

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.IVD-ID6/AB/EIL/AO/DRK/AKS/EAD-3/335 /33 -12]

**UNDER SECTION 15 I OF SECURITIES AND EXCHANGE BOARD OF INDIA
ACT, 1992 READ WITH RULE 5(1) OF SECURITIES AND EXCHANGE
BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING
PENALTIES BY ADJUDICATING OFFICER) RULES, 1995**

Against:

Shri Ashok Bhagat

H-19, Ramaji Gupta Chawl

Sakharam Buva Patil Marg

(Gazadhar Band), Santacruz (W)

Mumbai – 400054

FACTS IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation relating to buying, selling or dealing in the shares of Empower Industries India Ltd. (hereinafter referred to as '**EIL / company**') to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Regulations made there-under. Investigation period was taken as February 16, 2005 to March 11, 2005.

2. The shares of the company are listed only on BSE. On BSE the price of the scrip rose from ₹ 81.00 on February 16, 2005 to ₹ 113.00 on March 11, 2005 during 18 trading days. Total trading volume during the period of investigation was 2,17,700 shares with an average daily trading volume of 12,095 shares. One month before the investigation period the scrip traded with the daily average volume of 2,365 shares and the price of the scrip increased from ₹ 61.00 on 13th January, 2005 to ₹ 79.50 on 9th February, 2005. One month after the investigation period the scrip traded with an average trading volume of 13,773 shares per day and the price of the scrip came down to ₹ 97.80 on 11th April, 2005 as against ₹ 110.75 on 14th March, 2005 (Decrease of 13.29% during one month after investigation period).

APPOINTMENT OF ADJUDICATING OFFICER

3. I was appointed as the Adjudicating Officer (subsequent to the transfer of previous AO) under Section 15 I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') vide order dated 17.01.2012 to inquire into and adjudge under Sections 15HA , 15A(b) and 15H(ii) of the SEBI Act, the violation of Regulations 3 (a), 4 (1), 4 (2) (a) and (e) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), Regulation 7(1) read with Regulation 7(2) and Regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**') and Regulation 13(1) and Regulation 13(3) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') alleged to have been committed by Shri Ashok Bhagat (hereinafter referred to as '**noticee**').

SHOW CAUSE NOTICE, HEARING AND REPLY

4. A Show Cause Notice (herein after referred to as '**SCN**') dated 13.11.2009 was served on the noticee by "Registered Post Acknowledgement Due" in terms of the provisions of Rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 requiring the noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under Sections 15HA, 15A(b) and 15H(ii) of the SEBI Act for the alleged violations of Regulations 3 (a), 4 (1), 4 (2) (a) and (e) of PFUTP Regulations, Regulation 7(1) read with Regulation 7(2) and Regulation 10 of SAST Regulations and Regulation 13(1) and Regulation 13(3) read with Regulation 13(5) of PIT Regulations. Proof of service of SCN is on record. In the said SCN it was alleged that the noticee was party to circular movement of shares with a clear intention to inflate trade volumes, creating interest in the share and had aided and abetted the company, Promoter- Director in manipulation thereby defrauding the innocent investors. It was also alleged that the noticee had failed to make disclosures under SAST Regulations and PIT Regulations for the acquisition and disposal of shares. Further, it was also alleged that the noticee had failed to make a public announcement under SAST Regulations. The noticee did not submit any reply to the aforesaid SCN.
5. Vide personal hearing notice dated 08.07.2010 the noticee was granted an opportunity of hearing at SEBI Bhavan, Mumbai on 15.07.2010 at 10:30 am. However, the noticee failed to attend the hearing without providing any reasons. Subsequent to the transfer of previous AO, the undersigned granted a final opportunity of hearing to the noticee vide hearing notice dated 07.05.2012 at SEBI Bhavan, Mumbai on 28.05.2012 at 03:00 pm. In the said hearing notice the noticee was also advised to submit a detailed reply to the SCN on or before 18.05.2012 and proof of service is on record.

