BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: SBM-ASR/AO/EAD-3/ 13-15/ 2015)

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

In respect of:

Anushikha Investments Private Limited
PAN: AACCA5568N

Swaran Financial Private Limited
PAN: AAECS4024R

York Financial Services Private Limited
PAN: AAACY1185F

In the matter of:

Shree Om Trades Limited
(Now known as Emergent Global Edu and Services Ltd)

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI")** while examining the activities in the scrip of Shree Om Trades Limited (hereinafter referred to as **"SOTL/ Target Company")** for the period January 01, 2013 to March 31, 2013, observed that there was an increase in the shareholding of Anushikha Investments Private Limited and Swaran Financial Private Limited and decrease in the shareholding of York Financial Services Private Limited in the scrip of the Target Company during the above referred period. The change in the shareholding of Anushikha Investments Private Limited, Swaran Financial Private Limited and York Financial Services Private Limited (hereinafter referred to individually as "**Anushikha", "Swaran"** and **"York"** and collectively referred to as '**Noticees'** in the Order) required appropriate disclosures to be made by the Noticees under the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST**

Regulations") and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **"PIT Regulations"**). However, it was observed that the Noticees had failed to make the necessary disclosures in terms of the aforementioned Regulations. The Target Company, which is presently known as Emergent Global Edu and Services Limited, is listed on the Bombay Stock Exchange (hereinafter referred to as **BSE**). BSE vide their letter dated June 12, 2013 informed SEBI that the Noticees had not made the necessary disclosures under the relevant provisions of SAST Regulations and PIT Regulations, as aforesaid.

2. As per the Annual Report of the Target Company for the Financial Year 2012-13, the total paid up share capital of the Target Company was Rs 4,56,90,000/- represented by 45,69,000 shares of Rs 10/ each. As per the information on the shareholding pattern of the Target Company available on the BSE website during the relevant period, the Noticees were appearing in the list of public shareholders holding more than 1 % stake in the Target Company.

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI vide Order dated September 24, 2013 appointed Shri D. Ravikumar as the Adjudicating Officer 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 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 violation of the provisions of Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(1) of the PIT Regulations alleged to have been committed by Anushikha and Swaran and the violation of the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations alleged to have been committed by York. Subsequently, upon the transfer of Shri D. Ravikumar, I have been appointed as Adjudicating Officer in the matter vide an order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice dated June 30, 2014 was issued to the Noticees separately in the said matter under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees and penalty, if any, be not imposed on the Noticees

under the provisions of Section 15 A (b) of the SEBI Act for the alleged violations as specified in the respective Show Cause Notice (hereinafter referred to as "**SCN"**) issued to the Noticees. It was alleged in the SCN issued to Anushikha and Swaran that they have violated the provisions of Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations and Regulation 13 (1) of the PIT Regulations. In the SCN issued to York, it was alleged that York has violated the provisions of Regulation 29 (2) read with Regulation 29 (3) of the SAST Regulations and Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations. Consequently, the Noticees were liable for penalty under the provisions of Section 15 A (b) of the SEBI Act for the aforementioned violations allegedly committed by them.

a) It was observed that Anushikha who was holding 2 lakh shares of the Target Company (representing 4.38% of the total paid up capital of the target company) had acquired 42,425 shares of the target company on March 28, 2013, which resulted in the shareholding of Anushikha increasing from 4.38 % to 5.31%. The shareholding of Anushikha in the target company increased to 5.31% as on March 28, 2013 i.e. more than the threshold limit of 5 % stipulated in the SAST Regulations and PIT Regulations for making the necessary disclosures prescribed under these Regulations. It was alleged in the SCN that Anushikha had failed to make the necessary disclosures to the Target Company and to the Stock Exchange within the prescribed time period under the provisions of Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations, 2011 and also failed to make the disclosures to the Target Company under the provisions of Regulation 13(1) of the PIT Regulations. Thus, it was alleged in the SCN that Anushikha had failed to comply with the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations along with Regulation 13(1) of the PIT Regulations.

