

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/NP/AS/AO/40/2017]

**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:

Dr. M. V. Ramana Rao (PAN ACQPM1488E)
Flat No. 131, 3rd Floor, A Block, Srila Heights,
H. No. 10-3-150, 151 D, St. Johns Road,
East Maredpally, Secunderabad – 500 026

FACTS OF THE CASE IN BRIEF

1. SEBI conducted investigation in the matter of MIC Electronics Ltd (MIC, hereinafter), which is listed at BSE and NSE. MIC announced the issue of shares/ warrants convertible into equity shares, on preferential basis on February 21, 2012. The closing price of the scrip which was Rs.8.59 as on February 17, 2012 increased to Rs.12.09 as on February 22, 2012 and the scrip also witnessed increased daily volume for few days after this announcement. Thereafter, on May 25, 2012, the preferential issue proposal was withdrawn and the closing price of the scrip in the month of May was Rs.5.37. During the period of announcement and withdrawal, promoters' shareholding reduced from 15.21% (December 2011) to 8.85% (June 2012).
2. As per finding of investigation report, Dr M. V. Ramanna Rao (hereinafter, noticee) was one of the promoters of the company. As per the Annual Report 2011-12 of MIC, during the period under investigation, he was Executive Chairman and Managing Director of the company
3. As per finding of investigation report it is noted that the shareholding of the noticee changed during the following quarters were as under:-

Promoter	Dec 2011	March 2012	June 2012	Sept 2012
Venkataramana Rao Maganti (VRRM)	11.90 %	9.75 %	5.53%	5.53%

4. As per the findings of the Investigation Report, vide letter dated September 27, 2012, inter alia, the reasons for the reduction in the promoters holding was sought from MIC. MIC vide its reply dated October 10, 2012 (**Annexure 1**) had informed that the shares pledged by the noticee were invoked by the pledgees viz L&T Finance Ltd. (LTFL), STCI Finance Ltd. (STCIFL) and Cholamandalam Investment and Finance Company Ltd (CIFCL) and were liquidated in the market. Vide the said letter, the company also informed that no disclosures have been received by the company from the noticee in this regard.
5. As per finding of Investigation Report, the details on which pledgee sold shares in market and the consequential reduction in shareholding of the noticee on various date is as under-

Table : 1

Depository name	Name of pledgee/off market transferee	Date of Invocation of pledge /Off Market Transfer	Date of creation of pledge/ Off market	No. of shares invoked by pledgees/ Off market transfer	% of shares invoked by pledgees /off market transfers
CDSL	LTFL	12-01-2012	09-07-2010	50,000	0.05
CDSL	LTFL	13-01-2012	09-07-2010	50,000	0.05
CDSL	LTFL	16-01-2012	09-07-2010	50,000	0.05
CDSL	LTFL	17-01-2012	09-07-2010	50,000	0.05
CDSL	LTFL	18-01-2012	09-07-2010	50,000	0.05
CDSL	LTFL	19-01-2012	09-07-2010	50,000	0.05
CDSL	LTFL	20-01-2012	09-07-2010	50,000	0.05
CDSL	LTFL	23-01-2012	09-07-2010	50,000	0.05
CDSL	Srecko Indhan Ltd. (Srecko)	23-01-2012	Off-Market Transfer	8,00,000	0.78
CDSL	LTFL	24-01-2012	09-07-2010	2,00,000	0.20

