to notice of hearing, vide letter dated May 9, 2016, submitted letter dated January 29, 2010, along with Form C addressed to Anand Credit Ltd, as proof of disclosure made to company under Regulation 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992. I note that the letter was duly acknowledged by Anand Credit, with company seal affixed, on January 29, 2010.

I also note from the details submitted to company that on January 29, 2010 Noticee sold 8,00,000 shares through market at Rs. 30.89 and 4,25,500 shares through off market on January 29, 2010 at the rate of Rs 5 for total consideration of Rs. 2,47,12,000 /- and Rs. 21,27,500/- respectively. I also note that shares of Anand Credit was revoked and resumed trading at BSE on January 27, 2010. The closing price of Anand Credit on January 29, 2010 was Rs 53.9, whereas the Noticee had sold shares in open market at Rs. 30.89 and off market at Rs 5 which is away from the market closing price.

It was also observed that during investigation company has acknowledge that, disclosure was made by Noticee to company. In view of above, since the Noticee submitted proof of dispatch along proof of receipt by company, charges of violation of Regulation 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992, as alleged against Noticee, in the SCN cannot be established.

**d) With respect to Noticee 4:**

As per Share Holding pattern of quarter ending December 2009, Noticee was holding 5,37,000 share (constituting 8.95% of share capital) of M/s. Anand Credit Limited under the category of Public and holding more than 1% of the total number of shares. On January 27, 2010, Noticee sold his holding to 4 different entities through off-market. As per the provision of Regulation 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992, Noticee was required to make disclosure to the company with-in two days of transaction, i.e. on or before January 29, 2010.

I note that Noticee didn't submit the proof of disclosure during the course of investigation. However, Noticee in response to notice of hearing, vide letter dated May 9, 2016, submitted letter dated January 28, 2010 addressed to Anand Credit Ltd, along with Form C, as proof of disclosure made to company under Regulation 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992. I note that the letter was duly acknowledged by Anand Credit, with company seal affixed, on January 28, 2010.

I also note from the details submitted to company that Noticee sold 5,37,000 shares Off market on January 27, 2010 at the rate of Rs 5 for total consideration of Rs 26,85,000/-. I also note that shares of Anand Credit was revoked and resumed

trading at BSE on January 27, 2010. The closing price of Anand Credit on January 27, 2010 was Rs 50, whereas the Noticee had sold shares in off market at Rs 5 which is away from the market closing price. Further I also note that Noticee is Director of AFSL (Noticee 3)

In view of above, since the Noticee submitted proof of dispatch along proof of receipt by company, charges of violation of Regulation 13 (3) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992, as alleged against Noticee, in the SCN cannot be established.

**e) With respect to Noticee 5:**

As per records, Noticee bought 4,25,000 shares (constituting 7.09% of Share capital) from Noticee 3 through off-market on January 27, 2010. Subsequently these 4,25,000 shares were sold to 3 different entities through off market on January 29, 2010. Consequent to above acquisition and sale by Noticee, as per the provisions of Regulation 13 (1) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992, and 7 (1) of SEBI (SAST) Regulation 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation, 2011, with respect to acquisition of 4,25,000 shares, Noticee was required to make disclosure to the company within two days of transaction, i.e. on or before January 29, 2010. Similarly with respect to sale transactions, as per the provision of Regulation 13 (3) of SEBI (PIT) Regulations read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992, Noticee was required to disclose to company within two days of transaction, i.e. on or before February 1, 2010.

It is admitted fact that Noticee did not make disclosures under PIT and SAST Regulations as mentioned above. However, noticee in written and oral submission made following main submissions.

- *No disclosure were required to be filed as the transaction were entered as a broker being a member of Vadodra Stock Exchange.*
- *Since shares are movable property are considered as goods and therefore provisions of Sale of Goods Act, 1930 shall be applicable.*



- *Noticee cannot be considered as seller or buyer as per the definition of seller or buyer as defined in Sale of Goods Act, 1930 and therefore not owner of shares.*
- *Mere possession of shares in reference to short duration of time of about 48 hours in my account does not make me owner of shares. It is settled law that mere possession of goods does not create any kind of ownership or title or property in the good in possession as reasons for possession and intent of transactions will decide the ownership or property in title of the possessor.*
- *Similar provisions of Agent under Section 182 onwards (Chapter X) of Indian Contracts Act, 1872 about ownership and transfer of ownership are also applicable to transactions under reference.*
- *Considering above provisions of law, since noticee having acted in the capacity of broker, no adverse inference can be drawn against him.*