b) Similarly, Swaran who was holding 1,80,050 shares of the Target Company (representing 3.94% of the total paid up capital of the Target Company) had acquired 1 lakh shares of the target company on March 26, 2013, which resulted in the shareholding of Swaran increasing from 3.94 % to 6.13%. The shareholding of Swaran in the target company increased to 6.13% as on March 26, 2013 i.e. more than the threshold limit of 5% for making the necessary disclosures under the provisions of SAST Regulations and PIT Regulations. It was alleged in the SCN that Swaran had failed to make the relevant disclosures required to be made to the Target Company and to the Stock Exchange under the provisions of Regulation 29(1) read with Regulation 29 (3) of the SAST Regulations and also failed to make the disclosures to the Target Company under the provisions of Regulation 13 (1)

of the PIT Regulations. Thus, it was alleged in the SCN that Swaran had failed to comply with the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations along with Regulation 13(1) of the PIT Regulations.

c) In the SCN issued to York, it was mentioned that York was already holding more than 5% stake in the Target Company as on March 21, 2013 and had sold the shares of the target company on March 22, 2013, March 25, 2013 and on March 26, 2013, which also resulted in change in the shareholding of York in the target company. It was mentioned that the shares sold by York on the transaction dates mentioned above had crossed the threshold limit of 2 % i.e. the sale of shares by York had resulted in change in shareholding exceeding 2% of the total shareholding or voting rights in the target company for making the necessary disclosures under the relevant provisions of SAST Regulations and PIT Regulations. In terms of the provisions of Regulation 29 (2) read with Regulation 29 (3) of the SAST Regulations and Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations, York was required to make timely disclosures (i.e. within two working days of the change in shareholding) to the Stock Exchange and to the Target Company, as applicable.

It was mentioned in the SCN that York who was holding 4,92,500 shares of the Target Company as on March 21, 2013 (representing 10.78% of the total paid up capital of the Target Company) had sold 2,00,000 shares on March 22, 2013 as a result of which the shareholding of York in the target company had decreased from 10.78 % to 6.40%. On March 25, 2013, York sold 1,50,000 shares as a result of which the shareholding of York decreased from 6.40% to 3.12% and again on March 26, 2013, it was further observed that York had sold 1,00,075 shares of the Target company as a result of which the shareholding of York decreased from 3.12% to 0.93%. The details of the transactions of York in the target company are mentioned as under:

Trade date	**Net Sale Qty**	**Post holding**	**As % of paid up capital**
March 21, 2013	30,000	4,92,500	10.78
March 22, 2013	2,00,000	2,92,500	6.40
March 25, 2013	1,50,000	1,42,500	3.12
March 26, 2013	1,00,075	42,425	0.93
March 28, 2013	42,425	0	0.00

d) It was alleged in the SCN that York had failed to make the necessary disclosures regarding change in shareholding on the three transaction dates mentioned above i.e. on March 22, 2013, March 25, 2013 and on March 26, 2013 within the prescribed time period (i.e. within two working days of the

above mentioned transaction dates) to the Target Company and to the Stock Exchange under the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and also failed to make the necessary disclosures to the Target Company under the provisions of Regulation 13(3) read with Regulation 13(5) of the PIT Regulations. Thus, it was alleged in the SCN that York had failed to comply with the provisions of Regulation 29 (2) read with Regulation 29 (3) of the SAST Regulations and also Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations.

5. The three SCNs dated June 30, 2014 were sent to the common address of the Noticees located at No. 24 & 26, Hemant Basu, Sarani Mangalam, 5th Floor, Room No 507, Kolkata 700001 by Registered Post with Acknowledgement Due. The SCNs were also served on the Noticees and the proof of service of the SCN to the Noticees is available on record.

6. In response to the SCN, York vide letter dated August 14, 2014 admitted to the delay in making the necessary disclosures in terms of the PIT Regulations and SAST Regulations and also requested for an opportunity of personal hearing in the matter as per the convenience of the Adjudicating Officer. However, both Anushikha and Swaran failed to submit their reply to the SCN till date. Accordingly, an opportunity of personal hearing was granted to York on September 10, 2014 at SEBI, Mumbai vide letter dated August 26, 2014. As per the postal confirmation, the above said letter was also served on York on September 3, 2014. However, York failed to respond to the said letter and also failed to appear for the hearing on the stipulated date. In view of the failure on the part of both Anushikha and Swaran to submit their reply to the SCN and also the failure of York to appear for the personal hearing on September 10, 2014, as aforesaid, in the interest of natural justice, an opportunity of personal hearing was granted to the Noticees i.e. Anushikha, Swaran and York on October 13, 2015 at SEBI, Southern Regional Office, Chennai vide letter dated September 29, 2015. Vide the letter dated September 29, 2015, Anushikha and Swaran were specifically informed that they have not submitted their reply to the SCN dated June 30, 2014 issued to them and were therefore advised to submit the same before the hearing date.

