

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/9-18/2017-18]**

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992
("SEBI ACT") 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:

**Mr. Pravin V Sheth (PAN: AAHPS7949D)
Ms. Unnati P Sheth (PAN: AUPPS6260F)
Mr. Abhishek Agarwal (PAN: ADXPA8893P)
Mr. Anilkumar Agarwal (PAN: ADPPA3794B)
Mr. Mitesh Anil Agarwal (PAN: AADPA1565F)
Ms. Manisha Gupta (PAN: AFPPG4864C)
Ms. Pragna P Patel (PAN: ACCPP2576L)
Ms. Sulochanadevi Anilkumar Agarwal (PAN:
AABPA9575D)
Mr. Bhavesh P Sheth (PAN: AAGPS7481K)
Gayatri Pipes and Fittings Pvt. Ltd. (PAN:
AAACG2107R)**

In the matter of Fibreweb India Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), pursuant to examination of the scrip Fibreweb India Limited (hereinafter referred to as "FIL/ company") had observed that Mr. Pravin V Sheth (hereinafter referred to as "Noticee 1"), Ms. Unnati P Sheth (hereinafter referred to as "Noticee 2"), Mr. Abhishek Agarwal (hereinafter referred to as "Noticee 3"), Mr. Anilkumar Agarwal (hereinafter referred to as "Noticee 4"), Mr. Mitesh Anil Agarwal (hereinafter referred to as "Noticee 5"), Ms. Manisha Gupta (hereinafter referred to as "Noticee 6") and Ms. Pragna P Patel (hereinafter referred to as "Noticee 7") have violated

provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “SAST Regulations”) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “PIT 2015”), Ms. Sulochanadevi Anilkumar Agarwal (hereinafter referred to as “Noticee 8”) have violated provisions of SAST Regulations, PIT 2015 and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as “PIT 1992”) read with PIT 2015, Mr. Bhavesh P Sheth (hereinafter referred to as “Noticee 9”) and Gayatri Pipes and Fittings Pvt Ltd. (hereinafter referred to as “Noticee 10”) have violated provisions of SAST Regulations.

2. FIL, vide its email dated June 15, 2016 informed SEBI that the company was a sick company and referred to Board for Industrial and Financial Reconstruction (hereinafter referred to as “BIFR”) for revival scheme. The Hon’ble BIFR, vide its order dated October 20, 2015 proposed revival strategy for the company and accordingly, FIL on February 12, 2016 issued 37,50,000 equity shares to promoters and their group and 22,50,000 equity shares to Strategic Investor i.e. Noticee 10. All the Noticees were to infuse fresh fund in the company as per the details given below:

Name of the promoter/ promoter group	Shares Allotted
Noticee 1	18,35,000
Noticee 2	13,50,000
Noticee 3	30,000
Noticee 4	2,00,000
Noticee 5	30,000
Noticee 6	1,00,000
Noticee 7	5,000
Noticee 8	1,00,000
Noticee 9	1,00,000
Total (A)	37,50,000
Name of Shareholder	
Noticee 10	22,50,000
Total (B)	22,50,000
TOTAL A +B	60,00,000

3. In view of the abovementioned allotment of shares, Noticees 1 to 10 were to make disclosure under SAST Regulations, PIT, 2015 and PIT 1992, which they failed to make and are liable for penalty under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”).

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide an order of Executive Director, SEBI, dated May 16, 2017, the undersigned has been appointed as the Adjudicating Officer under section 19 of the SEBI Act read with section 15 I of SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘Rules’) to inquire into and adjudge the alleged violations of provisions of SAST Regulations, PIT 1992 and PIT 2015.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Based on the findings by SEBI, separate Show Cause Notice/s dated June 6, 2017 (hereinafter referred to as 'SCN') was issued to the Noticees under Rule 4(1) of AO Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them under Section 15A (b) of SEBI Act for the alleged violations.

6. The Noticees gave the following reply:

- a) Noticees 1, 2, 9 and 10, vide letter/s dated June 14, 2017 and Noticees 3, 4, 5, 6 and 8 vide letter/s dated June 19, 2017 made similar submissions stating, inter alia, the following:

As per BIFR Order, enclosed herewith the share capital of the company was reduced by 40%.

