BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER/SS/AS/2019-20/3177-3178]

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

In respect of:

1. Shri Bakul Ramniklal Parekh (PAN: AACPP5587D)

2. Shri Milan Ramniklal Parekh (PAN: AACPP4073G)

In the matter of Action Financial Services (India) Limited

1. Action Financial Services (India) Limited (hereinafter referred to as "the Company") is a company having its shares listed on the Bombay Stock Exchange Limited (hereinafter referred to as "BSE"). Shri Bakul Ramniklal Parekh (hereinafter referred to as "the Noticee No. 1") is Joint Managing Director and Shri Milan Ramniklal Parekh (hereinafter referred to as "the Noticee No. 2") is Chairman and Managing Director of the Company. Both the Noticees are promoters of the Company.

2. In the course of investigation conducted by Securities and Exchange Board of India ("SEBI") in the scrip of the company during March 01, 2009 to July 22, 2015 ("the investigation period") following was observed:

   a. The shareholding of the Noticees No. 1 and 2 in the Company had changed during the investigation period and such change in their shareholding during the investigation period had resulted in disclosure obligations upon them under the provisions of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as the 'PIT Regulations') and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations').

   b. The analysis of the change in promoter and promoter-group shareholding in the Company during the investigation period and details of the disclosure obligations upon both the Noticees was noted as follows:

i. Change in quarter ended March 2009:

Table 1

Name of Promoter	Q.E. Dec 2008		Q.E. Mar 2009		Change		Date of Transaction	Disclosures made under		Delay, if any
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding		Reg.	Date of reporting	
Shri Bakul Ramniklal Parekh	14,46,489	17.24	15,06,489*	17.83	60,000	0.59	25/03/2009	13(4) r/w 13(5) of PIT Reg., 1992	Not disclosed to AFSL and BSE	-

Shri Milan Ramniklal Parekh	23,34,256	27.83	23,34,256	27.62	0	-0.21	NA
Ms Nayana M Parekh	43,600	0.52	43,600	0.52	0	0	
Total Promoter & Promoter –group holding	38,24,345	45.58	38,84,345	45.97	60,000	0.39	-

Source: www.bseindia.com; *Pursuant to conversion of convertible warrants issued to promoter.

ii.Change in quarter ended June 2009:

Table 2

Name of Promoter	Q.E. Mar 2009		Q.E Jun 2009		Change		Date of Transaction	Disclosures made under		Delay, if any
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding		Reg.	Date of reporting	
Shri Bakul Ramniklal Parekh	15,06,489	17.83	18,66,489*	21.18	3,60,000	3.35	11/04/2009	13(3), 13(4) r/w 13(5) of PIT Reg., 1992 7(1A) r/w 7(2) of SAST Reg., 1997	Not disclosed to AFSL and BSE	-
Shri Milan Ramniklal Parekh	23,34,256	27.62	23,34,256	26.50	0	-1.12	NA			
Ms Nayana M Parekh	43,600	0.52	43,600	0.50	0	-0.02				
Total Promoter & Promoter –group holding	38,84,345	45.97	42,44,345	48.18	3,60,000	2.21	-			

Source: www.bseindia.com; *Pursuant to conversion of convertible warrants issued to promoter.

iii.Change in quarter ended December 2010:

Table 3

Name of Promoter	Q.E. Sept 2010		Q.E Dec 2010		Change		Date of Transaction	Disclosures made under		Delay, if any
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding		Reg.	Date of reporting	
Shri Bakul Ramniklal Parekh	18,66,489	21.18	20,38,889*	20.43	1,72,400	-0.75	13/10/2010	13(4) r/w 13(5) of PIT Reg., 1992	Not disclosed to AFSL and BSE	-
Shri Milan Ramniklal Parekh	23,34,256	26.50	26,01,856*	26.07	2,67,600	-0.43				
Ms Nayana M Parekh	43,600	0.50	43,600	0.44	0	-0.06	NA			
Total Promoter & Promoter – group holding	42,44,345	48.18	46,84,345	46.93	4,40,000	-1.25	-			

Source: www.bseindia.com; *Pursuant to allotment of equity shares on preferential basis to promoters.