6. Noticee vide his letter dated 25.05.2012 requested to adjourn the hearing and also requested for a copy of the SCN. Vide hearing notice dated 05.06.2012 the noticee was granted another opportunity to appear for the hearing on 19.06.2012 at 11:00 am at SEBI Bhavan, Mumbai. The noticee was also provided with a copy of the SCN and was also advised to submit a reply to the SCN on or before 15.06.2012. Proof of service is on record. However, the noticee neither submitted any reply to the SCN nor attended the hearing.
7. From the records it is noted that the noticee has neither replied to the SCN nor has attended any of the personal hearings granted to him inspite of service of the notices as stated above. It is noted that the proof of service of the notices are on record. In the light of this fact, I am convinced that the Principles of Natural Justice have been complied with and I am compelled to pass an ex-parte order against the noticee based on the material made available on record. It is also noted that inspite of providing opportunities, the noticee has failed to cooperate in the current adjudication proceedings.

CONSIDERATION OF EVIDENCE AND FINDINGS

8. I have taken into consideration the facts and circumstances of the case and the material made available on record. The issue in the present matter is whether the noticee was party to circular movement of shares with a clear intention to inflate trade volumes, creating interest in the share and had aided and abetted the company, Promoter- Director, Shri Devang Master (hereinafter referred to as '**DM**') in manipulation thereby defrauding the innocent investors.

PFUTP

9. It is observed from the investigation report (hereinafter referred to as 'IR') that during the investigation period following announcements were made by the company:

Sr. No	Date & time of anncmnt.	Subject	Effect of price/volume
1	02.03.05 at 11:02 AM & 4:44 PM	The board meeting to be held on 08.03.2005 to consider the pricing of the issue and also to consider the options and ways for expansion plans, acquisition and any other related matter for growth of the company and to consider the increase in authorized capital and issue of rights/preferential shares.	Price increased from closing price of ₹ 100.15 on March 1, 2005 to ₹ 101.90 on next trading day. Volume increased from average daily trading volume of 3,685 shares to average daily trading volume of 22,606 shares for remaining investigation period.
2	11.03.05 at 04:31PM	The Board meeting which was scheduled to be held on March 08, 2005 has been postponed as the directors of the company have gone out of station.	The price came down from closing price of ₹ 113.96 on March 11, 2005 to ₹ 110.75 on next trading day. There was negligible effect on the volume.

10. At the time of investigation when the company was questioned for the reasons for not proceeding with the issue of rights / preferential shares, the company stated that it had considered the equity expansion by rights / preferential issue but the same could not be proceeded with because of the lack of number of allottees and non-finalization of the terms and conditions of the issue. The company was asked for the list of allottees, quantum of the issue, however no details was received for the same.

11. Further, when the company was asked to give explanation as to why the intimation was not given to the stock exchange for cancellation of the rights / preferential issue for the non-finalization of the terms and conditions and lack

of number of allottees. The company explained that it had intimated to the stock exchange about the postponement / cancellation of such preferential issue through the intimation of the cancellation of board meeting. It also explained that the company was under impression that the cancellation of the board meeting on a particular date leads to cancellation of the meeting and cancellation of the agenda proposed to be considered in the meeting.

12.The IR observed that the postponement of the board meeting cannot be presumed to be cancellation of the board meeting and of the agenda items. In this regard, a copy of the letter (which was received by BSE on 11.03.2005) submitted by the company to Stock exchange for announcements was obtained and it was found that the company in its intimation for postponement of the board meeting also stated that “any further notice in this regard will be given to you (Stock Exchange) in due course”. This statement reflects the intention of the company for postponement of the meeting and not the cancellation of the meeting. BSE was also asked as to whether this announcement was treated as postponement or cancellation of the board meeting. BSE vide its email dated 18.12.2007 stated that the announcement was treated as postponement only.

13.It is observed from the IR that the company had no material on table to proceed or to consider the rights / preferential issue. Subsequent to the corporate announcement there was sudden spurt in the volume and also increase in price of the scrip. The average volume before the corporate announcement by the company (upto 01.03.2005) was 3,685 shares per day and after the corporate announcement (after 02.03.2005) volume increased to an average of 22,606 shares per day. During the investigation period there was a consistent increase in price and it increased by 39.50%.