Therefore holding of all shareholders reduced by 40%.

The Promoters and Strategic Investor were required to introduce fresh capital of Rs. 6 crore in 60,00,000 equity shares of Rs. 10/- each. The reduction was due to BIFR Order as also the subscribing of new shares is also as per BIFR Order.

BIFR vide its order dated 20/10/2015 has also exempted the Company, its promoters and Strategic Investor from the said requirements of SEBI.

As such we have not committed any default as per SEBI Regulation.

b) Noticee 7 for the alleged violation of regulation 7(1) of PIT 2015 and regulations 29(2) read with 29(3) of SAST Regulations did not reply to the SCN.

7. In order to comply with the principles of natural justice an opportunity of personal hearing was given to the Noticees on July 27, 2017 vide notice dated July 10, 2017. The authorised representative appeared on behalf of Noticee 1, 2, 9 and 10 and reiterated the submissions already made.
8. Noticees 1 and 2, vide letter dated August 4, 2017 and Noticees 9 and 10, vide letter dated August 8, 2017, made additional submissions stating, inter alia, the following:

Vide letter dated 13.02.2016, Company disclosed outcome of the Board Meeting held on 12.02.2016 wherein decision to issue and allot shares was considered. The aforesaid letter was uploaded on BSE website (portal) on 13.02.2016.

In compliance to aforesaid regulation, vide letter dated 20.02.2016, Company submitted details of shareholding pattern as on 12.02.2016 informing reduction and consolidation of share capital and further issue of shares on preferential basis. The aforesaid letter was uploaded on BE website (portal) on 20.02.2016.

Besides quarterly disclosures made on regular basis by the company, shareholding pattern as on 12.02.2016 was disseminated on BSE website.

We would like to state that in our case the shares were issued and allotted by Company on preference basis hence acquisition of shares by us was known to the Company. However, Company had submitted disclosure in Form C u/r 7(2) of PIT Regulations to the Stock Exchange on 16.06.2016.

9. An opportunity of personal hearing was given to the Noticees on August 28, 2017, vide notice dated July 27, 2017 who failed to appear on the previous date of hearing. The authorised representative appeared on behalf of Noticees 3, 4, 5, 6, 7 and 8 and undertook to make further submissions.
10. Noticee 3, vide letter dated August 31, 2017, made additional submissions, stating, inter alia, the following:

It is also important to note that I before the said acquisition as also mentioned in the show cause notice I was holding 96,986 shares of the said company and was also not a part of the promoter group of the said company, however pursuant to such acquisition by way of preferential allotment I was induced as a promoter of the said company. I had only acquired 30,000 shares of the said company, however my individual shareholding reduced by 0.46% because of the preferential allotment. The total shareholding of myself along with the PAC's which are 1) Sulochanadevi Agarwal 2) Anil Kumar Agarwal 3) Mitesh Anil Agarwal 4) Manisha Gupta was decreased by 0.20% and thus it is clear under Regulation 29(2) of SEBI (SAST) Regulations, 2011 that any acquirer who already holds 5% shares or voting rights in a target company shall disclose acquisition or disposal of 2% or more of the shares or voting rights in such target company. In the present case the shareholding decreased by 0.16% as demonstrated in the Table at para 2 of the Show Cause Notice.

Therefore as I neither individually nor along with PAC's have not crossed the threshold limit of 2%, hence I was under no requirement to make a disclosure under Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011.

With respect to violation of Regulation 7(1) of SEBI (PIT) Regulations, 2015 I submit that the said Regulation requires the disclosure to be made by an entity to the Company and in the present case the relevant disclosure under Regulation 7(1)(b) was made by me to the said Company on 16th June, 2016. I had become a promoter of the said company on 12th February, 2016 after the preferential allotment.

