

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.IVD-ID6/DM/AO/DRK-AKS/EAD-3/674/220 -14]

**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 Devang D. Master

16-A, Tower C, Viceroy Park

Thakur Palace, W E Highway

Kandiwali (E), Mumbai - 400101

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 '**EIIL / 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 Ltd. (hereinafter referred to as '**BSE**'). On BSE the price of the scrip rose from ₹ 81.00 on February 16,

2005 to ₹ 113.00 on March 11, 2005 (an increase of ₹ 32) 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 (an increase of ₹ 18.50). 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, 15H(ii) and 15A(b) of the SEBI Act for the violation of Regulations 3 (b), 3(c) and 3(d), 4 (1), 4(2)(d), 4(2)(e), 4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**'), Regulation 7(1A) read with Regulation 7(2) and Regulations 10 and 11 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations**') and also Regulation 13(4) read with 13(5) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') alleged to have been committed by Shri Devang D Master (hereinafter referred to as '**noticee**').

SHOW CAUSE NOTICE, REPLY AND HEARING

4. A show cause notice ADJ/EIL/HB/PM/169796/2009 (hereinafter referred to as '**SCN**') dated 15.07.2009 issued by the previous Adjudicating Officer was served on the noticee, pursuant to which noticee was granted two personal hearings on 29.05.2012 and 11.06.2012 by the undersigned. However, the noticee failed to attend any of the hearings provided to him without furnishing any reason. Thereafter an adjudication order was passed based on the material made available on record against the noticee on 31.01.2013.
5. The said adjudication order was challenged in the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**'). Hon'ble SAT vide its order dated 23.04.2014 remanded the matter to the Adjudicating Officer for holding fresh proceedings against the noticee. Further, the Hon'ble SAT observed that SEBI if so advised may issue fresh SCN to the noticee.
6. In compliance with the Hon'ble SAT direction, SCN A&E/DRK-AKS/17897/2014 dated 23.06.2014 was sent to the noticee by Hand Delivery 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, 15H(ii) and 15A(b) of the SEBI Act for the alleged violations of Regulations 3 (b), 3(c) and 3(d), 4 (1), 4(2)(d), 4(2)(e), 4(2)(k) and 4(2)(r) of PFUTP Regulations, Regulation 7(1A) read with Regulation 7(2) and Regulations 10 and 11 of Takeover Regulations and Regulation 13(4) read with 13(5) of PIT Regulations.
7. However, the SCN dated 23.06.2014 came back undelivered with remark "house / office locked". Therefore, the aforesaid SCN was served on the noticee vide our letter dated 26.06.2014 by Registered Post Acknowledgement Due. Proof of delivery is on record.

8. In the SCN dated 23.06.2014 following was alleged:

- It was observed from the IR that the major buying clients viz. Shri Girdharbhai Vagadia, Shri Prasad Tandel, Shri Nilesh Upadhyay, Shri Prakash D'souza, Shri Kalpesh Babaraya and Shri Vithalbhai Gajera were found connected to each other through common telephone numbers, fund movement and off market transfers, bought together 1,25,400 shares contributing to 57.60% of the market volume trading through 6 different stock brokers. Two other clients found connected to above mentioned clients through off market transfers viz. Ms. Shila Suryavanshi and Shri Vikas Bengani also bought in small quantity during the investigation period and taken together total quantity bought by the connected clients was 1,39,400 shares. The clients are collectively referred to as **Group**. As reported by BSE the above entities were found to be trading in Prraneta Industries Ltd., Mega Corporation Ltd. and IFSL Ltd. as a group and was termed as Mahesh Mistry group.
- It was also observed from the IR that the noticee was connected to Ms. Lata Agrawal, Shri Vasudev Agrawal, Ms. Indira Agrawal, Shri Shambhu Agrawal and Shri Rajendra Agrawal (connected as belonging to the same family and herein after referred to as '**Agrawal Family**') as the noticee had transferred shares directly to them on 30.10.2004 and 01.11.2004.
- It was alleged in the SCN that there was circular movement of shares among the noticee, the Group, Agarwal Family and other clients establishing relationship among these entities and it was alleged that these entities trading in a concerted manner created artificial volume in the scrip and also influenced the price of the scrip.
- It was also alleged that the company made misleading corporate announcements and the noticee utilised the Group, the Agrawal

Family and other clients for creating artificial volume and price rise in the scrip. The shares were then transferred to the noticee who sold 36,000 shares in the market @ ₹ 120 to ₹ 127 during June-2005 i.e. after the investigation period when the price had gone up.

- Further, it was also alleged in the SCN that the noticee had made off market transfers to various entities and had also received shares in off market for which the noticee had not made disclosures / open offer under Takeover Regulations and PIT Regulations.

9. The noticee vide his letter dated 04.07.2014 requested for inspection of relied upon documents and had requested for three weeks time to submit a reply to the SCN. Vide our letter dated 08.07.2014 noticee was informed that his request for inspection of documents has been forwarded to the concerned department and he was advised to address further communication if any, in that regard to the concerned department and complete the inspection within a period of 15 days from the date of receipt of the letter. Noticee was also advised to submit a detailed reply to the SCN within 15 days from the date of inspection, failing which it would be presumed that noticee has no reply to submit and the matter would be proceeded on the basis of the material available on record.

10. Noticee vide his letter dated 20.08.2014 which was received via email stated that inspection of documents was conducted on 06.08.2014 and requested for extension of time till 05.09.2014 to submit a reply to the SCN due to holidays and religious festival. Vide hearing notice dated 21.08.2014 noticee's request was acceded to and he was granted time till 05.09.2014 to submit a reply to the SCN. He was also advised to attend the hearing before the undersigned on 12.09.2014 at 11:00 am at SEBI Bhavan, Mumbai. A scan copy of the aforementioned hearing notice was also sent to noticee's email id.

11. Noticee vide his letter dated 12.09.2014, authorised Mr J.J. Bhatt, Advocate, Ms. Rinku Valanju, Advocate, Mr Jayesh Ahire and Mr. Vivek Shah (hereinafter referred to as '**ARs**') to represent him for the scheduled hearing.

12. At the time of hearing the ARs submitted a reply to the SCN dated September 12, 2014 which was taken on record. The ARs reiterated the submissions made vide the said reply. The ARs submitted that the noticee was not related to the 23 entities as stated in the SCN. The ARs were advised to submit the copy of the Loan Agreement (including the detailed terms and conditions) and the details of share certificates of 2,13,000 (share certificate numbers, distinctive numbers, folio numbers etc.). Further ARs undertook to confirm whether the noticee took any action for forgery of signatures as submitted by the noticee and also to confirm whether STA had any communication with noticee with respect to the transfer of 2,13,000 shares and to provide copies of the contract notes of the transferors with respect to the same. The ARs, undertook to submit the aforesaid details/ documents, clarifications and additional reply if any on or before September 20, 2014. It is observed from the record that noticee has not submitted share certificate numbers and distinctive numbers as undertaken at the time of hearing.

13. Noticee's reply dated 12.09.2014 is as follows:

- He was the Promoter - Director of EIL at the relevant time. He resigned as a Director in February 2013 from EIL.
- Noticee submits that his loan related dealings have been misunderstood and misinterpreted and wrongly correlated with on market transactions and on market parties for roping him in and for charging him for alleged violations of PFUTP, Takeover Code and PIT Regulations.
- 1, 25, 000 shares in physical mode (Share Certificates + 5 unsigned blank TDs handed over to Shri Shambhu Agrawal in October, 2004. These shares were transferred in 5 names of Agrawal (Lata, Indra, Vasudev, Rajendra, Shambhu – 25,000 shares each) on 01.11.2004. Noticee submits that his signature as transferor was forged and he has submitted a copy of 'Signature Comparison Report.

- Noticee transferred 2,500 shares in demat mode to the pool account of Ruchiraj – broker as per Shri Nilesh Kothari's request. [It transpired later that these shares were used to meet one of the Agrawal's settlement obligations]. This was prior to investigation period.
- Noticee rematerialized 2,40,500 shares on 31.1.2005 and handed over certificates of 2,13,000 shares to Shri Shambhu Agrawal who arranged transfer in 23 names without noticee's knowledge on 25.02.2005. Noticee's signatures were forged on the transfer deeds. Noticee has not got copies of transfer deeds pertaining to transfer of 2,13,000 shares in the names of 23 entities. Noticee does not know nor has any commercial dealing with 23 parties.
- Mr. Agrawal paid by cheque to the noticee – ₹ 2,59,000 and paid by cash ₹ 2,41,000/- . Noticee has submitted copy of bank statement. Noticee was negotiating terms of loan with Shri Shambhu Agrawal and he handed over share certificates only as security for ₹ 5 lacs for token advance received.
- Noticee returned ₹ 5 lacs (advance received) in cash to Shri Shambhu Agrawal who assured to return shares received by him as security earlier. Accordingly, Shri Shambhu Agrawal returned 2,15,500 shares (physical 1,82,150 + Demat 33,350) to the noticee and thereby completed the outstanding transaction – The said shares were arranged by Shri Shambhu Agrawal from five parties. As a result the noticee received back 2,15,500 (2,13,000 + 2,500 shares) shares within a period of about one month. The said physical shares (1,82,150) got transferred in the noticee's name on 31.03.2005 and 33,350 demat shares got transferred in the noticee's name on 31.3.2005.
- The noticee sold 26,000 shares (and not 36,000) in demat form in the market in June, 2005. No fault has been found in the trading pattern for this sale post investigation period.
- From the above, it is evident that the conduct of handing over of share certificates comprising 1,25,000 shares to Shri Shambhu Agrawal and transfer of 2,500 shares in demat mode to Ruchiraj Broker's pool account were prior to investigation period and did not involve any wrongdoing on the part of the noticee.
- With regard to handling over of 2,13,000 shares in physical mode on 25.02.2005 to Shri Shambhu Agrawal, the noticee within about one month

received back shares and the transaction got completed. The transactions were commercial in nature, at arm's length and there was no any guilty intent.

- It is the case of the noticee that return of 2,15,500 shares of EIL on 31.03.2005 was not and could not be regarded as acquisition of shares as contemplated under Takeover Code. The said return of shares to the noticee was on account of irregular / fraudulent transfer of 2,13,000 shares (which was effected without transfer deeds and / or without signature of noticee as transferor and / or with forged and fabricated signature of the noticee) on 25.02.2005 in the names of 23 parties. Thus, transfer of 2,15,500 shares on 31.03.2005 was a corrective action of an earlier tainted / invalid transfer of shares on 25.2.2005. It is worth noting additionally that for the said transfer of 2,15,500 shares no consideration was paid by the noticee.
- In view of the above, the noticee's alleged changes in his shareholding in the company from 53.01% to 9.91% as on 25.02.2005 and from 9.91% to 53.01% as on 31.03.2005 did not call for any disclosures. The noticee placed reliance on SEBI notification dated 28.01.2009. As per the said notification dated 28.01.2009 the Promoters/Promoter Group entities are now required to make disclosure of pledged shares. However, at the relevant time (February 2005), there was no such disclosure requirement for the Promoters.
- It has been alleged that the company made misleading corporate announcement on 2.3.2005 and the noticee utilized the Group, Agrawal family and other clients for creating artificial volume and price rise in the scrip. The said announcement of 2.3.2005 made by the company was made in good faith and in the regular course of business. It is wrongly linked with the price rise and price fall of the scrip as both price rise on 02.03.2005 and price fall on 11.03.2005 is insignificant and hence the inference drawn by Adjudicating Officer (herein after referred to as 'AO') is erroneous.

Date	Price Pre announcement	Price post announcement	% increase/decrease
02.03.2005	100.15	101.90	1.75% +
11.03.2005	113.96	110.75	2.82% -

- The company calling Board meeting on 8.3.2005 for considering inter alia issue of right / preferential shares was based on then management's thinking and genuine. Similarly, on account of valid reason i.e. non-availability of Directors, the meeting scheduled on 8.3.2005 was cancelled. This intimation of cancellation too was conveyed to BSE Ltd. There was hardly any effect on price of the scrip. Post 11.3.2005 the price remained without much change.
- The noticee got 2,40,500 shares rematerialized for the very purpose of depositing it with Mr. Agrawal as a collateral. The noticee bore in mind (while getting shares rematerialized) that if he transfers the shares in demat form then there would be change in beneficial ownership of the shares.
- The noticee is undisputedly not a part of alleged group entities. The noticee has not carried out a single trade in the market during the investigation period (16.2.2005 to 1.3.2005). The AO has established noticee's connection with the Agrawal family based on alleged transfer of 1,25,000 shares to 5 different Agrawal family members. It is pertinent to mention that the noticee never intended to transfer beneficial ownership of the shares and it appears that the Agrawals got the shares transferred into their names without the knowledge and consent of the noticee through fabricated and forged signatures / documents. The noticee had transferred these shares in order to raise funds for various business exigencies and deposited his shares towards security. However, it is clarified that the noticee did not receive any consideration at any point of time. Further the connection established on the basis of genuine dealing cannot be stretched to rope in and connect / implicate the noticee with the alleged group entities and for PFUTP charges. The noticee's selling 26,000 shares in June, 2005 (3 months after investigation period was an independent action and had nothing to do with the return of 2,15,500 shares received in March, 2005). Hence provisions of PFUTP are not applicable.
- The noticee's name appears for off-market trade after investigation period for 33,350 shares. The noticee clarifies that he received these shares towards handing 2,13,000 shares to Mr. Agrawal in February 2005, who then arranged return delivery of shares through 5 entities in March 2005, out of which Mr. Prasad Tandel delivered 33,350 shares in demat form through off- market.

14. Noticee vide his letter dated 25.09.2014 submitted additional reply as follows:

- Noticee submits that the company was looking for some business expansion and for that needed some bridge finance on immediate basis. The shares of the company were traded in the “T” category; therefore, not eligible under any margin funding list of banks. The noticee came across one Mr. Nilesh Kothari who introduced him to Mr. Shambhu Agrawal who represented himself as a finance broker and promised to arrange finance at friendly terms. Since the need of funds was on immediate basis and the same was agreed on friendly terms, there was an oral agreement / understanding between the parties. The terms and conditions broadly were as follows:
 - The financier agreed to arrange ₹ 1 crore at a nominal interest rate (1.00% per month) repayable in 2 years. It was agreed that he would charge 1% commission and as token he advanced ₹ 5, 00,000/- to the noticee (₹ 2, 59,000 by cheque and ₹ 2,41,000 by cash) in February 2005.
 - As per the oral agreement, the financier asked the noticee to surrender original share certificates so that the funding can be organized on immediate basis. Accordingly, the noticee rematerialized 2,40,500 shares and deposited the jumbo share certificates (213 share certificates of 1000 shares each) with the financier. The noticee did not foresee any problem in this as he did not sign any transfer forms for the said shares. It was agreed that if the financier failed to arrange the balance loan (of ₹ 95, 00,000) within the stipulated time of 2 weeks then he shall return the share certificates to the noticee and accordingly the noticee shall return him the token money of ₹ 5,00,000/-.
 - There was only oral agreement between the noticee and Mr. Agrawal as it was mutually agreed that a formal agreement will be entered into only when the financier was able to arrange the complete finance.
- The noticee submits that share certificates of EIL were handed over to Mr. Agrawal were jumbo physical share certificates of 1000 shares each (213 share certificates). Folio No. of these shares were 000274.
- Due to non-receipt of finance as agreed upon, the noticee took up the matter very strongly with Mr. Nilesh Kothari and Mr. Agrawal (to whom he had handed over the shares as security to raise the finance) and pursuant to which Mr. Agrawal agreed to return the shares. Hence, on account of

pressure put by the noticee, Mr. Agrawal arranged to return 2,13,000 shares of the noticee – in dematerialized form 33,350 shares and 1,82,150 in shares physical form. Thereafter there was no reason for the noticee to pursue the matter further.