14. From the above it can be concluded that the company seems to have made announcements with respect to the Board meeting only to create interest among the investors in shares of the company.

15. It is observed from the IR that the following entities namely

- Shri Girdharbhai Vagadia
- Shri Prasad Tandel
- Shri Nilesh Upadhyay
- Shri Prakash D'souza
- Shri Kalpesh Babaraya
- Shri Vithalbhai Gajera

were found to be connected to each other through fund movement, off market transfers and common telephone numbers as depicted in the table below. Further, Ms. Shila Suryavanshi and Shri Vikas Bengani were also found to be connected to the aforementioned entities through off market transfers. Moreover, as reported by BSE the above entities were found to be trading in the shares of Prraneta Industries Ltd., Mega Corporation Ltd. and IFSL Ltd as a group and were termed as Mahesh Mistry group. Hence, the aforementioned entities along with the noticee who are found to be connected with each other are hereinafter referred to as “**Group**”.

Fund Movement	Off Market Transactions / Share Movement	Common Address	Common Telephone No.
1. Shri Girdharbhai Vagadia 2. Shri Prasad Tandel 3. Shri Prakash D'souza 4. Shri Kalpesh	1. Shri Girdharbhai Vagadia 2. Shri Prasad Tandel 3. Shri Prakash D'souza 4. Shri Kalpesh Babaraya	1. Shri Girdharbhai Vagadia 2. Shri Kalpesh Babaraya 3. Shri Vithalbhai Gajera	1. Shri Girdharbhai Vagadia 2. Shri Prasad Tandel 3. Shri Prakash D'souza

Babaraya	5. Shri Vithalbhai		
5. Shri Vithalbhai	Gajera		
Gajera	6. Ms. Shila		
6. Ms. Shila	Suryavanshi		
Suryavanshi	7. Shri Nilesh		
	Upadhyay		
	8. Shri Vikas Bengani		

16. It is noted from the IR that DM on 25.02.2005 had transferred 2,13,000 shares in physical form (42.60% of the paid up capital) to 22 entities. A few among the 22 entities sold 63,300 shares during the investigation period wherein majority of counterparties to the trades were entities belonging to the Group.

17. The IR has observed from the information obtained from Sharex Dynamic Pvt. Ltd., Registrar and Share Transfer Agent of the company (hereinafter referred to as 'RTA') that Ms. Lata Agrawal, Ms. Indra Agrawal, Shri Vasudev Agrawal, Shri Rajendra Agrawal and Shri Shambhu Agarwal (hereinafter referred to as '**Agrawal Family**') had directly acquired shares from Shri Devang Master through off-market. The details are as follows:

Buyers' folio	Name of the buyer	No. Of shares	Sellers' folio	Name of the seller	Date of transfer
000244	Lata Agrawal	25,000	000241	Devang Master	10/30/2004
000249	Indra Agrawal	25,000	000241	Devang Master	11/01/2004
000256	Vasudev Agrawal	25,000	000241	Devang Master	11/01/2004
000254	Rajendra Agrawal	25,000	000241	Devang Master	11/01/2004
000255	Shambhu Agrawal	25,000	000241	Devang Master	11/01/2004
Total		1,25,000			

18. It is further observed from the IR that the Agrawal Family sold 1,07,000 shares through stock broker Ruchiraj shares and Stock Brokers Pvt. Ltd between 02/03/2005 to 11/03/2005 which was 49% of the total market volume during the investigation period. They entered into 379 trades which is 48.77% of the total 777 trades during the investigation period. Further it is observed that their majority trades were with the connected entities of the Group (51,900 shares; 48.50% of total sale by Agrawal Family). The trading details are as follows:

Sr. No.	Name	No. of shares sold	No. of trades entered	Counterparty major client name	Name of the counter party major stock broker
1	Vasudev Agrawal- (38004)	25,000	45	Nilesh Upadhyay Govind Goel	Indiainfoline Ltd. Pilot Credit Capital Ltd.
2	Shambhu Agrawal- (38005)	25,000	97	Vithalbhai Gajera Prasad Tandel Shila Suryavanshi Prakash D'souza Girdhaybhai Vagadia	Indus Portfolio Ltd Action Fin Ser.Ltd Motial Oswal Sec. Ltd. Galaxy Broking Ltd. Mehta Equities Ltd.
3	Indra Agrawal- (38006)	25,000	100	Subhash Goel Mahendra Brahmabhatt Dipak C. Shah	Pilot Credit Capital Ltd.
4	Lata Agrawal- (38007)	20,100	126	Subhash Goel Govind Goel	Pilot Credit Capital Ltd.
5	Rajendra Agrawal- (38001)	11,900	11	Nilesh Kumar Upadhyay	Indiainfoline Ltd.
Total		1,07,000	379		

19. The information received from the RTA reveals that the Agrawal Family had transferred their entire shareholding by off market transfers before they started selling shares during the investigation period. Ms. Lata Agrawal sold 25,000 shares on 25th February, 2005 in physical form, whereas Shri Vasudev Agrawal,

Shri Shambhu Agrawal, Ms Indra Agrawal, and Shri Rajendra Agrawal dematerialized their shares on 8th December, 2004 and sold the shares by off market transfers during 24th December, 2004 to 31st December, 2004. Hence the pool and demat account of the stock broker Ruchiraj Shares & Stock Brokers Pvt. Ltd., was examined from which it was observed that the delivery for the shares sold by the Agrawal family was given by the following entities:

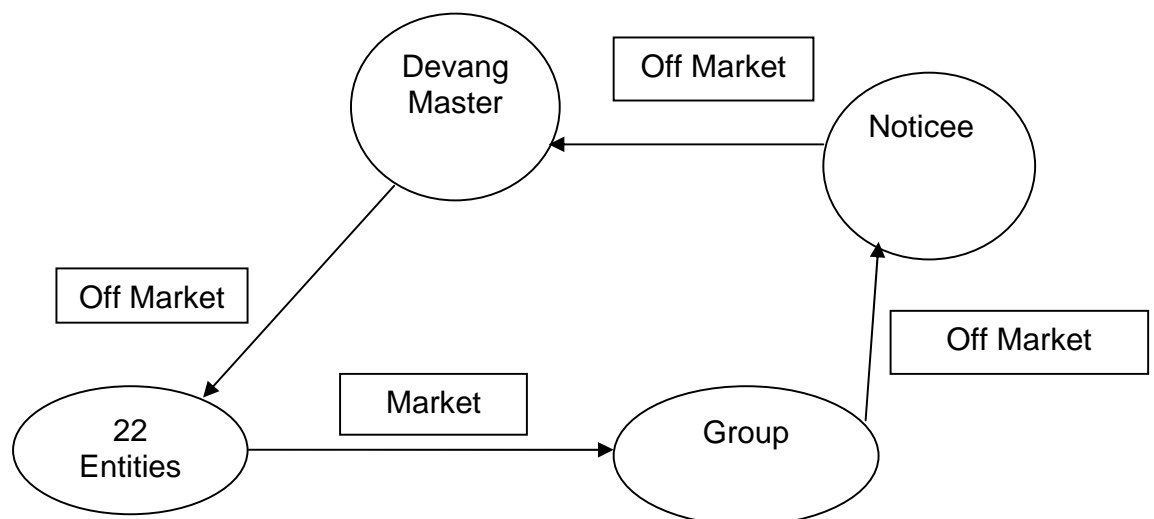
Sr.No.	Name	DP ID/ Client Id	No. of shares	Date
1	Devang Master	1601010000029818	2,500	27 th January, 2005
2	Sanjay Mahadik	1601010000102332	7,500	27 th January, 2005
3	Nilesh Kothari	1202700100023021	11,300	3 rd March, 2005
4	Nilesh Kothari	IN300183-12509826	1,700	4 th March, 2005
5	Ashok Bhagat	IN300271-10112300	20,000	5th March, 2005
6	Nilesh Upadhyay	IN302269-10228324	20,000	10 th March, 2005
7	Vipul Vora	1601010000098671	3,000	10 th March, 2005
8	Ravi Farata	1601010000193478	2,000	10 th March, 2005
9	Vijay Bhagawandas Shah	IN300271-10120983	15,000	11 th March, 2005
10	Nilesh Kothari	IN300183-12509826	5,000	14 th March, 2005
11	Nilesh Upadhyay	IN302269-10228324	6,950	14 th March, 2005
12	Vijay Bhagawandas Shah	IN300271-10120983	14,800	15 th March, 2005
Total			1,09,750	

