BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 135/2013]

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

In respect of

Sanjay Bajranglal Sharma

(PAN: AKSPS3714K)

In the matter of MTZ Polyfilms Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) conducted investigation in trading in the scrip of MTZ Polyfilms Limited during the period between July 2009 and September 2010 as huge off-market transfers were observed during this period. The shares of the company are listed at Bombay Stock Exchange (hereinafter referred to as **BSE**). The paid-up capital of MTZ Polyfilms Limited during July 2009 to September 2010 was 89,355,760 shares.

2. It was observed that that during the period between quarter ending June 2009 and September 2009 MTZ Industries Limited (erstwhile MTZ (India) Limited), a BSE listed company and belonging to the promoter group entity of MTZ Polyfilms Limited, had transferred 56,25,000 shares of the company on 10.07.2009, 04.08.2009 and 17.09.2009 in off-market to Mr. Sanjay Bajranglal Sharma (hereinafter referred to as the **Noticee**). It was further observed that Noticee then transferred 56,25,000 shares off-market to MTZ Industries Limited on 13.07.2010, 13.08.2010, 08.09.2010,

14.09.2010. It was observed that due to such transfers there was change in the holding of the Noticee by more than 5% of the paid up capital of MTZ Polyfilms Limited and such changes required disclosures to the exchange under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997(hereinafter referred to as **SAST Regulations**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations**). It was alleged that Noticee did not make the disclosures to the exchange under Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations.

3. In view of the above it was alleged that Noticee failed to comply with the provisions of Regulation 7(1) read with (2) of the SAST Regulations and Regulation 13(3) read with (5) of PIT Regulations. Consequently Noticee was liable for penalty under section 15A (b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**).

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide order dated December 2, 2010 under section 15 I of 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**) to inquire into and adjudge the alleged violations of SAST Regulations and PIT Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notice No. EAD-6/BM/VRS/14661/2011 dated May 6, 2011 (hereinafter referred to as **SCN**) was issued to the Noticee under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A (b) of SEBI Act for the alleged violation specified in

the said SCN. The said SCN was delivered and acknowledged by the Noticee. Noticee vide letter dated May 22, 2011 submitted a copy of an agreement dated July 9, 2009 entered into between Noticee, MTZ Polyfilms Limited and dated September 17, 2009 entered into between Noticee, MTZ Polyfilms Limited and MTZ Industries Limited and made the following submissions:

a. *That the Notice is drafted due to certain off-market transactions of MTZ Polyfilms Limited to and fro from Demat account of MTZ Industries Limited and Sanjay Sharma. At the outset let me deny all the allegations about contravening provisions of SEBI Account, doing that let me narrate the facts of the case as follows:*

   i. *That the promoter of both MTZ Polyfilms Limited and MTZ Industries Ltd. are known to me for last many years and my company have been serving them as air ticketing agents. The promoters had specific requirements of funds for which they approached me.*

   ii. *I arranged certain sum personally and stood guarantor for certain sum advanced to promoters, against which some shares were transferred to my demat account on various dates. The details are given as follows:*

Execution date	***Quantity***	***Transferor***	***Transferee***
10/07/2009	*1250000*	*MTZ industries Ltd.*	*Sanjay Sharma*
04/08/2009	*2500000*	*MTZ industries Ltd.*	*Sanjay Sharma*
17/09/2009	*1875000*	*MTZ industries Ltd.*	*Sanjay Sharma*

   An agreement was made between both the parties and was duly stamped and signed.

   iii. *Upon receipt of sum so advanced these shares was returned back to the owners.*

   iv. *I believe that I held these shares in trust on behalf of the owner MTZ (India) Limited and had no ownership right or claim on shares. The same were duly returned to the same account as there was no acquisition as defined under SEBI Act, I was not under any statutory obligation to make*

necessary disclosure under Regulation 7(1) read with 7(2) of SAST Regulations.