- Further, the noticee did not receive any communication from the company's Share Transfer Agent regarding the transfer of 2, 13,000 shares in various parties names.
- The scrip EILL was in 'T' Group at the relevant time. The purchase/ sale of shares were settled on a trade to trade basis and generally speaking, no manipulation takes place in a scrip which is put in this group by BSE.
- The noticee says that the transfer of his shares to 22 parties was not pursuant to any commercial dealing with these parties. The transfers were effected through forged and fabricated signatures of the noticee on the transfer deeds.
- The very fact that Mr. Agrawal returned the same quantity of shares from "other parties" establishes the fact that the noticee's shares were surreptitiously dealt with by Mr. Agrawal.
- The said transfer of shares cannot be considered valid for any purpose as such transfer of noticee's shares was per-se illegal in the first instance. Thus, the provisions of the Takeover code and Insider Trading Regulations cannot be applied to such transfer.
- It is pertinent to note that when the Agrawal family traded, from 02.03.2005 to 11.03.2005, they were not holding a single share in their name. However, the delivery for the shares sold by them was not given by any of the 22 entities who wrongfully got noticee's shares transferred in their names.
- Further, out of 1,09,750 shares delivery of only 2,500 shares have been attributed to noticee (that too the noticee transferred the shares in January, 2005 to the pool account of Ruchiraj Shares and Stock Brokers Private Limited as per Mr. Nilesh Kothari's request (which was prior of investigation period). Thus, from the above, it is evident that none of the noticee's shares were involved in alleged manipulation of shares/ prices, circular movement of shares and creation of artificial volume.

15. Noticee in his aforementioned additional submission had requested for copies of transfer deeds of the transferors of the 2,13,000 shares. Accordingly noticee was provided with the copies of transfer deeds vide letter dated 27.10.2014.

16. In response to the same, noticee made further submissions vide his letter dated 24.11.2014 as follows:

- Noticee submitted Signature Comparison Report dated 10.11.2014 and Handwriting Comparison Report dated 12.11.2014 and stated that as per the aforesaid reports the expert has concluded that the disputed handwriting and signature samples are fundamentally different from the comparative handwriting and signature samples as more specially set out in the enclosed reports.
- It is very clear from the reports that 2,13,000 shares got transferred in the names of 22 entities by way of forging noticee's signature. The alleged transfers have been affected without noticee's knowledge and consent.
- On detailed scrutiny of the transfer deeds noticee has found various discrepancies because of which the transfers ought to have been rejected. Noticee's observations are as under:
 - a) All the transfers have a common witness.
 - b) Many of the transfer deeds did not contain date and / or place of execution.
 - c) Of the remaining transfers on which the date and place of execution was mentioned it seems that the transfers were executed either on February 03, 2005 or February 15, 2005 in different cities namely Mumbai, Pune and Indore. It is beyond my understanding as to how a person can witness various transfers executed on the same date in different cities.
 - d) None of the transferee's had signed in the section for specimen of the transferee's signature, which is a mandatory requirement to process the transfer.
 - e) In one transfer namely to Mr. Biharilal Saboo mentioned incorrect distinctive numbers. The transfer deed stated that 3000 shares were transferred to him bearing distinctive nos. from 278801 to 271800 whereas the distinctive nos. should have been from 278801 to 281800 (i.e. 278800+3000).

- f) Noticee has not received any consideration, as mentioned in the transfer deeds, from the transferees concerned.
- The above facts coupled with handwriting and signature comparison reports are conclusive that the alleged transfers were prima facie forged and invalid.

17. In light of the new evidence / reports submitted by the noticee, comments of the concerned operational department of SEBI were sought. The operational department replied as follows:

- a) The entity being a Promoter – Director of the company was shown caused on 15.07.2009. The notice sets out alleged transactions executed by the entity. All supporting documents and evidences based on which allegations were made were provided to the entity. At that point of time, the entity never relied upon the documents nor placed on the record the reports or provided any FIR or anything to this effect to the alleged fraudulent transfer.
- b) Given the attendant circumstances, the filing of the forensic report at this juncture appears to be an afterthought and hence cannot be a sole evidence for arriving at the conclusion.

CONSIDERATION OF EVIDENCE AND FINDINGS

18. I have taken into consideration the facts and circumstances of the case and the material made available on record. The first issue in the present matter is whether the noticee was instrumental in issuing misleading corporate announcement on March 02, 2005 of preferential / rights issue, which did not materialize and which had lured investors.

19. 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 announcement	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.

20. 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. Over here it may be added that the issue of lack of number of allottees does not hold good in case of rights issue, since rights issue is offered to the existing shareholders of the company.

21. 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 due to 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.

22. 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. In response to the same, BSE vide its email dated 18.12.2007 stated that the announcement was treated as postponement only. It is observed from the IR that the company had no material on table to proceed or to consider the rights / preferential issue.

23. The noticee vide his reply dated 12.09.2014 stated that scheduled Board meeting was cancelled due to non availability of Directors. However, the noticee has not placed on record any material to support his claim viz names of the Directors who were not available, communication by the said Directors to the company including the reasons etc.

