

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

{ADJUDICATION ORDER NO. AO/SBM/EAD-3/58-65 /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

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In respect of:

Sharp Industries Ltd. -	(PAN: AAFFS9104E)
Ms. Bhavna Sheth -	(PAN: AAIPS6242H)
Ms. Jyothika Sheth -	(PAN: AAIPS6246A)
Ms. Kashmira Sheth -	(PAN: AAIPS6248Q)
Ms. Sujatha Sheth -	(PAN: AAIPS6241H)
Mr. Dhumil V Sheth -	(PAN: AYDPS4431Q)
Mr. Vishal Sheth -	(PAN: AAXPS7686G)
Vision Agencies Pvt Ltd.-	(PAN: AAACV8440Q)

In the matter of  
Sharp Industries Ltd.  
Plot No 6, Survey No.70  
Village Waliv, Vasai ( East)  
Thane Dist. Pin 401 208.  
(PAN No AAFFS9104E)

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**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination into the trading in the scrip of Sharp Industries Limited (hereinafter referred to as '**Noticee no 1/ 'SIL' or 'Company'**') for the period May 2013 to December 2013 (hereinafter referred to as '**Examination Period**' or '**Relevant period**'). The examination by SEBI, *inter-alia*, revealed that there were inter-se transfer of shares of the company during the relevant period among the promoters of the company viz. Ms Bhavana Sheth ( **Noticee no 2/Bhavana**), Ms Jyothika Sheth ( **Noticee no 3/Jyothika**), Ms Kashmira Sheth ( **Noticee no 4/Kashmira**), Ms Sujatha Sheth ( **Noticee no 5/Sujatha**), Mr Dhumil V Sheth ( **Noticee no 6/Dhumil**), Mr. Vishal Sheth ( **Noticee no 7/Vishal**) and M/s Vision Agencies Pvt Ltd ( **Noticee no 8/Vision** ). In the context of the present proceedings, Noticees 1 to 8 are also collectively referred to as '**Noticees**'. Specifically, it was observed from the examination report of SEBI that a disclosure based alert was generated from the DWBIS alert system of ISD, which *inter-alia* mentioned about inter-se transfer of 6.77 % shares of the Company by Vision i.e Noticee no 8 to other promoters of the company during the relevant period. The company is listed

on the Bombay Stock Exchange (BSE). As per BSE website, the present status of the company is shown as suspended due to penal reasons. During the relevant period, the total share capital of the company was Rs 19.95 crores (represented by 1,99,52,819 shares of Rs 10/- each).

2. In view of the inter-se transfer of shares among the promoters of SIL during the relevant period, it is alleged that the Noticees have failed to make the necessary disclosures which were required to be made by them under the relevant provisions of SEBI (Substantial acquisition of shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and also under SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). It is therefore alleged that Noticees have violated the provisions of SAST Regulations and PIT Regulations. SEBI has, therefore, initiated adjudication proceedings against the Noticees under the provisions of section 15A (b) of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**') for their alleged violations of the relevant provisions of SAST Regulations and PIT Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned was appointed as the Adjudicating Officer under Section 15-I of the SEBI Act read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of Section 15A (b) of the SEBI Act, the alleged violation of the relevant provisions of the SAST Regulations and PIT Regulations by the Noticees.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. A common Show Cause Notice ref. SEBI/HO/EAD-3/9439/2017 dated April 25, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticees under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty, if any, be not imposed on them under the provisions of Section 15A(b) of the SEBI Act for their alleged failure to make the necessary disclosures under the provisions of SAST and PIT Regulations, during the relevant period.