6. In the interest of natural justice an opportunity of hearing was provided to the Noticee on July 20, 2011 vide hearing notice dated July 04, 2011 for the personal hearing. Noticee appeared on behalf of the company and reiterated the submissions given in reply to the SCN dated May 22, 2011. Noticee informed that he would like to avail for consent and undertook to inform the same by August 5, 2011. However no reply was received from the Noticee. Vide email dated September 9, 2011 Noticee was informed that if he wish to apply for consent process he may apply as per SEBI Circular No. EFD/ED/Cir-1/2007 dated April 20, 2007 in the prescribed form which was also mentioned at para 10 of the SCN. Vide email dated October 18, 2011 Noticee informed that he has submitted the consent application in prescriber Form A with required documents. The consent application filed by the Noticee was considered by the High Powered Advisory Committee (HPAC) in its meeting dated October 29, 2012 wherein committee recommended that the consent terms proposed by the Noticee may not be settled. Same was informed to the Noticee vide letter dated December 7, 2012. Thereafter, Noticee was provided with another opportunity of hearing before me on January 4, 2013. The hearing notice was acknowledged by the Noticee, however, Noticee failed to appear. Further Noticee did not seek any adjournment also, hence, no further hearing opportunity was provided.

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully examined the documents available on record. The allegations against the Noticee are as follows:

   i. Noticee did not disclose to the company and to the stock exchange when its shareholding in the company crossed five percent as required under Regulation 7(1) read with 7(2) of SAST Regulations.

ii. Noticee did not disclose to the company of change in its shareholding amounting to more than two percent in the company as stipulated under Regulation 13(3) read with 13(5) of PIT Regulations.

8. In view of the above it was alleged that the Noticee violated the provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations.

9. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 7(1) read with 7(2) of SAST Regulations and Regulation 13(3) read with 13(5) of PIT Regulations, which reads as under:

The continual disclosure requirement under Regulation 7 of SAST Regulations:

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.

(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.

The continual disclosure requirement under Regulation 13 of PIT Regulations:

(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.

(5) the disclosure mentioned in sub-regulations (3) and (4) shall be made within 2 working days of:

(a) the receipt of intimidation of allotment of shares, or

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

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

i. Whether Noticee acquired shares more than 5% of the paid capital of the company and violated Regulation 7(1) read with 7(2) of SAST Regulations?
ii. Whether Noticee has violated Regulation 13(3) read with 13(5) of PIT Regulations?
iii. Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15A (b) of SEBI Act?
iv. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS:

11. I now proceed with the alleged violations of SAST and PIT Regulations.

i. I observe that the shareholding of MTZ Industries Limited as per disclosures made by the company for the quarters June and September 2009 was as under:

Quarter ending	Total Shares of MTZ Polyfilms Limited	Shares held by MTZ Industries Limited	% shareholding of MTZ Industries Limited
June 2009	89,355,760	16,801,618	18.80%
September 2009	89,355,760	15,385,391	17.22%

ii. I note from the data of the NSDL for holding more than 1%, that as on 17.09.2009 MTZ industries Limited was holding 97,60,391 shares representing 10.92% of shareholding of MTZ Polyfilms Limited. The paid-up capital of MTZ Polyfilms Limited during July 2009 to September 2010 was 89,355,760 shares.

iii. During the period between quarter ending June 2009 and September 2009, MTZ Industries Limited transferred 56,25,000 shares representing 6.3% of shareholding of MTZ Polyfilms Limited on 10.07.2009, 04.08.2009 and 17.09.2009 in off-market transfers to the Noticee. The details of the off-market transfer between the two entities for various dates during July 2009 till September 2009 is as under:

Execution Date	Quantity	Sell BO Name	Buy BO Name
10/7/2009	1250000	*MTZ industries Ltd.*	Sanjay Bajranglal Sharma
4/8/2009	2500000	*MTZ industries Ltd.*	Sanjay Bajranglal Sharma
17/9/2009	1875000	*MTZ industries Ltd.*	Sanjay Bajranglal Sharma
Total	**5625000**		

iv. It is observed that Noticee then transferred 56,25,000 shares off-market to the MTZ Industries Limited on 13.07.2010, 13.08.2010, 08.09.2010, 14.09.2010. The details of the off-market transfer between the two entities for various dates during July 2010 till September 2010 is as under:

Execution Date	Quantity	Sell BO Name	Buy BO Name
13/7/2010	180000	Sanjay Bajranglal Sharma	*MTZ industries Ltd.*
13/8/2010	180000	Sanjay Bajranglal Sharma	*MTZ industries Ltd.*
8/9/2010	3225000	Sanjay Bajranglal Sharma	*MTZ industries Ltd.*
14/9/2010	2040000	Sanjay Bajranglal Sharma	*MTZ industries Ltd.*
Total	**5625000**		

v. It was observed that the Noticee acquired shares which crossed more than 5% of the paid up capital of the company; further the transfers also resulted in change in holding of more than 2% of the paid up capital of the company and the

changes required disclosures under SAST Regulations and PIT Regulations. The details of change of shareholding on various dates was as under:

- Shares acquired from MTZ Industries Limited:

Date of Transaction	No. of shares Acquired	Shareholding in the MTZ Polyfilm Ltd.	% Change in shareholding	Total % of shareholding
10/7/2009	1250000	1250000	1.4	1.4
4/8/2009	2500000	3750000	2.8	4.2
17/9/2009	1875000	5625000	2.1	6.3

From the above table it can be observed that on 17.09.2009 the holding of the Noticee crossed 5% of the shareholding in MTZ Polyfilms Limited. Hence, the Noticee was required to make disclosures to the company and the exchange as required under Regulation 7(1) of SAST within 2 working days of the respective date of acquisition as required under Regulation 7(2) of SAST Regulations. Admittedly the Noticee did not make any disclosure as required under SAST.

- Further shares transferred to MTZ Industries Limited are as detailed below:

Date of Transaction	No. of shares Transferred	Shareholding in the MTZ Polyfilm Ltd.	% Change in shareholding	Total % of shareholding
13/7/2010	180000	5445000	0.2	6.1
13/8/2010	180000	5265000	0.2	5.9
8/9/2010	3225000	2040000	3.6	2.3
14/9/2010	2040000	0	2.3	0

vi. As may be seen from the above table on 04.08.2009, 17.09.2009, 08.09.2010 and 14.09.2010 there was change in the share-holding of the Noticee of more than 2% in MTZ Polyfilms Limited. Hence the Noticee was required to make necessary disclosure to the company under Regulation 13 (3) within 2 working days as required under Regulation 13(5) of PIT as under:

Date of Transaction	No. of shares Acquired/ (Transferred)	Shareholding in the MTZ Polyfilm Ltd.	% Change in shareholding	Date of making disclosure*
4/8/2009	2500000	3750000	2.8	6/8/2009
17/9/2009	1875000	5625000	2.1	19/9/2009
8/9/2010	(3225000)	2040000	3.6	10/9/2010
14/9/2010	(2040000)	0	2.3	16/9/2010

* Dates when disclosures were required to be made

It was observed that the Noticee did not make any disclosure under PIT also.

vii. Noticee in its reply has claimed that the above transactions were not of a sale and purchase but of a loan wherein certain sum of monies were advanced to the promoters against which some shares were transferred to the demat account of the Noticee. In support of the claim Noticee has submitted the Loan Agreement wherein Noticee had advanced loan amount to MTZ Polyfilms Limited which was guaranteed by MTZ Industries Limited by offering 56,25,000 shares of MTZ Polyfilms Limited as collateral security to secure the said loan.

viii. From the documents before me I observe that the shares were recorded in the name of the Noticee when those shares were transferred to him in 2009. I note that in terms of Section 10 of the Depositories Act, 1996, the beneficial owner is the person whose name is recorded as such with a depository and is entitled to all the rights and benefits and also subjected to all liabilities in respect of its/his securities held by a depository. As per Section 41 (3) of the Companies Act, 1956, "Every person holding equity share capital of a company and whose name is entered as beneficial owner in the records of the depository shall be deemed to be a member of the concerned company". Further, as per Section 152A of the said Act, the register and index of beneficial owners maintained by a depository under Section 11 of the Depositories Act, 1996, shall be deemed to be an index of members and register and index of debenture holders, as the case may

be. Therefore, the presence of shares in a depository account is a *sine quo non* for any individual/entity to declare that he is a shareholder of the company. Further, any transfer of securities from the beneficial owner account would be construed as change in ownership in respect of those securities which have been transferred to another beneficiary depository account. From the Demat Instructions submitted by MTZ Industries Limited I find that the nature of transaction of the Noticee and MTZ Industries Limited was an off-market transfers of shares where the beneficiary ownership had transferred to the transferee.

ix. I have perused the agreement dated July 09, 2009 entered into between the Noticee and MTZ Industries Limited. Clause 6.1 provides that in the event of default in repayment of the outstanding amount by MTZ Industries Limited to lender, the lender shall be required to give 15 days notice to MTZ Polyfilms Limited to set right the default, before dealing/parting (and or selling/disposing off the said shares to the third person at the prevailing market price). Further, as per clause 8.1 of the agreement, the lender in the event of default and after giving notice as per clause 6.1 shall in all cases give the borrower the first right to purchase the said shares. Thus, it can be seen that the securities have been transferred by the MTZ Industries Limited to the Noticee for the purpose of finance availed or to be availed by it and there was change in beneficial ownership of the shares. The plea of the Noticee that the said shares were in the nature of loan could have been justified had those shares been pledged in accordance with the provisions of the Depositories Act, 1996, Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 (hereinafter referred to as **DP Regulations**) and the Bye-laws and business rules of the depositories. 'Pledge' or 'hypothecation' under the depository system does not involve any transfer of shares from the pledger to the pledgee as only an entry is recorded in respect of the securities so pledged or hypothecated, which

would evidence the creation of a pledge. Further, pledge or hypothecation of securities held in a depository shall be made as per the method and manner prescribed under the provisions of the Depositories Act, 1996, DP Regulations and the Bye laws of the depositories. Section 12 of the Depositories Act, 1996 provides for pledge or hypothecation of securities held in a depository, which is reproduced herein below:

Pledge or hypothecation of securities held in a depository-

12. (1) Subject to such regulations and bye-laws, as may be made in this behalf, a beneficial owner may with the previous approval of the depository create a pledge or hypothecation in respect of a security owned by him through a depository.

(2) Every beneficial owner shall give intimation of such pledge or hypothecation to the depository and such depository shall thereupon make entries in its records accordingly.

(3) Any entry in the records of a depository under sub-section (2) shall be evidence of a pledge or hypothecation.

Further, Regulation 58 of the DP Regulations provides for the manner of creating pledge or hypothecation, the same is reproduced herein below for reference:

Manner of creating pledge or hypothecation-

58. (1) If a beneficial owner intends to create a pledge on a security owned by him he shall make an application to the depository through the participant who has his account in respect of such securities.

(2) The participant after satisfaction that the securities are available for pledge shall make a note in its records of the notice of pledge and forward the application to the depository.

(3) The depository after confirmation from the pledgee that the securities

are available for pledge with the pledger shall within fifteen days of the receipt of the application create and record the pledge and send an intimation of the same to the participants of the pledger and the pledgee.

(4) On receipt of the intimation under sub-regulation (3) the participants of both the pledger and the pledgee shall inform the pledger and the pledgee respectively of the entry of creation of the pledge.

(5) If the depository does not create the pledge, it shall send along with the reasons intimation to the participants of the pledger and the pledgee.

(6) The entry of pledge made under sub-regulation (3) may be cancelled by the depository if pledger or the pledgee makes an application to the depository through its participant:

***Provided that** no entry of pledge shall be cancelled by the depository without prior concurrence of the pledgee.*

(7) The depository on the cancellation of the entry of pledge shall inform the participant of the pledger.

(8) Subject to the provisions of the pledge document, the pledgee may invoke the pledge and on such invocation, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.

(9) After amending its records under sub-regulation (8) the depository shall immediately inform the participants of the pledger and pledgee of the change who in turn shall make the necessary changes in their records and inform the pledger and pledgee respectively.

(10) (a) If a beneficial owner intends to create a hypothecation on a security owned by him he may do so in accordance with the provisions of sub-regulations (1) to (9).

(b) The provisions of sub-regulations (1) to (9) shall mutatis mutandis apply in such cases of hypothecation:

***Provided that** the depository before registering the hypothecatee as a beneficial owner shall obtain the prior concurrence of the hypothecator.*

(11) No transfer of security in respect of which a notice or entry of pledge or hypothecation is in force shall be effected by a participant without the concurrence of the pledgee or the hypothecatee, as the case may be.

x. NSDL (in Bye law 9.9) and CDSL (in Bye law 14) have prescribed the procedures to be followed while creating a pledge on the securities held in their depositories. A depository creates and records the pledge only after receiving a confirmation from the depository participant of the pledgee. Thus, for creating a pledge on the securities held by a depository, the aforesaid legal provisions have to be followed necessarily. In the present case, MTZ Industries Limited had transferred 56,25,000 shares to the Noticee by way of an agreement, when the said shares were in dematerialised mode and held by the depositories. In this context, Noticee submitted that the transactions entered between the entities by way of agreement was that of lending which was secured by collateral security in form of equity shares held by the MTZ Industries Limited. Though, Noticee contends so, it failed to produce the documents for pledging of the shares and comply with the legal requirements, prescribed for pledge of shares in the depository system. Therefore, pledge of dematerialised securities shall be created as per the provisions of the Depositories Act, 1996, DP Regulations and the bye laws of the depositories. In this connection, I place reliance in the decision of the Hon'ble Supreme Court of India in *Kunwar Pal Singh vs. State of U.P.* [(2007) 5 Supreme Court Cases 85], wherein it was observed as under:

"…….The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act." [Emphasis supplied]

The Hon'ble Supreme Court of India vide its order dated April 21, 2009 in Civil Appeal No. 3696 of 2005 (*SEBI Vs Saikala Associates Limited*) inter alia observed:

"…….When something is to be done statutorily in a particular way, it can only be done that way."

xi. The Noticee has failed to act as per the requirements of the relevant statutes. I further find that Section 12(3) of Depositories Act, 1996 mentions that any entry in the records of a depository shall be evidence of a pledge or hypothecation. The reason for creating a pledge in the manner as specified under Section 12 of the Depositories Act, 1996 read with Regulation 58 of the DP Regulations is to have proper record of securities held in a particular beneficiary account. The said requirement is also utilised for the purposes of computing the shareholding of any individual/entity in a particular company for the purposes of the SAST Regulations and the PIT Regulations, as only depository records are used for proving the title of the shares.

