

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. EAD/SR/VV/AO/59-61/2017-18]**

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

**In respect of**

<b>S. N.</b>	<b>Name</b>	<b>Common Address</b>	<b>PAN No.</b>	<b>Order no.</b>
1	Shri Aditya Narayan Singh	6378/101, Shiva Uma Sadan Apartment, Hastinapuri Colony, Sainikpuri, Secunderabad – 500094, Telangana	AITPS2152A	EAD/SR/VV/AO/59/2017-18
2	Shri Nitin Kumar Singh		CBGPS8637A	EAD/SR/VV/AO/60/ 2017-18
3	Ms. Padma Singh		BQIPS8097A	EAD/SR/VV/AO/61/ 2017-18

**In the matter of Celestial Biolabs Limited**  
**CIN: L72200TG1997PLC028374**

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**BACKGROUND**

1. A Department (hereinafter referred to as **OD**) of Securities and Exchange Board of India (hereinafter referred to as the **SEBI**) examined the trading activities of certain entities in the scrip of Celestial Biolabs Limited (hereinafter referred to as the **Company/CBL**) which is listed on Bombay Stock Exchange (**BSE**) for the period July 01, 2014 to December 12, 2014 (Examination Period). It was observed by OD that Shri Aditya Narayan Singh, Shri Nitin Kumar Singh and Ms. Padma Singh (hereinafter individually referred to as **Noticee-1**, **Noticee-2** and **Noticee-3** respectively and collectively referred to as “**Noticees**”) were the promoters of the Company and also Noticee-1 and Noticee-3 were directors of the Company during the Examination Period. There were changes in the shareholding patterns of the Noticees during the Examination Period, which required the Noticees to make disclosures to the Company and Bombay Stock Exchange (BSE) under the provisions of SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **SAST Regulations, 2011**) and SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **PIT Regulations, 1992**). OD observed that Noticee-1 and Noticee- 3 have violated regulations 13(3), 13(4), 13(4A) r/w

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13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulation, 2011 and Noticee-2 violated regulation 13(1) of PIT Regulations, 1992, regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulation, 2011.

### **APPOINTMENT OF ADJUDICATING OFFICER**

2. Based on the examination, OD initiated adjudication proceedings against the Noticees, to inquire into and adjudge under section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **the SEBI Act, 1992**) for alleged violations of provisions of regulations 13(3), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulation, 2011 by Noticee-1 and Noticee-3 and regulation 13(1) of PIT Regulations, 1992, 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulation, 2011 by Noticee-2. The adjudication proceedings were approved by the Competent Authority. Shri. Nagendraa Parakh was appointed as the Adjudicating Officer (AO) under Section 15-I of the SEBI Act, 1992 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, 1995**) to inquire into and adjudge under section 15A(b) of the SEBI Act, 1992 for the said alleged violations PIT Regulations, 1992 and SAST Regulations, 2011. Pursuant to transfer of Shri Nagendraa Parakh, I was appointed as AO vide order dated July 10, 2017.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

3. A Common Show Cause Notice dated April 25, 2017 (hereinafter referred to as **SCN**) was issued to the Noticees in terms of Rule 4 of the Adjudication Rules, 1995 requiring the Noticee to show cause as to why an inquiry should not be held against them for the respective violations under the provisions of PIT Regulations, 1992 and SAST Regulations, 2011 and why penalty be not imposed on the Noticees under section 15A(b) of the SEBI Act, 1992 for the alleged violations as specified in the SCN. The allegations in the said SCN against the Noticees are summarized below:
  - *"It was alleged in the SCN that Noticee-1 transferred 3, 00,000 shares of CBL to Noticee-2 in the form of gift on September 15, 2014 through off-market transactions. Pursuant to this transfer, the shareholding of the Noticee-1 changed from 46, 88,250 shares of CBL representing 27.02 % of share capital of CBL to 43,88,250 shares representing 25.28% of the share capital of CBL. As the change in shareholding of the Noticee-1 was more than the threshold limit of 25,000 shares, he was required to make disclosure to the Company and BSE*

under regulations 13(4) & 13(4A) r/w 13(5) of PIT Regulations, 1992. It is alleged that the Noticee-1 failed to make the required disclosure within the prescribed time and therefore violated the aforesaid provisions of PIT Regulations, 1992.