iv. Change in quarter ended March, 2012:

Table 4

Name of Promoter	Q.E. Dec 2011		Q.E Mar 2012		Change		Date of Transaction	Disclosures made under		Delay, if any
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding		Reg.	Date of reporting	
Shri Bakul Ramniklal Parekh	20,38,889	20.43	20,38,889	20.27	0	-0.16	NA			-
Shri Milan Ramniklal Parekh	26,01,856	26.07	26,79,056*	26.64	77,200	0.57	30/01/2012	13(4), 13(4A) r/w 13(5) of PIT Reg., 1992	Not disclosed to AFSL and BSE	
Ms Nayana M Parekh	43,600	0.44	43,600	0.43	0	-0.01	NA			
Total Promoter & Promoter – group holding	46,84,345	46.93	47,61,545	47.34	77,200	0.41	-			

Source: www.bseindia.com; *Pursuant to conversion of convertible warrants issued to promoter.

v. Change in quarter ended December 2012:

Table 5

Name of Promoter	Q.E. Sept 2012		Q.E Dec 2012		Change		Date of Transaction	Disclosures made under		Dela y, if any
	No. of shares	% share holding	No. of shares	% share holding	No. of shares	% share holding		Reg.	Date of reporting	
Shri Bakul Ramniklal Parekh	20,38,889	20.27	20,38,889	16.31	0	-3.96	04/12/2012	13(3), 13(4), 13(4A) r/w 13(5) of PIT Reg., 1992	Not disclosed to AFSL and BSE	-
Shri Milan Ramniklal Parekh	26,79,056	26.64	26,79,056	21.42	0	-5.22				
Ms Nayana M Parekh	43,600	0.43	43,600	0.35	0	-0.08	NA			
Kedia Consultants Pvt Ltd	4,99,667	4.97	4,99,667	4.00	0	-0.97				
Shri Raj Kumar Kedia	1,90,696	1.90	1,90,696	1.53	0	-0.37				
Esha Securities Ltd	91,316	0.91	91,316	0.73	0	-0.18				
Ms Esha Kedia*	54,224	0.54	1,44,224	1.15	90,000	0.61	04/12/2012	13(4), 13(4A) r/w 13(5) of PIT Reg., 1992	22/01/2013	Yes
Raj Kumar Kedia HUF	53,175	0.53	53,175	0.43	0	-0.10	NA			
Total Promoter & Promoter – group holding	56,50,623	56.18	57,40,623	45.91	90,000	-10.27	-			

Source: www.bseindia.com; *Pursuant to allotment of equity shares on preferential basis to promoter.

c. Vide e-mail dated August 08, 2018, BSE shared the details of the disclosures received during the investigation period under PIT Regulations and SAST Regulations from both the Noticees. It was observed that both the Noticees had not made disclosures to BSE under PIT Regulations and SAST Regulations during the investigation period with respect to aforesaid change in their shareholdings.

d. Vide letter dated August 20, 2018, the Company *inter alia* stated that, it had not received any disclosure under the PIT Regulations for change in shareholding during investigation period from any of the Noticees. However, it had received annual disclosures under regulation 8 of SAST Regulations for year ending on March 31, 2010 and March 31, 2011; under regulation 30(1) and

30(2) of SAST Regulations, 2011 for year ending on March 31, 2012; and under regulation 30(3) of SAST Regulations, 2011 for year ending on March 31, 2013, March 31, 2014 and March 31, 2015, respectively.

3. In view of above, SEBI noted that –

   a. Noticee No. 1 had failed to make disclosures to the Company and BSE under regulations 13(3), 13(4), 13(4A) read with 13(5) of PIT Regulations for transactions dated March 25, 2009, April 11, 2009, October 13, 2010 and December 04, 2012 and under regulations 7(1A) read with 7(2) of SAST Regulations for transactions dated April 11, 2009.

   b. Noticee No. 2 had failed to make disclosures to the Company and BSE under regulations 13(3), 13(4), 13(4A) read with 13(5) of PIT Regulations for transactions dated October 13, 2010, January 30, 2012 and December 04, 2012.

4. The provisions of regulation 13(3), 13(4), 13(4A) read with 13(5) of the PIT Regulations and regulation 7(1A) read with 7(2) of the SAST Regulations charged in this case read as under:-

PIT Regulations, 1992

Continual Disclosure

13(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.*

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

(4A) *Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such persons 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.*

SAST Regulations, 1997

Acquisition of 5 per cent and more shares or voting rights of a company.

7(1A) *Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

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

(2) *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—*

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

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

5. The competent authority in SEBI *prima facie* felt satisfied that there are sufficient grounds to inquire and adjudicate the alleged violations of the provision of the PIT Regulations and SAST Regulations by the Noticees as described hereinabove. Vide a *communication - order* dated February 15, 2019, undersigned was advised to inquire and adjudge under Rule 5 of the SEBI (Procedure for Holding Inquiry and imposing penalties by Adjudicating Officer) Rules, 1995 (Adjudication Rules) and section 15A (b) of the SEBI Act, the aforesaid alleged violations by the Noticees.

6. Accordingly, in terms of Rule 4(1) of the Adjudication Rules read with section 15I of the SEBI Act and terms of reference as advised in above communication- order dated February 15, 2019, the notice to show cause no. EAD/SS/AKS/6812/1-2/2019 dated March 14, 2019 ('the SCN') was issued to the Noticees, calling upon them to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A (b) of the SEBI Act for the aforesaid alleged violations.

7. After seeking further time, the Noticees, vide their respective letters dated April 05, 2019, filed their replies to the SCN. They also availed opportunity of hearing granted to them in terms of Rule 4 (3) of the Adjudicating Rules on April 12, 2019, when Mr. Anil Shah, Advocate, Mr. Siddheshwar Thorat, Company Secretary and Noticee No. 2 appeared before me and made submissions on the lines of the Noticees replies dated April 05, 2019. The replies/submissions of the Noticees are *inter alia* as following:

A. <u>Specific Submissions by Noticee No. 1</u>

a. It is evident from the findings of investigation that the Company had received his disclosures under regulation 8 of the SAST Regulations being his annual disclosures for the relevant year under consideration i.e. March 31, 2010. He further submitted that the said disclosure has also been filed with the stock exchange on July 09, 2010.

b. He was not aware nor advised of the requirement of making disclosures under SAST Regulations for shares allotted to him on conversion of convertible warrants and on allotment of shares on preferential basis. He was under *bona fide* belief that only those acquisition of shares need to be disclosed which were acquired from the market and the shares which were allotted to him on conversion of convertible warrants and on allotment of shares on preferential basis were not required to be disclosed under the SAST Regulations.

B. Common submissions of the Noticees:- Apart from the above, the Noticees have made common / identical submissions which are *inter alia* as following:-

a. There was an inadvertent lapse in interpreting the provisions of the SAST/PIT Regulations in terms of requirements of making disclosures for shares allotted to them on conversion of convertible warrants and on allotment of shares on preferential basis. They wrongly interpreted the disclosure requirements under the SAST Regulation and the PIT Regulations and that is apparent from the annual filings made by them to the Company under regulation 8 of the SAST Regulations for the year under consideration. They were under *bona fide* belief that only those acquisition of shares need to be disclosed which were acquired from the market and the shares which were allotted to them on conversion of convertible warrants and on allotment of shares on preferential basis were not required to be disclosed under the SAST/ PIT Regulations.

b. Immediately, on receipt of the SCN, they had filed disclosures on March 28, 2019. At no point in time was there any intent to defy the law and that no sooner they were made aware of the violations, they had made all the relevant disclosures. Also, there was no intention to suppress any material information from the public domain.

c. The lapse on their part is inadvertent and technical. Noticees have relied upon the judgment of Hon'ble Bombay High Court in the matter of *SEBI vs. Cabot International Capital Corporation, 2004*, wherein it was held that:

"25(G). Though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc.