*It is very surprising to note that under the heading “**Relevant provisions of PIT regulations:**” in the show cause notice Regulation 7(1)(a) is quoted, when on SEBI's own showing it is established that I had acquired 30,000 shares in the preferential allotment made on 12th February, 2016 and thereafter became a promoter in the said company. Therefore there is no question of making any disclosure under Regulation 7(1)(a) of SEBI (PIT) Regulations, 2015. Annexure III to the show cause notice clearly shows that I had made the relevant disclosure to the said company under Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015 on the date of becoming a promoter as 12th February, 2016 and also disclosed my shareholding in the said company as required under Regulation 7(1) of SEBI (PIT) Regulations, 2015.*

In view of the above it is respectfully submitted that I am not in violation of Regulation 29(2) & (3) of SEBI (SAST) Regulations, 2011 and Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015, therefore no penalty can be imposed against me under Section 15A(b) of the SEBI Act, 1992.

11. Noticee 4, vide letter dated August 31, 2017 made additional submissions, stating, inter alia, the following:

It is also important to note that I before the said acquisition was not having any prior shareholding in the said company, pursuant to such acquisition by way of preferential allotment I was induced as a promoter of the said company. I have only acquired 1.59% of the share capital of the said company, however the total shareholding of myself along with the PAC's which are 1) Sulochanidevi Agarwal 2) Abhishek Agarwal 3) Ms. Manisha Gupta 4) Mitesh Anil Agarwal was decreased by 0.20% thus it is clear under Regulation 29(2) of SEBI (SAST) Regulations, 2011 that any acquirer who already holds 5% shares or voting rights in a target company shall disclose acquisition or disposal of 2% or more of the shares or voting rights in such target company. In the present case the shareholding decreased by 0.20% as demonstrated in the Table at para 2 of the Show Cause Notice.

Therefore as I neither individually nor along with PAC's have not crossed the threshold limit of 2%, hence I was under no requirement to make a disclosure under Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011.

With respect to violation of Regulation 7(1) of SEBI (PIT) Regulations, 2015 I submit that the said Regulation requires the disclosure to be made by an entity to the Company and in the present case the relevant disclosure under Regulation 7(1)(b) was made by me to the said Company on 16th June, 2016. I had become a promoter of the said company on 12th February, 2016 after the preferential allotment. Annexure III to the show cause notice clearly shows that I had made the relevant disclosure to the said company under Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015 on the date of becoming a promoter as 12th February, 2016 and also disclosed my shareholding in the said company as required under Regulation 7(1) of SEBI (PIT) Regulations, 2015.

In view of the above it is respectfully submitted that I am not in violation of Regulation 29(2) & (3) of SEBI (SAST) Regulations, 2011 and Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015, therefore no penalty may be imposed against me under Section 15A(b) of the SEBI Act, 1992.

12. Noticee 5, vide letter dated August 31, 2017 made additional submissions stating, inter alia, the following:

It is also important to note that I before the said acquisition was not having any prior shareholding in the said company, pursuant to such acquisition by way of preferential allotment I was induced as a promoter of the said company. I have only acquired 0.24% of the share capital of the said company, however the total shareholding of myself along with the PAC's which are 1) Sulochanidevi Agarwal 2) Abhishek Agarwal 3) Anil Kumar Agarwal and 4) Manisha Gupta was decreased by 0.20% thus it is clear under Regulation 29(2) of SEBI (SAST) Regulations, 2011 that any acquirer who already holds 5% shares or voting rights in a target company shall disclose acquisition or disposal of 2% or more of the shares or voting rights in such target company. In the present case the shareholding decreased by 0.20% as demonstrated in the Table at para 2 of the Show Cause Notice.

Therefore as I neither individually nor along with PAC's have not crossed the threshold limit of 2%, hence I was under no requirement to make a disclosure under Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011.

*With respect to violation of Regulation 7(1) of SEBI (PIT) Regulations, 2015 I submit that the said Regulation requires the disclosure to be made by an entity to the Company and in the present case the relevant disclosure under Regulation 7(1)(b) was made by me to the said Company on 16th June, 2016. I had become a promoter of the said company on 12th February, 2016 after the preferential allotment. It is very surprising to note that under the heading "**Relevant provisions of PIT regulations:**" in the show cause notice Regulation 7(1)(a) is quoted, when on SEBI's own showing it is established that I had acquired 30,000 shares in the preferential allotment made on 12th February, 2016 and thereafter became a promoter in the said company. Therefore there is no question of making any disclosure under Regulation 7(1)(a) of SEBI (PIT) Regulations, 2015.*

Annexure III to the show cause notice clearly shows that I had made the relevant disclosure to the said company under Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015 on the date of becoming a promoter as 12th February, 2016 and also disclosed my shareholding in the said company as required under Regulation 7(1) of SEBI (PIT) Regulations, 2015.