xii. I note that even as per the agreement (Clause 7.1) between Noticee and MTZ Industries Limited, provides for the recording/creation of pledge which is reproduced herein, *"The Borrower shall pledge the 12.50 lakhs equity shares of the MTZ Polyfilms Limited with the lender in demat mode within 7 days for the date of the agreement"*. As per the said clause, the Borrower (MTZ Polyfilms Limited) agreed to create an exclusive pledge in favour of the lender (Noticee) of 12.50 lakhs equity shares of the company. As already stated above, no pledge was marked in the depository account of the Noticee in respect of those securities which were pledged or were to be pledged. I note that by creating a pledge or hypothecation in accordance with the relevant provisions of the Depositories Act, 1996 and DP Regulations, the pledgee's interest is adequately protected, as Regulation 58 (11) of the DP Regulations provides that no transfer of security in respect of which a notice or entry of pledge or hypothecation is in force, shall be effected by a participant without the concurrence of the pledgee or hypothecatee. Thus, even in the absence of transfer of shares to the account of the Noticee, the security interest of the lender/pledge is adequately protected as mentioned above.

xiii. I also note from the clause 9.9.2 of Bye Laws of NSDL that *"the pledgor and the*

pledgee must have an account in the Depository to create a pledge" and as per clause 2.1.6 Depository means *"National Securities Depository Limited".* I further note from clause 8.5.1 of the Operating Instructions of CDSL that *"the pledgor and the pledgee must have accounts in CDSL to create a pledge"*. The aforesaid pre-requisite are mandatory for creating a valid pledge on a security. In the present matter I note that NSDL is the depository of the MTZ Industries Limited and CDSL is the depository of the Noticee. Hence, inter-depository creation of pledge is restricted by the depositories.

xiv. Noticee claimed that the said transaction does not amount to acquiring of shares under SAST Regulations since Noticee had no ownership right or claim on shares which were duly returned. Though the Noticee contend that the said transfer of shares were governed by the loan agreement, it failed to follow the necessary statutory requirement mentioned under Depositories Act, 1996, DP Regulations and the various bye laws of the depositories which prescribe the method and manner in which a pledge of dematerialised shares have to be created. Further, I find nothing available in 'Demat Instruction' showing that any form of pledge or hypothecation was created over the shares. Thus, the submissions made by the Noticee are not acceptable.

xv. From the information given by BSE and the submission of the Noticee it is observed that the Noticee did not make the required disclosures. In view of the above I hold that the Noticee violated the provisions of Regulation 7(1) read with (2) of the SAST and Regulation 13(3) read with (5) of PIT Regulations.

12. The object of the SAST and PIT Regulation mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. In this

regard I would like to rely upon the findings of Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd Vs. SEBI* (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that:

> *"the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market".*

Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 7(1) read with (2) of the SAST and Regulation 13(3) read with (5) of PIT Regulations.

13. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 7(1) read with (2) of the SAST Regulations and Regulation 13(3) read with (5) of PIT Regulations attracts monetary penalty under section 15A(b) of SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee. 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…".*

14. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act, which reads as under:

15A(b). <u>Penalty for failure to furnish information, return, etc.-</u>

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.

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

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

16. In view of the charges as established, and the facts and circumstances of the case, and the various judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The SAST and PIT Regulation have been framed in order to bring about the transparency in the market and timely disclosure to the investors. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, had responsibility in ensuring the compliance of disclosure norms. The timely disclosure was of importance from the point of view of outside shareholders/other investors as such disclosure would have prompted them to buy or sell shares of the target company. It is an admitted fact that the Noticee had not made the disclosure as required and hence there was no dissemination of information to the general investor. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the

information. Under these circumstances, the compliance with the disclosure requirements under SAST and PIT Regulation assumes significance and the Noticee's failure to do so needs to be viewed seriously and an appropriate view is being taken with regard to imposition of monetary penalty in the matter.

17. In the instant case, it is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find from the records available before me that the default is not repetitive.

ORDER

18. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 5,00,000 (Rupees Five lakh only) under Section 15A (b) of SEBI Act, on the Noticee which will be commensurate with the violations committed by it.

19. The Noticee shall pay the said amount of penalty by way of demand draft 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 should be forwarded to Sujit Prasad, Chief General Manager, Integrated Surveillance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

20. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **March 5, 2013** **BARNALI MUKHERJEE**

Place: **Mumbai** **ADJUDICATING OFFICER**