BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-5/SVKM/AO/43-47/2017-18]

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

Name of the Entity	PAN	Order No.
Ashok Kumar Gupta	AAIPG7033R	SVKM/AO-43/2017-18
Ankush A Gupta	AHCPG2531K	SVKM/AO-44/2017-18
Sushma Ashok Gupta	AAJPG9621L	SVKM/AO-45/2017-18
Akshat Gupta	AMYPG2411K	SVKM/AO-46/2017-18
Ashok Gupta HUF	AAAHA4357A	SVKM/AO-47/2017-18

In the matter of

Santowin Corporation Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (SEBI) conducted investigation into the alleged irregular trading in the scrip of Santowin Corporation Limited (hereinafter referred to as "**SCL** / **Company**"). It was observed that that there was change in 'control' of SCL at 26th Annual General Meeting held on August 17, 2010 wherein members designated Mr. Ashok Gupta (**Noticee No.1)** and Mr. Ankush Gupta **(Noticee No.2)** as new promoters of the company in place of Sandeep R Deora and Ms. Shruti S Deora.

2. Noticee no. 1, 2, Ms. Sushma Ashok Gupta (**Noticee no. 3**), Akshat Gupta (**Noticee no. 4**) and Ashok Gupta HUF (**Noticee no. 5**) (Noticee no. 1 to 5 to be collectively referred to as "**Noticees**") are the persons belonging to the Promoter Group of SCL. Additionally, Noticee no. 1, 2

and 3 are also Directors of SCL. Noticee No. 1 and 2 became Directors of SCL on June 01, 2010 while Noticee No. 3 became Director of SCL on October 01, 2010.

3. SCL had undertaken the following corporate actions with regard to its share capital:-

i. issue of 18,75,000 equity shares of SCL on December 07, 2010 on account of bonus issue,

ii. issue of 50,10,000 equity shares of SCL on December 18, 2010 on account of preferential allotment of shares,

iii. issue of 17,28,000 equity shares of SCL on April 06, 2011 on account of preferential allotment of shares,

iv. sub-division of equity shares of SCL on May 18, 2011 from the face value of ₹ 10 to ₹ 2 per share.

4. Details of change in the shareholding of the promoters/Directors on account of the aforesaid corporate actions is as under:

Date of txns	**Name of promoter**	**Director (Y or N)**	**Opening Holding**	**Reason of increase**	**Increase**	**Closing holding**	**Closing holding (%)**	**Change in share holding (%)**
30/08/10	Sushma Ashok Gupta	N	0	Physical shares received	46000	46000	3.68	3.68
01/10/10		Y	46000	-	-	46000		
07/12/10		Y	46000	Bonus 3:2	69000	115000	3.68	0
18/05/11		Y	115000	Stock Split	460000	575000	1.17	-2.51
30/08/10	Ashok Kumar Gupta	Y	0	Physical shares received	45100	45100	3.61	3.61
07/12/10		Y	45100	Bonus 3:2	67650	112750	3.61	0.00
06/04/11		Y	112750	Preferential Allotment	264000	376750	4.49	0.88
18/05/11		Y	376750	Stock Split	1507000	1883750	3.82	-0.67
30/08/10	Akshat A Gupta	N	0	Physical shares	45000	45000	3.60	3.60

				received				
07/12/10		N	45000	Bonus 3:2	67500	112500	3.60	0.00
18/05/11		N	112500	Stock Split	450000	562500	1.14	-2.46
30/08/10	Ankush A Gupta	Y	0	Physical shares received	45000	45000	3.60	3.60
07/12/10		Y	45000	Bonus 3:2	67500	112500	3.60	0.00
18/05/11		Y	112500	Stock Split	450000	562500	1.14	-2.46
18/12/10	Ashok Gupta HUF	N	0	Preferential Allotment	710000	710000	8.73	8.73
18/05/11			710000	Stock Split	2840000	3550000	7.20	-1.53

5. Since the aforesaid corporate actions resulted in the change in the shareholding of the i) noticee no.1 on 07.12.2010, 06.04.2011 and 18.05.2011, ii) Noticee no. 2 on 07.12.2010 and 18.05.2011 and iii) Noticee no. 3 on 07.12.2010 and 18.05.2011 in SCL which was more than ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights of SCL, they were required to disclose to SCL as well as to the exchange, where the shares of SCL are listed, about such change in his/her holding as stipulated under Regulation 13(4) read with Regulation 13(5) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "**PIT Regulations, 1992**"). It was alleged that Noticee no. 1, 2 & 3, who were Directors of SCL, violated Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 by not making such disclosure.