24. Noticee has submitted that corporate announcement has been wrongly linked with the price rise and price fall. Further, the price rise and price fall is insignificant. It is observed from the IR that one month before the investigation period the scrip was traded with the daily average volume of 2,365 shares per day and the price of the shares increased from ₹ 61.00 on 13th January, 2005 to ₹ 79.50 on 9th February, 2005 (an increase of ₹ 18.50 in

20 trading days). During the investigation period the price rose from ₹ 81.00 to ₹ 113.00 during 18 trading sessions (an increase of ₹ 32). 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, an increase by 513%. During the investigation period there was a consistent increase in price and it increased by 39.50%. One month after the investigation period the scrip was traded with the 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). Thus, the price – volume data clearly suggests that the corporate announcement had an impact on the trading of the scrip (price and volume).

25. From the above it can be concluded that by disclosing about the proposed rights / preferential issue, it is generally expected that the investors interest will be created in the scrip. By withholding the information from the stock exchange that the rights / preferential issue is not being considered or that it has been dropped, the noticee has misled share holders and investors. Making a declaration with regard to the rights / preferential issue and then not proceeding with the issue is nothing but a way to lure investors and play fraud on the investors as observed by the Hon'ble SAT in the matter of *Rich Capital & Financial Services Limited et al. V. SEBI* decided on 14.11.2012. Hon'ble SAT has observed as follows:

"... By putting the item of rights issue on the agenda note and informing stock exchange about it, surely creates interest in the investors in the shares of the company and thereafter by not taking up the issue at all and not furnishing any reasons therefor and not informing stock exchange about the outcome of

the board meeting, in our view, will fall within the definition of fraud under the regulations...”

26. It is observed from the IR that the Group during the investigation period taken together bought 1,39,400 shares. The IR observes that the price of the scrip increased due to incremental trades (first trade and intra day trades) which were placed at a price higher than the last traded price. On analysis of price influence through incremental trades including first trades with a price difference of ₹ 0.50 or more, it was observed that connected clients of the Group viz. Shri Girdharbhai Jayrambhai Vagadiya, Shri Prasad Tandel, Shri Nilesh Upadhyay, Shri Prakash D'souza and Ms. Shila Suryavanshi appeared on 18 instances out of 24 instances during the investigation period and influenced the price rise in the scrip mainly from ₹ 85.75 (close price on 17/02/2005) to ₹ 109 on 08/03/2005 which is a rise by 27% (₹ 23.30) in 18 trading days
27. Before the corporate announcements (i.e. from 16th February, 2005 to 1st March, 2005) total 125 trades were executed for 36,850 shares. Two of the connected clients of the Group namely Shri Prasad Tandel and Shri Girdharbhai Vagadia traded from 17th February, 2005 to 1st March, 2005 and placed first trades at a price higher than the last traded price and their trade influenced the price from ₹ 87.40 to ₹ 100.15. They entered into 4 trades where each trade was for 50 shares and all these 4 trades were the only trade of the day establishing higher price than the previous close. Shri Prasad Tandel dealing through Action Financial Services Ltd. bought 200 shares where the counterparty was Shri Girdharbhai Vagadia dealing through Galaxy Broking Ltd. Although time gap of more than five minutes was observed between buy order time and sell order time for these trades, yet there were only four other clients placing the orders at lower rates on the trade dates when these incremental trade took place. Apart from these Shri Prasad

Tandel placed order at higher price on 4 more occasions where the counterparties were scattered.

28. After the corporate announcements (i.e. 2nd March, 2005 to 11th March, 2005) 1,80,850 shares were traded and 652 trades were executed. Other connected clients of the Group viz: Shri Nilesh Upadhyay dealing through India infoline, Ms. Shila Suryavanshi dealing through Motilal Oswal Securities Ltd. and Shri Prakash D'Souza dealing through Mehta Equities Ltd. were found involved in the incremental trades with the related and unrelated counter party clients and affected the price from ₹ 101.90 to ₹ 109. Out of total 14 incremental trades during the period they entered into 10 incremental trades (first and intra day trades) for aggregate of 3,450 shares and out of 10 incremental trades in 6 trades the counterparty to the trade were clients of Agrawal family dealing through Ruchiraj Shares & Stock Brokers Pvt. Ltd for 2800 shares. Apart from these incremental trades the connected clients of the Group bought 1,12,350 shares out of which for 51,900 (48.50% of total sale by Agrawal Family) shares the counterparties were the clients of Agrawal Family.

29. Analysis of order log trade log and the demat accounts of the connected clients of the Group reveals that they purchased in aggregate 1,39,400 shares which is 64.03% of the total volume during the investigation period. The trading details of connected clients of the Group during the period of investigation including their trades placed at a higher price is tabulated below:

Sr. No	Name of the entity	Name of the stock broker	Gross Purch.	Gross Sale	Net Purch.
1	Girdharbhai Vagadia	Galaxy Broking Ltd.	33800	400	33400
2	Prasad Tandel	Action Financial Services Ltd.	38150	150	38000
3	Shila Suryavanshi	Motilal Oswal Securities Ltd.	4000	0	4000

4	Kalpesh Babaraya	Vijay Bhagwandas & Co.	7000	0	7000
5	Vikas Bengani	Indus Portfolio Pvt. Ltd.	10000	0	10000
6	Nilesh Upadhyay	India Infoline Ltd.	26950	0	26950
7	Prakash D'souza	Renaissance Securities Ltd.	12000	0	12000
8	Vithalbhai Gajera	Magnum Equity Broking Ltd.	7500	0	7500
Total			139400	550	138850

30. Further analysis of the demat statements of the connected clients of the Group revealed that after buying from the market they transferred the shares through off market trades 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 trades to Shri Vijay Bhagwandas Shah (38,500 shares), Shri Ashok Bhagat (34,450 shares), and Shri Pratap Singh (3,165 shares). He also transferred 96,400 shares to the noticee on 31st March, 2005 (33,350 shares in demat form and after rematerializing 63,050 shares in physical form).

31. Shri Ashok Bhagat who received 80,000 shares through off market trades from different clients of the Group rematerialized these 80,000 shares and transferred them in physical form to the noticee on 31st March, 2005, i.e after the investigation period. Thus, the noticee directly and indirectly, received 1,76,400 shares in off market from the Group.

32. The trading details of Agrawal Family dealing through broker Ruchiraj shares and Stock Brokers Pvt. Ltd. is as under:

Sr. No.	Name	No. of shares sold	No. of trades entered	Counterparty major client name	Name of the counter party major broker
1	Vasudev Agrawal	25,000	45	Nilesh Upadhyay	Indiainfoline Ltd.

				Govind Goel	Pilot Credit Capital Ltd.
2	Shambhu Agrawal	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	25,000	100	Subhash Goel Mahendra Brahmabhatt Dipak C. Shah	Pilot Credit Capital Ltd.
4	Lata Agrawal	20,100	126	Subhash Goel Govind Goel	Pilot Credit Capital Ltd.
5	Rajendra Agrawal	11,900	11	Nileshkuma Upadhyay	Indiainfoline Ltd.
Total		1,07,000	379		

33. From the above table it is observed that the clients of Agrawal Family sold 1,07,000 shares which is 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.

34. The information received from the RTA reveals that the Agrawal Family had transferred their entire shareholding by off market trades 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 trades during 24th December, 2004 to 31st December, 2004. During the investigation period Agrawal family traded from 2nd March, 2005 to 11th March, 2005 and together sold 1,07,000 shares when they were

not holding a single share in their name. 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.	Nilesh Kothari	1202700100023021	11,300	3 rd March, 2005
2.	Nilesh Kothari	IN300183-12509826	1,700	4 th March, 2005
3.	Ashok Bhagat	IN300271-10112300	20,000	5 th March, 2005
4.	Nilesh Upadhyay	IN302269-10228324	20,000	10 th March, 2005
5.	Vipul Vora	1601010000098671	3,000	10 th March, 2005
6.	Ravi Farata	1601010000193478	2,000	10 th March, 2005
7.	Vijay Bhagawandas Shah	IN300271-10120983	15,000	11 th March, 2005
8.	Nilesh Kothari	IN300183-12509826	5,000	14 th March, 2005
9.	Nilesh Upadhyay	IN302269-10228324	6,950	14 th March, 2005
10.	Vijay Bhagawandas Shah	IN300271-10120983	14,800	15 th March, 2005
11.	Devang Master	1601010000029818	2500	27 th Jan, 2005
12.	Sanjay Mahadik	1601010000102332	7500	27 th Jan, 2005
	Total		1,09,750	

35. It is observed that Agarwal family's majority trades were with the connected clients of Group as mentioned at para 32 and Agarwal family's sale obligations was meant by the entities mentioned at para 34. Further, the IR observes that the stock broker Vijay Bhagvandas & 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. It has already been mentioned at para 31 that

Shri Ashok Bhagat had received shares from the connected clients of Group and had met part of the sale obligations of the Agarwal Family. In addition to the above, it is also noted that Shri Nilesh Kothari also had met part of the sale obligations of the Agarwal Family and he had also helped the noticee in arranging finance.

36. On further analysis of the demat statements of the above entities the IR observes that shares in the account of Shri Nilesh Kothari came from the account of two clients of Pilot Credit Capital Ltd. namely Shri Dipak C. Shah and Shri Mahendra Brahmabhatt and these clients were the counterparty buyer in the market to the Agrawal family as stated above. Shri Dipak C. Shah and Shri Mahendra Brahmabhatt together bought 18,000 shares which were transferred to Shri Nilesh Kothari and out of these 5,000 shares were delivered by Shri Nilesh Kothari to meet the sale obligation of Agrawal family.

37. It is noted from the IR that the noticee 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 had sold 63,300 shares during the investigation period wherein majority of the counterparties to the trades were entities belonging to the Group.

38. In view of the above discussions and based on the flow of securities it can be concluded that there was circular movement of shares among the noticee, the Group, Agarwal Family and other clients establishing relationship among these entities and these entities by trading in a concerted manner had created artificial volume in the scrip and also had influenced the price of the scrip.

39. 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..."

40. Noticee has submitted that for the loan that he took, he gave 2,40,500 shares as collateral to Shri Shambhu Agrawal after rematerialising them. Noticee's contention that if he transfers the shares in demat form then there would be change in beneficial ownership of the shares is not correct as he would be only giving them as collateral / pledging the shares thereby marking a lien on those shares and therefore, he would still be the beneficial owner of the shares.
41. The very fact that noticee rematerialised shares to give as collateral raises suspicion because in the electronic era it is much easier to give shares as collateral in demat form rather than going through the entire process of rematerialising them and then give it as collateral which involves time and cost especially when the noticee has submitted that the company was in need of funds on an immediate basis. It is also noted that noticee has not submitted any documents / evidence wherein he was authorised by the Board of the company to raise funds on behalf of the company. Secondly, it does not seem plausible that even before the noticee could receive the entire / substantial loan amount and in the absence of any formal agreement, the noticee gave entire 2,40,500 shares (whose value on 11.02.2005 was approximately ₹ 1.94 crore) as collateral / security when he had only received a meager advance of ₹ 5 Lakh.
42. Noticee in his earlier reply dated 05.06.2012 at the first instance before the undersigned (before Hon'ble SAT Order) had submitted that he had handed over the signed blank transfer forms with the rematerialized shares to Shri Deepak Agarwal (Goel) as collateral. In the current proceedings noticee has submitted that he has not signed any transfer forms. Thus, the noticee is contradicting himself. Further, it does not make any prudent business rational for a lender to accept unsigned share transfer deeds as collateral, since the

lender would be left with no recourse to transfer the title in his favour upon borrower's default. Noticee has also not produced any evidence / material / any communication with company / RTA with respect to his so called collateral / lien created on the shares.

43. Noticee's submission that he did not receive any communication from the company's RTA regarding the transfer of 2,13,000 shares in various parties names may not be acceptable as when such bulk transfer of shares takes place especially belonging to the Promoter - Director who has more than 53% of shareholding in the company and the shares which were rematerialised very recently, the RTA as per the Listing Agreement at regular intervals sends a memorandum of transfer to the company and the compliance officer of the company reports to the company's board in each meeting regarding the share transfers as per the Listing Agreement. Thereby the noticee being the Promoter - Director of the company would be aware of the transfers taking place.

44. Noticee has submitted Signature Comparison Report and Handwriting Comparison Report stating that his signature was forged on the transfer deeds. Over here I would like to quote the order of Hon'ble Supreme Court of India dated 13.09.1963 wherein the Hon'ble Court observed as follows:

"...Besides it is necessary to observe that expert's evidence as to handwriting is opinion evidence and it can rarely, if ever, take the place of substantive evidence. Before acting on such evidence it is usual to see if it is corroborated either by clear direct evidence or by circumstantial evidence.. "

45. In the present matter apart from submitting the aforementioned reports, noticee has not produced any other corroborative evidences to substantiate his claim like FIR / police complaint for the alleged forgery of his signature in transfer deeds, complaint to the company or RTA etc. It is to be noted that till date noticee has not filed a FIR for the same, wherein the quantum and value of shares involved is very significant. Further, it may also be added that the

noticee never submitted handwriting and signature comparison reports either before the Investigating Authority or during the previous adjudication proceedings. Therefore, I agree with the comments of the concerned department as stated at para 17 that it's an afterthought and hence cannot be a sole evidence for arriving at the conclusion.

46. As observed from the Hon'ble Supreme Court of India's Order that the opinion of the handwriting expert is not conclusive but is in the nature of opinion. To arrive at a conclusion, the opinion of the handwriting expert cannot be the only criteria. It has to be corroborated by some other reliable evidence on record sufficient enough to form a particular view, which in the present matter is absent.
47. Noticee has pointed out the discrepancy that only one person has witnessed various transfers executed on the same date in different cities. In this regard it may be noted that the witness that the noticee is referring to is seller's witness i.e., in the present matter the noticee's witness. Further, on a perusal of share transfer form of 22 entities it is observed that all the share transfer forms were checked and signature was tallied by the company official and company's seal is also affixed on all the said 22 transfer deeds confirming the authenticity / genuineness of the transfer. This shows that due process was followed in effecting the transfers. Therefore, it is difficult to fathom that when such bulk Promoter's shares are getting transferred, the company / RTA has not exercised due diligence.
48. One of the obligations of RTA is that if there is any suspicion or discrepancy in the signature, the RTA generally confirms the same from the transferor through seller's notice / objection memo before effecting the transfer. In the given situation no such RTA communication has been placed on record. It is difficult to accept that all the checks and balances that are in place when shares are transferred like communication from RTA, memorandum of

transfer, share transfer committee, reporting by the compliance officer to the company's board in each meeting etc. were bypassed in the present matter and bulk shares belonging to Promoter – Director were fraudulently transferred.

49. The entire episode looks suspicious because the shares that were in demat form were rematerialised, jumbo share certificates were generated based on which the alleged loan transaction was proposed, then those shares were transferred after forging share transfer deeds and within a month of all these events, the entire lot of shares came back to the noticee.

50. Noticee has also submitted that the shares that were given to the Agarwal Family in October - November 2004 towards security were transferred by the Agarwal Family in their own name through forged signature / documents. Further, the noticee submitted that he never received any consideration at any point of time. It is highly unlikely that any person will give his shares as security without receiving any consideration. Further, it cannot be coincidence that on two occasions within a short span, when there was transfer of noticee's shares in bulk quantity (in lakhs), it happened through forged signature / documents. It is difficult to accept that the noticee was victim of forgery twice. Also, it is noted with surprise that the noticee never filed a FIR even for this alleged forgery.

51. Hon'ble SAT in *Balchandra K Patel Vs SEBI* decided on 24.08.2012 observed as follows:

"...There is no denying the fact that the company made corporate announcements which were never executed and which resulted in the increase of the price of the shares and during that period the promoter entities offloaded their holdings. It is also a fact that the appellant transferred 20 lac shares to Meena Ambani without consideration and Meena Ambani is one of the related entities to the promoter group and these shares were also offloaded in the market. We are inclined to agree with the view taken by the adjudicating officer that a false impression about the scrip of the company was created in the market by corporate announcements which were not

fulfilled, which led to rise in the price of the scrip luring innocent investors to invest in the scrip and gave an opportunity to the promoters to offload their shareholdings. Such an activity is not in the interest of securities market and cannot be permitted..."