31. Now, the question, of the penalty, by the Adjudicating Authority, in the facts and circumstances of the case, was warranted or not. We find that the allotment in question was undoubtedly covered under the exemption provided in regulation 3(1). There could not have been insistence by the Appellants-SEBI to comply with the requirements of regulation 3(4). It is also clear that when an acquisition is covered under regulation 3 the acquirer is required to report to the Board under the regulation 3(4) within the specified time, as referred above. In view of this undisputed position, merely because there was no Report filed, that itself cannot be read as serious defect or non-compliances of the said provisions. The Appellate Authority, after considering the material on record, including the events, referred in the pleadings, found that the respondents-company had no intention to suppress any material information from the appellants or the shareholders."

d. The Noticees have not taken any undue advantage by their act of omission to file the required disclosures. Further, there is no allegation of any disproportionate gain or unfair advantage attributed to them. Since that factum is deemed settled, as a corollary, the question of loss caused to an investor or group of investors as a result of the lapse in filing disclosures does not arise. There was no intention to suppress any material information from the shareholders, investors or the public and the alleged lapse was totally inadvertent and non-repetitive in nature. Further, there was a genuine effort to disclose as evident from the fact that they had filed annual disclosures under regulation 8 of the SAST Regulations for the March 31, 2010 to March 31, 2015, as admitted in the SCN.

e. The default was a venial technical lapse and there was no intent to not file the required disclosures by them. Accordingly, they requested that no adverse inference may be drawn against them and the said technical lapse be viewed leniently in the matter.

8. I have considered the allegation levelled in the terms of reference, reply / submissions of the Noticees and the relevant material brought on record. In this case, the change in shareholding of the Noticees was pursuant to acquisition of additional shares - (a) on conversion of convertible warrants on March 25, 2009, April 11, 2009 and January 30, 2012 and (b) allotment of equity shares on preferential basis on October 13, 2010; and reduction in shareholding of the Noticees on preferential allotment of shares by the Company on December 04, 2012 to other entities. The transactions that are basis of allegations and consequential change in their shareholding as alleged in the SCN are admitted by the Noticees. The Noticees have, however, claimed that they were under *bona fide* belief that only the acquisition of shares by way of transaction on market need to be disclosed under the PIT Regulations and the SAST Regulations and that they have subsequently made disclosures in terms of the Regulations on March 28, 2019 and hence, the default is technical and venial.

9. It is noted that :-

a. As per the regulation 13(3) of the PIT Regulations, the compliance obligation of a person holding 5% shares or voting rights in a listed company, to make disclosure to the company triggers when-

i. there is a change in the total number of shares or voting rights held and change in shareholding or voting rights of such persons from the last disclosure made under sub regulation (1) or under this sub-regulation; and

ii. the change exceeds 2% of total shareholding or voting rights, even if such change results in shareholding falling below 5%.

b. Under regulations 13(4) and (4A) of the PIT Regulations, the compliance obligation of director / promoter of a listed company to make disclosure to the company and to the stock exchange triggers when –

i. there is a change in the total number of shares or voting rights held and change in shareholding or voting rights of such persons from the last disclosure made under Listing Agreement or under sub-regulation (2) or (2A) or under this sub-regulation; and

ii. the change exceeds ₹5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

c. In terms of regulation 7(1A) of the SAST Regulations, the compliance obligation of an acquirer to make disclosure to the company triggers when –

i. he acquires shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11; and

ii. the purchase or sale aggregates to two per cent or more of the share capital of the target company.

10. From the above provisions of PIT Regulations and SAST Regulations it can been seen that the requirements provided therein are very clear as to when the disclosure obligations of the persons acquiring or selling/disposing shares in a company are triggered. The obligation under the aforesaid provisions of PIT Regulations and SAST Regulations are not limited to acquisition of shares on market and the mode of acquisition and disposal is not a factor for determining the disclosure obligations under the aforesaid provisions of the PIT Regulations and the SAST Regulations. It is settled position that ignorance of law is no excuse. Further, considering the clear language of aforesaid provisions of PIT Regulations and SAST Regulations, the default is not a *bona fide* error of understanding or an erroneous interpretation in the facts and circumstances of this case. It is also relevant to mention that SEBI, during investigations, observed that in respect of the aforesaid conversion of warrants dated March 25, 2009, April 11, 2009, and January 30, 2012 and preferential allotments dated October 13, 2010 and December 04, 2012, the acquirers/ allottees, including the Noticees, did not have sufficient funds in their bank accounts for acquiring/subscribing the equity shares of the Company. Firstly, the Company had transferred the funds in their respective accounts directly/ through their conduits, and later on, the Noticees had paid the amount back to the