6. Further, Noticee no.1, 2, 3 and 4 collectively acquired 1,81,100 equity shares on August 30, 2010 from Shruti Deora and became promoters of SCL. As the acquisition of 1,81,100 equity shares of SCL by the Noticee no.1, 2, 3 and 4 constituted 14.49% of the share capital of SCL at the relevant time, it required disclosure from them within 2 working days of transaction as stipulated by Regulation 7(1) read with Regulation 7(2) of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter

referred to as "**SAST Regulations, 1997**"). Since no such disclosures were made by the Noticee no. 1, 2, 3 & 4, it was alleged that they violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997.

7. Additionally, Noticee no. 5 acquired 7,10,000 equity shares of SCL on December 18, 2010 on account of preferential allotment of shares by SCL. As the acquisition of 7,10,000 equity shares of SCL by the Noticee no. 5 constituted 8.73% of the share capital of SCL at the relevant time, it required disclosure from the Noticee no. 5 within 2 working days of transaction as stipulated by Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997. Since no such disclosures was made, it was alleged that Noticee no. 5 violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997.

APPOINTMENT OF ADJUDICATING OFFICER

8. The undersigned was appointed as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act, 1992"**) read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **'Rules'**) to inquire and adjudge under section 15A(b) of the SEBI Act, 1992 the aforesaid alleged violations by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

9. A common Show Cause Notice dated December 11, 2015 (hereinafter referred to as "**SCN**") was issued to the Noticees under Rule 4 of the Rules 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 alleged violations specified in the SCN against the respective noticees. Copies of the documents relied upon in the SCN were provided to the Noticees along with the SCN.

10. Vide letter dated January 06, 2016, Noticee no.1 on behalf of all the noticees stated that *"the changes in the shareholding of all noticees are due to Bonus, Stock Split and Preferential allotment. All the three actions viz. Bonus, Stock Split and Preferential allotment were done after receiving the approval of BSE. All the relevant documents were submitted to give effect to the aforementioned corporate actions. The information along with the list of allottees has been submitted to BSE."*

11. Thereafter, Noticees were given opportunities of personal hearing on February 24, 2016, March 09, 2016 & March 17, 2016. Vide email dated March 15, 2016 noticee no.1 asked for supporting documents showing that Ashok Gupta and family acquired shares from Shruti Deora on August 30, 2010. In this regard, vide email dated March 15, 2016, noticees were supplied scanned copies of i) letter dated October 08, 2014 from RTA-Purva Share Registry (I) Pvt. Ltd., ii) Letter dated November 11, 2014 from ex-promoters of SCL and iii) Letter dated December 03, 2014 from SCL. Vide email dated March 16, 2016, noticees stated that they have found from their records that August 30, 2010 is date of transfer of shares and not date of transaction and requested for short adjournment from personal hearing for verification of records and they were given another date for personal hearing on April 04, 2016. On the scheduled date of hearing, noticee no. 1 appeared on behalf of all the noticees and made submissions. Vide letter dated April 14, 2016, Noticees submitted reply to the SCN. The summary of

submissions made by the noticees during hearing and in reply are as follows:

- *As regards the alleged violation of Regulation 13(4) r/w 13(5) of PIT Regulations, 1992 by Noticee No. 1, 2 and 3, it is submitted that the change in the shareholding was due to issuance of bonus shares, preferential allotment and stock splits. Necessary approval from the stock exchanges were received for these issuances. Further, there is no cash outflow in respect of acquisition of shares through bonus issues and stock splits. The noticees were under the impression that such acquisitions need not be informed to stock exchange.*

- *As regards the alleged violation of Regulation 7(1) r/w 7(2) of SAST Regulations, 1997 by Noticee No. 1, 2 , 3 and 4, it was submitted that the acquisition of 1,81,100 shares from Shruti Deora took place earlier and the transfer of title in respect of these shares took place on August 30, 2010. It was submitted that no intimation in respect of these acquisition was made to stock exchange under Regulation 7(1) r/w 7(2) of SAST Regulations, 1997 by the afore-mentioned noticees. However, the management of SCL made due disclosures and informed BSE about change in control/management and acted in transparent manner. Further, the company SCL also submitted its shareholding for the quarter ended September 2010 which duly reflected the change in promoter group and its shareholding along with that of new promoters and promoter group holding for the quarter ended September 2010.*

- *As regards the alleged violation of Regulation 7(1) r/w 7(2) of SAST Regulations, 1997 for the acquisition of 7,10,00 shares of SCL by Noticee no. 5 it was submitted that the said preferential allotment was done in accordance with the law after EGM of shareholders of the company. However, no intimation to stock exchange in terms of the afore-mentioned regulation was made by the noticee.*