20. It is observed from the IR that the connected entities of the Group and the noticee were found to have given delivery of shares to meet the sale obligation of the Agrawal family. Further, the IR observes that the stock broker Vijay Bhagwandas & Co., (proprietor, Shri Vijay Bhagwandas Shah) received shares in off market transfers from the connected entities of the

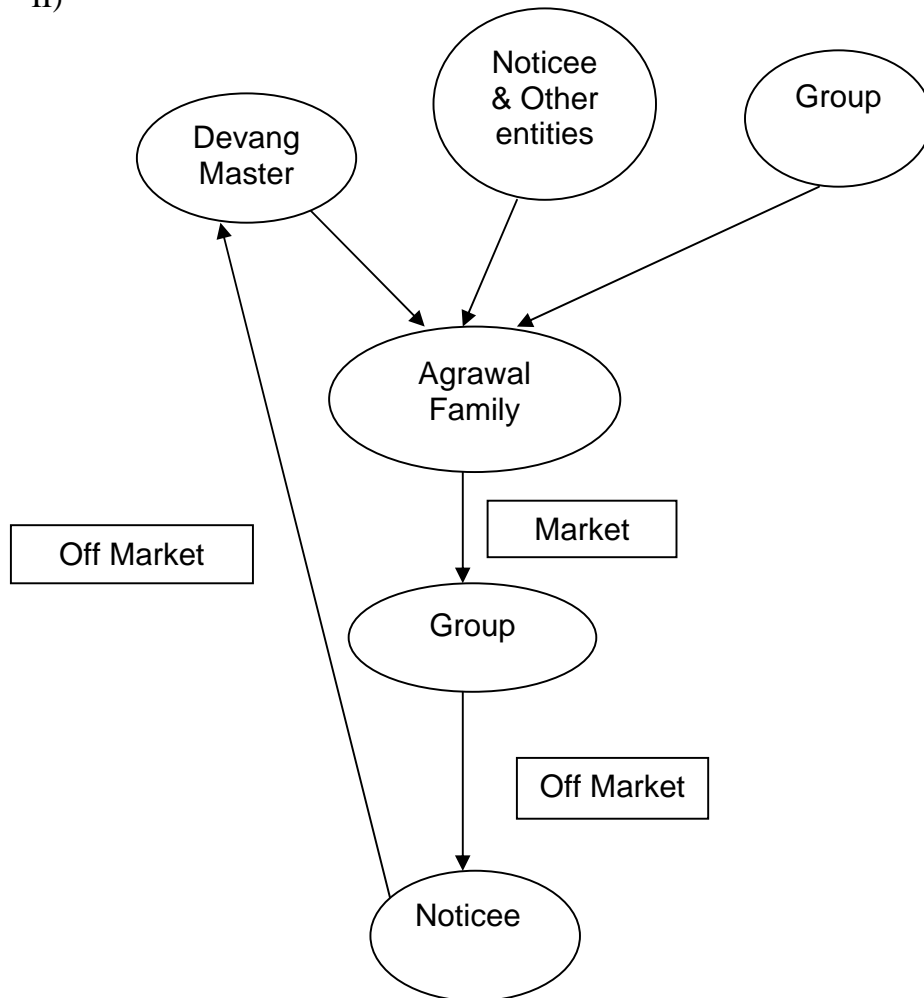
Group and gave delivery for meeting the sale obligations of Agrawal Family. From the above table it is also seen that DM has also given shares to the Agrawal Family to meet their delivery obligation.