- Further, it was alleged that the Noticee-1 transferred 9,00,000 shares of CBL to the Noticees-3 in the form of gift on the same day i.e. September 15, 2014. Pursuant to such transfer, the shareholding of the Noticee-1 had changed from 43,88,250 shares representing 25.28% of share capital of CBL to 34,88,250 shares representing 20.10% of share capital of CBL. As the Noticee-1 held more than 5% share capital of CBL and the change in his shareholding was more than 2% of the total share capital of the Company, and as the transfer of shares was more than the threshold limit of 25,000 shares of CBL, he was required to make disclosure under regulations 13(3), 13(4) and 13(4A) r/w 13(5) of PIT Regulations, 1992 and under regulation 29(2) r/w 29(3) of SAST Regulations, 2011. It is alleged that he failed to make the required disclosures and therefore, alleged to have violated the aforesaid provisions of PIT Regulations, 1992 and SAST Regulations, 2011. The details of the transactions made by Noticee-1 are tabulated below:

<b>Date of Transaction</b>	<b>Holding before transaction (% of shareholding)</b>	<b>No of shares transferred</b>	<b>Holding after Transaction (% of shareholding)</b>	<b>% of change shareholding wrt total capital of CBL</b>
September 15, 2014	46,88,250 (27.02)	3,00,000 (by gift)	43,88,250 (25.26)	1.94%
September 15, 2014	43,88,250 (22.28)	9,00,000 (by gift)	34,88,250 (20.10)	2.18%

- It was alleged in the SCN that Noticee-2 held 6,45,328 shares of CBL representing 3.72% of the share capital of CBL before September 15, 2014. On receipt of 3,00,000 shares of CBL through off-market from Noticee-1 on September 15, 2014, the shareholding of the Noticee-2 changed to 9,46,328 i.e. from 3.72 % to 5.45% of the share capital of CBL. As, the shareholding of the Noticee-2 has crossed the 5% benchmark and as the change in his shareholding had been more than the threshold limit of 25000 shares, he was under an obligation to make disclosure under regulation 13(1) of PIT Regulations, 1992, 13(4A) r/w 13(5) of PIT Regulations, 1992 and under regulation 29(1) r/w 29(3) of SAST Regulations, 2011. It is alleged that the Noticee-2 failed to make the required disclosure within the required time frame and hence violated the said provisions of PIT Regulations, 1992 and SAST Regulations, 2011.
- It was alleged that Noticee-3 held 9,10,050 shares of CBL representing 5.24% of the share capital of CBL before September 15, 2014. On receipt of 9,00,000 shares of CBL on September 15, 2014 from Noticee-1, the shareholding of the Noticee-3 changed from 5.24% to 10.43% of the share capital of CBL and as it was above the threshold limit of 25000 shares, she was thus under an obligation to make disclosures under regulation 13(3) r/w 13(5) of PIT Regulations, 1992 and under regulation 29(2) r/w 29(3) of SAST Regulations, 2011. Further, as the change in the shareholding of the Noticee-3 was above the threshold limit of 25,000 shares, she was under an obligation to make disclosures under regulations 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992. It is alleged that the Noticee 3 failed to make the required disclosures and therefore alleged to have violated the aforesaid provisions PIT Regulations, 1992 and SAST Regulations, 2011.
- Further, Noticee-3 sold 38,141 shares of CBL on the same day i.e. on September 15, 2014. As the sale of shares was more than the threshold limit of 25,000 shares, she was under an

*obligation to make disclosures under regulation 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992. It is alleged that the Noticee-3 failed to make the required disclosure and therefore, alleged to have violated Regulation 13(4) and 13(4A) r/w 13(5) of PIT Regulations, 1992. The details of the transactions by the Noticee- 3 are summarised as under:*