Before I proceed on merits, I shall deal with the legal submissions made by the noticee as mentioned above. As per the definition of Securities stated in Section 2 of Securities and Contract Regulations Act, (SCRA) 1956, “shares and stocks” are included. The transactions under reference were done in the shares of Anand Credit. Further, Contract has also been defined in SCRA, as a contract for or relating to the purchase or sale of shares. Reading both definition together, I am of the view that all contracts in securities (which includes shares), are governed by provisions of SCRA. Further, Preamble of SCRA, states that “An Act to prevent undesirable transactions in securities by regulating the business of dealings therein, by providing for certain other matters connected therewith”. When legislature has contemplated a separate act for specific purpose, with respect to dealing of shares, all dealing in shares shall be governed by such specifically legislated Act i.e. SCRA and not by any other law as submitted by Noticee. Therefore, I conclude that submissions made by Noticee that transactions under reference are governed by the provisions of Sale of Goods Act, 1930 and Indian Contracts Act does not have any merit.

With respect acquisition and sale of shares, as the transactions of Noticees were reflected in the demat account of the Noticee, the provisions of Depository Act, 1996 would be applicable. As per definition of beneficial Owner, any person whose name is recorded as such with a depository. Based on the transactions reflecting in the

demat account of Noticee, I note that shares acquired and sold by Noticee were reflected in its demat account and therefore considered as a the beneficial owner of shares during relevant time. Transfer of securities from account of beneficial owner to account of another beneficial owners is covered under the definition of Spot Delivery Contracts as defined in SCRA.

I have noted that Noticee acquired 4,25,000 shares on January 27, 2010 from Noticee 3 and accordingly received shares in its demat account. Thus, shares were transferred from the seller beneficial owner account to buyer beneficial owner account (Noticee) thereby the beneficial ownership was also transferred. Similarly, Noticee had transferred these shares to three different account of beneficial owner. Thus these contracts are in the nature of independent spot delivery contracts done in the capacity of beneficial owner as per SCRA.

The Noticee submitted that since the shares were not trading on Vadadora Stock Exchange (VSE), it had mediated the deal between buyer and seller in the capacity as broker of VSE. Further, Securities Contract Regulations Act. 1956, SEBI (Stock Broker and Sub-Broker) Regulations 1992 does not restrict broker to get the credit of shares in the demat account to secure the payment and for comfort of buyer and seller. Rather it is more necessitated when the scrip is not tradable.

Brokers should execute all trades on behalf of clients on only the recognised stock exchange platform, where it is member of. Any trades done outside such recognised exchanges is not permissible as per byelaws of the exchange.

I note that trades under reference were neither executed on stock exchange platform of VSE nor shares routed through its broker pool account in normal course of transactions as member of VSE. However, in view of above provisions, I consider that transactions reflected in the demat account of Noticee are independent purchase and sale transactions.

Further, I also note from records submitted by Noticee that 4,25,000 shares were acquired at a price of Rs 5 each for total consideration of Rs 21,25,000 as against the close price (Rs 50) on the BSE on the date of acquisition i.e. on January 27, 2010.

As per clause 1 of code of conduct of Stock Broker Regulations, I note that stock brokers shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business. I note that transactions executed by Noticee does not indicate fairness and integrity

I note that after revocation of suspension, trading in the shares of Anand Credit recommenced on January 27, 2010 on BSE. The details of price volume for three days after resumption of trade is as under:

Date	Open	High	Low	close	Traded quantity	
27/01/10	50	50	30	50	12,85,200	12,85,200
28/01/10	52.5	52.5	47.51	52.35	2,24,000	2,24,000
29/01/10	49.74	54.96	49.74	53.90	73,800	73,800

I noted from the submissions made by Noticee that it was a registered broker of Vadadora Stock Exchange (VSE) and had acted in the capacity of broker of VSE and dealt purchased shares from Anand Credit Finance Ltd (Noticee 1) and thereafter sold the shares to Yamini M Pandya, Laxman Parmar and Shobhnaben R Parmar for 1,25,500 shares, 2,00,000 shares and 1,00,000 shares respectively. Based on the ledger submitted by Noticee, it has been observed that these shares were purchased by Noticee for Rs 21,27,500 and subsequently sold to Shobhnaben R Parmar and Laxman Parmar at Rs 10,04,494 and sold to Yamin M pandhya at Rs 8,81,443. However, corresponding bank accounts evidencing payments received and paid have not been submitted.

Apart from above alleged transactions, as per the ledger submitted, I also note that Noticee had purchased 5,37,000 shares on January 27, 2010 from Noticee 4 at Rs 5 per share for total consideration of Rs 26,85,000 /-.

From the above facts, I note that Noticee had purchased total of 9,62,000 shares (constituting 16.02% of share capital of Anand Credit) on January 27, 2010 from Noticee 3 (4,25,000 shares) and Noticee 4 (5,37,000 shares) at Rs 5 per share for total consideration of Rs 48,12,500 /-. Incidentally, I also note that Noticee had

crossed the threshold limit of 15% of share capital which is not permissible as per Regulation 10 of SEBI SAST Regulations.

Therefore, I conclude that Noticee 5 failed to disclose the information to company and also to exchange and thus violated the provisions of Regulation 13 (1) read with Regulation 13 (5) of SEBI (PIT) Regulation, 1992, and 7 (1) of SEBI (SAST) Regulation 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation, 2011.

**f) With respect to Noticee 6:**

As per the shareholding pattern for March 31, 2011, under the category of Public and holding more than 1% of the total number of shares, M/s. India Advantage Securities Limited (IASL) was holding 9,11,906 shares (constituting 15.19% of share capital) of M/s. Anand Credit Limited. During investigations, IASL informed that above shareholding were of held in its Pool account on behalf of the various clients including Noticee. Further, IASL vide email dated January 1, 2015 provided the client details and respective Running Account Authorisation letter of clients including Noticee 6: The details of holding of clients of IASL as on March 31, 2011 is mentioned in the table below.

**Table No. 3**

<b>Sr. No.</b>	<b>Name</b>	<b>Quantity held on 31.03.2011</b>	<b>Client Authorisation date</b>
1	Sanjay Kumar	1,000	12.01.2010
2	Jainam Shailesh Kumar	8	05.11.2009
3	Halari Brijesh Ashokbhai	7,22,280	30.06.2010
4	Pramar Bharatkumar	1,86,118	06.05.2010
5	Parikshit Sharma	2,500	29.06.1010
	Total	9,11,906	

Further, I note that on March 28, 2011 Noticee has bought 7,22,690 shares (constituting 12.04% of share capital) of M/s. Anand Credit Limited through IASL. As per Regulation 13 (1) read with 13 (5) of SEBI (PIT) Regulation, 1992 and 7 (1) of SEBI (SAST) Regulation 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation, 2011 Noticee was required to make disclosures in change in shareholding to Company and Exchange.

During investigations, Noticee was informed to submit the information, regarding disclosure made to ACL and BSE, which was not submitted by Noticee. BSE, vide email dated February 06, 2015, informed that no disclosure were received from Noticee for the above transactions.

In the interest of natural justice, opportunity of personal hearing was granted to Noticee before the Erstwhile AO, on February 23, 2016. However, Noticee did not avail the opportunity whereupon another opportunity was granted on March 11, 2016. In response to notice of hearing, vide letter dated March 17, 2016, Noticee submitted its reply seeking for relevant document relied upon by SEBI during the investigation.

Accordingly, vide letter dated July 13, 2017, Noticee was provided relevant documents i.e. share holding pattern of Anand Credit during relevant period, confirmation mail from IASL informing details of share lying in their pool account, voluntary Running Account Authorisation letter duly signed by Noticee and BSE's email dated January 20, 2015 confirming that no disclosure were made to exchange by Noticee. Further, opportunity of hearing was granted on July 27, 2017. The aforesaid letter was duly delivered to the Noticee. However, Noticee neither made any subsequent submissions nor availed the opportunity of hearing. Therefore, I am of the view the sufficient opportunities and relied upon documents were also provided to Noticee. In view of same, there is principles of natural justices have been sufficiently dealt with.

Considering the above facts, I conclude that Noticee failed to disclose aforesaid changes in holding to company and to exchange, and thus violated the Regulation 13 (1) read with 13 (5) of SEBI (PIT) Regulation, 1992 and 7 (1) of SEBI (SAST) Regulation 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation, 2011.