21. Further analysis of the demat statements of the connected entities of the Group revealed that after buying from the market they transferred the shares through off market transfers to the demat accounts of Shri Prasad Tandel and Shri Vijay Bhagwandas Shah. Thereafter, Shri Prasad Tandel in turn transferred the shares through off market transfers to Shri Vijay Bhagwandas Shah (38,500 shares), noticee (34,450 shares), and Shri Pratap Singh (3,165 shares). It is observed from the IR that the noticee had received 80,000 shares through off market transfers from different entities of the Group and had rematerialized these 80,000 shares and transferred them in physical form to DM on 31st March, 2005. It is observed from the IR that DM had acquired 2,15,500 (43.10%) shares on 31st March, 2005 mainly from connected entities of Group by off market transfers. The circular transaction executed in the scrip can be represented as follows:

I)



II)



22.a) In other words, in the first instance of circular transaction, DM had transferred shares in off market to 22 entities who in turn traded with the Group and the Group later on transferred the shares in off market to the noticee who in turned transferred those shares back to DM through off market.

b) In the second instance of circular transaction, the Agarwal Family entered into trades with the Group although they had zero shares in their demat account. The delivery obligation of Agarwal family was met by DM, the Group and various other entities including the noticee. Afterwards the Group

transferred the shares to the noticee in off market who in turn transferred those shares back to DM through off market.

23. At this juncture I would like to quote the order of Hon'ble Securities Appellate Tribunal in the matter of *Monika Jain Vs. Ms. Barnali Mukherji, Adjudicating Officer SEBI* decided on 11.02.2011:

"...A circular trade is a fictitious trade which is executed on the trading screen of the exchange which does not result in the transfer of beneficial ownership in the traded scrip. Such trades only create false or misleading appearance of trading in the securities market and thereby lure the lay investors to jump into the fray..."

24. The off market transfers that were made by the aforesaid entities were a part of the whole scheme of manipulating the volume in the scrip and cannot be viewed in isolation. In view of the above it can be concluded that the noticee along with the Group was part of the circular movement of the shares of EILL

25. From the foregoing events, it does not appear to be a mere coincidence that the company made false announcements that facilitated in creating a general interest in the scrip and helped DM and the noticee along with the Group in carrying out their nefarious designs. The noticee along with the Group and DM carried out transactions in the market that led to a rise in the volume of the scrip and thereby induced the gullible investors. It is further, observed from the IR that DM had sold 36,000 shares in the market at ₹ 120 to ₹ 127 during June-2005 i.e. after the investigation period.

26. In view of the above facts and circumstances of the case it can be concluded that the noticee has violated Regulations 3 (a), 4 (1), 4 (2) (a) and (e) of PFUTP Regulations. The text of the said provisions is as follows:

PFUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(e) any act or omission amounting to manipulation of the price of a security;

27. The said violations attract penalty under Section 15HA of the SEBI Act which provides that:

“15HA. Penalty for fraudulent and unfair trade practices- If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”

Public Announcement / Open Offer

28. It was observed from the IR that at the beginning of the investigation period the noticee did not have any shares of EIL. However by subsequent off-market transfers from entities, who were counterparty clients to the sell trades of the Agarwal Family, the noticee acquired 30,000 shares of EIL (6.00% of the paid-up capital). It is further observed from the DP statement that on March 21, 2005, the noticee was holding 31,000 shares of EIL (6.20% of the paid-up capital) which subsequently increased to 80,065 shares (16.01% of the paid-up capital) on March 22, 2005. Since the noticee's shareholding crossed 15%, he was required to make a public announcement / open offer under Regulation 10 of SAST Regulations which the noticee has failed to do so. The text of the said provisions is as follows:

SAST Regulations:

Regulation 10 - Acquisition of [fifteen] per cent or more of the shares or voting rights of any company

No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise [fifteen] per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

29. The said violation attracts penalty under Section 15H(ii) of the SEBI Act. The text of the said provision is as follows:

Regulation 15H(ii) - Penalty for non-disclosure of acquisition of shares and takeovers.