5. Noticees 2 to 8 vide separate letters dated July 7, 2017 submitted their reply to the SCN. It was mentioned that the Company i.e SIL is under Liquidation pursuant to an order passed by the Hon'ble Bombay High Court. A copy of the winding up order of the company passed by the Hon'ble Bombay High Court was also enclosed by the Noticees along with their reply. The relevant excerpts of the reply of the Noticees 2 to 8 are as under:

- (i) *There was an inter-se transfer of 41, 03,485 shares constituting 20.57% of the paid up capital of the company from amongst the promoters of the company on September 11 and September 12, 2013.*
- (ii) *The company, Sharp Industries Limited was engaged in the business of supplying flexible packaging materials to Gutkha and Tobacco manufacturers only, and had to close its operations during that period due to nationwide ban on Tobacco manufactures only, and had to close all its operations during that period due to nationwide ban on tobacco and gutkha products with effect from March 31, 2013 pursuant to Hon'ble Supreme Court.*
- (iii) *At present, Sharp Industries Limited is under liquidation pursuant to the order passed by the Hon'ble Bombay High Court and all the assets of the company are seized and possessed by the Official Liquidator. BSE has suspended trading in the shares of the company. Although the shares of the company are currently suspended, I am complying with all the requirements of the listing agreement regularly and filing necessary disclosures under the listing agreement and also been paying listing fees on time upto the year March 31, 2014*
- (iv) *The above mentioned transaction is only amongst the promoters of the company and did not result in any change in the overall promoter shareholding of the company.*
- (v) *We were given to understand that an inter-se transfer of shares is exempted from the requirements of disclosure and making an open offer. Hence we did not make the necessary disclosures. We however gave necessary pre intimation under Regulation 10(5) of the SEBI (SAST) Regulations, 2011.*
- (vi) *The non-filing of the necessary disclosure was only by sheer ignorance of the requirements of law and not out of any malafide intention. Since there was no change in the overall promoter holding, there was no loss to the investors also.*

6. In the interest of natural justice and in terms of Rule 4(3) of the Adjudication Rules, Noticees were granted an opportunity of personal hearing on July 18, 2017. Ms. Shailashri Bhaskar, Company Secretary and Mr. Dilipkumar Jagad, Chartered Accountant appeared as Authorized Representatives (ARs) on behalf of the Noticees and reiterated the submissions made by the Noticees vide their reply dated July 07, 2017. The ARs also mentioned that Noticees would make additional submissions in the matter by July 31, 2017. Subsequently, vide letters dated July 20, 2017, Noticees 2 to 8 made the following additional submissions:

- (i) *Sharp Industries Ltd. / Noticee no.1 is under liquidation and the assets of the company have been taken over by the Office of the Official Liquidator. The Company is therefore not in a position to give a reply to the show cause notice.*
- (ii) *The winding up Order was passed by the Hon'ble Bombay High Court as a result of the default by the Company to pay its debt to Videocon Industries Ltd.*
- (iii) *As required, we are attaching a copy of the order of the Hon'ble High Court of Bombay dated Dec 16, 2015. It has been stated in the Order that since the company has defaulted, official liquidator has been appointed in Company petition no. 171 of 2013. Further, there is no statement that "no legal proceedings should be initiated" in the said Order appointing the Official Liquidator. However, we would like to take shelter under Section 446 of the Companies Act.*
- (iv) *In the matter of Shivalik Loha Ltd., all proceedings have been dropped since the company was under liquidation. We, therefore, request you to kindly drop all proceedings against Sharp Industries Ltd./ Noticee no. 1.*
- (v) *With reference to the inter-se transfer amongst the promoters, this was only an internal arrangement/ transfer of shares amongst the promoters and there was no change in the overall promoter shareholding. Further, the disclosure could not be made since the company was under liquidation and there was no professional advice available to help the acquirers/ sellers make the necessary filing.*
- (vi) *We would also like to submit that no gain or profit has been made by the noticees due to this transaction and further, since the shares were also suspended from trading at the time of the transaction, there would have been no impact on the share price due to these transactions.*
- (vii) *The Order passed by WTM, SEBI In the matter of Madhusudan Securities Ltd., where one of the acquirers was under liquidation, but the other acquirers were advised to proceed with the open offer and pay interest for the delay in the completion of the open offer, but no punitive action was taken on them for the delay in the open offer.*

## **CONSIDERATION OF ISSUES AND FINDINGS**

7. I have carefully perused the submissions made by the Noticees, the facts and circumstances of the case and the material available on record. It was alleged in the SCN issued to the Noticees that there were inter-se transfer of shares of the company among the Noticees ( i.e Noticees 2 to 8) during the relevant period and therefore, Noticees were required to make necessary disclosures under the provisions of SAST Regulations and PIT Regulations, as applicable. It was alleged that the Noticees have failed to make the necessary disclosures and therefore, violated the relevant provisions of the SAST Regulations and PIT Regulations.

8. Specifically, the purchases/sale of the shares of SIL by the Noticees during the relevant period and the violations allegedly committed by the Noticees of the provisions of SAST and PIT Regulations are mentioned as under:

**TABLE-1**

<b>Transaction date</b>	<b>Name of Noticee</b>	<b>Shareholding of Noticee prior to the transaction date along with % to paid up capital</b>	<b>Number of shares acquired /sold</b>	<b>Shareholding of Noticee post acquisition / Sale of shares along with % to paid up capital</b>	<b>Violations observed w.r.t SAST &amp; PIT Regulations</b>
-	Sharp Industries Ltd. (Noticee no.1)	-	-	-	Violation of Regulation 13(6) of the PIT Regulations
11/09/2013	Bhavana Sheth (Noticee no.2)	5,685 shares (0.03%)	<b><u>Acquired</u></b> 10,00,000 shares	10,05,685 shares (5.040%)	Regulation 10(6) of SAST Regulations, Reg 29(1), 29(2) r/w 29(3) of SAST Regulations and Regulation 13(1), 13(4A) r/w Regulation 13(5) of the PIT Regulations
11/09/2013 and 12/09/2013	Jyothika Sheth (Noticee no.3)	16,520 shares (0.08%)	<b><u>Acquired</u></b> 9,40,474 shares on 11/09/2013 and 3,50,763 shares on 12/09/2013	13,07,757 shares (6.55%)	Regulation 10(6) of SAST Regulations, Reg. 29(1), 29(2) r/w 29(3) of SAST Regulations and Regulation 13(1), 13(4A) r/w Regulation 13(5) of the PIT Regulations
11/09/2013	Kashmira Sheth (Noticee no.4)	6,636 shares (0.03%)	<b><u>Acquired</u></b> 8,12,248 shares	8,18,884 shares (4.104%)	Regulation 10(6) of SAST Regs, Reg. 29(1), 29(2) r/w Reg. 29(3) of SAST Regulations and Regulation

					13(4A) r/w 13(5) of PIT Regulations
12/09/2013	Sujatha Sheth (Noticee no.5)	6,490 shares (0.03%)	<b>Acquired</b> 10,00,000 shares	10,06,490 shares (5.04%)	Regulation 10(6) of SAST Regulations, Reg 29(1), 29(2) r/w Reg. 29(3) of SAST Regulations and Reg. 13(1), 13(4A) r/w 13(5) of PIT Regulations
11/09/2013	Dhumil V. Sheth (Noticee no.6)	18,12,248 shares (9.08%)	<b>Sold</b> 18,12,248 shares	NIL	Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3), 13(4A) r/w 13(5) of PIT Regulations
11/09/2013	Vishal Hasmukh Sheth (Noticee no.7)	9,40,474 shares (4.71%)	<b>Sold</b> 9,40,474 shares	NIL	Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(4A) r/w 13(5) of the PIT Regulations
12/09/2013	Vision Agencies Pvt. Ltd. (Noticee no.8)	13,50,763 shares (6.77%)	<b>Sold</b> 13,50,763 shares	Nil	Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3), 13(4A) r/w 13(5) of the PIT Regulations

9. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST and the PIT Regulations allegedly violated by the Noticees, which reads as under:

**SAST Regulations**

**General exemptions**

*10.(1) The following acquisitions shall be exempt from the obligation to make an open offer under regulation 3 and regulation 4 subject to fulfillment of the conditions stipulated therefor....*

.....  
.....

*10(5) In respect of acquisitions under clause (a) of sub-regulation (1), and clauses (e) and (f) of sub-regulation (4), the acquirer shall intimate the stock exchanges where the shares of the target company are listed, the details of the proposed acquisition in such form as may be specified, at least four working days prior to the proposed acquisition, and the stock exchanges shall forthwith disseminate such information to the public.*

*10 (6) In respect of any acquisition made pursuant to exemption provided for in this regulation, the acquirer shall file a report with the stock exchanges where the shares of the target company are listed, in such form as may be specified not later than four working days from the acquisition, and the stock exchange shall forthwith disseminate such information to the public.*

#### **Disclosure of acquisition and disposal.**

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

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

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

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

*(b) the target company at its registered office.*

#### **PIT Regulations**

##### **Disclosure of interest or holding in listed companies by certain persons**

##### **-Initial Disclosure**

**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.*

##### **Continual disclosure.**

*(3) Any person who holds more than 5% shares or 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.*

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

*(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) 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.*

***Disclosure by company to stock exchanges***

*(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), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.*

10. From the transaction details of the Noticees in the scrip of SIL as shown in the Table above and also upon examination of the reply / materials made available in the matter, I record my findings as under:

(a) Noticee no 1 i.e Sharp Industries Ltd is under liquidation pursuant to an Order dated December 16, 2015 passed by the Hon'ble Bombay High Court in Company Petition No 171 of 2012 and liquidator was also appointed in terms of the above said Order. The Company was also ordered to be wound up by the Hon'ble Bombay High Court vide Order dated October 27, 2014. Before proceeding in the matter, it would be appropriate to first decide the preliminary issue as to whether Adjudication Proceedings initiated by SEBI against Sharp Industries Limited i.e Noticee no 1 can continue in view of the above position w.r.t the liquidation of the company.

(b) In order to examine the maintainability of the present adjudication proceedings against Noticee no 1, it would be appropriate to refer to Section 446 of the Companies Act, 1956 { corresponding to Section 279 of the Companies Act, 2013}, which reads as under:



**“Section 446 of the Companies Act, 1956”**

*When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Tribunal and subject to such terms as the Tribunal may impose”*

(c) According to Black’s Law Dictionary, Sixth Edition, the term ‘Legal Proceedings’ includes “all proceedings authorized or sanctioned by law, and brought or instituted in a court or legal tribunal, for the acquiring of a right or the enforcement of remedy”. Further, the term ‘Proceedings’ means, “any action, hearing, investigation, inquest or inquiry (whether conducted by a court, administrative agency, hearing officer, arbitrator, legislative body, or any other person authorized by law) in which, pursuant to law, testimony can be compelled to be given.” (ibid).

(d) In the “Guide to the Companies Act” by A Ramaiya, (17th Edition Reprint 2010, page 4929 and 4930), it is stated that the object of winding up of a company by the court is to facilitate the protection and realization of its assets with a view to ensure an equitable distribution thereof among those entitled and to prevent the administration from being embarrassed by a general scramble among creditors and others. Consequently, once the Court has taken the assets of the company under its control or has passed an order for it being wound up, it will not be proper to allow the proceedings to be started or continued against the company. “Section 446 is wide in its terms and is not restricted to any category of suits or any class of plaintiffs. It is wide enough to cover all suits and other legal proceedings whoever may be plaintiff”. {*Murugan Oil Industries (P) Ltd Re, (1970) 40 Com.Cases 77,82 (Mad) following Ghose Khan Vs Bala Subba Rowther, AIR 1927 (Mad) 925* }.

(e) While examining the issue of maintainability of the legal proceedings initiated after the date of the order of winding up/appointment of official liquidator, the Hon’ble High Court of Bombay, in the case of Deutsche Bank vs S.P.Kala {(1990) 67 Com. Cases} held as under:

“Section 446 of the Companies Act provides that, when a winding up order is made or the official liquidator is appointed as provisional liquidator, no suit or

legal proceedings should be commenced or if pending on the date of the winding-up order, shall be proceeded with, against the company, except with the leave of the Court and subject to such terms as may be imposed. Sub-section ( 2) further lays down that the court which is winding-up the company shall, notwithstanding anything contained in any other law in force, have jurisdiction to entertain or dispose of, inter alia, any suit or proceeding by or against the company, whether such suit or proceeding has been instituted or is instituted. A careful examination of these provisions of law makes it clear that once winding-up order is made or the official liquidator is appointed as provisional liquidator, no proceedings can continue or be instituted against the company without the permission of the court. It is further clear that jurisdiction to entertain or dispose of any kind of suit or proceeding by or against the company is vested in the company court without any kind of restriction..... The expression “any suit or proceeding by or against the Company” is wide enough to bring within its sweep any kind of suits”

(f) In view of the above observations and the legal position, I am of the considered view that the present adjudication proceedings initiated against Noticee no 1 i.e Sharp Industries Ltd for its violation of the provisions of Regulation 13 (6) of the PIT Regulations, cannot be continued as the Company is under liquidation. Further, I am also of the view that the proceedings cannot be continued against Noticee no 1 without the leave of the Court as it falls under the term “*other legal proceedings*” used in Section 446 of the Companies Act, 1956. I observe that there is no material on record to show that leave of the Court has been taken/obtained before initiating the present adjudication proceedings against Noticee no 1 i.e Sharp Industries Ltd. Therefore, for the reasons cited above, the adjudication proceedings against Noticee no 1 cannot be proceeded with and the SCN dated August 25, 2017 issued to Noticee no 1 is disposed of accordingly.

(g) However, the case of the other Noticees i.e Noticees 2 to 8 stands on a different footing. I am of the view that there are no restrictions to initiate proceedings against the promoters/directors of SIL i.e Noticees 2 to 8. In the instant matter, the provisions of section 446 of the Companies Act are applicable only to SIL (i.e Noticee no 1) and the promoters of SIL i.e Noticees 2 to 8 cannot claim any immunity from making the necessary disclosures under

PIT and SAST Regulations by citing the aforementioned section of the Companies Act. I observe that Noticees 2 to 8 were under an obligation to make the necessary disclosures under SAST and PIT Regulations in respect of their individual acquisition/disposal of the shares of SIL during the relevant period, details of which have been brought out in the Table at para 8 above. I observe that during the relevant period, there were inter-se transfer of 41,03,485 shares of SIL (which represented 20.57% of the total paid up capital of SIL) among the promoters of SIL. As can be observed from the Table above, Noticees 6 to 8 sold 41,03,485 shares of SIL held by them on September 11 and 12, 2013 and these shares were acquired/purchased by Noticees no 2 to 5. Thus, the aforementioned inter-se purchases and sale of shares by the promoters of SIL triggered the disclosure/reporting requirements under the relevant provisions of SAST Regulations and PIT Regulations.

(h) Noticees 2 to 8 being the promoters of SIL, were also 'persons acting in concert' (PACs) within the meaning of Regulation 2 (q) (2) (iv) of the SAST Regulations. I find that prior to the acquisition of 41,03,485 shares of SIL from other promoters, Noticees 2 to 5 had made the necessary disclosures to BSE u/r 10 (5) of the SAST Regulations informing the stock exchange about their proposed acquisition of these shares from other promoters. I observe that BSE had also disseminated this information on its website. However, pursuant to the acquisition of the 41,03,485 shares, as mentioned above, on September 11 and 12, 2013, Noticees 2 to 5 were required to file a report with BSE u/r 10(6) of the SAST Regulations within four working days of the acquisition of these shares. Since Noticee 2 to 5 failed to file/submit the necessary report u/r 10 (6) of the SAST Regulations with BSE, I hold that Noticees 2 to 5 have violated the provisions of Regulation 10(6) of the SAST Regulations.

(i) As can be observed from the Table above, in view of the above mentioned acquisition of shares of SIL from other promoters, the individual shareholding of Noticee 2, 3 and 5 (which was 0.03%, 0.08% and 0.03% of the total capital of the company prior to their acquisition of shares) had crossed the threshold limit of 5% of the total share capital of the company as on 11<sup>th</sup> and 12<sup>th</sup> September 2013. Therefore, in terms of Regulation 13 (1) of the PIT Regulations, Noticees no 2, 3 and 5 were under an obligation to make the necessary disclosures to BSE and to the Company within two working days

under the provisions of Regulation 29(1) r/w 29(3) of the SAST Regulations. Similarly, Noticees no 2, 3 and 5 were required to make the necessary disclosure to the Company within two working days of the acquisition of the shares. I observe that Noticee no 2, 3 and 5 failed to make these disclosures under the aforementioned provisions of law. Therefore, I hold that Noticees no 2,3 and 5 have violated the provisions of Regulation 29(1) r/w Regulation 29(3) of the SAST Regulations and also Regulation 13 (1) of the PIT Regulations.

(j) From the above Table, I observe that Noticee no 6 and 8 who were individually holding more than 5% shares of SIL during the relevant period had sold the entire shares held by them on 11<sup>th</sup> September 2013 and 12<sup>th</sup> September 2013 respectively. Specifically, I observe that Noticee no 6 (who was holding 18,12,248 shares of SIL representing 9.08% of the total share capital of SIL) had sold the entire shares held by him on September 11, 2013. Noticee no 8 (holding 13,50,763 shares of SIL representing 6.77% of the total capital of SIL) sold / divested its entire shareholding in SIL on September 12, 2013. In view of the above sale of shares by Noticees no 6 and 8, there was change in the shareholding of Noticee 6 and 8, which exceeded more than 2% of their total shareholding in the Company. Therefore, Noticee no 6 and 8 were under an obligation to make the necessary disclosures to the Company and BSE within two working days under the provisions of Regulation 29(2) r/w Regulation 29 (3) of SAST Regulations. Similarly, in terms of Regulation 13 (3) of the PIT Regulations, Noticee no 6 and 8 were also required to disclose to the company in the prescribed format within two working days of the change in their shareholding. I observe from the records/material made available that Noticee no 6 and 8 had failed to make the necessary disclosures under Regulation 29(2) r/w Regulation 29 (3) of SAST Regulations and also under the provisions of Regulation 13 (3) of the PIT Regulations. Therefore, I hold that Noticee no 6 and 8 have violated the provisions of Regulation 29 (2) r/w Regulation 29(3) of the SAST Regulations and Regulation 13 (3) r/w Regulation 13(5) of the PIT Regulations.

(k) Further, Noticees 2 to 8 being the promoters of SIL, their transactions in the scrip of SIL during the relevant period have resulted in change in shareholding, which have exceeded Rs 5 lakhs in value or 25,000 shares or 1% of their total shareholding in SIL, whichever is lower. Therefore, Noticees 2 to 8 were under

an obligation in terms of Regulation 13 ( 4A) of the PIT Regulations to make the necessary disclosures to the Company and BSE within two working days in the prescribed reporting format about the change in their shareholding. I find that Noticee 2 to 8 have failed to make the necessary disclosures u/r 13 (4A) of the PIT Regulations. Therefore, I hold that Noticees 2 to 8 have violated the provisions of Regulation 13 (4A) of the PIT Regulations r/w Regulation 13 (5) of the PIT Regulations.

(I) Pursuant to the aforementioned inter-se transfer of shares among the promoters of SIL during the relevant period, no disclosures under SAST Regulations and PIT Regulations were observed to have been made by the Noticees as per the BSE website. BSE in its email dated June 26, 2014 has confirmed the fact that it did not receive any disclosures from the Noticees under the SAST Regulations and PIT Regulations. In their reply to the SCN, Noticees have also admitted to the fact that they have not made the disclosures under the provisions of SAST and PIT Regulations.

11. Therefore, keeping in view the aforesaid observations made at pre-paras, I hold that Noticees 2 to 8 have violated the following provisions of SAST Regulations and PIT Regulations

<b>Sl. No.</b>	<b>Name of the Noticee</b>	<b>Violations</b>
1.	Bhavana Sheth (Noticee no.2)	Regulation 10(6) of SAST Regulations, Reg 29(1) r/w 29(3) of SAST Regulations and Regulation 13(1), 13(4A) r/w Regulation 13(5) of the PIT Regulations
2.	Jyothika Sheth (Noticee no.3)	Regulation 10(6) of SAST Regulations, Reg. 29(1) r/w 29(3) of SAST Regulations and Regulation 13(1), 13(4A) r/w Regulation 13(5) of the PIT Regulations
3.	Kashmira Sheth (Noticee no.4)	Regulation 10(6) of SAST Regs and Regulation 13(4A) r/w 13(5) of PIT Regulations
4.	Sujatha Sheth (Noticee no.5)	Regulation 10(6) of SAST Regulations, Reg 29(1) r/w Reg. 29(3) of SAST Regulation and Reg. 13(1), 13(4A) r/w 13(5) of PIT Regulations
5.	Dhumil V. Sheth (Noticee no.6)	Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3), 13(4A) r/w 13(5) of PIT Regulations
6.	Vishal Hasmukh Sheth (Noticee no.7)	Regulation 13(4A) r/w 13(5) of the PIT Regulations

7.	Vision Agencies Pvt. Ltd. (Noticee no.8)	Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3), 13(4A) r/w 13(5) of the PIT Regulations
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12. It was contended by the Noticees that the non-compliance with the disclosure requirements were due to reasons such as (a) sheer ignorance of the requirements of law and not with any malafide intention (b) the company was under liquidation and therefore, no professional advice was available to the Noticees to make the necessary filings (c) the inter-se transfer of shares among the promoters did not result in overall change in the promoters' shareholding and no profit or gain were made by the Noticees as a result of the non-disclosures by them under the provisions of SAST and PIT Regulations (d) Noticees were of the view that inter-se transfers were exempt from making the disclosures (e) trading in the shares of the company was suspended and therefore there was no impact on the share price etc. I cannot accept the contentions of the Noticees as the reasons/factors cited above does not absolve the Noticees from their obligation to make the necessary disclosures under the above provisions of law. I also do not find any merit in the submissions of the Noticees that they were ignorant of the requirements of the law about the disclosure requirements. The Hon'ble Securities Appellate Tribunal (**SAT**) through various judgments has consistently observed that these factors are not valid grounds for not complying with the statutory obligation of making the necessary disclosures under the SAST and PIT Regulations.
13. In E-Ally Consulting ( India) Pvt.Ltd.& Ors.Vs SEBI ( Appeal No 203 of 2014 dated August 15,2014), wherein similar contentions were raised by the appellant in the case relating to violation of Regulation 30 (1) and 30 (2) of the SAST Regulations, 2011, Hon'ble SAT had observed that “ *We see no merit in the above contentions. Obligations to make disclosures under Regulation 30 (1) and 30 (2) read with re Regulation gulation 30 (3) of SAST Regulations, 2011 is mandatory and is independent of the obligation to make the disclosures under the listing agreement. Similarly, fact that proper advise was not there or that the delay was unintentional/without any fraudulent intention or there is no complaint from investors does not absolve appellants from their obligation to make the disclosures under SAST Regulations, 2011* “ ( Emphasis supplied).
14. In the matter of Ashok Jain Vs SEBI ( Appeal No 79 of 2014 dated June 09,2014), Hon'ble SAT observed “..... 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” (Emphasis supplied).

15. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI* had observed that

*“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”*

16. In the matter of *Virendrakumar Jayantilal Patel Vs SEBI* ( Appeal No 299 of 2014 and 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 the disclosures “* (Emphasis supplied).

17. I find that in the context of the present proceedings, Noticees have placed reliance on the Orders passed by WTM, SEBI in the matter of *Madhusudan Securities Ltd* and by AO, SEBI in the matter of *Shivalik Loha Ltd*. I have perused these orders and find that in the case of *Shivalik Loha Ltd*, the adjudication proceedings against the company was disposed of as the company was under liquidation. In the case of *Madhusudhan Securities Ltd*, owing to the fact that one of the acquirer company was under liquidation, the WTM, SEBI had granted certain relaxations in the

matter of making disclosures regarding the acquirer company which was under liquidation. In the instant matter, proceedings are not initiated against Noticee no 1 i.e SIL for the reasons already brought out in the pre-paragraphs. However, Noticees 2 to 8 cannot escape from their liability to make the necessary disclosures under the provisions of SAST and PIT Regulations. As such, the orders cited by the Noticees 2 to 8 would not be of much assistance to them as the violations of the provisions of SAST and PIT Regulations by them has been established. Therefore, penalty becomes imposable on the Noticees 2 to 8 for their aforementioned violations of the provisions of law.

18. By not making the disclosures under the relevant provisions of SAST and PIT Regulations, Noticees 2 to 8 have failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of The Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shri Ram Mutual Fund* {{2006}} 5 SCC 361} held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..... Hence, we are of the view that once the contravention is established, then penalty has to follow and only the quantum of penalty is discretionary....."*.

19. In view of the violation of the provisions of law by Noticees 2 to 8, as established above, Noticees 2 to 8 are liable for monetary penalty under the provisions of section 15 A ( b) of the SEBI Act, which reads as under :

**15A. Penalty for failure to furnish information, return, etc.-** *If any person, who is required under this Act or any rules or regulations made there under, -*

*(a).....*

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



20. In this regard, the provisions of Section 15J of the SEBI Act require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely;

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

21. From the material available on record, it is not possible to ascertain the exact unfair gain made by the Noticees 2 to 8 and the monetary loss to the investors on account of non-compliance by the Noticees 2 to 8. The main objectives of the SAST Regulations and PIT Regulations are to afford fair treatment to shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating timely and adequate disclosure of information to the public/ investors/ shareholders to enable them to make an informed decision to be part of / or not to be part of companies due to such change in control/ information made available etc. True and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing the investors from taking well-informed decisions.

### **ORDER**

22. After taking into consideration the facts and circumstances of the case, the material made available on record, the replies submitted by the Noticees, I, in exercise of the powers conferred upon me under Section 15 I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs 2,00,000/- ( Rupees Two Lakh only) on the Noticees 2 to 8 under the provisions of Section 15 A (b) of the SEBI Act, 1992 for their violations of the relevant provisions of SAST Regulations and PIT Regulations, details of which are mentioned as under:

Sl. No.	Name of the Noticee	Violations
1.	Bhavana Sheth (Noticee no.2)	Regulation 10(6) of the SAST Regulations, Reg 29(1) r/w 29(3) of SAST Regulations and Regulation 13(1), 13(4A) r/w Regulation 13(5) of the PIT Regulations and Regulation 12(1) and (2) of SEBI ( Prohibition of Insider Trading) Regulations, 2015

2.	Jyothika Sheth (Noticee no.3)	Regulation 10(6) of SAST Regulations, Reg. 29(1) r/w 29(3) of SAST Regulations and Regulation 13(1), 13(4A) r/w Regulation 13(5) of the PIT Regulations and Regulation 12(1) and (2) of SEBI ( Prohibition of Insider Trading) Regulations, 2015
3.	Kashmira Sheth (Noticee no.4)	Regulation 10(6) of SAST Regulations and Regulation 13(4A) r/w 13(5) of the PIT Regulations and Regulation 12(1) and (2) of SEBI ( Prohibition of Insider Trading) Regulations, 2015
4.	Sujatha Sheth (Noticee no.5)	Regulation 10(6) of SAST Regulations, Reg 29(1) r/w Reg. 29(3) of SAST Regulations and Reg. 13(1), 13(4A) r/w 13(5) of PIT Regulations and Regulation 12(1) and (2) of SEBI ( Prohibition of Insider Trading) Regulations, 2015
5.	Dhumil V. Sheth (Noticee no.6)	Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3), 13(4A) r/w 13(5) of PIT Regulations and Regulation 12(1) and (2) of SEBI ( Prohibition of Insider Trading) Regulations, 2015
6.	Vishal Hasmukh Sheth (Noticee no.7)	Regulation 13(4A) r/w 13(5) of the PIT Regulations and Regulation 12(1) and (2) of SEBI ( Prohibition of Insider Trading) Regulations, 2015
7.	Vision Agencies Pvt. Ltd. (Noticee no.8)	Regulation 29(2) r/w 29(3) of SAST Regulations and Regulation 13(3), 13(4A) r/w 13(5) of the PIT Regulations and Regulation 12(1) and (2) of SEBI ( Prohibition of Insider Trading) Regulations, 2015

The above penalty is payable jointly and severally by Noticees 2 to 8. As already mentioned, the adjudication proceeding against Noticee no 1 i.e Sharp Industries Ltd. has been disposed of for the reasons mentioned in para 10 (a) to (f) above.

23. The Noticees 2 to 8 shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into the Bank Account, the details of which are given below

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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

24. The Noticees 2 to 8 shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department (EFD) of SEBI. The format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website, which is mentioned as under

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

25. 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, copies of this order are being sent to the Noticees and also to the Securities and Exchange Board of India, Mumbai.

**DATE: September 06, 2017**  
**PLACE: MUMBAI**

**SURESH B MENON**  
**ADJUDICATING OFFICER**