CDSL	LTFL	25-01-2012	09-07-2010	1,00,000	0.10
CDSL	LTFL	27-01-2012	09-07-2010	50,000	0.05
CDSL	CIFCL	07-03-2012	03-03-2011	4,00,000	0.39
CDSL	STCI	07-03-2012	20-12-2011	2,36,956	0.23
CDSL	CIFCL	09-03-2012	16-12-2011	18,000	0.02
CDSL	LTFL	13-04-2012	09-07-2010	50,000	0.05
CDSL	LTFL	16-04-2012	09-07-2010	1,00,000	0.10
CDSL	LTFL	17-04-2012	09-07-2010	1,00,000	0.10
CDSL	LTFL	18-04-2012	09-07-2010	1,00,000	0.10
CDSL	SPRY Resources India Pvt. Ltd. (SPRY)	18-04-2012	Off-Market Transfer	5,00,000	0.49
CDSL	LTFL	19-04-2012	09-07-2010	2,50,000	0.24
CDSL	LTFL	20-04-2012	09-07-2010	1,00,000	0.10
CDSL	LTFL	23-04-2012	09-07-2010	1,00,000	0.10
CDSL	LTFL	23-04-2012	22-07-2010	1,50,000	0.15
CDSL	LTFL	25-04-2012	22-07-2010	2,00,000	0.20
CDSL	LTFL	26-04-2012	22-07-2010	2,00,000	0.20
CDSL	LTFL	27-04-2012	22-07-2010	2,00,000	0.20
CDSL	LTFL	30-04-2012	22-07-2010	1,50,000	0.15
CDSL	LTFL	02-05-2012	22-07-2010	1,75,000	0.17
CDSL	LTFL	03-05-2012	22-07-2010	1,00,000	0.10
CDSL	STCI	23-05-2012	13-12-2011	6,25,000	0.61
NSDL	STCI	23-05-2012	10-05-2010	21,232	0.02
NSDL	SCTI	23-05-2012	16-06-2011	75,000	0.07
NSDL	STCI	23-05-2012	27-03-2010	4,00,000	0.39
NSDL	STCI	23-05-2012	14-05-2010	1,10,000	0.11
NSDL	STCI	23-05-2012	21-05-2010	2,65,000	0.26
NSDL	STCI	23-05-2012	21-04-2011	6,05,750	0.59

6. It is noted from the Table above, the holding of the noticee reduced by 2.15% on 7.3.2012, by 2.05% on 27.4.2012 and by 2.47% on 23.5.2012 by way of invocation of pledge and/or off-market transfers and no disclosures were filed either with the company and the stock exchange under Regulations 13(3) r/w Regulation 13(5) of SEBI (PIT) Regulations and Regulations 29(2) r/w Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in respect of disposal of shares representing 2% or more of the shares of the company.
7. Further, being a director as well as a promoter the noticee had failed to make disclosures w.r.t change in holdings of 25,000 shares on all the above mentioned dates except on 9/3/2012 and 23/5/2012 (transaction of 21,232 shares) in violation of Regulation 13(4) and 13(4A) r/w 13(5) of SEBI (PIT) Regulations, 1992.
8. As per finding of Investigation Report , the noticee had created pledge on 9/7/2010, 22/7/2010, 3/3/2011 and 16/6/2011, however failed to disclose these details to the company in violation of Regulation 8A (2) of SEBI (SAST) Regulations, 1997.
9. Further, as per finding of Investigation Report the noticee had created pledge on 13/12/2011, 16/12/2011 and 20/12/2011, however failed to disclose the same to the company and to the stock exchange in violation of Regulation 31(1) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011. Further the noticee had also failed to file disclosures w.r.t invocation of shares by promoter on all the above dates in violation of Regulation 31(2) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011.
10. Based on the findings of the investigation, SEBI initiated Adjudication Proceedings against the Noticee under Section 15A (b) of SEBI Act, 1992 (hereinafter referred to as SEBI Act, 1992) for the alleged violation of the following provisions:
 - i. Regulations 29(2), read with 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; Regulation 31(2) read with 31(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, Regulation 8A(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 r/w Repeal and Saving Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 31(1) read with Regulation 31(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011
 - ii. Regulations 13(3), 13(4) and 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations 1992.

APPOINTMENT OF ADJUDICATING OFFICER

11. Vide an order of Whole Time Member, SEBI, dated May 03, 2015, Ms Anita Kenkare, GM, SEBI was appointed as the Adjudicating Officer to inquire into and adjudge under Section 15 A (b) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, for the alleged violations as stated above. Vide the internal noting of the Whole Time Member, SEBI, dated December 14, 2015, the undersigned has now been appointed as the Adjudicating Officer to inquire into and adjudge under the provisions as enumerated above.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

