

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/JP/ 123 /2017]

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:-

1. Empee Holdings Ltd. (PAN: AABCE5490N)
2. Mr. M. P. Purushothaman (PAN: AGMPP4159R)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') upon certain alerts in the scrip of Empee Distilleries Ltd. (hereinafter referred to as "**EDL / the Company**") - a company listed at BSE Ltd. (BSE) and National Stock Exchange India Ltd. (NSE), had examined the shareholding pattern of the Promoters of the EDL for the period from June 02, 2014 to June 30, 2015 to find out the possible violations / non-disclosures of encumbered shares etc. by the Promoters of the EDL. The examinations *inter - alia* revealed that (1) Empee Holdings Ltd. and (2) Mr. M. P. Purushothaman – Promoters of the EDL (hereinafter referred to as '**Promoter(s)**' or '**the Noticee No. 1 to 2**' respectively or all referred to as '**the Noticees**' collectively) had failed to make certain disclosures in terms of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and appointed undersigned as the Adjudicating Officer vide order dated December 28, 2015 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**'), to inquire into and adjudge under section 15A (b) of the SEBI Act, the violations of regulation 13(3), 13(4), 13(4A) read with 13 (5) of the PIT Regulations; and regulation 29(2) read with 29(3), 31(1), 31(2) read with 31(3) of the SAST Regulations, alleged to have been committed by the Noticee(s)

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice dated April 25, 2016 Reference No. E&AO/RA/JP/11964/2016 was issued against Noticees (hereinafter referred to as the '**SCN**') under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under section 15A (b) of the SEBI Act, for the aforesaid alleged violation of failure to make the required disclosures upon making pledges of shares / invocation of pledge / release of pledge / acquiring or disposing of shares of the EDL in contravention of provisions of PIT Regulations and SAST Regulations. The allegations levelled against the Noticees are as under:

Allegations against Noticee No. 1 (Empee Holdings Ltd.)

- A. *It was revealed during the course of examination that the Noticee No. 1 (being the promoter of EDL) was holding 62,41,181 (32.83%) shares in the quarter ending December 2013 and out of which, 52,07,703 (27.40%) shares were pledged to IFCI Factors Ltd. In the quarter ending March 2015, its total shareholding was reduced to 48,64,375 (25.59%) and consequently, its total pledged shares were reduced to 20,30,897 (10.68%).*
- B. *As per regulations 31(1), 31(2) read with 31(3) of SAST Regulations, the promoters of the Company are required to make disclosures about creation /*

release / invocation of pledged shares within a period of 7 working days from the creation or invocation or release of encumbrance. It was alleged that the Noticee No.1 had failed to disclose about creation and release of pledged shares. Date wise change in pledged shares of Noticee No. 1 was enclosed along with SCN as Annexure-III.

- C. Under regulations 13(4), 13(4A) of PIT Regulations, it is inter-alia stipulated that the promoters of the Company are required to make disclosures about change in their shareholding if the change exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights whichever is lower. It was alleged that the Noticee No.1 had failed to disclose about change in its shareholding having worth of ₹ 5 lakh or more. The date wise change in shareholding exceeding ₹ 5 lakh in value, was enclosed along with SCN as Annexure-IV.*
- D. Further, disclosures regarding change in shareholding was also required under regulation 13(3) of PIT Regulations and under regulation 29(2) of SAST Regulations in case the change in such shareholding exceeds 2% from the last disclosures made under sub regulation (1). It was alleged that the Noticee No.1 had failed to disclose about change in its shareholding exceeding 2% as stipulated in aforesaid provisions. The details of such change of 2% was provided in Annexure-V along with SCN.*
- E. In view of the above, it was alleged that the Noticee No.1 had failed to make the required disclosures to the EDL / Target Company and to the Stock Exchange (s) where the shares of the EDL are listed and thereby had allegedly violated the provisions of regulation 13 (3), 13 (4) & 13 (4A) read with 13 (5) of the PIT Regulations and regulation 29 (2) read with 29(3) and 31 (1) & 31 (2) read with 31 (3) of the SAST Regulations.*

Allegation against Noticee No. 2 (Mr. M. P. Purushothaman)

- F. It was revealed under examination that the Noticee No. 2 (being the Promoter of EDL) has 7,80,420 (4.11%) shares pledged at the end of quarter December 2013 which reduced to zero shares pledged at quarter ending March 2015. Also, the Noticee No. 2 had acquired 20,000 shares (0.11%) of the EDL during the period Quarter ending December 2013.*
- G. As per regulations 31(1) read with 31(3) of SAST Regulations, Promoter of the Company is required to make disclosures about shares encumbered by him in such target company within a period of 7 working days from the creation of*

encumbrance. It was alleged that the Noticee No. 2 had failed to disclose about creation of pledge / encumbrance of shares. It was alleged that for the aforesaid shares, the Noticee No. 2 had made the disclosures only under regulation 13(4) of PIT Regulations, whereas beside above, the Noticee No 2 was also required to make disclosures under regulation 13(4A) read with 13 (5) of the PIT Regulations and regulation 31(1) read with 31(3) of SAST Regulations. Hence, it was also alleged that the Noticee No. 2 had failed to make disclosures as stipulated under regulation 13(4A) of PIT Regulations. Details of pledged / encumbered shares of Noticee No. 2 has been shown in Annexure II of the SCN.

H. The aforesaid provisions of law alleged to have been violated by the Noticees are mentioned below;

PIT Regulations

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

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

13 (3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

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.

(4A) Any person who is a promoter or part of promoter group 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 from the last disclosure made under Listing Agreement or under sub-regulation (2A) 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.

13 (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

Disclosure of acquisition and disposal.

29. (2) *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.*

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

(a) every stock exchange where the shares of the target company are listed; and (b) the target company at its registered office.

Disclosure of encumbered shares.

31 (1) *The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.*

31 (2) *The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specifies.*

31(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance; as the case may be to,-*

(a) every stock exchange where the shares of the target company are listed;
(b) the target company at its registered office.

- I. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticees liable for monetary penalty under section 15A (b) of the SEBI Act.
4. In respect to the SCN, Noticees vide their letters dated May 10, 2016 sought extension of time till July 15, 2016 to submit reply in the matter. Thereafter, the Noticees had submitted their replies dated June 29, 2016 towards the SCN.

5. It is relevant to mention that the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

6. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticees on June 15, 2017 vide notice of hearing dated May 22, 2017. Vide said notice, the Noticees were also asked to submit their additional reply if any by June 05, 2017. Additional reply dated June 02, 2017 was submitted by the Noticees, however, they sought adjournment of hearing in the matter vide their letter dated June 07, 2017. Thereafter, final opportunity of hearing was provided to the Noticees on July 06, 2017 vide hearing notice dated June 13, 2017.
7. The scheduled hearing on July 06, 2017 was attended by the Mr. Sanjay Balkrishna Shringarpure - Authorised Representatives (**AR**) of the Noticees. During the course of hearing, AR of the Noticees had reiterate as stated in aforesaid reply / additional reply of the Noticees and he also submitted that certain pledges of share took at the time when old SEBI Takeover Regulation 1997 was in existence and for that we have made the required disclosures under

regulation 8 of the old Takeover Regulations. The AR had agreed to provide within 2 weeks the authentic proof of delivery of the disclosures / acknowledgement by the stock exchange of said disclosures.

8. Thereafter, the Noticees vide letter dated July 07, 2017 had submitted copies of certain disclosures made in the EDL during the period of 2011 only, but, no proof of disclosures required for the period of 2013 to 2015 as alleged in the SCN were submitted. The core submissions made by the Noticees towards the allegations under their aforesaid replies / additional replies / during the course of hearing, are as under;

Reply of Noticee No. 1 / Empee Holdings Ltd.

- I. It / EHL has entered into a pledge agreement dated 12/02/2011 in favour of IFCI Factors Ltd. and pledge agreement dated 24/12/2010 in favour of IFCI Ventures Ltd. The Company pledged 54,00,000 shares of EDL with IFCI Ventures and IFCI Factors in order to assist its subsidiary company, viz., Empee Sugars & Chemicals Ltd. (ESCL) to avail corporate loan from IFCI Factors Ltd. and IFCI Ventures Ltd. At this juncture, it would not be exaggeration to highlight the performance of ESCL, which was not only poor but also the entire net worth of the company had eroded since 2013, that company (ESCL) on making a reference before Board for Industrial and Financial Reconstruction (BIFR) the company has been registered as Sick Company under the provisions of SICA on 24/11/2014 under case no. 69/2014, a copy of which is attached vide Annexure 3.
- II. We submit that while the matter of ESCL stood as above, the Promoter Company, viz. Empee Holdings Ltd., had pledged the above shares with the intent and purpose of assisting ESCL to redeem ESCL from its financial crisis and back to normalcy. Hence it / EHL did not deal with the shares directly or indirectly in selling the pledged shares. Further there was no intention whatsoever to make any alerts in the prices of EDL shares in the market by EHL and no investor or shareholder had been put into any difficulty by us in this connection and therefore your allegation about violation in terms of PIT Regulations are seems to be not right.
- III. We submit that, the promoter company, was holding 62,41,181 (32.83%) of EDL shares in the quarter ending December 2013 out of which 52,07,703 shares comprising 27.40% were pledged with IFCI Ventures Ltd. and IFCI Factors Ltd. In the quarter ending March 2015 its total shareholding was reduced to 48,64,375 (25.59%) shares and consequently its total pledged shares were reduced to 20,30,897 (10.68%) shares. The position of

shareholding and pledge of shares by it/EHL with IFCI Ventures and IFCI Factors and consequently the balance shareholding as at 31/03/2015 has reduced to 48,64,375 shares only due to IFCI Ventures and IFCI Factors invoking the pledge and sale of 15,58,241 shares in the open Market and the Company is quite unaware of the act of IFCI Ventures and IFCI Factors. On coming to know of the disposal of the shares, the Company has complied with the provisions of the Reg. 13(3) of the PIT Regulations and filed necessary disclosures with Stock Exchanges. Further on each occasion of sale of shares by IFCI Ventures and IFCI Factors we were not kept informed.

- IV. It is further submitted that since EHL had not received any intimation in writing from IFCI Ventures and IFCI Factors, EHL has been deprived to know the changes in shareholding and release of pledge then and there took place during the period of alleged violation as cited in SCN. There was absolutely no intention whatsoever to suppress the information by way of filing necessary disclosures under PIT Regulation and SAST Regulation with the Stock Exchanges. The events took place of its own to which EHL cannot be attributed as a party of alleged violation. After receipt of SCN and on writing to IFCI Ventures and IFCI Factors to confirm about such sale / release of pledge of shares and much persuasion, IFCI Ventures and IFCI Factors have provided the details on sale of 15,58,241 shares in open market, vide their email dated 13/06/2016 and 23/06/2016. The details of which are attached vide Annexure 4.
- V. It is submitted that as observed by the Adjudication Officer, EHL had duly complied with the Disclosures under Reg. 13(3) of PIT Regulations, the copies of which are enclosed at Annexure 5. However, kind attention of the Adjudicating Officer is invited to the provision of regulation 13(4) and 13(4A) which reveals that if there has been a change in share holding of the promoters / Group from the last disclosure made and such change exceeds Rs.5.00 lakh in value or 25000 shares or 1% of total share holdings of voting rights, whichever is lower, the promoter or the said person shall disclose to the company and to the Stock Exchange where he shares are listed in Form D. As you may appreciate as the Company (EHL) had no information either on its own (or) through any mode of communication could not ascertain the sale of shares of IFCI Factors and IFCI Ventures by way of invoking the pledge, hence in the absence of given to know, EHL had not seemed to be in violation of any of the provisions of SAST Regulations. Hence, the EHL could not either inform the company (EDL) and the Stock Exchanges about the changes took place in the shareholding pattern exceeding the threshold limits of as stipulated in Reg. 13(4) and 13(4A) quoted above. Since the default is not wanton or wilful act of the Company, EHL, may be slipped up to report to the Stock Exchanges about the changes in the shareholdings, we appeals you not to view the matter seriously.

Reply of Noticee No. 2 / Mr. M.P. Purushottaman

- VI. I would like to submit that while the matter of ESCL stood as above, I had pledged the above shares with the intent and purpose of assisting ESCL to redeem it from its financial crisis and back to normalcy.
- VII. I submit that as revealed in the notice (SCN) that I have been holding 780420 shares (4.15%) of EDL in the quarter ending December 2013 and all the shares (780420) were pledged with IFCI Ventures and IFCI Factors. In the quarter ending March 2015, my total shareholding was reduced to zero shares consequent to invocation of pledge by IFCI Ventures and IFCI Factors. During the period quarter ending December 2013, I had acquired 20000 shares from open market. The value of these shares was Rs.6,60,000/- only and the threshold limit of acquisition in terms of rupee value had since exceeded Rs.5 lacs, I had disclosed the same with BSE/NSE (a copy of which is attached as Annexure 6).
- VIII. I submit that allegation of non-disclosure under regulation 13(4A) of read along with 13(5) of the PIT Regulations about changes in such holdings from the last disclosure made, was an inadvertent error and I regret for the same in not complying the formalities under regulation 13(4) read with 13(5) of PIT Regulations.
- IX. I submit that the sale / release of pledged shares by suo motto action of both IFCI Ventures and IFCI Factors and were not intimated to me by them. Further, upon receipt of SCN and after much persuasion, I could get their confirmation about sale of shares datewise which is attached herewith as Annexure 7. As you may appreciate the pledgee should have given information about invoking of the pledged shares every time and in the absence of such normal practice, I could not file necessary disclosures. Hence I may kindly be pardoned for not complying with the provisions of regulation 31(1) and 31(3) of SAST provisions in respect of non-disclosure with stock exchanges with reference to creation of pledge / release of pledge of EDL shares. It was sheer inadvertence in respect of non-filing of disclosures.
- X. SEBI's letter dated 09/12/2015 and my reply dated 16/12/2015 are also enclosed to show my bonafide act in the above said matter. (kindly see Annexure 8)
9. Since, the hearing / inquiry is concluded in the matter, therefore, after taking into account the allegations, replies of the Noticee(s) and evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

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

- a) Whether the Noticee(s) had failed to make the required disclosures under the PIT Regulations, SAST Regulations as alleged in the SCN?
- b) Whether the failure, if any, on the part of the Noticee(s), would attract monetary penalty under section 15 A (b) of the SEBI Act?
- c) If yes, then, what would be the monetary penalty that can be imposed upon the Noticee(s) taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

ISSUE NO. 1

Whether the Noticee(s) had failed to make the required disclosures under the PIT Regulations, SAST Regulations as alleged in the SCN?

11. The details of allegations levelled against the Noticees and replies of the Noticees have been produced at pre paras No. 3 and 8 respectively of this order, therefore, the same is not reproduced for sake of brevity.

12. As regards to the issue of non-compliance of regulation 31 (1) and 31 (2) of the SAST Regulations viz. failure to make the disclosures of creation of pledge of shares and release / invoking of pledge, the fact of number of shares so pledged / invoked / released are not in dispute. As per records and the undisputed facts, it is observed that the Noticee No.1 had pledged 52,07,703 shares (27.40%) of EDL to the IFCI Factor Ltd. and IFCI Venture Ltd during the period Quarter ending 2013 to Quarter ending March 2015. Admittedly, the Noticee No. 2 also had pledged 7,80,420 shares during quarter ending December 2013 to quarter ending March 2015 and thereby his shareholding was reduced to zero. The Noticees contended that they had made the disclosures upon pledge and in support of the same, vide their letter dated July 07, 2017, they had filed certain copies of disclosure made to the Stock Exchanges. I have gone through the said copies and observed that so called disclosures were related to the period of

pledge transactions took place in the year of 2011 and not to the period of 2013 to 2015 as alleged. Therefore, copies of disclosure as submitted by the Noticees, are not pertaining to the period involved in the issue.

13. Thought the said copies of disclosure were not pertaining to the period of pledge transactions happened during the period of 2013 to 2015 as alleged, however, it is not out of place to mention that upon scrutiny of said copies, it is observed that the pledged shares (pledged in the year of 2011) of the Noticee No. 1, were reported to NSE on May 17, 2011, May 25, 2011 and November 22, 2011 for 10 lakh shares, 7.5 lakhs shares and 14 lakhs share respectively. Therefore, total pledged shares reported to NSE were only 31.5 lakh shares which apparently shows that total admitted pledged shares i.e. (52,07,703 shares) were not reported to the NSE by Noticee No. 1. Further, the relied upon copies / disclosures regarding pledge of shares by Noticee No. 1 were reported to BSE only for the transaction on February 09, 2011 for 22.5 lakh shares, which again shows that said total pledged shares i.e. (52,07,703 shares) were not reported to BSE. Also, no proof of disclosure of any pledged shares to NSE has been provided in respect of Noticee No. 2.

14. From the available records and undisputed fact of pledged shares, it is established that shares were pledged by the Noticees during the period in quarter ending December 2013 to quarter ending March 2015 and no proof has been provided by the Noticees to show that they had made the disclosures to Stock Exchange(s) / the Target Company, upon creation of said pledge. Also, Noticee No. 2 under his reply dated June 29, 2016 at para 7 had categorically admitted as- *“Hence I may be kindly pardoned for not complying with the provisions of regulation 31 (1) and 31 (3) of the SAST provisions in respect of non-disclosure with stock exchanges with reference to creation of pledge / release of pledge of EDL shares. It was sheer inadvertence in respect of non-filing of disclosures”*.

15. Therefore, in absence of any proof, it is established that the Noticees (being the promoters of the EDL) had failed to make the required disclosures to the Stock Exchange(s) and to the Target Company regarding creation of such pledges in favour of IFCI Factors Ltd. / IFCI Venture Ltd. and thereby has violated regulation 31(1) read with 31 (3) of the SAST Regulations.
16. As regards to the allegation of non-disclosure of invocation / release of pledge under regulation 31 (2) of the SAST Regulations and subsequent non disclosures under regulation 13(3), 13(4) & 13(4A) of the PIT Regulations and regulation 29(2) of the SAST Regulations, the Noticees had submitted that they were not aware of the invocation / release of the pledge by IFCI Factor Ltd. / IFCI Venture Ltd. It was also submitted by the Noticees that the disclosure under regulation 13(3) of PIT Regulations was made, however, the disclosure under regulations 13(4) and 13(4A) of PIT Regulations and under regulation 29(2) of SAST Regulations could not be made.
17. I do not agree with the submission of the Noticees that invocation of pledge by IFCI Factors Ltd. / IFCI Ventures Ltd. was not intimated to them and therefore, they could not make the required disclosure. From the Annexure – 4 (page nos. 30-33) provided by the Noticee No.1 along with replies (viz. e-mails dated December 05, 2013, January 22, 2014, May 28, 2014 and June 05, 2014 from IFCI Ventures Ltd.), the selling of shares / further selling of shares in case of default by the Noticee(s) were indicated under the said e-mails. Further, said e-mails mentions that “this communication may please be treated as notice u/s 176 of the Indian Contract Act, 1872”.
18. From the above e-mails, it is very much clear that during the relevant period in 2013-2014, the Noticees were informed through aforesaid e-mails regarding intimation of further selling of shares. Therefore, I am of the view that the pleas taken by the Noticees that they were not aware about invocation / selling of shares by IFCI Factors Ltd. / IFCI Ventures Ltd., and only upon receipt of SCN,

they enquired and received details of such invocation / sale / release of pledge through vide e-mail dated June 13, 2016 and June 23, 2016 of IFCI Factors Ltd. / IFCI Ventures Ltd, are not acceptable.

19. Further, the fact that the Noticees were aware of the invocation or release of pledge by IFCI Factors Ltd / IFCI ventures Ltd. can be clearly seen from their letter dated December 16, 2015 in response to SEBI's letter dated December 09, 2015 regarding notice of approved enforcement action (their annexure 8), which in fact, was so stated by them before issuing of present SCN. Other annexures relied upon by the Noticees are not relevant to the issue involved.

20. It is not out of place to mention that the said contention of the Noticees that they were not aware of the invocation of pledge, cannot be accepted in view of the provisions of the SEBI (Depositories and Participants) Regulations, 1996 (**DP Regulations**). I have gone through regulation 58 (8) & (9) of the DP Regulations which states as under;

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

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

21. By virtues of the aforesaid provisions, it is very much clear that upon invocation of pledge, the pledger and pledgee would come to know about the same as per mandatory procedure laid down therein. In view of the above, it is established that the Noticee (s) has also failed to make the disclosures about invocation / release of pledge of shares under regulation 31 (2) read with 31 (3) of the SAST Regulations and accordingly violated the same.

22. Also, as per available records and undisputed facts, it is noticed that upon such creation / invocation / release of pledge or subsequent acquisition of shares (which were of value exceeded more than 5 Lakh), there was change of more than 2% in the shareholding of the Noticees from the last disclosures (while

holding 5% shareholding in EDL) or the change exceeds ₹ 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights and therefore, the Noticee(s) were also required to make the disclosures under regulation 13(3),13(4) / 13(4A) of PIT Regulations and under regulation 29(2) of SAST Regulations. It is noted from the records that the Noticees had made the disclosures under regulation 13 (3) of the PIT Regulations, however, no proof is available on records to show that they had made the disclosures under regulation 13(4) / 13(4A) of PIT Regulations and under regulation 29(2) of SAST Regulations. In fact the Noticee No. 2 under his reply dated June 29, 2016 had categorically at para 6 had admitted as under-

“I submit that your averment that I should have also made a disclosure under Reg. 13(4A) of read along with 13(5) of the PIT Regulations about changes in such holdings from the last disclosure made and uptodate of above purchase was an inadvertent error and I regret for the same in not complying the formalities under Reg. 13(4) read along with Reg. 13(5) of PIT Regulations”.

23. It is noted that the Noticee No.1 (which is a promoter company of EDL), cannot be subject to an obligation under regulation 13 (4) of the PIT Regulations as the said provision is applicable on the ‘director/officer’ of Company/EDL which the Noticee No. 1 is obviously not so. It goes without saying that the requirements of disclosures (in Form D) under regulation 13 (4) and 13 (4A) of the PIT Regulations, are almost similar in nature.

24. In view of the above, it is established that the Noticee No. 1 (being the promoter of EDL) had also violated regulation 13(4A) of PIT Regulations and regulation 29(2) of SAST Regulations, and Noticee No. 2 (being the promoter as well as the Chairman of the EDL) had violated regulation 13 (4), 13(4A) of PIT Regulations and regulation 29(2) of SAST Regulations, by not making the required disclosures about change in their shareholding as observed above.

ISSUE NO. 2 & 3- Whether the failure, if any, on the part of the Noticees, would attract monetary penalty under section 15 A (b) of the SEBI Act AND If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

25. Keeping in view the aforesaid observations made at pre paras, I am of the view that no disclosures were made by the Noticees and therefore, the aforesaid violations committed by the Noticees, makes them liable for penalty under Section 15A (b) of the SEBI Act which read as follows.

Penalty for failure to furnish information, return, etc.

15A. 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;

26. While determining the quantum of penalty under sections 15A (b), it is important to consider the factors stipulated in section 15J of SEBI Act read with rule 5 (2) of the Adjudication Rules, 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.”*

27. No disproportionate gains or unfair advantage made by the Noticees or the loss suffered by the investors due to such non disclosures, is available on records; and the default by the Noticees is not shown as repetitive in nature. I cannot ignore the fact that (except the aforesaid established non disclosures), the disclosures under regulation 13 (3) of the PIT regulations, was made by the Noticees.

28. Taking into account the aforesaid mitigating factors, considering the facts and circumstance of the case, the purpose of the SAST and PIT Regulations as observed in the case of *Millan Mahendra Securities Pvt. Ltd. vs. SEBI (Appeal*

No. 66/2003 decided on November 15, 2006) decided by the Hon'ble Securities Appellate Tribunal and a judgment dated 23/05/2006, pronounced by the Hon'ble Supreme Court of India in Civil Appeal No. 9523-24 of 2003 in case of *The Chairman of SEBI vs. Shriram Mutual Fund & Another*, I am of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

29. After taking into consideration all the aforesaid facts / circumstances of the case, and in exercise of the power conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticee(s) under section 15 A (b) of the SEBI Act, as shown in table below;

Name of the Noticee	Amount of Penalty / Provisions of Laws Violated
Empee Holdings Ltd. (Noticee No. 1)	<p>₹ 3,00,000/- (Rupees Three Lakh only) for violation of regulation 31 (1) and 31 (2) read with 31 (3) of the SAST Regulations.</p> <p>₹ 2,00,000/- (Rupees Two Lakh only) for violation of regulation 13(4A) of PIT Regulations and under regulation 29(2) of SAST Regulations.</p>
(2) Mr. M. P. Purushothaman (Noticee No. 2)	<p>₹ 3,00,000/- (Rupees Three Lakh only) for violation of regulation 31 (1) and 31 (2) read with 31 (3) of the SAST Regulations.</p> <p>₹ 2,00,000/- (Rupees Two Lakh only) for violation of regulation 13(4) and 13(4A) of PIT Regulations and under regulation 29(2) of SAST Regulations.</p>

30. I am of the view that the said penalty would commensurate with the violations committed by the Noticees.

31. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties

Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

32. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The format for forwarding details of e-payments shall be made in the following tabulated form (as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017) and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in ₹)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UT R No
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33. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

Date: August 01, 2017

Place: Mumbai

(RACHNA ANAND)
GENERAL MANAGER &
ADJUDICATING OFFICER