7. Vide separate letters dated October 08, 2015; the Noticees submitted their reply to the hearing notice issued to them. The Noticees in their reply requested for adjournment of the hearing by 4 weeks and also requested for the personal hearing to be provided to them at Kolkata. The Noticees also

mentioned through their letter dated October 8, 2015 that they are finalizing their reply to the SCN.

8. Thereafter, another opportunity of hearing was provided to the Noticees to appear on November 20. 2015 at SEBI, Mumbai vide letter dated November 2, 2015. In order to ensure that the Noticees are provided with adequate time to enable them to make the necessary arrangements for the personal hearing, a scanned copy of the hearing notice dated November 2, 2015 was also sent through email to the respective email IDs of the Noticees on November 5, 2015. The hearing notices sent through email were also properly served on the Noticees. In response to the hearing notice, vide separate letters dated November 17, 2015, the Noticees submitted the following:

    a) The Noticees mentioned that they have no establishment at Mumbai and therefore, it was not possible for them to appear for the personal hearing on such a short notice at Mumbai since it needs time to make travel arrangements.
    b) Noticees requested for 14 days time between delivery of Notice and date of hearing to make prior arrangements at their end.
    c) Noticees also requested to preferably keep the hearing at Kolkata office of SEBI.

9. In response to the SCN, the relevant extracts of the reply submitted by York vide letter dated August 14, 2014 is mentioned below:

    a) It was submitted by York that the requisite disclosures under the SAST Regulations and PIT Regulations to the Target Company and to the Stock Exchange in respect of the transactions done on March 22, 2013, March 25, 2013 and March 26, 2013 could not be made due to oversight and lack of knowledge of the same. York also admitted that it was a genuine mistake on the part of its management and directors.
    b) York mentioned that as soon as the default came to their knowledge, they took necessary steps to make the relevant disclosures under Regulation 29(2) read with Regulation 29(3) of SAST Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations to the Target Company and to the Stock Exchange, as applicable. In this regard, York also submitted a copy of the disclosures made on August 14, 2014 to the target company and to the BSE, in terms of the aforementioned Regulations along with their reply to the SCN.
    c) York mentioned that the delay in making the disclosures was unintentional and the lapse in making timely disclosures was without

any ill motive. York also mentioned that its management or any of its directors did not make any wrongful gain nor did any investor suffer any loss on account of the said omission. York admitted that it was an inadvertent and unintentional lapse on their part and requested that no inquiry or penalty be imposed for the lapse.

d) York also requested for an opportunity of personal hearing to be provided in the matter as per the convenience of the Adjudication Officer.

10. I observe that despite reminders issued to both Anushikha and Swaran to furnish their reply to the SCN, they have failed to submit the same till date. Further, I also observe that the Noticees have been provided with sufficient opportunity of being heard in the said proceedings, which they failed to avail and hence, I am of the view that ample opportunity, has been granted to the Noticees to meet the ends of natural justice. I am therefore, proceeding with the inquiry taking into account the material / information available on record.

CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case and the material available on record. I observe that the allegation leveled against the Noticees is that they have failed to make the necessary disclosures required to be made under the relevant provisions of SAST Regulations and PIT Regulations, as applicable.

12. The issues that arise for consideration in the present case are :

a. Whether Anushikha and Swaran have violated the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13(1) of the PIT Regulations?.
b. Whether York has violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13(3) read with Regulation 13(5) of the PIT Regulations?.
c. Does the violation, if any, attract monetary penalty under the provisions of Section 15 A (b) of the SEBI Act, 1992?
d. If so, what would be the quantum of monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?

13. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations and PIT Regulations, which reads as under:

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 acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.