12. A show-cause notice (SCN) no. EAD/NP/JS/OW/3037/2016 dated February 4, 2016 was issued to the noticee under rule 4 of the AO Rules to show-cause as to why an inquiry should not be initiated against noticee and penalty be imposed upon it under section 15A(b) of SEBI Act for the alleged violations as specified in the said SCN. The noticee was given 15 days of time to make his submission against the allegations made in SCN. The noticee vide his email dated 22nd February 2016 requested for 10 days of additional time to respond to the SCN and the same was allowed vide email dated February 22, 2016 from the office of Adjudicating Officer.
13. Noticee vide email dated March 3, 2016 replied to the charges levelled in the show-cause notice (SCN). The noticee admitted that he failed to make disclosures as elaborated in the SCN to the company and stock exchanges in terms of SAST and PIT Regulations. The noticee submitted that it is an unintentional lapse and was neither deliberate nor wilful on his part to comply with the requirement and there was no malafide intention at any point of time in the failure of disclosure. The noticee did not ask for personal hearing, however, in the interest of natural justice an opportunity of personal hearing was accorded to the noticee. Vide letter EAD/NP/JS/MIC/10213/4/2016 dated April 4, 2016, the noticee was advised to attend personal hearing before me on May 19, 2016.
14. The noticee vide his reply dated March 3, 2016 made submissions as under:

I pledged my equity shares in favour of Financial Intuitions and raised funds in order to bail out cash starved Company in the most financial difficult times. On due date for payment due to severe financial tightness and prevailing market conditions, I could not raise the requisite amount so as to clear the dues

to the pledges. It has put tremendous amount of pressure on me and I was under little depressive mood looking for some financial help so that I can come out of debt that did not happen for various reasons. For a while, I did not pay attention on market front particularly invocation of pledge of shares, sale of shares, etc. in the market. I became helpless and merely a spectator to the ongoing deeds. In the said toughest circumstances while was thinking intensely to avoid unpleasant situations, I totally forgot disclosures that are to be made to the Company and Stock Exchanges in terms of SEBI (SAST) and (PIT) Regulations. However the annual disclosures to the Stock Exchanges were made in time. I with utmost respect to SEBI that there are no non disclosures by me in the past and I agree that it is an unintentional lapse and was neither deliberate nor wilful on my part to comply with the requirement and that there was no malafide intention at any point of time in the failure of disclosure which I hereby request SEBI to kindly pardon and take lenient view. I respectfully assure SEBI that henceforth would take utmost care and scrupulous compliance of disclosure requirements.

15. Vide letter dated May 11, 2016, the noticee intimated that Mr S. Sarveswara Reddy, Practising Company Secretary and Mrs P. Lakshmi Lavanya, ACS would represent him on the scheduled date of hearing. On the scheduled date of hearing, i.e. on May 19, 2016, Ms P. L. Lavanya and Shri S. S. Reddy appeared before me and reiterated the submissions made vide the noticee's reply dated March 03, 2016 and requested for additional 10 days to make written submissions.

16. Vide his reply date 03.06.2016, the noticee made written submission as under:

With reference to the above, I respectfully submit that I have made all the relevant disclosures as pointed out in the notice pertaining to SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 1997 and 2011. The copies of the same are enclosed. I further bring to the kind notice of SEBI the following for its kind consideration and sympathetic view:

- *I am a first generation entrepreneur. I am a technocrat with the qualifications of Ph.D. (Electronics & Communication Engineering) and not much conversant with the financial aspects and other regulatory requirements.*
- *I have brought the Company to its present level and established it as a pioneer in LED Technology and played a significant role in this sector.*
- *I have contributed a lot in terms of time, energy, efforts and money to keep the Company alive against all odds faced.*
- *I have faced stiff competition and undergone financial difficulties but always tried to protect the Company to keep it as a going concern.*
- *To help the company I pledged the shares and as a result of default, I lost all my pledged holdings which were sold in the market by pledgee.*

- *Today my shareholding stands at a mere 2.80% against 30.24% in June 2010. To meet unavoidable financial obligations of the company from time to time, I was forced and sacrificed my shareholding.*
- *There are no failures in making disclosures by me in the past and I agree that it is an unintentional lapse and was neither deliberate nor wilful on my part to comply with the requirement and there was no malafide intention at any point of time in these unintentional non-disclosure.*

I hereby request SEBI to kindly pardon and take lenient view. I respectfully assure SEBI that henceforth would take utmost care and scrupulous of disclosure requirements.