<i>Date transaction</i>	<i>Holding before transaction (% of shareholding)</i>	<i>No of shares received/sold</i>	<i>Holding after Transaction (% of shareholding)</i>
<i>September 15, 2014</i>	<i>9,10,050 (5.24)</i>	<i>900,000 (by gift)</i>	<i>18,10,050 (10.43)</i>
<i>September 15, 2014</i>	<i>1810050 (10.43)</i>	<i>38,141 (sold)</i>	<i>17,71,909 (10.21)</i>

4. The SCNs were issued to the available addresses of the Noticees through speed post with acknowledgement due (hereinafter, referred to as the “SPAD”). The SCN sent to the Noticee-1 was delivered in one address. However, the SCNs sent to another address of Noticee-1 and the SCN sent to Noticee-2 and Noticee-3 returned undelivered with the remark on the envelopes stating “left”, which is available on record. Since the SCNs were not delivered to Noticee-2 and Noticee-3, the said SCNs were uploaded in SEBI website ([www.sebi.gov.in](http://www.sebi.gov.in)) under “Unserved Summons/Notices”.
5. After my appointment as AO, I granted an opportunity of personal hearing to each of the Noticees vide hearing notice dated December 06, 2017 for personal hearing scheduled on January 10, 2018, enclosing the copy of SCN. Noticees were requested to provide their reply to the SCN by December 20, 2017. The said hearing notices were sent to the Noticees by SPAD and the same were delivered to the Noticees and the proof of deliveries are available on record.
6. A common reply dated December 22, 2017 was sent by the Noticees vide email dated December 28, 2017 received from Noticee-1 and in the said email Noticees authorised Noticee-1 and one Shri Amit Kumar to appear for the hearing on their behalf. The Noticees made the following key submissions vide their reply to the SCN :
  - *It is admitted that all the above transactions were required to be disclosed to Stock Exchanges i.e., BSE & NSE, under regulations 13(1), 13(3), 13(4) & 13(4A) of the PIT Regulations 1992 and Regulations 29(1), 29(2) and 29(3) of SAST Regulations 2011.*
  - *Due to tremendous pressure on the company to pay the arrears of Sale Tax during that particular period, the Director/promoters had skipped some disclosures under PIT Regulations 1992 & SAST Regulations 2011.*

- *The Non-disclosures under SEBI (PIT), Regulations 1992 & SAST Regulations 2011 are purely unintentional & there is no malafide intention. Further no undue advantage or gain was made out of the nondisclosure, nor was any loss or damage caused to the interest of investors due to an inadvertent error on our part.*
- *The Company and the promoters have complied with all the compliances of SEBI Act i.e., SEBI (PIT), SEBI (SAST), SEBI (ICDR), SEBI (LODR) etc. since from the IPO of the Company till date.*
- *There was no price manipulation or any abnormal impact on the market price of the share of the Company due to the above transactions.*
- *The promoters, therefore, pray for the condonation for non-disclosures under PIT Regulations, 1992 and SAST Regulations, 2011."*

7. The Authorised representatives (hereinafter referred to as 'AR') appeared for hearing as scheduled on January 10, 2018 and reiterated the submissions made by the Noticees vide their reply letter dated December 22, 2017 and had sought additional time to make additional submissions. As requested, the Noticees were granted time to submit the documents and evidences and additional submissions by January 17, 2017 and the hearing minutes are on record.

8. The three Noticees post the hearing, made common submissions vide their letter dated January 16, 2018 as follows:

- *"With reference to the personal hearing held on January 10, 2018 at 3.30 P.M. at SEBI office and in continuation of our earlier reply letter dated December 22, 2017, we would like to bring to your notice that the necessary intimations in respect of transactions made by Mrs. Padma Singh, Dr.. Aditya Narayan Singh and Mr. Nitin Kumar Singh (Promoters) were intimated to Stock Exchanges (on July 07, 2015) after receiving the email from SEBI dated May 13, 2015.*
- *We hereby undertake to strictly follow the submissions in future. Keeping in view of the submitted facts and other information before you, you are humbly requested to treat this case as our first noncompliance and condone the same."*

9. After taking into account, the allegations leveled in the SCN, reply of the Noticee to the SCN and other evidences / materials available on record, I hereby, proceed to decide the case on merit

### **CONSIDERATION OF ISSUES**

10. I have carefully perused the documents/evidences available on record and the issues that merit consideration in the said case are:

- (a) Whether the Noticee-1 and Noticee-3 have violated regulations 13(3), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulations, 2011?

- (b) Whether the Noticee-2 has violated regulations 13(1) of PIT Regulations, 1992, regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulations, 2011?
  - (c) Do the violations, if any, on the part of the Noticees attract any monetary penalty under Section 15A(b) of the SEBI Act, 1992?
  - (d) If yes, what should be the quantum of monetary penalty that could be imposed upon the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5(2) of Adjudication Rules, 1995?
11. Before proceeding with the consideration of issues, the text of the provisions of regulation 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4), 13(4A) r/w 13(5) of the PIT Regulations, 1992 and regulations 29(1), 29(2) r/w 29(3) of SAST Regulations, 2011 may be read as given below:-

***PIT Regulations, 1992***

***Disclosure of Interest or holding in listed companies by certain persons – Initial Disclosure***

- 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.

***Continual disclosure***

- (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.
- (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.
- (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.

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## **SAST Regulations, 2011**

### **Disclosure of acquisition and disposal**

- 29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.
- (2) Any person, 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 the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, 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 two per cent of total shareholding or voting rights in the 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

### **EVIDENCES AND FINDINGS**

12. On perusal of the evidences available on record and after giving regard to the facts and circumstances of the case, I record my findings hereunder for every issue under consideration as follows:
13. **Issue (a): Whether the Noticee-1 and Noticee-3 have violated regulations 13(3), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulations, 2011?**
- Issue (b): Whether the Noticee-2 has violated regulations 13(1) of PIT Regulations, 1992, regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulations, 2011?**

#### **Noticee-1 and Noticee-3**

- a) I have noted from the records that Noticee-1 was a promoter and director of the Company during the Examination Period. Noticee-1 transferred 3,00,000 shares (i.e. excess of 25,000 shares) of CBL to Noticee-2 on September 15, 2014 in off-market transactions by which the shareholding of the Noticee-1 changed from 46,88,250 shares of CBL representing 27.02 % of total share capital of CBL to 43,88,250 shares representing 25.28% of total share capital of CBL. In this regard, I note from regulations 13(4) and 13(4A) r/w 13(5) of PIT Regulations, 1992 that being a director and promoter of the Company and as the change of shareholding exceeds 25,000 shares of the Company, the Noticee-1 was required to make relevant disclosures to the Company and BSE within two working days of sale of shares of the Company. However, as

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submitted by Noticee-1, he has made disclosures on July 07, 2015 with a delay of more than nine (9) months.

- b) Further, on the same day i.e. September 15, 2014, Noticee-1 transferred 9,00,000 shares (i.e. excess of 25,000 shares) of CBL to the Noticees-3 in the form of gift by which the shareholding of the Noticee-1 changed from 43,88,250 shares representing 25.28% of total share capital of CBL to 34,88,250 shares representing 20.10% of total share capital of CBL. In this regard, I note from regulations 13(4) and 13(4A) r/w 13(5) of PIT Regulations, 1992 that being a director and promoter of the Company and as the change of shareholding exceeds 25,000 shares of the Company, the Noticee-1 was required to make relevant disclosures to the Company and BSE within two working days of sale of shares of the Company. Further, it is noted that Noticee-1 held 25.28% of shares (i.e. more than 5%) of total share capital of CBL and by the said transaction, % of change in his shareholding was 5.18% (i.e. more than 2%) of the total share capital of CBL. In this regard, I note from the regulation 13(3) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulations, 2011 that as the change of shareholding exceeded 2% of the total shareholding of the Company, the Noticee-1 was required to make relevant disclosures to the Company and BSE within two working days of sale of shares of the Company. However, as submitted by Shri Aditya Narayan Singh (Noticee-1), he has made disclosures on July 07, 2015 with a delay of more than nine (9) months.
- c) I have noted from the records that Noticee-3 was a promoter and director of the Company during the Examination Period. At that time, Noticee-3 held 9,10,050 shares of CBL representing 5.24% of total share capital of CBL. On September 15, 2014. Noticee-3 received 9,00,000 shares (i.e. excess of 25,000 shares) of CBL on from Noticee-1, by which shareholding of Noticee-3 changed to 18,10,050 shares of CBL i.e. from 5.24% to 10.43% (i.e. change of 5.19% which is more than 2%) of total share capital of CBL. In this regard, I note from regulations 13(4) and 13(4A) r/w 13(5) of PIT Regulations, 1992 that being a director and promoter of the Company and as the change of shareholding exceeds 25,000 shares of the Company, the Noticee-3 was required to make relevant disclosures to the Company and BSE within two working days of sale of shares of the Company. It is noted that Noticee-3 held 5.24% of shares (i.e. more than 5%) of share capital of CBL and by the said transaction, % of change in his shareholding was 5.19% (i.e. more than 2%) of the share capital of CBL. In this



regard, I note from the regulation 13(3) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulations, 2011 that as the change of shareholding exceeded 2% of the total shareholding of the Company, the Noticee-3 was required to make relevant disclosures to the Company and BSE within two working days of sale of shares of the Company. However, as submitted by Noticee-3 (Ms. Padma Singh), she has made disclosures on July 07, 2015 with a delay of more than nine (9) months.

- d) In this regard, it is noted from the record that CBL vide e-mail dated May 18, 2015 and BSE vide e-mail dated May 18, 2015 informed that no disclosures under SAST Regulations, 2011 and PIT Regulations, 1992 were made by Noticee-1 and Noticee-3 for these transactions. In view of above, it is concluded that the Noticee-1 (Shri Aditya Narayan Singh) and Noticee-3 (Ms. Padma Singh) had failed to make disclosures to the company and BSE within the stipulated time as prescribed under PIT Regulations, 1992 and SAST regulations, 2011 and hence violated the provisions of regulations 13(3), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulations, 2011.

#### **Noticee-2**

- a) It is noted from the available record that Noticee-2 was a promoter of the Company during the Examination Period. Before September 15, 2014, Noticee-2 held 6,45,328 shares of CBL representing 3.72% of total share capital of CBL. On September 15, 2014, he received 3,00,000 shares (i.e. excess of 25,000 shares) of CBL through off-market transaction from Noticee-1, by which shareholding of the Noticee-2 changed to 9,46,328 i.e. from 3.72 % to 5.45% of total share capital of CBL. In this regard, I note from regulation 13(1) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulations, 2011 that as the shareholding of the Noticee-2 has crossed the 5% benchmark, the Noticee-2 was required to make relevant disclosures to the Company and BSE within two working days of acquisition of shares of the Company. Further, I note from the regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 that being a promoter of the Company and as the change of shareholding exceeds 25,000 shares of the Company, the Noticee-2 was required to make relevant disclosures to the Company and BSE within two working days of sale of shares of the Company. However, as submitted by Noticee-2 (Shri Nitin Kumar Singh), he has made disclosures on July 07, 2015 with a delay of more than nine (9) months.

b) In this regard, it is noted from the record that CBL vide e-mail dated May 18, 2015 and BSE vide e-mail dated May 18, 2015 informed that no disclosures under SAST Regulations, 2011 and PIT Regulations, 1992 were made by Noticee-2 for these transactions. In view of above, it is concluded that the Noticee-2 (Shri Nitin Kumar Singh) had failed to make disclosures to the company and BSE within the stipulated time and hence has violated the provisions of regulation 13(1) of PIT Regulations, 1992, regulation 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulations, 2011.

**14. Issue (c): Do the violations, if any, on the part of the Noticees attract any monetary penalty under Section 15A(b) of the SEBI Act, 1992?**

- a) In respect of imposition of monetary penalty, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant"*.
- b) It is relevant to mention here that said case of Shri Ram Mutual Fund (supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of Shri Ram Mutual Fund (supra) has been analysed in the legal position and in the correct perspectives.
- c) Therefore, after taking into account the aforesaid entire facts / circumstance of the case, submissions of the Noticee and analysing the aforesaid case laws, I am of the view that the violation of regulations 13(1) of PIT Regulations, 1992, regulations 13(3), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1), 29(2) r/w 29(3) of SAST Regulations, 2011 by the Noticees, as applicable, attracts the imposition of

monetary penalty upon the Noticees under Section 15A(b) of the SEBI Act, 1992, which is reproduced below:

**The SEBI Act, 1992**

**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.

**15. Issue (d) - If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992 r/w rule 5 (2) of the Adjudication Rules, 1995 ?**

a) While determining the quantum of penalty under section 15A(b) of the SEBI Act, 1992 it is important to consider the factors stipulated in section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, which reads as under:-

**SEBI Act, 1992**

**Factors to be taken into account by the adjudicating officer**

**15J -:** 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.”

b) I observe, that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any made by the Noticee and the loss, if any suffered by the investors due to the aforesaid violations. I find that the Noticee had failed to make required disclosures as prescribed under PIT Regulations, 1992 and SAST Regulations, 2011. In this regard, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014 “...penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”

c) Further, I find that the Noticee had failed to make required disclosures within timelimit as prescribed under PIT Regulations, 1992 and SAST Regulations, 2011. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for penalty by not making disclosure to the Company and to BSE as per the requirements prescribed under the provisions of regulation 13(1) of PIT

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Regulations, 1992 and regulation 13(3), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulations 29(1) & 29(2) r/w 29(3) of SAST Regulations, 2011. In this regard, it is relevant to quote the observations made by Hon'ble SAT in its judgment on September 04, 2013 in the matter of Vitro Commodities Private Limited Vs SEBI wherein Hon'ble SAT had observed that *"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other"*.

- d) Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticee is liable for monetary penalty for not complying with the disclosure requirements as prescribed under the PIT Regulations, 1992 and SAST Regulations, 2011.

### **ORDER**

16. In exercise of the powers conferred under Rule 5 of the Adjudication Rules, 1995, I hereby imposed the following penalties on the Noticees viz. Mr. Aditya Narayan Singh (Noticee-1), Mr. Nitin Kumar Singh (Noticee-2) and Ms. Padma Singh (Noticee-3) under section 15A(b) of the SEBI Act, 1992:

<b>Name of the Noticee</b>	<b>Regulations violated</b>	<b>Penalty</b>
Mr. Aditya Narayan Singh (Noticee-1)	Regulation 13(3), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulation, 2011	Rs. 3,00,000/- ( Rupees three lakhs only)
Mr. Nitin Kumar Singh (Noticee-2)	Regulation 13(1) of PIT Regulations, 1992, 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(1) r/w 29(3) of SAST Regulation, 2011	Rs. 2,00,000/- (Rupees two lakhs only)
Ms. Padma Singh (Noticee-3)	Regulation 13(3), 13(4), 13(4A) r/w 13(5) of PIT Regulations, 1992 and regulation 29(2) r/w 29(3) of SAST Regulation, 2011	Rs. 3,00,000/- ( Rupees three lakhs only)

I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

17. The Noticee 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

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Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

<b>Account No. for remittance of penalties levied by Adjudication Officer</b>	
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

18. 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 / confirmations 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](mailto:tad@sebi.gov.in)

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	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	UTR No

19. In terms of the Rule 6 of the Adjudication Rules, 1995 copies of this order are sent to the Noticees and also to Securities and Exchange Board of India.

**Date: March 28, 2017**

**Place: Mumbai**

**SANGEETA RATHOD  
ADJUDICATING OFFICER**