52. In view of the above, it can be concluded that the company made misleading corporate announcements and the noticee being the Promoter - Director of company whose shareholding was more than 53 in the company utilised the Group, the Agrawal Family and other clients for creating artificial volume and price rise in the scrip. The shares were then transferred to the noticee who sold shares in the market @ ₹ 120 to ₹ 127 during June-2005 i.e. after the investigation period when the price had gone up.
53. In view of the above facts and circumstances of the case it can be concluded that the noticee has violated Regulations 3 (b), 3 (c), 3 (d) and 4 (1), 4 (2) (d), 4(2)(e), 4(2)(k) and 4(2)(r) of 'PFUTP Regulations and therefore attract penalty under 15HA of SEBI Act. Text of the provisions of said regulations are given below:

PFUTP Regulations:

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or

proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

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 :—
 - (d) paying, offering or agreeing to pay or offer, directly or indirectly, to any person any money or money's worth for inducing such person for dealing in any security with the object of inflating, depressing, maintaining or causing fluctuation in the price of such security;
 - (e) any act or omission amounting to manipulation of the price of a security;
 - (k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors;
 - (r) planting false or misleading news which may induce sale or purchase of securities.

54. The said violation attracts 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.”

55. The next issue in the matter is whether the noticee has failed to make required disclosures under Takeover Regulations and PIT Regulations.

56. It is observed from the IR that the noticee as a Promoter - Director of the company was holding 2,65,050 shares (53.01% of paid up capital) as on 31st December, 2004. Thereafter 2,40,500 shares were rematerialized on 31.01.2005 and 2,13,000 shares (42.60% of the paid up capital) were transferred by off market transfers on 25th February, 2005 to various entities in physical form. The noticee also transferred 2,500 shares on 27th January, 2005 in demat form by off market trades. Further, it is also observed from the IR that on March 31, 2005, the noticee acquired 2,15,500 (43.10%) shares by off market trades (both in physical form and demat), thereby crossing the threshold limit of 15% under the Takeover Regulations.

57. It has already been concluded in pre paras that the noticee's submission that the shares that were allegedly given as collateral for the loan were transferred through forged signature / documents does not hold good.

58. In view of the aforesaid conclusion, it is seen from the records that on 31.03.2005 when noticee had acquired 43.10% of paid up share capital of EILL, he already had 9.91% of the paid up share capital of EILL. Thus, the noticee by acquiring 2,15,500 shares (43.10%) had crossed the threshold limit of 15% under Takeover Regulations. These transactions required him to make a public announcement / open offer under Regulations 10 and 11 of the Takeover Regulations which the noticee has failed to do so and hence the noticee has violated Regulations 10 and 11 (1) of the Takeover Regulations. The text of the said provisions are given below:

Takeover 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.

Regulation 11 - Consolidation of holdings.

(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, [15 per cent or more but less than [fifty five per cent (55%)]] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than [5] per cent of the voting rights, [in any financial year ending on 31st March] unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

59. The said violations 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 there under, 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.

60. It is also observed from the IR that initially the noticee's shareholding reduced from 53.01% on 31.12.2004 to 9.91% on 25.02.2005 and then finally increased from 9.91% to 53.01% on 31.03.2005 in EIL. The said change in the shareholding required noticee to make disclosures under Regulation 7(1A) read with 7(2) of Takeover Regulations and Regulation 13 (4) read with 13 (5) of PIT Regulations which the noticee failed to do so.

61. In light of the above, it can be concluded that the noticee has violated Regulations 7(1A) read with 7(2) of Takeover Regulations and Regulations 13(4) read with 13(5) of PIT Regulations. The text of the said provisions are as follows:

Takeover Regulations

Regulation 7(1A) - Acquisition of 5 per cent and more shares or voting rights of a company

Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term ‘acquirer’ shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

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(4)

Any person who is a director or officer of a listed company, shall disclose to the company [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 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 [2%] of total shareholding or voting rights, whichever is lower.

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.

62. 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.

63. 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

64. 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 ₹ 20,00,000/- (Rupees Twenty Lakh only) on the noticee under Section 15HA of the Securities and Exchange Board of India Act, 1992 for the violation of Regulations 3 (b), 3 (c), 3 (d) and 4 (1), 4 (2) (d), 4(2)(e), 4(2)(k) and 4(2)(r) 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 Regulations 10 and 11(1) of Takeover Regulations and a penalty of ₹ 5,00,000/- (Rupees Five 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(1A) read with Regulation 7(2) of SAST Regulations and Regulation 13(4) read with Regulation 13(5) PIT Regulations which is appropriate in the facts and circumstances of the case.

ORDER

65. 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 ₹ 1,00,00,000/- (Rupees One Crore only) on Shri Devang D Master 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 (b), 3 (c), 3 (d) and 4 (1), 4 (2) (d), 4(2)(e), 4(2)(k) and 4(2)(r) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 and Regulations

10 and 11(1), Regulation 7(1A) read with Regulation 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and Regulation 13(4) 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.

66. 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.

67. 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 Devang D Master having address at 16-A, Tower C, Viceroy Park, Thakur Palace, W E Highway Kandiwali (E), Mumbai - 400101 and also to the Securities and Exchange Board of India, Mumbai.

Place: Mumbai

Date: 24.12.2014

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