12. Noticees were given opportunity of making additional written submissions, if any, vide letter dated May 03, 2017. No additional submissions, though, were made by the noticees.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the oral and written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

I. Whether Noticee no. 1, 2 & 3 had violated Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992?

II. Whether Noticee no. 1, 2, 3 & 4, had violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997?

III. Whether Noticee no. 5 had violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 and

IV. Do the violations, if any, attract monetary penalty under section 15A(b) of SEBI Act?

14. Before moving forward, it is pertinent to refer to the relevant provisions of PIT Regulations, 1992 and SAST Regulations, 1997 which reads as under:-

PIT Regulations, 1992

***"Continual disclosure**.*
13. (4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :
(a) the receipts of intimation of allotment of shares, or

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

SAST Regulations, 1997

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

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.

(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."

Issue I – Violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 by Noticee no. 1, 2 & 3

15. Regulation 13(4) read with 13(5) of PIT Regulations,1992 inter alia requires disclosure in Form D to the company and to the Stock Exchange by any person who is a Director or Officer of a listed company, of the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings which exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower; and such disclosure has to be made within two working days of acquisition or sale of shares or voting rights, as the case may be.

16. Upon perusal of the documents available on record, I find that it is not in dispute that Noticee No. 1 and 2 became Directors of SCL on June 01, 2010 while Noticee No. 3 became Director of SCL on October 01,

2010. It is also not disputed that there was change in the shareholding of the respective noticees as stated in the table at para 4 above. I note that each time the change in the shareholding of the respective noticees exceeded 25,000 shares which calls for disclosure under Regulation 13(4) of PIT Regulations, 1992 but no disclosure was made to BSE where the shares of SCL were listed at the relevant time and the same has also been confirmed by BSE vide its email dated December 29, 2014. A copy of the said email was given to the noticees but the same is not disputed by the noticees. The change in the shareholding of the respective noticees are as under:

Date	Name of Noticee	Opening Holding (%)	Increase	Closing holding (%)	Reason of Increase
07/12/10	Ashok Kumar Gupta	45100 (3.61%)	67650	112750 (3.61%)	Bonus 3:2
	Ankush A Gupta	45000 (3.60%)	67500	112500 (3.60%)	
	Sushma Ashok Gupta	69000 (3.68%)	69000	115000 (3.68%)	
06/04/11	Ashok Kumar Gupta	112750 (3.61%)	264000	376750 (4.49%)	Preferential allotment
18/05/11	Ashok Kumar Gupta	376750 (4.49%)	1507000	1883750 (3.82%)	Stock Split
	Ankush A Gupta	112500 (3.60%)	450000	562500 (1.14%)	
	Sushma Ashok Gupta	115000 (3.68%)	460000	575000 (1.17%)	

17. However, the respective noticees have contended that the change in the shareholding was due to issuance of bonus shares, preferential allotment and stock splits. Necessary approval from the stock exchanges were received for these issuances. Further, there is no cash outflow in respect of acquisition of shares through bonus issue and stock splits. The noticees submitted that they were under the impression that such acquisitions need not be informed to stock exchange.

18. These contentions are devoid of merit in so far as the disclosure obligation under Regulation 13(4) read with 13(5) of PIT Regulations is concerned. I find that the language of Regulation 13(4) is very clear that the Directors are required to make continuous disclosure in Form D to the company and to the stock exchange, of the shares held and changes thereof, if any, to disclose to the company and to the stock exchange if the change exceeds the limits stated in the said regulation. The said regulation brooks no exception from this mandatory obligation. While there was change of more than 25,000 shares on December 07, 2010 and May 18, 2011 on account of bonus issue and stock-splits respectively, 2,64,000 equity shares were acquired by Noticee no.1 by way of preferential allotment on April 06, 2011. I do not find any merit in the submissions of the Noticees that were under the impression that such acquisitions need not be informed to stock exchange having regard to the plain language of the Regulation. Hon'ble Securities Appellate Tribunal (**SAT**) in the matter of *Vitro Commodities Private Limited vs. SEBI* (Appeal No. 118 of 2013 order dated September 04, 2013), had upheld the imposition of penalty on the appellant therein when the appellant failed to make disclosure under PIT Regulations about change in its shareholding on account of bonus issues, amalgamation etc. However, Hon'ble SAT, treating the violation as technical and inadvertent, reduced the amount of penalty to Rs. One lakh on the ground that the non-disclosure was due to the appellant's ignorance or non-appreciation of requirement of disclosure and since same occurred mostly by not as active action by appellant but as a result of bonus shares, shares allotted due to amalgamation etc. But the same does not hold good in respect of preferential allotment which cannot be treated as passive acquisition.