If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—

.....

(ii) make a public announcement to acquire shares at a minimum price;

.....

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Disclosure

30. No disclosure in accordance with Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(1), 13(3) and 13(5) of the PIT Regulations was made by the noticee to the company and BSE. IR has further observed that noticee's non disclosure has been confirmed by the company and BSE. The various non disclosure of the noticee can be stated as follows:

- When noticee's shareholding increased by 6% (30,000 shares) – Required disclosure under Regulation 7(1) read with Regulation 7(2) of SAST Regulations and Regulation 13(1) of PIT Regulations.
- When noticee's shareholding increased from 6.20% (31,000 shares) to 16.01% (80,065 shares) - Required disclosure under Regulation 7(1) read with Regulation 7(2) and Regulation 13(3) of PIT Regulations.

- When noticee's shareholding decreased from 16.01% (80,065 shares) to 0% - Required disclosure under Regulation 13(3) of PIT Regulations.

31. In view of the above facts and circumstances of the case it can be concluded that the noticee has violated Regulation 7(1) read with Regulation 7(2) and and Regulation 13(1) and Regulation 13(3) read with Regulation 13(5) of PIT Regulations. The text of the said provisions is as follows:

SAST Regulations:

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

Regulation 7(1)

[Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent [or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.]

Regulation 7(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.

PIT Regulations

Regulation 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 4 working days of :—

- (a) the receipt of intimation of allotment of shares; or
- (b) the acquisition of shares or voting rights, as the case may be.

Continual disclosure

Regulation 13 (3)

Any person who holds more than 5% shares for 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.

Regulation 13(5)

The disclosure mentioned in sub-regulations (3) and (4) shall be made within 4 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.

32. The said violations attract penalty under Section 15A(b) of the SEBI Act. The text of the said provisions is as follows:

Regulation 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,—

(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 of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

33. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Rules 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

34. It may be added that it is difficult to quantify the profit/ loss for the nature of violations committed by the noticee and no quantifiable figures are made available on record to assess the disproportionate gain or unfair advantage and amount of loss caused to an investor or group of investors as a result of the noticee's violations. Therefore, in view of the abovementioned conclusion and after considering all the factors mentioned under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 5,00,000/- (Rupees Five Lakh only) on the noticee under Section 15HA of the Securities and Exchange Board of India Act, 1992 for the violation of Regulations 3 (a), 4 (1), 4 (2) (a) and (e) of PFUTP Regulations, a penalty of ₹ 75,00,000/- (Rupees Seventy Five Lakh only) on the noticee under Section 15H(ii) of the Securities and Exchange Board of India Act, 1992 for the failure to make public announcement / open offer under Regulation 10 of SAST Regulations and a penalty of ₹ 2,00,000/- (Rupees Two Lakh only) on the noticee under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for failure to make disclosures under Regulation 7(1) read with Regulation 7(2) of SAST Regulations and Regulation 13(1) and Regulation 13(3) read with Regulation 13(5) PIT Regulations which is appropriate in the facts and circumstances of the case.

ORDER

35. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a consolidated penalty of ₹ 82,00,000/- (Rupees Eighty Two Lakh only) on Shri Ashok Bhagat in terms of the provisions of Sections 15HA, 15H(ii) and 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of Regulations 3 (a), 4 (1), 4 (2) (a) and (e) of the Securities and Exchange Board of India (Prohibition of

Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Regulation 10, Regulation 7(1) read with Regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13(1) and Regulation 13(3) read with Regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the violations committed by the noticee.

36. The penalty shall be paid by way of Demand Draft drawn in favour of “SEBI – Penalties Remittable to Government of India” payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to General Manager- ID-6, Securities and Exchange Board of India, Plot No. C4-A, ‘G’ Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

37. 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 Shri Ashok Bhagat having address at H-19, Ramaji Gupta Chawl, Sakharam Buva Patil Marg, (Gazadhar Band), Santacruz (W), Mumbai – 400054 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: January 01, 2013

**D. RAVI KUMAR
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER**