

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**(ADJUDICATION ORDER NO: AO/SBM-ASR/EAD-3/09/2015)**

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

*In respect of:*

**Shri Pawan Kumar Sharma**  
**PAN: CJHPS7831R**  
A/303, New D. S. Nagar  
Nursing Lane,  
Malad (W)  
Mumbai - 400064

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') while conducting an examination in the scrip of Nivvyah Infrastructure and Telecom Services Limited (hereinafter referred to as "**Nivvyah**" / **Company**") observed that Shri Pawan Kumar Sharma (hereinafter referred to as "**Shri Sharma**" / "**Noticee**"), who is one of the promoters of the Company, had failed to make timely disclosures pertaining to his acquisition and sale of shares of the Company in the year 2012. It was therefore observed that the Noticee has failed to comply with the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and also SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

## **APPOINTMENT OF ADJUDICATING OFFICER**

2. Shri D. Ravikumar was appointed as Adjudicating Officer ( AO), vide Order dated March 11, 2013 under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Rule 3 of SEBI (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 for the alleged failure on the part of the Noticee to comply with the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulations 13(1), 13(2A) and 13(4A) read with Regulation 13(5) of the PIT Regulations. Subsequently, upon the transfer of Shri D Ravikumar, I have been appointed as the Adjudicating Officer vide Order dated June 22, 2015.

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

3. A Show Cause Notice dated April 30, 2014 (hereinafter referred to as "**SCN**") was served on the Noticee on May 05, 2014. The SCN was issued to the Noticee under Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee and why penalty, if any, should not be imposed on the Noticee under the provisions of Section 15A (b) of the SEBI Act for his alleged violation of the relevant provisions of the SAST Regulations and PIT Regulations, as mentioned in the SCN. The SCN issued to the Noticee *inter alia* mentioned the following :
  - (a) SEBI conducted an investigation into the alleged irregularity in the trading in the shares of the Company, which is listed on the BSE Ltd. (hereinafter referred to as "**BSE**") and Madhya Pradesh Stock Exchange Ltd (hereinafter referred to as "**MPSE**"). The Noticee is one of the promoters of the Company.
  - (b) The details of the acquisition and sale of the shares of the Company by the Noticee during the period June 20, 2012 to September 25, 2012 is given below:

Date of transaction	Acquisition/ sale	No. of shares	Resultant shareholding	Resultant shareholding %	Net Change in %	Net change in shareholding	Change in value ₹
20.06.2012	A	73,10,780		9.81%			
31.07.2012	S	5,00,000	68,10,780	9.14%	0.67%	-5,00,000	21,55,000
18.08.2012	A	4,00,000	72,10,780	9.68%	-0.54%	4,00,000	
3.09.2012	S	20,000	71,90,780	9.65%	0.03%		1,06,600
3.09.2012	A	50,000	72,40,780	9.72%	-0.07%	30,000	
4.09.2012	S	29,500	72,11,280	9.68%	0.04%	-29,500	1,58,710
18.09.2012	S	36,340	71,74,940	9.63%	0.05%	-36,340	2,60,921
20.09.2012	S	2,245	71,72,695	9.63%	0.00%		16,792
24.09.2012	S	75,000	70,97,695	9.53%	0.10%	-77,245	6,26,250
25.09.2012	S	25,000	70,72,695	9.49%	0.03%	-25,000	

- (c) It was alleged in the SCN that as on June 20, 2012, Noticee was holding against his name 73,10,780 shares constituting 9.81% of the total shareholding of the company. At this juncture, in terms of the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, Noticee was required to make disclosures of such acquisition of shares to the stock exchanges and also to the company within two working days of such acquisition, as the Noticee had acquired more than five percent of the shares of the company i.e Nivyah. Similarly, disclosures were also required to be made by the Noticee to the Company as per the prescribed format in terms of the provisions of Regulation 13(1) and 13(2A) of the PIT Regulations. It was alleged in the SCN that with respect to Regulation 13(1) of the PIT Regulations, Noticee had made the disclosure only on February 27, 2013 and with respect to Regulation 29(1) of the SAST Regulations, Noticee made the relevant disclosure on February 25, 2013. Therefore, it was alleged that the Noticee had failed to make the required disclosures in terms of the aforementioned Regulations within the stipulated time. It was further alleged that the Noticee had failed to make the necessary disclosure under the provisions of Regulation 13(2A) of the PIT Regulations.
- (d) It was also alleged in the SCN that on all the days when the Noticee has done a transaction in the shares of the Company, except on September 20, 2012, the total change in the shareholding of the Noticee has been more than 25,000 shares. Further, on July 31, 2012, September 18, 2012 and September 24, 2012, Noticee had sold/ acquired the shares of the company which resulted in change in Noticee's holding exceeding Rs 5 Lakhs in terms of value. Therefore, in terms

of the provisions of Regulation 13(4A) read with 13(5) of the PIT Regulations, the Noticee was required to make the relevant disclosures as regards change in the shareholding to the Company and also to the Stock exchanges where the securities are listed within two working days of such change in the shareholding. However, it is alleged that the Noticee has failed to make the disclosures required under Regulation 13 (4 A) of the PIT Regulations.

- (e) In view of the above, it was alleged that Noticee has violated the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulations 13(1), 13(2A) and 13(4A) read with Regulation 13(5) of the PIT Regulations. The relevant provisions of the SAST Regulations and PIT Regulations are mentioned as under;

**SAST Regulations:**

*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.*

*(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:**

*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.*

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

*[(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.*

4. Vide letter dated May 24, 2014, Noticee submitted his reply to the SCN and sought for extension of time to submit his detailed reply to the SCN. The Noticee also desired that a personal hearing may be provided to him in the said matter. Thereafter, vide his letter dated July 28, 2014, Noticee made the following submissions:

- (a) Noticee was holding 73,10,780 shares of the Company as on June 20, 2012. On July 31, 2012, Noticee pledged 5,00,000 shares to one Shri Satish Kumar Pandey (hereinafter referred to as "**Shri Pandey**"), as Noticee was in need of some funds. Accordingly, there is an entry of sale of 5,00,000 shares of Nivyah and Noticee had received a cheque of Rs 15,00,000 from Shri Pandey in this regard.
- (b) However, the aforesaid cheque of Rs.15,00,000 issued by Shri Satish Kumar Pandey had bounced the very next day. Therefore, the Noticee immediately purchased 4,00,000 shares (which is the reversal of the original 5,00,000 shares pledged with Shri Pandey).
- (c) The Noticee stated that he is yet to receive the remaining 1,00,000 shares of Nivyah from his stock broker and he is continuously following up the matter with the broker.
- (d) Since the transaction involving the pledge of shares could not be completed, Noticee mentioned that he did not make any disclosure in this regard.
- (e) As the Noticee required funds and he could not pledge his shares to obtain the funds, he started to sell the shares of the Company which he was holding.

Therefore, on few occasions, Noticee stated that he sold 20,000 shares, 29,500 shares, 36,340 shares, 2,245 shares, 75,000 shares and 25,000 shares of the company and subsequently intimated Nivyah about the same.

(f) Noticee came to know through the SCN that only two disclosures made by him with respect to his abovementioned transactions are available on record. He is not aware why the rest of the disclosures made by him are not on record.

(g) The Noticee also stated that there was no intention to hide any information from the authorities and he did not indulge in any price rigging or other activities.

5. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4 (3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing in the matter vide letter dated August 08, 2014. The hearing on August 26, 2014 was attended by the Noticee. The Noticee reiterated the submissions made by him in his reply to the SCN vide his letter dated July 28, 2014. Noticee also submitted a copy of the agreement indicating the details of the pledge of 5,00,000 shares of the Company and the bank statement reflecting the entry regarding the bounced cheque, which the Noticee had received from Shri Satish Kumar Pandey against the pledge of 5,00,000 shares of the Company. Noticee also gave an undertaking to submit his Depository Participant statement reflecting the entry regarding the pledge of 5,00,000 shares and the related disclosures in this regard.

6. Thereafter, vide letter dated September 05, 2014, the Noticee made the following additional submissions:

(a) Noticee submitted a copy of the Depository Participant Statement reflecting the transaction regarding the sale of 5,00,000 shares of the company by him to Shri Satish Kumar Pandey for availing the loan from him.

(b) Noticee also submitted that he had not obtained any acknowledged copies of the disclosures made by him to the Target Company and hence it was not possible for him to submit the same.

7. Pursuant to the change in the Adjudicating Officer in the said matter, another letter dated July 07, 2015 was served on the Noticee on July 15, 2015. The Noticee was advised to make additional submissions, if any, in the said matter and was also specifically required to state if any fresh hearing before the

Adjudicating Officer is required by him. The letter dated July 7, 2015 was also served on the Noticee and the proof of delivery of the aforesaid letter is available on record. However, there was no response from the Noticee to the above said letter issued to him. I observe that the Noticee has already availed an opportunity of personal hearing before the Adjudicating Officer on August 26, 2014 and subsequently made additional submissions. In view of these facts and circumstances, I deem it appropriate to proceed further in the matter.

#### **CONSIDERATION OF ISSUES AND FINDINGS:**

8. I have taken into consideration the facts and circumstances of the case and the material available on record. The allegations leveled against the Noticee in the present matter are that he had bought and sold shares of the Company during the year 2012 and failed to make the necessary disclosures to the Company and to the Stock Exchanges, which was required to be made under the relevant provisions of the SAST Regulations and PIT Regulations, as applicable.
9. Before moving forward, it is pertinent to mention that in May 2012, the Company i.e Nivyah merged with itself two entities viz. Parshwa Purushottam Parind Parekh Networks Private Limited (hereinafter termed as **Parshwa**) and Soften Computers Pvt Ltd (hereinafter termed as **Soften**). The merger was as per the scheme of arrangement u/s 391 to 394 of the Companies Act, 1956 and approved by the Hon'ble High Court of Madhya Pradesh. As a result of the merger, there was allotment of shares of the Company that were made to the existing shareholders of Parshwa. The share capital of the Company increased from 2,07,74,601 shares to 7,45,14,928 shares. In terms of the Hon'ble High Court Order, 5,37,40,328 shares were allotted to the share holders of Parshwa by the Company. The Noticee who was holding around 7,95,000 shares of Parshwa was proportionately allotted 73,10,780 shares of the Company on 20<sup>th</sup> June 2012. Pursuant to the above said allotment of shares, certain entities, including the Noticee have been included in the promoter group of the Company.
10. The requirement of making disclosures under the provisions of SAST Regulations and PIT Regulations are triggered when a minimum of 5 % of the shares of a listed company is acquired by an entity. As stated above, the Noticee was allotted 73,10,780 shares of the Company on 20/06/2012 pursuant to the scheme of merger of Parshwa and Soften with the Company. The Noticee was not holding any shares of the Company prior to 20/06/2012. The aforementioned allotment of

73,10,780 shares resulted in the Noticee holding 9.81 % stake in the Company as on 20/06/2012.

11. Since the Noticee had acquired more than 5 % stake in the Company, he was required to make the necessary disclosures under Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations to the Company and also to the Stock Exchanges within two working days of the date of receipt of the intimation of the allotment of shares i.e the Noticee was required to make the disclosure to the Company and to the stock exchanges latest by 23<sup>rd</sup> June 2012 as he had received the intimation of the allotment of 73,10,780 shares on 20/6/2012.
12. I find from the material made available before me that the relevant disclosures under Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations were made by the Noticee on 22/2/2013 (evident from the date mentioned in the prescribed format submitted by the Noticee for making the disclosure) and the letter forwarding the said format was submitted to the BSE by the Noticee on 1<sup>st</sup> March 2013 (which was also acknowledged by the BSE on 1<sup>st</sup> March 2013). I therefore observe that the Noticee made the disclosures under Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations with a delay of more than 7 months. Thus, from the observations made above, I am convinced that the Noticee had made the disclosures under Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations belatedly. Therefore, I hold that the Noticee has violated the provisions of Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations.
13. Similarly, in terms of the provisions of Regulation 13 (1) of the PIT Regulations, as the Noticee was holding more than 5 % shares of the Company as on 20/06/2012, he was required to make the necessary disclosure in the prescribed format (Form A ) to the Company within two working days of the receipt of the intimation of the allotment of the above mentioned 73,10,780 shares i.e the Noticee was under an obligation to make the relevant disclosure under Regulation 13 (1) of the PIT Regulations latest by June 23, 2012. However, I observe from the records/material made available before me that the Noticee made the relevant disclosure under Regulation 13 (1) of the PIT Regulations on 27/2/2013. The same is evident from a letter dated 27/2/2013 which was addressed to the BSE by the Company wherein the format of the said disclosure (Form A) submitted by the Noticee in terms of Regulation 13 (1) of the PIT Regulations was attached,



which was also acknowledged by the BSE on 28/2/2013. Since Regulation 13 (1) of the PIT Regulations require that any person holding shares in excess of the limits prescribed therein has to make the disclosures, and the Noticee had acquired 9.81% stake in the Company as on 20/06/2012, the fact that the Noticee made the relevant disclosure under Regulation 13 (1) of the PIT Regulations on 27/2/2013 constitutes violation of the provisions of Regulation 13 (1) of the PIT Regulations by the Noticee, as he made the relevant disclosure under the provisions of the PIT Regulations with a delay of more than 7 months. Therefore, I hold that the Noticee has violated the provisions of Regulation 13 (1) of the PIT Regulations.

14. I find that pursuant to the allotment of shares to the shareholders of Parshwa by the Company in terms of the Scheme of Merger, certain allottees, including the Noticee have been included in the category of promoter / promoter group of the Company. Therefore, the Noticee who was allotted 73,10,780 shares of the Company on 20/06/2012 was required to make the disclosure in the prescribed format (Form B) to the Company in terms of Regulation 13 (2A) of the PIT Regulations within two working days of becoming a promoter or person belonging to the promoter group of the Company. I find from the material available on record that the Noticee has failed to make the relevant disclosure required to be made under Regulation 13 (2A) of the PIT Regulations. Therefore, I hold that the Noticee has violated the provisions of Regulation 13(2A) of the PIT Regulations and the allegation leveled against the Noticee in the SCN that he has failed to make the disclosure under Regulation 13 (2A) of the PIT Regulations stands established.

15. I also find from the material available on record and the transactions of the Noticee in the scrip of Nivyah, as brought out in the Table at para 3 ( b) above that the Noticee who belonged to the promoter/promoter group of the Target Company had acquired and sold shares of the Company during the year 2012, which has resulted in change in the Noticee's shareholding or voting rights exceeding Rs 5 lakhs in value or 25,000 shares in terms of quantity of shares traded or 1 % of the total shareholding or voting rights, whichever is lower. The Noticee was required to make the necessary disclosures as regards the change in his shareholding to the Company and also to the Stock Exchanges in the prescribed format (Form D) in terms of the provisions of Regulation 13 (4A) read

with Regulation 13 (5) of the PIT Regulations within two working days of the acquisition or sale of shares, as the case may be.

Specifically, I observe from the transactions of the Noticee in the scrip of Nivyah, as mentioned in the Table at para 3 (b) above that the Noticee had bought / sold shares of Nivyah on July 31, 2012, August 18, 2012, September 3, 2012, September 4, 2012, September 18, 2012, September 24, 2012 and September 25, 2012 and the quantity of shares traded on these dates were in excess of 25,000 shares. Also, on July 31, 2012 and September 24, 2012, it is observed that the Noticee had sold shares of Nivyah which resulted in change in shareholding exceeding Rs 5 lakh in value. I also observe that the Noticee could not produce any supporting documents/evidence to confirm the fact that he had made the relevant disclosure to the Company and the Stock Exchanges in the prescribed format (Form D) in terms of the provisions of Regulation 13 (4A) of the PIT Regulations. In view of the above, I hold that the Noticee has failed to make the disclosures required under Regulation 13 (4A) of the PIT Regulations and has therefore violated the provisions of the aforementioned regulation.

16. In this context, I would like to quote the observations of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006] 5 SCC 361 } – held that *"In our 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....."*

17. In view of the foregoing, I am convinced that the Noticee has violated the provisions of Regulation 29(1) read with Regulation 29 (3) of the SAST Regulations and also the provisions of Regulations 13 (1), 13 (2A) and 13 (4 A) of the PIT Regulations. Therefore, I am of the view that it is a fit case to impose monetary penalty under the provisions of Section 15 A (b) of the SEBI Act, which reads as under :

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

***15 A. If any person, who is required under this Act or any rules or regulations made there under-***

*(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.*

18. In this regard, while determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under :

*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*

19. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or the loss caused to the investors as a result of the Noticee's default is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default committed by the Noticee, the details of the shareholding of the persons having substantial stake, the change in the shareholding of the promoters/ promoter- group and the persons in control over the Company and the timely disclosures thereof, were of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant case, the Noticee being a promoter of the Company, the timely disclosures by him under the relevant provisions of SAST Regulations and PIT Regulations, were of significant importance from the point of view of the shareholders who were holding the shares of the Company. Further, the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the securities market. In view of the violations committed by the Noticee i.e making delayed disclosures under Regulation 29 (1) of the SAST Regulations and Regulation 13 (1) of the PIT

Regulation and also failing to make the necessary disclosures prescribed under Regulations 13 (2A) and 13 (4A) of the PIT Regulations, as mentioned above, the investors were deprived of the important information at the relevant point of time. I also find that the Noticee has committed default under Regulation 13 (4A) of the PIT Regulations and have failed to make the relevant disclosures to the Stock Exchange and the Company on nine occasions. Therefore, the default committed by the Noticee is repetitive in nature.

20. The Noticee's submission that he has intimated all the transactions involving his acquisition and sale of shares of Nivayah to the Company who in turn has intimated the same to the Stock Exchanges and SEBI is unsustainable. There is nothing on record to show that the Noticee or the Company has made the disclosures regarding the transactions of the Noticee in the scrip of Nivayah, except the belated disclosures made by the Noticee under the provisions of Regulation 13 (1) of the PIT Regulations and Regulation 29 (1) of the SAST Regulations, as already brought out above. It is highly improbable to believe the version put forth by the Noticee that he has made the relevant disclosures regarding his transactions in the scrip of Nivayah. If that was so, it is not clear why the Noticee or the Company was not in a position to submit the documentary proof as regards the disclosures claimed to have been made by the Noticee under Regulations 13 (2A) and 13 (4A) of the PIT Regulations, despite repeated requests made to the Noticee to furnish the same during the course of the proceedings. I also observe from the reply submitted by the Noticee vide letter dated September 5, 2014 that he had expressed his inability to submit the acknowledgement details in respect of the disclosures purportedly made by him to the Company. The Noticee's argument that the relevant disclosures were made to SEBI also does not hold any merit as there is no disclosure obligation to SEBI which is mandated under the provisions of these Regulations. Further, in terms of the provisions of Regulation 13 (4A) of the PIT Regulations, the Noticee was under an obligation to make the disclosure to the Stock Exchange and the Company, which he failed to do so. Therefore, the submission made by the Noticee that he had made the relevant disclosures to the Company is baseless and without any merit.

21. The Noticee mentioned in his reply dated July 28, 2014 that he did not make the relevant disclosures w.r.t the transactions in the scrip of Nivayah involving an off-market sale of 5 lakh shares made by him on July 31, 2012 from his beneficiary

account and also an off-market purchase of 4 lakh shares which was received into his account on August 18, 2012, as these transactions were as a result of a pledge created in respect of a loan of Rs 15 lakhs availed by him from Shri Satish Kumar Pandey. The Noticee mentioned about the dishonor of the cheque for Rs 15 lakhs issued by Shri Satish Kumar Pandey and the subsequent reversal entry signifying the receipt of the 4 lakh shares of Nivvah into his Beneficiary account from the account of Shri Satish Kumar Pandey. Without going into further details regarding the loan transaction and agreement etc, I find from the transaction statement submitted by the Noticee (BO Code 1206300000044080 maintained with M/s Greshma Shares and Stocks Limited) that the Noticee has not created any pledge in respect of the 5 lakh shares of Nivvah in favour of Shri Satish Kumar Pandey.

Regulation 58 of the SEBI (Depositories and Participants) Regulations, 1996 set down certain procedures to be followed for creation of pledge in respect of the shares held in Demat form. I observe from the Transaction Statement of the Noticee that such procedure for creation of pledge has not been followed by the Noticee in respect of the 5 lakh shares transferred to the account of Shri Satish Kumar Pandey on July 31, 2012. In such a situation, the transaction w.r.t the 5 lakh shares of Nivvah has to be treated as a normal Off-market sale made from the Beneficiary account (BO) of the Noticee to the account of Shri Satish Kumar Pandey. Since a pledge has not been created in respect of these shares under the provisions of SEBI (Depositories and Participants) Regulations, I am of the view that it is a clear case of a normal off-market sale of 5 lakh shares of Nivvah made from the Noticee's BO account on 31/7/12 and the receipt of 4 lakh shares on August 18, 2012 should be treated as an off-market purchase into the Noticee's BO account. Since these two transactions have crossed the threshold limit prescribed under Regulation 13 (4A) of the PIT Regulations for making the relevant disclosures, the Noticee was duty bound to make these disclosures within two working days to the Company and also to the Stock Exchange in terms of Regulation 13 (4A) of the PIT Regulations. Thus, I do not find any force in the Noticee's submissions that disclosures were not made by him w.r.t the sale of 5 lakh shares and purchase of 4 lakh shares, as mentioned above.

22. In the instant case, I also observe that the Noticee has made the disclosures prescribed under Regulation 29 (2) of the SAST Regulations and also under Regulation 13 (3) of the PIT Regulations. While I have observed that the above

mentioned disclosures were made by the Noticee with a delay of more than 7 months, I also observe that the present proceedings against the Noticee has been initiated for his failure to make disclosures under Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations and also his failure to make disclosures under Regulations 13 (1), 13 (2A), 13 (4 A) and 13 (5) of the PIT Regulations. As such, I do not think it necessary to deal with the disclosures made by the Noticee under Regulation 29 (2) of SAST Regulations and Regulation 13 (3) of the PIT Regulations, in view of the reasons stated above.

**ORDER:**

23. Having considered all the facts and circumstances of the case and also the factors mentioned in Section 15 J of the SEBI Act above, 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 3,00,000 /- (Rupees Three Lakh Only) on the Noticee i.e. Shri Pawan Kumar Sharma having PAN: CJHPS7831R under the provisions of Section 15A(b) of the SEBI Act for his failure to make disclosures under Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulations 13(1), 13(2A) and 13(4A) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992. I am of the view that the said penalty is commensurate with the default committed by the Noticee.
24. 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- ISD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.
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, a copy of this order is being sent to the Noticee viz. Shri Pawan Kumar Sharma and also to the Securities and Exchange Board of India.

**Place: Chennai**  
**Date: 30.10.2015**

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