(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.

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.

(2) .....

(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) .....

(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.

14. As stated above, it is on record that both Anushikha and Swaran have failed to submit their reply to the SCN despite reminders issued to them in this regard during the course of the proceedings. It is also on record that the Noticees have been provided with adequate opportunity of being heard in the said matter. I find that York was granted opportunity of personal hearing on September 10, 2014, October 13, 2015 and on November 20, 2015. Anushikha and Swaran were granted opportunity of personal hearing on October 13, 2015 and on November 20, 2015. It is noted that the hearing notices issued to the Noticees were also served on them as per the postal confirmation. In fact, in order to ensure that the Noticees are in a position to make adequate arrangements for the personal hearing, including making necessary travel arrangements etc, a scanned copy of the hearing notice dated November 2, 2015 (for the hearing fixed on November 20, 2015) was also sent by email to the respective email IDs of the Noticees on November 5, 2015. I find that despite sufficient opportunity provided to the Noticees, as aforesaid, they have failed to avail of the opportunity of personal hearing granted to them on various dates.

In response to the hearing notices, I find that the Noticees have vide their letters dated October 8, 2015 and November 17, 2015 cited flimsy reasons for their inability to attend the personal hearing. The Noticees have cited reasons such as seeking adjournment due to Puja and Dassera holidays, requesting for hearing to be conducted at Kolkata as they are not having an establishment at Mumbai etc and sought adjournment of the matter. I observe that the Noticees were adopting dilatory and delaying tactics to prolong the inquiry and the proceedings. I also observe that the allegations leveled against the Noticees have been clearly brought out in the SCNs issued to them and these allegations are adequately backed by data / information submitted by the BSE. I find that BSE had vide their letter dated June 12, 2013 informed SEBI that the Noticees have failed to make the necessary disclosures required to be made by them under the relevant provisions of SAST Regulations and PIT Regulations. While I have observed that York has admitted to the delay in making the necessary disclosures under the SAST Regulations and PIT Regulations, I also observe that both Anushikha and Swaran have not responded to the SCN issued to them till date despite reminders sent to them in this regard during the course of the proceedings.

As stated above, Anushikha and Swaran have neither responded to the SCN nor availed opportunity of personal hearing provided to them in the said matter. Although I find that York has submitted its reply to the SCN, I observe that York has not availed of the opportunity of personal hearing granted to it on September 10, 2014, October 13, 2015 and on November 20, 2015. As the Noticees have not put up any defense or challenged the SCN, it is assumed that the charges leveled against the Noticees in the SCN have been accepted by them. In this context, I would like to rely upon the observations of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Classic Credit Ltd vs SEBI (Appeal No 68 of 2003 decided on December 08, 2006) wherein it, inter alia, observed that – " …….the appellants did not file any reply to the second show-cause notice. This being so, it has to be presumed that the charges leveled against them in the show-cause notice were admitted by them".*

The Hon'ble SAT has again in the matter of Sanjay Kumar Tayal and Ors vs SEBI (Appeal No 68 of 2013 decided on February 11, 2014), inter alia, observed that – *"…… As rightly contended by Mr Rustomjee, the learned senior counsel for respondents, appellants have neither filed reply to the show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges leveled against them in the show cause notices ……"*

In view of the above, I am convinced that the Noticees have been provided with adequate opportunity to present their case in line with the requirements of principles of natural justice.

15. I observe that the requirements under both SAST Regulations, 2011 and PIT Regulations, 1992 are triggered when a minimum of 5% of the shares of a listed company are acquired by an entity. In the instant matter, I find that both Anushikha and Swaran had acquired more than 5% shares of the Target Company on March 28, 2013 and on March 26, 2013 respectively, which required them to make the necessary disclosures under the relevant provisions of SAST Regulations 2011 and PIT Regulations, 1992. Similarly, York who was already holding 10.78% stake in the Target Company as on March 21, 2013 had sold shares on various dates viz. March 22, 2013, March 25, 2013 and on March 26, 2013, which resulted in change in the shareholding of York in the target company beyond the prescribed limit of 2 % and therefore, York had to make the necessary disclosures under the relevant provisions of SAST Regulations and PIT Regulations.

Finding

The issues for consideration in the present case and the findings thereon are as follows:

(A) Whether Anushikha and Swaran have violated the provisions of Regulation 29(1) read with Regulation 29 (3) of the SAST Regulations and Regulation 13 (1) of the PIT Regulations?

16. The following table indicates the shareholding of Anushikha and Swaran in the target company, which had crossed the threshold limit of 5%.

Noticee	Trade date	Net Acquired Qty	Post holding	% holding prior to acquisition	% holding after the acquisition
Anushikha	March 28, 2013	42,425	2,42,425	4.38	5.31
Swaran	March 26, 2013	1,00,000	2,80,050	3.94	6.13

17. From the above table, it is clear that Anushikha who was already holding 4.38% stake in the Target Company had on March 28, 2013 acquired 42,425 shares thereby the total shareholding of Anushikha in the Target Company increased from 4.38% to 5.31%. Similarly, Swaran who was holding 3.94% stake in the target company had on March 26, 2013 acquired 1,00,000 shares thereby the total shareholding of Swaran in the target company increased from 3.94% to 6.13%. Since the shareholding of both Anushikha and Swaran had crossed the threshold limit of 5 % on March 28, 2013 and March 26, 2013, as aforesaid, they were under an obligation to make the necessary disclosures to BSE and to the Target Company within two working days of the respective acquisition of shares by them in terms of the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, 2011. Further, Anushikha and Swaran were also required to make the necessary disclosures in the prescribed format (Form A) to the Target Company within two working days of the above mentioned acquisition of shares, in terms of the provisions of Regulation 13(1) of the PIT Regulations. However, it is on record that no such disclosures have been made by both Anushikha and Swaran till date. BSE has also confirmed the same to SEBI that both Anushikha and Swaran have failed to make the necessary disclosures in terms of the aforementioned Regulations. Thus, I hold that Anushikha and Swaran have violated the provisions of Regulation

29(1) read with Regulation 29(3) of the SAST Regulations and Regulation 13 (1) of the PIT Regulations.

(B) Whether York has violated the provisions of Regulation 29 (2) read with Regulation 29(3) of the SAST Regulations and Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations?

18. I find that York was holding 4,92,500 shares of the target company as on March 21, 2013 (representing 10.78% of the total paid up capital of the Target Company). I observe that York had sold 2,00,000 shares on March 22, 2013, which resulted in the decrease in the shareholding of York in the target company from 10.78% to 6.40%. On March 25, 2013, York sold 1,50,000 shares, which resulted in decrease in the shareholding from 6.40% to 3.12% and on March 26, 2013, York again sold 1,00,075 shares, which resulted in the decrease in the shareholding of York from 3.12% to 0.93%. The following table brings out the instances of the sale of shares of the target company by York on various dates, which resulted in the change in shareholding of York i.e. change in shareholding exceeding more than 2% of the total share capital of the Target Company.

Trade date	Net Sale Qty	Post holding	% holding prior to transaction	% holding after the transaction	% change in share holding
March 22, 2013	2,00,000	2,92,500	10.78	6.40	4.38
March 25, 2013	1,50,000	1,42,500	6.40	3.12	3.28
March 26, 2013	1,00,075	42,425	3.12	0.93	2.19

19. As per the above table, in view of the sale of shares of the target company by York on March 22, 2013, March 25, 2013 and on March 26, 2013, there was a change in the shareholding of York, which had exceeded 2% of the total shareholding or voting rights in the target company. In terms of the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, York was under an obligation to make the necessary disclosures to the Target Company and to BSE within two working days of the above mentioned transaction dates. Similarly, in terms of the provisions of Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations, disclosures were required to be made by York to the Target Company in Form C within two working days of the above mentioned transaction dates. Admittedly, York has failed to make these disclosures within the stipulated time period. In response to the SCN, it was mentioned by York that the relevant disclosures were not made within the prescribed time period due to

oversight and lack of knowledge of the same. The fact that York had failed to make these disclosures within the prescribed time period was also confirmed by BSE in their letter dated June 12, 2013 addressed to SEBI. I find that York made the relevant disclosures in terms of the aforementioned Regulations only on August 14, 2014 i.e. after York had received the SCN from SEBI. Thus, I find that there was a delay of 322 days, 321 days and 320 days on the part of York in making the relevant disclosures under the provisions of SAST Regulations and PIT Regulations in respect of the sale of shares of the target company by York on March 22, 2013, March 25, 2013 and on March 26, 2013. In view of the above and the belated disclosures made by York, as aforesaid, I am convinced that York has violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations and Regulation 13 (3) read with Regulation 13 (5) of the PIT Regulations.

(C) Does the non-compliance, if any, attract monetary penalty under the provisions of Section 15 A (b) of the SEBI Act?

20. By not making the necessary disclosures under SAST Regulations and PIT Regulations on time, York has failed to comply with its statutory obligation. Similarly, Anushikha and Swaran have also failed to comply with the statutory requirements of law as they have not made the necessary disclosures required to be made under the relevant provisions of SAST Regulations and PIT Regulations till date. The timely disclosure is mandated under these Regulations for the benefit of the investors at large. There can be no dispute that compliance with the provisions of the Regulations is mandatory and it is the duty of SEBI to enforce compliance of these Regulations. Timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. 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 view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary".*

21. As the violation of the statutory obligation under the relevant provisions of SAST Regulations and PIT Regulations have been established against the Noticees, I hold that the Noticees 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 thereunder,-
(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.
(c)……..

(D) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?

22. 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

23. I have independently verified the transactions done in the scrip of the Target Company by the Noticees during the relevant period with the details/information submitted by BSE. I have also carefully perused the relevant documents in the said matter which is available on record. While considering the factors mentioned in Section 15 J of the SEBI Act, 1992, I note that the material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the default committed by the Noticees. However, it is important to note that true and timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so prevents the investors from taking a well-informed investment decision. In the instant matter, the details of the shareholding of the Noticees who were having substantial stake in the target company, the change in their shareholding and timely disclosure 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 in taking a balanced investment decision. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

24. In the instant case, I find that York has failed to make timely disclosures under the provisions of SAST Regulations and PIT Regulations in respect of the sale of shares of the target company made on March 22, 2013, March 25, 2013 and on March 26, 2013. Hence, the violation committed by York is repetitive in nature. I have also considered the fact that the relevant disclosures under the PIT Regulations and SAST Regulations were made by York belatedly i.e. only after York had received the SCN from SEBI. Since Anushikha and Swaran have not made the necessary disclosures under SAST Regulations and PIT Regulations till date, I observe that there is continuing default on the part of both Anushikha and Swaran in the said matter.

25. The submission of York that the instances of non-compliance / delayed compliance with the relevant provisions of SAST Regulations and PIT Regulations were unintentional and they did not make any unlawful gain out of it and the investors have not suffered due to the omission/ default committed by York etc does not hold any merit. I am of the view that York being an investor in the securities market must be well aware of the consequences and the liabilities that are likely to arise due to the delayed disclosures made under the provisions of SAST Regulations and PIT Regulations. In view of the above, the argument put forth by York is indefensible.

ORDER

26. After taking into consideration all the facts and circumstances of the case and the material on record, 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 penalty on the Noticees as mentioned below:

Name of the Noticee	**Violation**	**Penalty (Rs)**
Anushikha Investments Private Limited	Failure to make disclosure required under Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(1) of the PIT Regulations	2,50,000
Swaran Financial Private Limited	Failure to make disclosure required under Regulation 29(1) read with Regulation 29(3) of SAST Regulations and Regulation 13(1) of the PIT Regulations	2,50,000

Name of the Noticee	Violation	Penalty (Rs)
York Financial Services Private Limited	Delayed disclosure made under the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations and Regulation 13(3) read with Regulation 13(5) of PIT Regulations	1,50,000

I am of the view that the penalty imposed on the Noticees, as mentioned above, is commensurate with the violation committed by them.

27. The penalty shall be paid by the Noticees 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 Chief General Manager- EFD, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

28. 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 viz. Anushikha Investments Private Limited, Swaran Financial Private Limited and York Financial Services Private Limited and also to the Securities and Exchange Board of India.

Place: Chennai
Date: 28.12.2015

SURESH B MENON
ADJUDICATING OFFICER