Company in form of subscription money for equity shares of the Company allotted to them in aforesaid preferential allotment/ conversion of warrants. This observation is the basis of charge on the Noticees in a separate proceedings alleging their involvement in fraudulent, manipulative and unfair devices and the instant proceedings are limited with respect to the non-compliance of disclosure obligations. However, such observations corroborates the findings that the default in this case was not as matter of ignorance or *bona fide* understanding of provisions of regulations as claimed.

11. The Noticees have further submitted that the change in their shareholding had been disclosed to the Company and BSE in their annual disclosures made under SAST Regulations. It is noted that such annual disclosures were made by Noticee No.1 as shown in the following table :

FY Ending on	**Regulations under which disclosure made**	**Date of Transactions**	**Date of Disclosure to Company**	**Date of Disclosure to BSE**	**No. of Days/Month/Year delay**
March 31, 2010	regulation 8(3) of the SAST Regulations	25.03.2009	31.03.2010	09.07.2010	1 yr. 4 days
		11.04.2009			11 months 15 days
March 31, 2011		13.10.2010	15.04.2011	15.04.2011	6 months
March 31, 2012	regulation 30(1) and 30(2) of the SAST Regulations, 2011	30.01.2012	11.04.2012	11.04.2012	2 months 10 days
March 31, 2013		04.12.2012	01.04.2013	01.04.2013	N.A.

12. It is noted that under regulations 13(3) of the PIT Regulations the disclosure of the number of shares or voting rights held and change in shareholding or voting rights is required to be made in Form C. Form C, as specified under regulation 13(3) of the PIT Regulations, contains specific details about transactions of the concerned person such as: *Name, PAN No. & Address of Shareholders, Shareholding prior to acquisition/ sale, No. of shares/voting rights acquired/ sold, Receipt of allotment advice/ acquisition of shares/ sale of shares specify, date of intimation to company, mode of acquisition (market purchase/ public/ rights/ preferential offer etc./ sale), No. & % of shares/ voting rights post acquisitions or sale, Trading Member through whom the trade was executed with SEBI registration no. of the TM, Exchange on which the trade was executed, Buy quantity, Buy Value, Sell quantity, sell value*. Further, under regulation 13(4) and 13(4A) of the PIT Regulations it is clearly brought out that "*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"*. Form D, as specified under regulation 13(4) and 13(4A) of the PIT Regulations, contains specific details about transactions of promoters of the company such as: *Name, PAN No. & Address of Promoter, No. of shares/voting rights held by the Promoter, Date of receipt of allotment advice/ acquisition/ sale of shares/ voting rights, date of intimation to the company, mode of acquisition (market purchase/ public/ rights/ preferential offer etc./ sale), No. & % of shares/ voting rights post acquisitions or sale, Trading Member through whom the trade was executed with SEBI registration no. of the TM, Exchange on which the trade was executed, Buy quantity, Buy Value, Sell quantity, sell value*. Similarly, under regulation 7(1A) the concerned person is required to disclose the purchase or sale aggregating two per cent or more of the share capital of the company to the company, and the stock exchanges where shares of the company are listed. In this case, the annual disclosures made by the Company under regulation 8 of the SAST Regulations of 1997 or regulation

30(1) and 30(2) of the SAST Regulations of 2011, at the end of the financial year contain only the aggregate of the promoters' holding as on March 31 of that particular financial year.

13. It is noted that regulation 13(5) of the PIT Regulations and regulation 7(2) of the SAST Regulations provide timeline of two days from the date of acquisition/ disposal of shares. The annual disclosures as claimed by the Noticees do not adhere to such timelines as such disclosures, apart from being deficient with regard to the particulars as required under aforesaid Form C , Form D and regulation 7(1A), was made after elapse of substantial time after the date of respective transactions. In the matter of *Premchand Shah and Others V. SEBI* Hon'ble SAT vide its order dated February 21, 2011, held that -"*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner...Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments*." Therefore, the annual disclosures as claimed by the Noticees cannot be taken as substitute for compliance of obligations of provisions of PIT Regulations and SAST Regulations charged in this case. The disclosures, in quarterly or annual reporting or in compliance of the listing agreement, of information materially similar to those required under the Regulations could though be a mitigating factor in any peculiar case, if it is shown that such disclosures ensured transparency in transactions and dissemination of material information in reasonable time frame.

14. It is pertinent to mention that additional acquisitions of shares in the Company by way of preferential allotment were also required to be made as per then applicable SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 ("ICDR Regulations") and the listing agreement with the stock exchange. In terms of regulation 73(1) of the ICDR Regulations, in the explanatory statement to the notice for the general meeting proposed for passing special resolution under section 81(1A) of then applicable Companies Act, 1956, the disclosures ought to be made, *inter alia*, about-

    a. the objects of the preferential issue;

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

    c. the shareholding pattern of the Company before and after the preferential allotment;

    d. the identity of the proposed allottees, the percentage of post preferential issue capital that may be held by them and change in control, if any, in the issuer consequent to the preferential issue; etc.

15. Similarly, the board resolutions, shareholders resolution and aforesaid notice of AGM, etc. with regard to prudential allotments/ conversion of warrants also need to be filed with the stock exchange under the then prevailing listing agreement for dissemination to public. The Noticee being promoters and Joint Managing Director and Chairman and Managing Director of the Company, respectively were in charge of affairs of the Company during the relevant period. As such, they were responsible

for the obligations of the Company as well their obligations. Holding such positions in the Company and acquiring additional shares of the Company repeatedly by way of preferential allotment and conversion warrants in clandestine manner as found in this case, they cannot feign ignorance as sought to be done by them. From the BSE website it is noted that no disclosures are available on BSE website/ in public domain with regard to transaction dated March 25, 2009, April 11, 2009 and October 13, 2010. In the facts and circumstances of this case, I am of the view that the Noticees deliberately concealed the important information about the change in their shareholdings pursuant to acquisition of additional shares on conversion of warrants and by way of preferential allotment of shares by the Company and the default was not a *bona fide* mistake. In my view, the disclosure made by them on March 28, 2019, only after receipt of the SCN in these proceedings after more than 7-10 years, is an afterthought and does not serve any purpose.

16. Timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Such disclosures also bring about transparency and enable the investors in the scrip to take an informed investment or disinvestment decision. Hon'ble SAT in the matter of *Coimbatore Flavors & Fragrances Ltd. vs SEBI (Appeal No. 209 of 2014 order dated August 11, 2014),* has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Further in the matter of *Appeal No. 66 of 2003 -Milan Mahendra Securities Pvt. Ltd. vs. SEBI*–the Hon'ble SAT, vide its order dated April 15, 2005 held that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market."* Timeliness is the essence of disclosure under the PIT Regulations and SAST Regulations and delayed disclosure, particularly where the delay is huge and transactions are undertaken in clandestine manner as in the present case would not serve the purpose for which the obligation is cast in the Regulations. In this case, the Noticees being promoters of the Company had acquired additional shares in a clandestine manner which had defeated the purpose of disclosure requirements under the aforesaid provisions of the PIT Regulations and SAST Regulations.

17. While determining the merits of the charges it is noted that the shares of the Company had not been allotted to the Noticees in the preferential allotment of equity shares on December 04, 2012. The change in shareholdings of the Noticees on December 04, 2012 was due to dilution of their shareholdings pursuant to preferential allotment of 24,48,300 equity shares by the Company to other entities. As per regulation 13(5) of the PIT Regulations, 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. It is admitted positions that the consequential change in shareholding of the Noticees in the preferential allotment dated December 04, 2012 was not on account of any active acquisition/transfer of shares rather it was a passive change in percentage of shares/ voting rights of the Noticees. Therefore, with regard

to preferential allotment dated December 04, 2012, the Noticees had not acquired the shares of the Company and thus, they were not under the obligations to make disclosure to the Company and Exchange with respect to change of their shareholdings in the Company.

18. In view of the allegations as charged in this case, the admissions of the Noticees and above findings, I conclude that when the Noticee No. 1 acquired 60,000 shares of the Company on March 25, 2009, such acquisition breached the threshold limit of 25,000 shares prescribed in regulation 13(4) of the PIT Regulations. When he again acquire 3,60,000 (3.35%) shares of the Company on April 11, 2009, his acquisition not only breached the threshold limit of 25,000 shares under regulation 13(4) of the PIT Regulations but also breached the threshold limit of 2% change in shareholding under regulation 13(3) of the PIT Regulations and under regulation 7(1A) of the SAST Regulations. Further, when Noticee No. 1 acquired 1,72,400 shares of the Company on October 13, 2010, this acquisition also breached the threshold limit of 25,000 shares under regulation 13(4) of the PIT Regulations. Similarly, when Noticee No. 2 acquired 2,67,600 shares of the Company on October 13, 2010, he also breached the threshold limit of 25,000 shares under regulation 13(4) of the PIT Regulations. Noticee No. 2 again acquired 77,200 shares of the Company on January 30, 2012 and breached the threshold limit of 25,000 shares under regulations 13(4) and 13(4A) of the PIT Regulations. I, therefore, find that the Notice shave failed to make disclosures in terms of the relevant regulation as following:

Transactions	Noticee	Violations
Conversion of Warrants dated March 25, 2009	Noticee No. 1	Regulation 13(4) read with 13(5) of the PIT Regulations.
Conversion of Warrants dated April 11, 2009	Noticee No. 1	Regulation 13(3), 13(4) read with 13(5) of the PIT Regulations and regulation 7(1A) read with 7(2) of the SAST Regulations.
Preferential Allotment dated October 13, 2010	Noticee No. 1 and 2	Regulation 13(4) read with 13(5) of the PIT Regulations.
Conversion of Warrants dated January 30, 2012	Noticee No. 2	Regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations.

19. In view of the above, I hold that the Noticees are liable for penalty under Section 15A (b) of the SEBI Act which reads as under:-

SEBI Act.

Penalties and Adjudication

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.

20. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the Act, 1992 which reads as follows:-

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."

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

21. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. In this regard, in the facts and circumstances of this case, I deem it worth relying the observations of Hon'ble SAT, vide its order dated June 09, 2014 in the matter of *Ashok Jain v/ SEBI (Appeal No. 79 of 2014)* wherein it was held that - "…….*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".* In this case, the Noticees being the director and promoter of the company have acquired shares of the company *via* preferential allotment and multiple conversion of warrants, involving substantial number of shares on more than one occasions. In my view, the repeated defaults in compliance of disclosure obligations involving acquisition of substantial number of shares by Joint Managing Director and Chairman and Managing Director of the Company as found in this case cannot be considered as technical and venial as sought to be contended by the Noticee. I also note that in the facts and circumstances of this case, lack of relevant information in public domain with regard to change in shareholding of the Noticees had created information asymmetry, at relevant times and the failure to make disclosure as found in this case had defeated the purpose of the provisions of the Regulations.

22. For determining the penalty obligations for violation of specific regulations as charged in this case it is also relevant to consider that the provisions of regulation 13(4) and 13(4A) of the PIT Regulations are not different with regard to obligation of a person who is promoter as well as the director of the respective company and one is corollary to each other. The Noticees are the promoters and directors of the Company. Thus, their obligations under regulation 13(4) and 13(4A) of the PIT Regulations overlap. Similarly, the acquisition by Noticee No. 1 due to conversion of convertible warrants on April 11, 2009 attracts his compliance obligations under regulation 13(3) of the PIT Regulations and regulation 7(1A) of the SAST Regulations both. The provisions of regulation 13(3) of the PIT Regulations and regulation 7(1A) of the SAST Regulations are also not different, as both provides for acquisition/ disposal of 2% or more shareholdings or voting rights in the Company, for a person