**21. The second issue for consideration is Whether the Noticee(s) are liable for monetary penalty under section 15A(b) of the SEBI Act, 1992?**

Keeping in view the aforesaid observations made at pre paras, I am of the view that no disclosures were made by the Noticee 1, 2, 5 and 6 (s) and therefore, the aforesaid

violations committed by the Noticee(s), makes them liable for penalty under Section 15A (b) of the SEBI Act which read as follows.

*Penalty for failure to furnish information, return, etc.*

5A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified 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;

**22. The third issue for consideration is what quantum of monetary penalty should be imposed on the Noticee(s)?**

While determining the quantum of penalty under sections 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act read with rule 5 (2) of the Adjudication Rules, which reads as under:-

*15J-Factors to be taken into account by the adjudicating officer*

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;
- (b) the amount of loss caused to an investor or group of investors as a result of the default;
- (c) the repetitive nature of the default.”

**23.** No disproportionate gains or unfair advantage made by the Noticee(s) or the loss suffered by the investors due to such non disclosures, are directly available on records. However, I have considered the materiality of the non-disclosures (in terms percentage of holding) made by Noticee(s) as dealt in above paragraphs and the likely impact on the investors had such disclosure being made timely as prescribed PIT and SAST Regulations.

**24.** Considering the facts and circumstance of the case, the purpose of the SAST and PIT Regulations as observed, it is relevant to quote the judgment of Supreme Court in the matter of SEBI vs. Shri Ram Mutual Fund (2006) 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.”*

## ORDER

**25.** In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules, I hereby impose a monetary penalty as per following table under Section 15A (b) of the SEBI Act, 1992. In my view, the penalty imposed is commensurate with the default committed by the Noticee(s) and also act as a deterrent factor for the Noticee(s) and others in protecting the interest of Investors.

**Table No. 3**

<b>Sr. No.</b>	<b>Name of Noticee</b>	<b>Amount of Penalty / Provisions of Law violated</b>
1	M/s. Anand Credit Ltd. (Noticee 1)	<p><b>Rs. 15,00,000/-</b>-(Rupees Fifteen Lakh only) for violation of Regulation 13 (6) of SEBI (PIT) Regulations 1992</p> <p><b>Rs. 2,00,000/-</b>-(Rupees Two Lakh only) for violation of Regulation 8 (3) of SEBI (SAST) Regulations 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation 2011</p> <p><b>Rs. 3,00,000/-</b>-(Rupees Three Lakh only) for violation of Regulation 7 (3) of SEBI (SAST) Regulations 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation 2011</p>
2	Shri Ramesh L Shah (Noticee 2)	<b>Rs. 5,00,000/-</b> -(Rupees Five Lakh only) for violation of Regulation 13 (4) read with 13 (5) of SEBI (PIT) Regulations 1992
3	M/s. Anand Finstock Services Ltd. (Noticee 3)	NIL
4	Shri Mafatbhai L Desai (Noticee 4)	NIL
5	Shri Samir S Shah (Noticee 5)	<p><b>Rs. 10,00,000/-</b>-(Rupees Ten Lakh only) for violation of Regulation 13 (1), 13(3) read with 13 (5) of SEBI (PIT) Regulations 1992</p> <p><b>Rs. 1,00,000/-</b>-(Rupees One Lakh only) for violation of Regulation 7 (1) of SEBI (SAST) Regulations 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation 2011</p>
6	Shri Halari Brijesh Ashok (Noticee 6)	<b>Rs. 5,00,000/-</b> -(Rupees Five Lakh only) for violation of Regulation 13 (1) read with 13(5) of SEBI (PIT) Regulations 1992

		<b>Rs. 1,00,000/-</b> (Rupees One Lakh only) for violation of Regulation 7 (1) of SEBI (SAST) Regulations 1997 read with Regulation 35 (2) of SEBI (SAST) Regulation 2011
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**26.** The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

*Account No. for remittance of penalties levied by Adjudication Officer*

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

**27.** The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Deputy General Manager, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payment shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and the details of such payment shall be intimated at email id: [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

Date	Dept., of SEBI	Name of the Intermediary	Type of Intermediary	SEBI regn., no.,	PAN	Amount in `	Purpose of payment (including the period for which payment was made, e.g., quarterly / annually)	Bank Name and Account number from which payment is remitted	UTR No.

**28.** In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

**Place: Mumbai**

**Date: August 4, 2017**

**B J DILIP**

**ADJUDICATION OFFICER**