19. Hon'ble SAT in the matter of *Akriti Global Traders Ltd. vs. SEBI* (Appeal No. 78 of 2014 order dated September 30, 2014) 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.*

20. In view of the aforesaid discussion, I find that the Noticee no. 1, 2 & 3 failed to make the requisite disclosures to BSE as stipulated under Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 read with Regulation 12 of PIT Regulations 2015 about change in their shareholding in SCL on 3, 2 and 2 occasions respectively as discussed earlier.

Issue II – Violation of Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 by Noticee no. 1, 2, 3 & 4

21. Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997, requires that any acquirer who acquires shares or voting rights which would entitle him to more than 5% or 10% or 14% or 54% or 74% shares or voting rights in a company in any manner whatsoever is required to disclose at every stage the aggregate of his shareholding in that company, to the company and to the stock exchanges where shares of the target company are listed within two days of the acquisition.

22. Upon perusal of submissions of the Noticees and documents available on record, I find that Noticee no. 1, 2, 3 & 4 were admittedly part of the promoter group which was acting in concert in exercising control over SCL at the relevant period and the company has been disclosing the shareholding of the Noticee no. 1, 2, 3 & 4 under the

category of promoters. It is also not in dispute that as on August 30, 2010, a total of 1,81,100 shares were acquired by them from the erstwhile promoters of the company which constituted 14.49% of the share capital of SCL at the relevant time and no disclosure in respect of these acquisitions was made by them to the stock exchange under Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997.

23. However, it was contended that the acquisition of 1,81,100 shares from Shruti Deora took place earlier and only the transfer of title in respect of these shares took place on August 30, 2010. Here, I find that RTA of SCL Purva Share Registry (I) Pvt. Ltd vide its letter dated October 08, 2014 (copy was given to noticees) submitted the chronological schedule of reduction in shareholding of erstwhile promoters for the period March 01, 2010 to December 31, 2010, which shows the date of transactions of shares from the erstwhile management to Noticee no. 1, 2, 3 & 4 as August 30, 2010. Even if I the contention of noticees that the transactions in question happened earlier is accepted, it does not make any difference to the findings on violation of Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 by these noticees as the fact remains that they acquired 14.49% of the share capital of SCL from the erstwhile management and did not make the requisite disclosure to the stock exchange at any relevant point in time.

24. It was further contended that the management of SCL made due disclosures and informed BSE about change in control/management and acted in transparent manner. Further, the company SCL also submitted its shareholding for the quarter ended September 2010 which duly reflected the change in promoter group and its shareholding along with of

new promoters and promoter group holding for the quarter ended September 2010.

25. These contention are devoid of any merit. In this regard, I note that under regulation 7(1) of SAST Regulations, 1997 there is an independent and separate statutory obligation of making disclosure of acquisition on acquirer of the shares and disclosure by the company does not absolve the acquirer from making the relevant disclosure under the afore-mentioned regulation. These disclosures are time-bound. In this context, I would like to rely on observation of Hon'ble SAT in *Ambaji Papers Pvt. Ltd. V. The Adjudicating Officer, SEBI (*Appeal no. 201 of 2013 dated January 15, 2014), wherein similar contention of information being in the public domain was raised by the appellant. SAT observed ".... *that a reading of Regulation 7 of the SAST Regulations, 1997 read with Regulation 35(2) of the SAST Regulations, 2011 clearly points out that not only the company, but an acquirer is also required to inform the stock exchanges at every stage of aggregate of the shareholding or voting rights in the company. The object underlying these regulations is, therefore, unequivocally to bring more transparency by dissemination of complete information to the public as well as shareholders at large not only by the concerned company but by the individual acquirer as well."* (Emphasis supplied*).*

26. In this context, I would also like to rely on observation of Hon'ble SAT in *Premchand Shah and Others* V. *SEBI (Appeal no. 192 of 2010* dated February 21, 2011), wherein it was held that "…….*When a law prescribes a manner in which a thing is to be done, it must be done only in that manner……. Non-disclosure of information in the prescribed*

manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments …… "

27. In view of the aforesaid, I find that Noticee no. 1, 2, 3 & 4 did not make disclosure to stock exchange about acquisition of 14.49% share capital of SCL and thereby violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011.

Issue III – Violation of Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 by Noticee no. 5

28. I note that SCL issued 50,10,000 equity shares on December 18, 2010 by preferential allotment of shares, wherein Noticee no. 5 acquired 7,10,000 equity shares of SCL which constituted 8.73% of the share capital of SCL at the relevant time. Such acquisition by the Noticee no.5 required disclosure within 2 days of transaction as stipulated by Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 which was admittedly not made by Noticee no.5.

29. However, it has been contended that the said acquisition was by way of preferential allotment which was done in accordance with law. I note that Regulation 7(1) of SAST Regulations, 1997 does not create any exception for the acquisitions made by way of preferential allotment from the mandatory obligation of making disclosures if such acquisition of shares is beyond the threshold limits specified in the said regulation. Moreover as has been held by Hon'ble SAT in the matter of *Akriti Global Traders Ltd. vs. SEBI* referred *supra* the obligation to make disclosures under the provisions contained in Takeover Regulations 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.

30. In view of the aforesaid discussion and findings, I find that Noticee no. 5 did not make disclosure to stock exchange about acquisition of 8.73% share capital of SCL on December 18, 2010 and thereby violated Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 read with Regulation 35 of SAST Regulations, 2011.

Issue IV - Does the non-compliance, if any, attract monetary penalty under section 15A (b) of SEBI Act?

31. By not making the disclosures on time, Noticees failed to comply with their mandatory statutory obligation. In this context, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of *Chairman, SEBI vs. Shriram Mutual Fund* {[2006] 5 SCC 361} wherein it was held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

32. As the violation of Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992 by Noticee no.1, 2 & 3 and violation of Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997 by Noticee no.1, 2, 3, 4 & 5 is established, the Noticees are liable for monetary penalty under section 15A(b) of SEBI Act, which, at the time of violation, read as under:

"15A. Penalty for failure to furnish information, return, etc.- *If any person, who is required under this Act or any rules or regulations made thereunder,-*
(a) ……..;
(b) to file any return or furnish any information, books or other documents within the time specified 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. While determining the quantum of penalty under section 15A(b), 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."

34. The amount of disproportionate gain or unfair advantage to the Noticees or loss caused to the investors as a result of the default is not quantified in the material available on record. Details of the shareholding of the promoters/Directors and changes thereto is an important element for the proper functioning of the securities market and timely disclosure thereof to the stock exchanges etc. are of significant importance from the standpoint of investors. The purpose of these disclosures is to bring about transparency in the transactions of Directors/Promoters/Acquirers and assist the Regulator to effectively monitor the transactions in the market. Hon'ble SAT in the case of *M/s. Coimbatore Flavors & Fragrances Ltd. & Ors vs SEBI* (Appeal No. 209 of 2014 order dated August 11, 2014), observed *"Undoubtedly, the purpose of these*

*disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same." (*Emphasis supplied*).*

35. It is contended by the Noticees that they have not gained any disproportionate gain or unfair advantage by not making the purported disclosures, no loss was caused to the investors, there was no trading in the scrip of company and that the scrip was suspended. In this regard, I note that Hon'ble SAT through various judgments, as cited earlier, has consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations under the PIT and Takeover regulations.

36. In the matter of *Virendrakumar Jayantilal Patel vs. SEBI* (Appeal No. 299 of 2014 order dated October 14, 2014), Hon'ble SAT 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).

ORDER

37. After taking into consideration the nature and gravity of charges established, the facts and circumstances of the case and the mitigating

factors, I, in exercise of the powers conferred upon me under Section 15I (2) of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, hereby impose following penalties on the Noticees under section 15A(b) of SEBI Act, 1992:

Violation	Name of the Noticee	Penalty Amount
Regulation 13(4) read with Regulation 13(5) of PIT Regulations, 1992	Ashok Kumar Gupta	₹ 1,50,000/- (Rupees one Lakh Fifty Thousand Only)
	Ankush A Gupta	₹ 1,00,000/- (Rupees one Lakh Only)
	Sushma Ashok Gupta	₹ 1,00,000/- (Rupees one Lakh Only)
Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997	Ashok Kumar Gupta	₹ 2,00,000/- (Rupees Two Lakh Only) to be paid jointly and severally
	Ankush A Gupta	
	Sushma Ashok Gupta	
	Akshat Gupta	
Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997	Ashok Gupta HUF	₹ 2,00,000/- (Rupees Two Lakh Only)

38. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, **or** by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Chief General Manager, Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	

5. Transaction No. :	
6. Bank Details in which payments 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 Rules, copies of this order are sent to Noticee and also to the Securities and Exchange Board of India.

Date: June 30, 2017
Place: Mumbai

S. V. Krishnamohan
Chief General Manager &
Adjudicating Officer