BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-3/ 1 /2017)

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

In respect of:

Shree Ram Enterprises (PAN:ACAFS9645R)
(a partnership firm represented by its Partners
- Richi Khemka, Manish Kumar and Firozudin)

In the matter of
Cubicle Financial Services Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while conducting an examination in the scrip of Cubical Financial Services Ltd. (hereinafter referred to as "**Company/CFSL**") during the period January 01, 2014 to December 31, 2014(hereinafter referred to as "**examination period**"), observed that **Shree Ram Enterprises** (hereinafter referred to as **"Noticee**")

had failed to make timely disclosures pertaining to its acquisition of shares of the Company during the examination period. It was observed that the Noticee, which is a partnership firm had failed to comply with the disclosure requirements specified under the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and also SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

2. The company is listed on the Bombay Stock Exchange (BSE) and is engaged in the business of making regular investments in financial markets, stocks and properties etc both on short term as well as on long term basis. In the Extra-Ordinary General Meeting of CFSL, which was held on April 7, 2014, the company had announced sub-division of its shares and had obtained the consent of its shareholders whereby each equity share having face value of Rs 10/- was sub-divided into 5 equity shares having face value of Rs 2/- each fully paid-up. The total paid up share capital of CFSL as on July 1, 2014 was Rs 1303.40 lacs (represented by 6,51,70,000 equity shares of face value of Rs 2/- each).

3. It was observed that the Noticee was holding 13,85,000 shares of CFSL in its demat account (A/C No. IN30195910073252) as on July 18, 2014, which was 2.125 % of the total paid up capital of CFSL. It is further observed that Noticee purchased 22,26,000 shares of CFSL in the month of July, 2014 by way of market purchases and also through off-market transactions. These shares were credited to the aforementioned demat account of the Noticee on various dates between July 19, 2014 to July 26, 2014. It was alleged that due to the aforementioned purchase of shares by the Noticee, the shareholding of the Noticee in CFSL increased from 2.125% (as on July 18, 2014) to 5.13% (as on July 24, 2014) and further increased to 5.54% (as on July 26, 2014).

4. In view of the fact that the Noticee's shareholding in CFSL had crossed the threshold limit of 5% of the total paid up capital of the company, the Noticee was required to make necessary disclosures under the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations to the Company and to BSE within two working days of its acquisition of the shares. Similarly, under the provisions of Regulation 13(1) of the PIT Regulations, the Noticee was required to make disclosures to the Company in the prescribed format (Form A) within two working days of its acquisition of the shares. It is alleged that the Noticee had failed to make these disclosures required under the aforementioned provisions of law. Therefore, adjudication proceedings were initiated against the Noticee in terms of the provisions of section 15 A(b) of the SEBI Act, 1992 (hereinafter referred to as **'SEBI Act'**) for the alleged violation.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as Adjudicating Officer, vide Order dated August 23, 2016 under Section 15-I(1) 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 '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Section 15A(b) of the SEBI Act, the aforesaid alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

6. Show Cause Notice dated September 28, 2016 (hereinafter referred to as "**SCN**") was issued to the Noticee in terms of Rule 4 of the Adjudication Rules read with section 15 I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of the SEBI Act 1992, for the aforesaid alleged contravention of the provisions of law

by the Noticee. Vide letter dated October 14, 2016, Noticee filed its reply to the SCN. The relevant excerpts of the reply submitted by the Noticee is mentioned hereunder:

(i) *We have made the dealings in the scrip of CFSL on BSE during the year period as stated in your goodself notice.*

(ii) *Firstly, we like to mention that we never had any intention or view to acquire 5% or more of shares in CFSL.*

(iii) *We like to mention that we are neither the promoters of the company nor have any connection with them. We have no other interests in the said company save and expect that dealing in its scrip on BSE.*

(iv) *We futher like to mention that we are common persons dealing in stock market to make a gain or profit out of our investments and doesn't have knowledge about various guidelines / regulations of SEBI and not technically sound to understand the Nitti gritty of immense and wide guidelines and regulations. Thus, we are not aware of exact requirement or compliance responsibility cast on us through the provisions contained in SEBI (PIT) and SEBI (SAST) regulations.*

(v) *That we most humbly request goodself to kindly take a lenient view in our matter being we are unaware of such stringent provisions and not any way connected with CFSL and belongs to general public category of investors and had no intention to make acquisition of more than 5% of shares of CFSL.*

7. In terms of Rule 4(3) of the Adjudication Rules and vide letters dated January 13, 2017, February 16, 2017 and April 21, 2017, the Noticee was granted an opportunity of personal hearing on February 15, 2017, March 8, 2017 and on

May 15, 2017 respectively. A scanned copy of the hearing notices were also sent to the Noticee's email IDs at shreeram2763@gmail.com, atul_jalan2007@yahoo.com, shreeramenter40@gmail.com and sramenterprises@gmail.com. I observe that the Noticee had submitted its reply to the SCN and had been communicating with SEBI from the aforementioned Email IDs. I observe that the Noticee has not only failed to respond to the notices but also failed to attend the personal hearing fixed on the stipulated dates. I am, therefore,compelled to proceed with the matter *ex-parte* on the basis of facts/material on record.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:

8. I have carefully examined the written submissions made by the Noticee, the facts and circumstances of the case and the material available on record. I find that the allegation leveled against the Noticee is that it had failed to make the relevant disclosures in respect of its purchase of shares of CFSL as required under the provisions of SAST Regulations and PIT Regulations, as applicable.

9. Before moving forward, the relevant extracts of the provisions of the SAST Regulations and PIT Regulations allegedly violated by the Noticee are reproduced below

SAST Regulations, 2011

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 (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.

PIT Regulations, 1992

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.

10. From the material/data available on record, I observe that the following table indicates the details of the transactions undertaken by the Noticee during the examination period-

Transaction and date of Credit of the shares	Credit	Debit	Balance	Percentage to the total Share Capital of Company
18.07.2014			13,85,000	2.125%
19.07.2014	3,15,000		17,00,000	2.61%
21.07.2014	2,70,000		19,70,000	3.02%
22.07.2014	4,64,325		24,34,325	3.735%
22.07.2014	82,675		25,17,000	3.86%
23.07.2014	2,77,000		27,94,000	4.29%
24.07.2014	4,35,700		32,29,700	4.95%
24.07.2014	**1,11,300**		**33,41,000**	**5.13%**
26.07.2014	2,70,000		36,11,000	5.54%

28.07.2014		10,00,000	26,11,000	4%

11. From the above table, I observe that as on July 18, 2014, the Noticee was holding 13,85,000 shares of CFSL, which represented 2.125% of the total share capital of the company. During the period July 19, 2014 to July 26, 2014, Noticee purchased 22,26,000 shares of the Company, which increased the shareholding of the Noticee in CFSL from 13,85,000 shares to 36,11,000 shares, whereby the percentage of Noticee's shareholding in the Company also increased from 2.125% to 5.54% as on July 26, 2014.

12. I find that the disclosure requirements under the SAST Regulations and PIT Regulations are triggered when an entity's shareholding in a company crosses the threshold limit of 5% of the total paid up capital of the company. In the instant case, I observe from the material on record and also from the data mentioned in the aforementioned table that the Noticee was holding less than 5% shares of CFSL as on July 18, 2014 (i.e 13,85,000 shares representing 2.125% of the total share capital of the company). The Noticee bought 22,26,000 shares of the company on various dates between July 19, 2014 to July 26, 2014. These shares were purchased by the Noticee from the market and also by way of off-market transactions. The aforementioned purchases by the Noticee resulted in the change in shareholding of the Noticee in the company, which crossed the threshold limit of 5% (of the total share capital of the company) as on July 24, 2014. Therefore, the Noticee was required to make the disclosures to the Company and to BSE within two working days of the acquisition of shares, in terms of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations. Further, the Noticee was also required to make the disclosures in the prescribed format (Form A) to the Company within two working days of the acquisition of shares in terms of Regulation 13(1) of

the PIT Regulations. I find that Noticee has failed to make these disclosures. The Noticee in its reply to the SCN also accepted the fact that it had not made the disclosures prescribed under the aforementioned Regulations. Both BSE and CFSL have also confirmed in their respective emails dated May 18, 2015 that Noticee has not made the required disclosures under SAST Regulations and PIT Regulations till date.

13. In this context, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. The Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI had observed that*

"*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.*"

14. In view of the above, I hold that the Noticee has failed to make the disclosure required under Regulation 29(1) read with Regulation 29(3) of the SAST Regulations and also under Regulation 13(1) of the PIT Regulations. Therefore, Noticee has violated the provisions of the aforementioned Regulations.

15. The Noticee in its reply to the SCN has mentioned that it was not aware of the regulatory requirements of making the disclosures upon crossing the threshold limit of 5% of the total capital of the Company due to ignorance of the provisions of law. The Noticee further submitted that there was no intention to conceal any information and no unfair gain or advantage has occurred to it during the course of the acquisition of the shares. I cannot agree with the contentions put forth by the Noticee. It is a settled principle that ignorance of law is no excuse. Further, I would also like to place reliance on the Order dated October 14, 2014 passed by Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs SEBI (Appeal No 299 of 2014) wherein it was observed that *"….. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time,was unintentional,technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit,because,all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures" (* emphasis supplied*)*. Therefore, in view of the failure on the part of the Noticee to make the disclosures, as brought out in the preceeding paragraphs, I conclude that the Noticee has violated the provisions of Reg 29(1) r/w Reg 29(3) of the SAST Regulations and Reg 13(1) of the PIT Regulations.

16. In view of the violation of the provisions of law by the Noticee, as established above, the Noticee is liable for monetary penalty under the provisions of Section 15A(b) of the SEBI Act, which reads as under :

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-

(b)To file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

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

18. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticee. No quantifiable figures or data 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 default of the Noticee. Further, there is nothing on record to show that the default by the Noticee was repetitive in nature.

19. By not making the disclosures on time, the Noticee has failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of The Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 }* – where the Hon'ble Supreme Court of India 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……..."*

20. Further, Hon'ble Securities Appellate Tribunal (SAT) in its judgment on 4.9.2013 in the matter of Vitro Commodities Private Limited Vs SEBI had observed that "*It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.*' In light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(1) of the PIT Regulations and Regulation 29(1) of the SAST Regulations committed by the Noticee are not substantially different. Therefore, these violations committed by the Noticee can be considered as a single violation for the purpose of imposition of penalty on the Noticee, as violation of the first regulation would automatically trigger the violation of the second regulation.

21. I am of the view that the details of the shareholding of the persons acquiring substantial stake and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received

by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant case, the Noticee having acquired more than 5% stake in the Company, the timely disclosures of the same by the Noticee under the relevant provisions of SAST Regulations and PIT Regulations, were of significant importance from the point of view of the investors. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

ORDER

22. Having considered all the facts and circumstances of the case, the material available on record, the written submissions made by the Noticee and the mitigating factors mentioned in the preceeding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs 3,00,000/- (Rupees Three Lakhs only) on the Noticee viz. Shree Ram Enterprises (PAN No: ACAFS9645R) under the provisions of Section 15A(b) of the SEBI Act for its failure to make the necessary disclosures under Regulation 29(1) read with Regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and Regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 (1) and 12(2)(a) of SEBI (Prohibition of Insider trading) Regulations, 2015. I am of the view that the said penalty is commensurate with the default committed by the Noticee.

23. The Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into the Bank Account, the details of which are given below

Account No. for remittance of penalties 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

24. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of Enforcement Department (EFD) of SEBI. 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 mentioned 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)	

25. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee viz. Shree Ram Enterprises and also to Securities and Exchange Board of India.

Place: Mumbai
Date: 18.05.2017

SURESH B MENON
ADJUDICATING OFFICER