In view of the above it is respectfully submitted that I am not in violation of Regulation 29(2) & (3) of SEBI (SAST) Regulations, 2011 and Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015, therefore no penalty can be imposed against me under Section 15A(b) of the SEBI Act, 1992.

13. Noticee 6, vide letter dated August 31, 2017 made further submissions stating, inter alia, the following:

It is also important to note that I before the said acquisition was not having any prior shareholding in the said company, pursuant to such acquisition by way of preferential allotment I was induced as a promoter of the said company. I have only acquired 0.79% of the share capital of the said company, however the total shareholding of myself along with the PAC's which are 1) Sulochanidevi Agarwal 2) Abhishek Agarwal 3) Anil Kumar Agarwal 4) Mitesh Anil Agarwal was decreased by 0.20% thus it is clear under Regulation 29(2) of SEBI (SAST) Regulations, 2011 that any acquirer who already holds 5% shares or voting rights in a target company shall disclose acquisition or disposal of 2% or more of the shares or voting rights in such target company. In the present case the shareholding decreased by 0.20% as demonstrated in the Table at para 2 of the Show Cause Notice.

Therefore as I neither individually nor along with PAC's have not crossed the threshold limit of 2%, I was under no requirement to make a disclosure under Regulation 29(2) of SEBI (SAST) Regulations, 2011.

*With respect to violation of Regulation 7(1) of SEBI (PIT) Regulations, 2015 I submit that the said Regulation requires the disclosure to be made by an entity to the Company and in the present case the relevant disclosure under Regulation 7(1)(b) was made by me to the said Company on 16th June, 2016. I had become a promoter of the said company on 12th February, 2016 after the preferential allotment. It is very surprising to note that under the heading “**Relevant provisions of PIT regulations:**” in the show cause notice Regulation 7(1)(a) is quoted, when on SEBI's own showing it is established that I had acquired 1,00,000 shares in the preferential allotment made on 12th February, 2016 and thereafter became a promoter in the said company. Therefore there is no question of making any disclosure under Regulation 7(1)(a) of SEBI (PIT) Regulations, 2015.*

Annexure III to the show cause notice clearly shows that I had made the relevant disclosure to the said company under Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015 on the date of becoming a promoter as 12th February, 2016 and also disclosed my shareholding in the said company as required under Regulation 7(1) of SEBI (PIT) Regulations, 2015.

In view of the above it is respectfully submitted that I am not in violation of Regulation 29(2) & (3) of SEBI (SAST) Regulations, 2011 and Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015, therefore no penalty can be imposed against me under Section 15A(b) of the SEBI Act, 1992.

14. Noticee 7, vide letter dated August 31, 2017 made additional submissions stating, inter alia, the following:

It is also important to note that I before the said acquisition was not having any prior shareholding in the said company, pursuant to such acquisition by way of preferential allotment I was induced as a promoter of the said company. I have only acquired 0.04% of the share capital of the said company and thus it is clear under Regulation 29(2) of SEBI (SAST) Regulations, 2011 that any acquirer who already holds 5% shares or voting rights in a target company shall disclose acquisition or disposal of 2% or more of the shares or voting rights in such target company.

Therefore as I was not a PAC with other promoters of the company and I have not crossed the threshold limit of 2%, I was under no requirement to make a disclosure under Regulation 29(2) of SEBI (SAST) Regulations, 2011.

*With respect to violation of Regulation 7(1) of SEBI (PIT) Regulations, 2015 I submit that the said Regulation requires the disclosure to be made by an entity to the Company and in the present case the relevant disclosure under Regulation 7(1)(b) was made by me to the said Company on 16th June, 2016. I had become a promoter of the said company on 12th February, 2016 after the preferential allotment. It is very surprising to note that under the heading “**Relevant provisions of PIT regulations:**” in the show cause notice Regulation 7(1)(a) is quoted, when on SEBI's own showing it is established that I had acquired 4000 shares in the preferential allotment made on 12th February, 2016 and thereafter became a promoter in the said company. Therefore there is no question of making any disclosure under Regulation 7(1)(a) of SEBI (PIT) Regulations, 2015.*

Annexure III to the show cause notice clearly shows that I had made the relevant disclosure to the said company under Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015 on the date of becoming a promoter as 12th February, 2016 and also disclosed my shareholding in the said company as required under Regulation 7(1) of SEBI (PIT) Regulations, 2015.

In view of the above it is respectfully submitted that I am not in violation of Regulation 29(2) & (3) of SEBI (SAST) Regulations, 2011 and Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015, therefore no penalty can be imposed against me under Section 15A(b) of the SEBI Act, 1992.

15. Noticee 8, vide letter dated August 31, 2017 made additional submissions stating, inter alia, the following:

*With respect to violation of Regulation 29(1) of SEBI (SAST) Regulation, 2011 and Regulation 13(1) of SEBI (PIT) Regulations, 1992, I submit that Regulation 12(1) of the SEBI (PIT) Regulations 2015 dated **JANUARY 15, 2015** quotes “The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.” as a result of which the allegation of not making disclosures under Regulation 13(1) of SEBI (PIT) Regulations, 1992 for transactions allegedly executed in April 2015 does not hold good. Without prejudice to the above I have also made submissions as applicable under regulation 13(1) which is annexed with the SCN issued by your good self. Further with regards the violation under Regulation 29(1) of SEBI (SAST) Regulation, 2011 I submit that that the disclosure under Regulation 13 (1) of SEBI (PIT) Regulation, 1992 and Regulation 29 (1) of SEBI (SAST) Regulations, 2011, are substantially the same and since I have already complied with disclosures requirement under Regulation 13 (1) of SEBI (PIT) Regulations, 1992, it should be treated as sufficient disclosures under Regulation 29(1) of SEBI (SAST) Regulations, 1992. Under the formats for disclosures under both the Regulations it is found that the information to be disclosed under both the Regulations are substantially the same and the transaction is also one. Accordingly, non-disclosure under Regulation 29 (1) of SEBI (SAST) Regulations, 2011, needs to be viewed leniently since the disclosure under Regulation 13 (1) of SEBI (PIT) Regulations, 1992 which has the similar information has already been made.*

Now dealing with violation with regards Regulation 29(2) of SEBI (SAST) Regulations, 2011 I again submit as also stated in my letter dated 19th June, 2017, that the said acquisition of shares by me was in compliance with the above mentioned BIFR order dated 20/10/2015 which also specifically exempted any compliance related to SEBI (SAST) Regulations, 2011 for the purpose of issuance of fresh share capital towards funds inducted by promoters, their friends and strategic investor, myself being one of them.

It is also important to note that I before the said acquisition as also mentioned in the show cause notice I was holding 4,36,395 shares of the said company. I had only acquired 1,00,000 shares of the said company, however my individual shareholding reduced by 2.36% because of the preferential allotment. The total shareholding of myself along with the PAC's which are 1) Abhishek Agarwal 2) Anil Kumar Agarwal 3) Mitesh Anil Agarwal 4) Manisha Gupta was decreased by 0.20% and thus it is clear under Regulation 29(2) of SEBI (SAST) Regulations, 2011 that any acquirer who already holds 5% shares or voting rights in a target company shall disclose acquisition or disposal of 2% or more of the shares or voting rights in such target company. In the present case the shareholding decreased by 0.20% as demonstrated in the Table at para 2 of the Show Cause Notice.

Therefore as I along with PAC's have not crossed the threshold limit of 2%, hence I was under no requirement to make a disclosure under Regulation 29(2) read with 29(3) of SEBI (SAST) Regulations, 2011.

*With respect to violation of Regulation 7(1) of SEBI (PIT) Regulations, 2015 I submit that the said Regulation requires the disclosure to be made by an entity to the Company and in the present case the relevant disclosure under Regulation 7(1)(b) was made by me to the said Company on 16th June, 2016. It is very surprising to note that under the heading “**Relevant provisions of PIT regulations:**” in the show cause notice Regulation 7(1)(a) is quoted, when on SEBI's own showing it is established that I*

had acquired 1,00,000 shares in the preferential allotment made on 12th February, 2016 and thereafter became a promoter in the said company. Therefore there is no question of making any disclosure under Regulation 7(1)(a) of SEBI (PIT) Regulations, 2015.

Annexure III to the show cause notice clearly shows that I had made the relevant disclosure to the said company under Regulation 7(1)(b) of SEBI (PIT) Regulations, 2015 on the date of becoming a promoter as 12th February, 2016 and also disclosed my shareholding in the said company as required under Regulation 7(1) of SEBI (PIT) Regulations, 2015.

In view of the above it is respectfully submitted that I am not in violation of Regulation 29(2) & (3) of SEBI (SAST) Regulations, 2011 and Regulation 7(1)(a) of SEBI (PIT) Regulations, 2015, therefore no penalty can be imposed against me under Section 15A(b) of the SEBI Act, 1992.

CONSIDERATION OF ISSUES AND EVIDENCE

16. I have carefully perused the charges levelled against the Noticees in the SCN, their replies and the material / documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- (a) Whether the Noticees 1 and 2 have violated the provisions of regulation 7(2) of PIT, 2015 and 29(2) read with 29(3) of SAST Regulations?
- (b) Whether the Noticees 3 to 7 have violated the provisions of regulation 7(1) of PIT, 2015 and 29(2) read with 29(3) of SAST Regulations?
- (c) Whether the Noticee 8 has violated the provisions of regulation 7(1) of PIT, 2015 13(1) of PIT 1992 and 29(1) and 29(2) read with 29(3) of SAST Regulations?
- (d) Whether the Noticee 9 have violated the provisions of regulation 29(2) read with 29(3) of SAST Regulations?
- (e) Whether the Noticee 10 have violated the provisions of regulation 29(1) read with 29(3) of SAST Regulations?
- (f) Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b) of SEBI Act for the alleged violation?; and,
- (g) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

17. Before proceeding further, I would like to refer to the relevant provisions of the SAST Regulations, PIT 1992 and PIT 2015

Relevant provisions of PIT, 2015:

Disclosure of interest or holding by directors, officers and substantial shareholders in a listed companies-

7. (1) Initial Disclosures.

(b). Every person on appointment as a key managerial personnel or a director of the company or upon becoming a promoter shall disclose his holding of securities of the company as on the date of appointment or becoming a promoter, to the company within seven days of such appointment or becoming a promoter.

7. (2) Continual Disclosures.

(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

Relevant provisions of PIT, 1992:

Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

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

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

Relevant provisions of SAST Regulations:

Disclosure of acquisition and disposal

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

29.(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.

29.(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.

18. I note from the documents on record that FIL by letter dated August 4, 2005 had filed an application to BIFR u/s 15(1) of Sick Industrial Companies (Special Provisions), Act, 1985 (hereinafter referred to as "SICA"). On October 20, 2015, BIFR passed an order in exercise of power conferred u/s 18(4) and 19(3) of SICA and sanctioned the rehabilitation scheme for the rehabilitation of the company. The relevant portion of the order is reproduced here:

13.6 SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

To consider:

a) To exempt the company, its promoters / directors and strategic investor from the provisions of SEBI (substantial acquisition of share and takeovers Regulations 2011) for issuance of fresh share capital towards funds inducted / to be in ducted and / or transfer of shares in favour of strategic investor (GPFL) during the period of rehabilitation under Regulation 3 & 4 of takeover regulation 2011 subject to fulfilment of the conditions stipulated therein.

b) To exempt the company, its promoter s directors and strategic investors from the provisions of guidelines (issue of capital and disclosure requirements) regulations, 2009 (ICDR regulation).The preferential issue of equity share to promoters shall be locked in for a period of three years.

The preferential allotment to the strategic investor would be locked in for a period of six months from the date of preferential allotment.

There should not be any change of management due to induction of Strategic Investor.

19. It may be noted that the company, its promoters / directors and strategic investor has been exempted from the obligations in regulations 3 and 4 of SAST Regulations and nothing else. The promoters/ directors and strategic investors were to comply with all other provisions of SAST Regulations, PIT, 1992 and PIT 2015. Having established this, I now proceed to discuss the issued pertaining to each Noticee.

Violation of PIT, 2015:

Noticee 1 and 2

20. Noticee 1 was allotted 18,35,000 shares at a price of Rs. 10/- per equity share on February 12, 2016 amounting to total traded value of Rs. 1,83,50,000/-. Noticee 2 was allotted 13,50,000 shares at a price of Rs. 10/- per equity share on February 12, 2016 amounting to a total traded value of Rs. 1,35,00,000. As per regulation 7(2) of PIT, 2015, Noticee 1 and 2 were to disclose to the company the number of such securities acquired within two trading days of the transaction if the value of the securities traded exceeded ten lakh rupees. Neither the company, viz. FIL nor the Noticees produced any documentary evidence that the required disclosure was done by the Noticees within two working days of the acquisition of shares.

21. The Noticees submitted that as the shares were issued and allotted by FIL on preference basis hence acquisition of shares by us was known to the company and the company had submitted disclosure to the Stock Exchange on June 16, 2016. I do not find any merit in the submission of the Noticees. The fact that the acquisition of shares by the Noticees 1 and 2 were known to the company does not absolve the obligation of the Noticees 1 and 2 to make the disclosure to the company. In view of the above, I find that the Noticees 1 and 2 have violated regulation 7(2) of PIT, 2015.

Noticees 3 to 7

22. Noticees 3 to 7 had become the promoter of the company on February 12, 2016. As per regulation 7(1)(b) of PIT, 2015 they were to disclose their holding of securities of the company as on the date of becoming a promoter, to the company within seven days of becoming a promoter. The Noticees admittedly had made the disclosure to the company on June 16, 2016, which is a delay of almost 4 months. Hence the allegation of violation of regulation 7(1)(b) of PIT, 2015 by Noticees 3 to 7 stand established.

Noticee 8

23. Noticee 8 had become promoter of the company on February 12, 2016 after the allotment of preferential shares. Noticee 8 made the required disclosure of her holding of shares to the company as per regulation 7(1)(b) of PIT, 2015 on June 16, 2016 after a delay of almost 4 months. Hence the allegation of violation of regulation 7(1)(b) of PIT, 2015 by Noticee 8 stands established.

Violation of PIT, 1992:

24. As per the documents on record, Noticee 8 was holding 5,40,906 shares (4.92% of share capital) on April 25, 2015. Her shareholding increased to 5,55,724 shares (5.06% of share capital) on April 27, 2015. As per regulation 13(1) of PIT, 1992, Noticee 8 was to disclose to the company within 2 working days about the said acquisition of shares. On enquiry, FIL forwarded to SEBI scanned copy of the letter dated May 5, 2016 addressed to BSE by Noticee 8 with cc to company making disclosures in Form A under regulation 13(1) of PIT, 1992. It is observed that Noticee 8 had made the disclosure under regulation 13(1) of PIT, 1992 after a delay of more than one year and hence, the allegation of violation of regulation 13(1) of PIT, 1992 stands established.

Violation of SAST Regulations:

Noticee 1 to 9

25. The company made preferential allotment of 37,50,000 equity shares to the promoter group at a price of Rs. 10/- per share on February 12, 2016 as per the following table:

Sr. No.	Name of Promoter	Holding Before Preferential Allotment	Holding Before Preferential Allotment (%)	No. of Shares Allotted	Change in Holding (%)
1	Pravin V. Sheth	1148597	17.41	1835000	6.28
2	Bhavesh P. Sheth	316548	4.8	100000	-1.49
3	Unnati P. Sheth	8362	0.13	1350000	10.65
4	Sulochnadevi Anilkumar Agarwal	436395	6.62	100000	-2.36
5	Abhishek Agarwal	96986	1.47	30000	-0.46
6	Anil Kumar Agarwal	0	0	200000	1.59
7	Mitesh Anil Agarwal	0	0	30000	0.24
8	Manisha Gupta	0	0	100000	0.79
9	Pragna P. Patel	0	0	5000	0.04

	Total	2006888	30.43	3750000	15.28
--	--------------	----------------	--------------	----------------	--------------

26. Promoter group i.e. Noticees 1 to 9 was holding 20,06,888 shares of the company (constituting 30.43% of the paid up share capital) before February 12, 2016. They were allotted 37,50,000 shares on February 12, 2016 in abovementioned Preferential allotment due to which total shareholding of the promoter group increased to 57,56,888 constituting 45.71% of the paid up capital of the company.
27. As per the BIFR order dated October 20, 2015, no exemption was given to the Noticees from making disclosure under regulation 29 of SAST Regulations. As the Noticees 1 to 9 were holding 30.43% of the share capital of the company before preferential allotment and the change of their joint shareholding was more than 2%, they were to make to disclosure to the company and the stock exchange within two days of the date of change in shareholding. The company failed to provide any documentary evidence in this regard. Also vide email dated June 15, 2016 to SEBI, BSE has confirmed that Noticee did not make any disclosure to the exchange under the SAST Regulations for the aforesaid allotment of shares. In view of the above, I find that the allegation of violation of regulation 29(2) read with 29(3) of SAST Regulations in respect of Noticees 1 to 9 stands established.
28. With respect to violation of regulation 29(1) of SAST Regulations in respect of Noticee 8, I find that Noticee 8 has already made a delayed disclosure of regulation 13(1) of PIT, 1992. The Noticee submitted that as the disclosure under regulation 13(1) of PIT, 1992 and 29(1) of SAST Regulations are substantially same, it should be treated as sufficient disclosures under regulation 29(1) of SAST. I note that the Noticee had made the disclosure under regulation 13(1) of PIT, 1992 after a delay of almost 1 year. Even if I am inclined to find merit in the submission of Noticee 8, I find that there was already a delay in disclosure. Hence, I find that Noticee 8 has violated the provision of 29(1) of SAST Regulations.

Noticee 10

29. Noticee 10 was holding 3,24,000 shares of the company (constituting 4.91% of the paid up share capital) before February 12, 2016 and it was allotted 22,50,000 shares on February 12, 2016 in Preferential allotment due to which total shareholding of the Noticee increased to 25,74,000 (constituting 20.44% of the paid up capital of the company). In light of the

acquisition, Noticee 10 was to make disclosure under regulation 29(1) read with 29(3) of SAST Regulations to the company and to the stock exchange.

30. FIL failed to provide any documentary evidence in this regard. Also vide email dated June 15, 2016 to SEBI, BSE has confirmed that Noticee did not make any disclosure to the exchange under the SAST Regulations for the aforesaid allotment of shares. In view of the same, I find that Noticee 10 has violated regulation 29(1) read with 29(3) of SAST Regulations.

31. I therefore find the act of the Noticees 1 to 10 is liable for a penalty under Section 15 A(b) of SEBI Act which read as follows:

Penalty for failure to furnish information, return, etc.

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

(a)

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty 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;

32. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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...”.

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

Section 15J - Factors to be taken into account by the adjudicating officer While adjudging quantum of penalty under section 15, 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.

34. I find that the investigation did not bring out the disproportionate gain or unfair advantages to the Noticees and loss caused to investors as a result of non-disclosure of change of shareholding. The Noticees failed to make the relevant disclosure for the allotment of same under two Regulations. Hence, their offence cannot be termed as repetitive in nature. Moreover, I find that FIL has disclosed its shareholding as on February 12, 2016 in the BSE website. Therefore, the public at large was aware of the shareholding of the Noticees. Hence I am inclined to consider this as a mitigating factor.

ORDER

35. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, I, in exercise of the powers conferred upon me under Section 15-I(2) of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, conclude that the proceedings against the Noticees 1 to 10 stand established in terms of the provisions of the SEBI Act. Hence, in view of the charges established under the provisions of the SEBI Act, I, hereby impose monetary penalty of ₹ 10,00,000/- (Rupees Ten Lakh only) on Noticees 1-10 jointly and severally.

36. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - I [**EFD-DRA-I**] SEBI Bhavan, Plot No.C4-A, ' G ' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051 OR 2) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) levied by Adjudication Officer :-

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

37. The Noticees shall forward the said Demand Drafts or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

38. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the Form as provided at Annexure `A' of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is reproduced as under:-

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

39. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : September 19, 2017
Place : Mumbai

SAHIL MALIK
ADJUDICATING OFFICER