who holds more than 5% of shareholdings or voting rights in the Company. It is also relevant to note that in this case, the acquisition of the Noticee No. 1 on April 11, 2009, which triggered overlapping obligations under regulation 13(3) of the PIT Regulations as well as under regulation 7(1A) of the SAST Regulations was the same and both provide same requirements with regard to overall threshold, timelines and the entity to whom the disclosures are to be made. With regard to such similar violations arising out of same transaction, the Hon'ble SAT judgment dated September 04, 2013 in the matter of *Vitro Commodities Private Limited Vs. SEBI* quoted by the Noticee can be relied upon. As per *ratio decidendi* in the aforesaid judgment, I am of the view that in the facts of this case, the violation of the provisions of regulation 13(3) read with regulation 13(5) of the PIT Regulations and regulation 7(1A) read with 7(2) of the SAST Regulations are not substantially different and can be considered as a single violation by the Noticee for the purpose of adjudication in the matter.

23. I am of the considered opinion that the deliberate defiance of the mandatory obligations and hiding the crucial information of transactions of the persons - who being in charge of affairs of the Company hold fiduciary duties – from investors, regulators *viz.* Stock Exchange, as found in this case should be dealt with sternly and the penalty in such cases should serve as effective deterrence. However, while so holding I am also mindful of the fact that the instant proceedings has been initiated in 2019 much after the transaction in questions relating to the period March 01, 2009 to July 22, 2015. Further, from the BSE website it is noted that with regard to the conversion of warrants on January 30, 2012 the Company had made disclosure on BSE on the same date about the decisions of its board of directors to allot 77,200 equity shares of ₹10/- each at a premium of ₹19/- per share, pursuant to the conversion of 77,200 convertible warrants issued to the promoters. Thus, certain information about such conversion of warrants was in public domain on January 30, 2012 itself. Further, where the corporate actions are supposedly taken by the company itself while making the allotment of the additional shares to promoters by way of preferential allotments and conversion of warrants, the requisite information is available with the company. One of the purposes of the disclosure to the company in case of acquisitions of its shares by any person is to enable the Company and its management to adopt defensive mechanism or guard against possible raid. Thus, the default in making the requisite disclosure to the Company by the Noticees in respect of their acquisitions of shares pursuant to such corporate action is technical and venial and does not deserve any penalty.

24. Considering all the facts and circumstances of the case including the aforesaid mitigating factors and exercising the powers conferred upon me under section 15I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose following penalty on the Noticees *viz.* Shri Bakul Ramniklal Parekh and Shri Milan Ramniklal Parekh under section 15A (b) of SEBI Act. In my view, the said penalty is commensurate with the violations committed by these Noticees in this case:

Transactions	Noticee	Violations	Amount of Penalty
Conversion of Warrants dated March 25, 2009	Shri Bakul Ramniklal Parekh (Noticee No. 1)	Regulation 13(4) read with 13(5) of the PIT Regulations.	₹2,00,000/- (Rupees Two Lakh Only)

Conversion of Warrants dated April 11, 2009	Shri Bakul Ramniklal Parekh (Noticee No. 1)	Regulation 13(4) read with 13(5) of the PIT Regulations.	₹3,00,000/- (Rupees Three Lakh Only)
Preferential Allotment dated October 13, 2010	Shri Bakul Ramniklal Parekh (Noticee No. 1)	Regulation 13(4) read with 13(5) of the PIT Regulations.	₹5,00,000/- (Rupees Five Lakh Only)
	Shri Milan Ramniklal Parekh (Noticee No. 2)		₹2,00,000/- (Rupees Two Lakh Only)
Conversion of Warrants dated January 30, 2012	Shri Milan Ramniklal Parekh (Noticee No. 2)	Regulation 13(4), 13(4A) read with 13(5) of the PIT Regulations.	₹2,00,000/- (Rupees Two Lakh Only)

25. The Noticees shall remit / pay the said amount of penalty within 45 days of 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 Bank Account the details of which are 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

26. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be sent to "*The Division Chief, EFD-DRA-I, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051*" and also to e-mail id:- tad@sebi.gov.in

1	Case Name	
2	Name of the 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)	

27. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: May 15, 2019
Place: Mumbai

Santosh Shukla
Adjudicating Officer