17. Noticee was issued Supplementary SCN dated March 15, 2017 wherein the charges levelled against him were detailed and the noticee was given time till 24th March, 2017 to submit his reply. Further in the interest of justice vide the said Supplementary SCN one more time opportunity of personal hearing was granted to the noticee on March 27, 2017. Vide letter dated April 06, 2017 the noticee submitted reply to the Supplementary SCN. Vide his reply date April 06, 2017, the noticee made submission which is as under:

- With reference to the subject I respectfully submit that I pledged my equity shares held in MIC Electronics Limited in favour of Financial Intuitions and raised funds in order to bail out cash starved Company in the most financial difficult times. On due dated for payment of the loan on account of severe financial tightness and prevailing market conditions, I could not raise the requisite amount so as to clear that dues to the pledges. It has put tremendous amount of pressure on me and I was under little depressive mood looking for some financial help so that I can come out debt that did not happen for various reasons. For a while, I did not pay attention on my DP Account particularly invocation of pledge of shares, sale of shares, etc in the market. I became helpless and merely a spectator to the ongoing deeds. In the said toughest circumstance while I was thinking intensely avoid unpleasant situations, I totally forgot disclosures that are to be made to the Company and Stock Exchanges in terms of SEBI (SAST) and (PIT) Regulations. However the annual disclosures to the Stock Exchanges were made in time.*
- With reference to the above, I respectfully submit that I have made all the relevant disclosures to stock exchanges as pointed out in the notices and proceedings of personal hearing pertaining to SEBI (PIT) Regulations, 1992 and SEBI (SAST) Regulations, 1997 and 2011. The copies of the same are enclosed.*
- LED product in which the company MIC Electronics Limited gained expertise being a first of its kind has faced several marketing difficulties, Substantial amounts were invested in R&D the result of the these were not immediate which due to the slowdown had its impact on the company's liquidity. To help the Company I pledged the shares and as a result of default, I lost all my pledged holdings which were sold in the market by pledgee.*
- Today my shareholding as an individual stands at a mere 2.11% against 30.24% in June'2010.*
- I with utmost respect to SEBI submit that there are no non disclosures by me in the past and I agree that it is an unintentional lapse and was neither deliberate nor wilful on my part to comply with the requirement and that there was no kindly take lenient view. I respectfully assure SEBI that henceforth would take utmost care and scrupulous compliance of disclosure requirements.*

18. The noticee vide its aforesaid letter dated April 06, 2017 also sought adjournment of hearing to April 17, 2017. Accordingly vide Hearing Notice dated April 11, 2017, the noticee was granted final opportunity of hearing on April 17, 2017. On the scheduled date of hearing, Ms P. L. Lavanya and Shri S. S. Reddy appeared before me and submitted that the failure to disclose was unintentional, they have made all the requisite disclosure on 3rd June 2016 to company and stock exchange under SAST and PIT regulations and also made the relevant quarterly disclosure.

CONSIDERATION OF ISSUES AND FINDINGS

19. I have carefully perused the replies to the SCN, written and oral submissions made by Noticee and the documents available on record. The issues that arise for consideration in the present case are:

- a) Whether Noticee has violated provisions of Regulations 29(2) r/w 29(3) of SEBI (SAST) Regulations, 2011, Regulations 13(3), 13(4) and 13(4A) r/w Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations 1992; Regulation 31(2) r/w 31(3) of the SEBI (SAST) Regulations, 2011; Regulation 8A(2) of SEBI (SAST) Regulations, 1997 r/w Repeal and Saving Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 31(1) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011.*
- b) Does the violation, if any, on the part of Noticee attract any penalty under section 15A(b) of the SEBI Act, 1992?*
- c) If yes, what should be the quantum of penalty?*

20. Before proceeding further, I would like to refer to the relevant provisions of SEBI (Prohibition of Insider Trading) Regulations 1992, SEBI (SAST) Regulations, 2011, SEBI (SAST) Regulations, 1997.

SEBI(Prohibition of Insider Trading) Regulations, 1992

Regulation 13(3) of SEBI(Prohibition of Insider Trading, PIT, hereinafter) Regulations, 1992 states, “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.”

Regulation 13(4) of SEBI (PIT) Regulations, 1992 states, “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.”

Regulation 13(4A) of SEBI (PIT) Regulations, 1992 states, “ 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.”

Regulation 13(5) of SEBI (PIT) Regulations, 1992 states, “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.

SEBI (SAST) Regulations, 2011

Regulations 29(2) of SEBI (SAST) Regulations, 2011 states, “Any acquirer, 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 every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.”

Regulation 29(3) of SEBI (SAST) Regulations, 2011 states, “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.

Disclosure of encumbered shares.

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.

Regulation 31(2) of SEBI (SAST) Regulations, 2011 states, “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.

Regulation 31(3) of SEBI (SAST) Regulations, 2011 states, “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,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office

SEBI (SAST) Regulations, 1997

Regulation 8A(2) of SEBI (SAST) Regulations, 1997 states, “A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of creation of pledge on shares of that company held by him, inform the details of such pledge of shares to that company.”

SEBI (SAST) Regulations, 2011

Repeal and Savings.

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

(2) Notwithstanding such repeal,—

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

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

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

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

FINDINGS

21. Upon perusal of the documents available on record, allegation levied and submissions made by the Noticee, I find that the noticee was one of the promoters of MIC. As per the Annual Report 2011-12 of the company, during the period under investigation, he was Executive Chairman and Managing Director of the company.
22. As per finding of Investigation Report, the noticee created pledge on 9/7/2010, 22/7/2010, 3/3/2011 and 16/6/2011. The noticee being promoter of MIC was required to disclose the details of such pledge of shares to the company within 7 working days of creation of pledge in terms of Regulation 8A (2) of SEBI (SAST) Regulations, 1997, however the noticee failed to do so. The noticee has admitted that he failed to disclose the creation of pledge on 9/7/2010, 22/7/2010, 3/3/2011 and 16/6/2011 at the relevant point in time to the company and has disclosed the same only on June 03, 2016. In light of the admission of failure on part of the noticee to make the necessary disclosure to the company within 7 working days of creation of pledge and the inordinate delay in disclosure of the aforementioned transactions, the violation of Regulation 8A (2) of SEBI (SAST) Regulations, 1997 r/w Repeal and Saving Regulation 35 of SEBI (SAST) Regulations, 2011 is established against the noticee.

23. As per finding of Investigation Report the noticee also created pledge on 13/12/2011, 16/12/2011 and 20/12/2011. As per Regulation 31(1) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011 the noticee being promoter of MIC is required to make disclosure w.r.t. the details of encumbered shares to the company and Stock Exchange within 7 working days from the date of creation of pledge on shares of the company, however he failed to disclose the same to the company and to the stock exchanges in violation of Regulation 31(1) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011. The noticee has admitted his failure to disclose the details of creation of pledge on 13/12/2011, 16/12/2011 and 20/12/2011 at the relevant point in time to company and stock exchanges and submitted that he has disclosed the same on June 03, 2016. In light of the admission of failure on part of the noticee to make the necessary disclosure to the company and Stock Exchange within 7 working days from the date of creation of pledge on shares and the inordinate delay in disclosure of the aforementioned transactions, the violation of Regulation 31(1) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011 is established against the noticee.
24. It is also noted from the Investigation Report that the aforesaid pledges were invoked on various dates between January 12, 2012 to May 23, 2012 for varying quantities ranging from 18,000 shares to 6,25,000 shares and the shareholding of the noticee was reduced from 11.90% in December 2011 to 9.75% in March 2012 and 5.53% in June 2012. However the noticee had failed to file disclosures w.r.t invocation of encumbrance of these shares which is in violation of Regulation 31(2) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011. As per the findings of the Investigation Report, the noticee vide his letters dated March 22, 2014 and January 2, 2014 informed that he had pledged his shares against the loans taken by the company from L&T Finance Ltd. (LTFL) and also loans taken by him from Cholamandalam DBS Finance Ltd. (Chola) and Securities Trading Corporation of India Ltd. (STCL) for his personal use. These pledged shares were invoked by all the 3 pledgees for non-payment of loan instalments. As per investigation the noticee has also stated that invoked shares sale date and consideration details were not disclosed by LTFL and hence he could not comply with the disclosure requirements to the company and stock exchange. However as per findings of Investigation Report, vide letter dated 25/9/2014, the DP viz R.L.P. Securities Pvt. Ltd. on CDSL has stated that the intimation regarding invocation of shares pledged by the noticee were intimated over phone the next day and also through digitally signed

electronic statements. Linn Financial Services Ltd. the DP on NSDL has informed vide letter dated 1/10/2014 that the noticee was intimated through post and also the noticee had availed of mobile alerts on mobile no. (9849140193) at the time of account opening with NSDL on 12/3/2010.

25. The noticee has admitted in the proceedings before me that he failed to disclose the invocation of pledge at the relevant point in time to company and stock exchanges as required under regulation 31 (2) of SAST and has disclosed the same on June 03, 2016. In light of the admission of failure on part of the noticee to make the necessary disclosure to the company and Stock Exchange within 7 working days from the date of invocation of pledge on shares and the inordinate delay in disclosure of the aforementioned transactions, the violation of Regulation 31(2) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011 is established against the noticee.
26. It is also noted that pursuant to invocation of pledge on various dates between January 12, 2012 and May 23, 2012, the shareholdings of the noticee reduced by more than 2 % i.e. 2.15% on 7.3.2012, by 2.05% on 27.4.2012 and by 2.47% on 23.5.2012. It is noted that as Regulations 29(2) r/w Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 the noticee was supposed to disclose within 2 working days the information w.r.t. the disposal of shares representing 2% or more of the shares to the company and stock exchange however, no such disclosures had been made by the noticee. . In light of the admission of failure on part of the noticee to make the necessary disclosure to the company and Stock Exchange within 2 working days and the inordinate delay in disclosure of the aforementioned transactions, the violation of Regulations 29(2) r/w Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 is established against the noticee.
27. Further as per Regulations 13(3) r/w Regulation 13(5) of SEBI (PIT) Regulations, the noticee being the person holding more than 5% shares in the company, was supposed to disclose within 2 working days the information w.r.t. the disposal of shares representing 2% or more of the shares to the company, however, no such disclosures had been made by the noticee. The noticee has admitted in the proceedings before me that he failed to disclose the information w.r.t. the disposal of shares representing 2% or more of the shares to the company and have disclosed the same on June 03, 2016

28. It is noted that the noticee was Director of MIC. It is noted that pursuant to the invocation of pledge during January 12, 2012 to May 23, 2012 as detailed in Table 1, on all occasions there had been change in shareholding of the noticee by 25000 shares or more except on 9/3/2012 and 23/5/2012 As per Regulation 13(4) and r/w 13(5) of SEBI (PIT) Regulations, 1992, the noticee was required to make disclosure of the same within 2 working days to the company and to the stock exchange. However the noticee even failed to make the same and have disclosed the same on June 03, 2016 after lapse of more than 4 years. In light of the admission of failure on part of the noticee to make the necessary disclosure to the company and Stock Exchange within 2 working days and the inordinate delay in disclosure of the aforementioned transactions, the violation of Regulation 13(4) r/w 13(5) of SEBI (PIT) Regulations, 1992 is established against the noticee.
29. It is noted that the noticee is a promoter of MIC. It is noted that pursuant to the invocation of pledge during January 12, 2012 to May 23, 2012 as detailed in Table 1, on all occasions there had been change in shareholding of the noticee by 25000 shares or more except on 9/3/2012 and 23/5/2012 As per Regulation 13(4A) r/w 13(5) of SEBI (PIT) Regulations, 1992, the noticee was required to make disclosure of the same within 2 working days to the company and to the stock exchange. However the noticee even failed to make the same and have disclosed the same on June 03, 2016 after lapse of more than 4 years. In light of the admission of failure on part of the noticee to make the necessary disclosure to the company and Stock Exchange within 2 working days and the inordinate delay in disclosure of the aforementioned transactions, the violation of Regulation 13(4A) r/w 13(5) of SEBI (PIT) Regulations, 1992 is established against the noticee.
30. I note that the noticee had created pledge on 09/7/2010, 22/7/2010, 3/3/2011 and 16/6/2011 where under Regulation 8A(2) of SAST Regulation, 1997 was required to make intimation to the company within 7 working days of creation of pledge. The SAST Regulation, 1997 did not specify the requirement to make disclosure for pledge of shares to stock exchange. Therefore the failure to make disclosure has deprived the company of the information of noticee creating pledge where the noticee himself was promoter and Executive Chairman and Managing Director. The noticee also created pledge on

13/12/2011, 16/12/2011 and 20/12/2011. As per Regulation 31(1) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011 the noticee being promoter of MIC was required to make disclosure w.r.t. the details of encumbered shares to the company and Stock Exchange within 7 working days from the date of creation of pledge on shares of that company held by him, however he failed to disclose the same to the company and to the stock exchange in violation of Regulation 31(1) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011. By not filing the required disclosure with company and stock exchange in compliance with Regulation 31(1) of SEBI SAST Regulation, 2011, the investor interest has been affected adversely as they were deprived of the intimation of creation of pledged shares by promoters. There was no other means available to shareholders to know the creation of pledge by the promoters/directors and therefore this provision was incorporated in SEBI SAST Regulation, 2011 by repealing SEBI SAST Regulation, 1997. The intimation of creation of pledge is considered material enough to have impact on the market. By not making the required disclosures, the noticee has violated provisions of SEBI SAST Regulation 1997 and SEBI SAST Regulations, 2011 and is therefore liable for a penalty under Section 15 A (b) of the SEBI Act, 1992.

31. It is also noted from the investigation Report that the aforesaid pledges were invoked on various dates between January 12, 2012 to May 23, 2012 for varying quantities ranging from 18,000 shares to 6,25,000 shares and the shareholding of the noticee was reduced from 11.90% in December 2011 to 9.75% in March 2012 and 5.53% in June 2012. As per provisions of Regulation 31(2) of SEBI SAST Regulation 2011, the noticee was required to file disclosures to the company and to the stock exchanges w.r.t. the details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified within 7 working days from the date of invocation of pledge on shares of that company held by him. The invocation of pledge has taken place on between January 12, 2012 to January 27, 2012 and also during March 07, 2012 to March 09, 2012 for 22,04,956 shares whereby the holding of the noticee has reduced by 2.15 %. The Quarterly disclosures filed by the company with Stock Exchange for the quarter ending March 2012 have disclosed change in shareholding of the noticee from 11.90% from the quarter ending December 2011 to 9.75% at the quarter ending on March 2012.

Similarly the pledge were invoked for 45,76,982 shares between April 13, 2012 to May 23, 2012 whereby the holding of the noticee has reduced by 4.46 %. The Quarterly disclosures filed by the company with Stock Exchange have disclosed change in shareholding of the noticee from 9.75% from the quarter ending March 2012 to 5.53% at the quarter ending on June 2012. Though the noticee was under obligation to make the disclosure for invocation of pledge within 7 days of the invocation and it is admitted by the noticee that he has not filed the disclosure with the company & also the stock exchanges as required under Regulation 31(2) r/w Regulation 31(3) of SEBI SAST Regulation, 2011 and made the required disclosure only on June 03, 2016 after the initiation of the present proceedings. However the Quarterly disclosures of the promoter's shareholding filed by the company with the Stock Exchange has disclosed the change in shareholding of the noticee. There is a case of delay in intimation of invocation of pledge by the noticee, however the change in his shareholding was disclosed by the company in the Quarterly disclosures filed with the Stock Exchanges. As such public shareholders were deprived of the disclosures for change in shareholding of the noticee because of invocation of pledge till the time Quarterly disclosures were not filed by the company with the Stock Exchanges. The delayed disclosure filed by the noticee therefore needs to be penalised under Section 15 A(b) of SEBI Act, 1992.

32. Consequent to invocation of pledge, the share of noticee were sold by the pledgee and the intimation of the same was made available to him by his Depository Participant. As such he was under an obligation to disclose the change of shareholding beyond 2% to the company and to the stock exchange which has occurred 3 times, however he failed to do so. He has therefore violated provision of Regulation 29(2) r/w Regulation 29(3) of SAST Regulation 2011.
33. The noticee has also been charged for failure to make appropriate disclosures in terms of Regulation 13(3), 13(4) and 13(4A) r/w Regulation 13(5) of SEBI (PIT) Regulation, 1992. The noticee being a shareholder holding more than 5% shares and also being director and promoter needs to comply with all the three provisions under Regulation 13(3), 13(4) and 13(4A) r/w Regulation 13(5) of SEBI (PIT) Regulation, 1992. Though

it pertains to the disclosure of the same information of change in shareholding beyond the prescribed limits under the said Regulation. The noticee being director is required to make disclosure of change in its shareholding under Regulation 13(4) of PIT Regulation which reads as- *“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.”* The noticee being director of the company, if he would have complied with the disclosure requirement of Regulation 13(4) the other disclosure requirement under Regulation 13(3) and 13(4A) also would have stand complied with. Therefore I proceed to impose penalty on the noticee under Section 15A(b) of SEBI Act, 1992 for non-disclosure of change in shareholding of the noticee in violation of provisions of Regulation 13(4) of SEBI PIT Regulation.

34. The noticee has admitted his lapse and submitted that there were no past incidence of him not making required disclosures and the present failure to make appropriate disclosures in time were unintentional and was neither deliberate nor wilful. In this regard I would like to refer ***E-Ally Consulting (Inida) Pvt. Ltd. & Ors. V. SEBI (Appeal No. 203 of 2014 dated August 15, 2016)*** wherein similar contentions were raised by the appellant before Hon'ble SAT and SAT has observed that *“That the delay was unintentional/without any fraudulent intention or there is no complaint from the investors does not absolve appellants from their obligation to make disclosure under SAST Regulation 2011”* Noticee further submitted that he has made all the relevant disclosures to stock exchanges as pointed out in the notices on June 3, 2016. Vide his submissions, the noticee while admitting the lapse on his part has requested to pardon him and take lenient view. The noticees forwarded proof of the disclosure made to the company, BSE and NSE on June 2, 2016. In this regard I would like to refer ***Ashok Jain v/ SEBI (Appeal No. 79 of 2014 dated June 09, 2014)*** wherein Hon'ble SAT has observed that *“Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non disclosure within the time stipulated under those regulations”* Timeliness is the essence of disclosure under

Regulation and delayed disclosure, particularly where the delay is huge as in the present case would not serve the purpose for which the obligation is cast in the Regulation.

35. In view of the admission of the lapse on part of the noticee to make disclosure, the violation of Regulations 29(2) r/w 29(3) of SEBI (SAST) Regulations, 2011, Regulations 13(4) r/w Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations 1992; Regulation 31(2) r/w 31(3) of the SEBI (SAST) Regulations, 2011; Regulation 8A(2) of SEBI (SAST) Regulations, 1997 r/w Repeal and Saving Regulation 35 of SEBI (SAST) Regulations, 2011 and Regulation 31(1) r/w Regulation 31(3) of SEBI (SAST) Regulations, 2011 is established against the noticee which attracts penalty under Section 15A(b) of SEBI Act, 1992. The provision of Section 15A(b) of SEBI Act, 1992 read as under-

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified 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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees

36. While determining the quantum of penalty under Section 15A(b) of the SEBI Act,1992, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act,1992 read with Rule which reads as under:-

Section 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.

37. I note that the Investigation Report does not record any fact to suggest that as a result of the violations committed by the noticee as found herein above he has made any disproportionate gain or unfair advantage or has caused loss to investors or the default is repetitive in nature. However disproportionate gain, unfair advantage, etc. are not sine qua non for imposing a penalty when the statutory obligations contemplated in the SCR Act, 1956 are contravened as is in the instant case. In this regard I would be guided by the ruling of Hon'ble Supreme Court of India in the matter of **SEBI Vs. Shri Ram Mutual Fund [2006] 68SCL216(SC)** wherein it was 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.* In the matter of **Akriti Global Traders Ltd. vs. SEBI (Appeal No. 78 of 2014 vide order dated September 30, 2014)**, Hon'ble SAT observed that "*Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay*". (Emphasis supplied). In the matter of **Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014)**, Hon'ble SAT observed that "*..... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures.*"(Emphasis supplied).
38. In view of the above, I am satisfied that the present case warrants imposition of penalty as per the provisions of section 15A(b) of the SEBI Act, 1992.

ORDER

39. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticee (both oral and written) and also the factors mentioned in Section 15 J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs 8,00,000/- (Rupees Eight lakhs only) on the Noticee viz.

M. V. Ramana Rao under the provisions of Section 15A(b) of the SEBI Act for the failure on the part of the Noticee to make disclosure to the company and to the stock exchanges and also failure on part of the noticee to disclose the instance of pledge and invocation of pledge of shares to the company as required under Regulations 13(4) read with 13(5) of SEBI (PIT) Regulations, 1992, Regulations 29(2) r/w 29(3) of SEBI (Substantial Acquisition of Shares and Takeover, SAST hereinafter) Regulations, 2011 and Regulations 31(2) r/w 31(3) of SEBI (SAST) Regulations, 2011 and Regulation 8A(2) of SEBI(SAST) Regulations, 1997 r/w Repeal and Saving Regulation 35 of SEBI (SAST) Regulations, 2011.

40. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee. The penalty shall be paid by way of Demand Draft drawn in favour of “SEBI Penalties Remittable to Government of India” payable at Mumbai within 45 days of the receipt of this order. The said demand draft shall be forwarded to the Chief General Manager, EFD, SEBI, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051. Alternatively, noticee may avail off the e-payment facility as per the details given below:

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

41. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to the Noticee viz. M. V. Ramana Rao and also to Securities and Exchange Board of India.

Date: May 22, 2017
Place: Mumbai

Nagendraa Parakh
Adjudicating Officer