

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/SM/AR/2018-19/863-864)

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:

Akrur Khetan (PAN: BFXPK0340A)
Anupma Khetan(PAN: BFXPK0222B)
(Represented by their Legal Guardian- Mr. Kamal Khetan)

5th Floor, Sunteck Centre,
Subhash Road, Vile Parle East,
Mumbai-400057

In the matter of

Nivedita Mercantile and Financing Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), on receipt of an alert generated from its surveillance system, conducted an examination in the scrip of Nivedita Mercantile & Financing Ltd. (hereinafter referred to as '**Nivedita**'/'**Company**') for the period from August 01, 2013 to November 30, 2013 (hereinafter referred to as '**Examination Period**'/'**Relevant period**'). During the course of examination by SEBI, it was observed that Akrur Khetan (hereinafter referred to as '**Akrur**') and Anupma Khetan (hereinafter referred to as '**Anupma**' and hereinafter collectively referred to as '**Noticees**'), who were part of the promoter group of the Company during the

relevant period, had not made the stipulated disclosures within the prescribed time period under the provisions of SEBI (Substantial Acquisition 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**'). It was observed that the shareholding of the Noticees in the company had witnessed an increase during the relevant period as a result of the allotment of additional shares by way of preferential allotment made by the company.

2. Pursuant to the preferential allotment of shares of the Company on August 22, 2013, the individual shareholding of the Noticees in the Company had crossed the threshold limit of 5% of the total share capital of the Company. In this regard, it is alleged that Noticees have failed to make the necessary disclosures which were required to be made under the relevant provisions of SAST Regulations, 2011 and PIT Regulations, 1992. In view of the above, adjudication proceedings were initiated against the Noticees under the provisions of section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide Order dated October 16, 2014, Shri D Ravikumar was appointed as the Adjudicating Officer in the matter under Section 19 read with Section 15 I of the SEBI Act, 1992 read with Rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15A(b) of the SEBI Act for the alleged violation of the provisions of Regulations 29(1) r/w 29(3) of the SAST Regulations, 2011 and Regulations 13(1) & 13(4A) r/w Regulation 13(5) of the PIT Regulations, 1992 by the Noticees. Pursuant to the transfer of Shri D Ravikumar, I have been appointed as the Adjudicating Officer in the matter, vide an Order dated June 22, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. A common Show Cause Notice ref. A&E/EAD-3/SBM-VB/969/2016 dated January 08, 2016 (hereinafter referred to as '**SCN**') was issued to the Noticees under Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticees and why penalty, if any, should not be imposed on the Noticees under the provisions of section 15A(b) of the SEBI Act for the aforementioned alleged violation of the provisions of SAST Regulations, 2011 and PIT Regulations, 1992, as mentioned in the SCN. The SCN issued to the Noticees inter alia, alleged the following:-

- *SEBI had conducted an examination in the scrip of Nivedita during the Examination Period. SEBI received an alert regarding appropriate disclosures that were not made by the Noticees who were represented by their guardian, in terms of the relevant provisions of the SAST Regulations, 2011 and PIT Regulations, 1992, as regards their activity in the scrip of the company during the above referred examination period.*
- *During the examination period, it was observed that the Company had allotted 31,24,500 equity shares through preferential allotment on August 22, 2013 at an offer price of Rs 100/- per share (Rs 10/- plus premium of Rs 90/- per share), out of which 22,99,500 equity shares were allotted by the company to the promoter group and 8,25,000 shares were allotted to the non-promoter group. The date of receipt of allotment advice/acquisition of shares w.r.t the above preferential allotment was August 22, 2013. In the above mentioned preferential allotment, the company allotted 2,94,000 shares to Anupama Khetan and 2,93,500 shares to Akrur Khetan. Both Akrur Khetan and Anupama Khetan were belonging to the promoter group of the company. In view of the above stated preferential allotment of shares, the shareholding of Akrur Khetan in the company increased from 1,30,400 shares (shares held before the preferential allotment) to 4,23,900 (after the preferential allotment). It was observed that after Akrur Khetan received allotment of 2,93,500 shares through the above mentioned*

preferential allotment on August 22, 2013, his shareholding in the company increased from 3.73% to 6.40%. Similarly, Anupama Khetan's shareholding also increased from 1,30,400 shares (shares held before the preferential allotment) to 4,24,400 shares (total shares held after the preferential allotment) as she was allotted 2,94,000 shares on August 22, 2013 in the preferential allotment. The shareholding of Anupama Khetan also increased from 3.73% to 6.40% in view of the above mentioned preferential allotment.

- *It is observed that the Noticees represented by their legal guardian had failed to make the relevant disclosures within the prescribed time period as required to be made by them under the relevant provisions of SAST Regulations, 2011 and PIT Regulations, 1992. In respect of both Akur Khetan and Anupama Khetan, pursuant to the aforementioned preferential allotment of shares, their individual shareholding in the Company had crossed the threshold limit of 5% to the total share capital of the Company. Thus, both Akur Khetan and Anupama Khetan were required to make the necessary disclosures under the provisions of both SAST Regulations, 2011 and also under PIT Regulations, 1992. As per the disclosure requirements mandated in terms of the provisions of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, 2011, the Noticees represented by their legal guardian were required to make the necessary disclosures regarding the change in the shareholding to the stock exchanges where the securities of the Company are listed and also to the Company within two working days of the acquisition / allotment of these shares.*
- *Similarly, in terms of the provisions of Regulation 13(1) of the PIT Regulations, 1992, the Noticees represented by their legal guardian were also required to make the necessary disclosure to the company in the prescribed format (Form A) within 2 working days of the acquisition/ allotment of the said shares. Further, in terms of the requirements of the provisions of Regulation 13(4A) read with Regulation 13(5) of the PIT*

Regulations, 1992, the Noticees (who represented the promoter group of the Company) were also required to make the disclosures regarding the change in the shareholding (as per the prescribed form viz. Form D) to the stock exchanges where the securities of the company are listed and also to the Company within two working days of the change in their shareholding. It was observed that the relevant disclosures mentioned in terms of the aforementioned Regulations were not made by the Noticees represented by their legal guardian, within the prescribed time period. Therefore, it is alleged that the Noticees represented by their legal guardian have violated the provisions of Regulation 29 (1) read with Regulation 29 (3) of the SAST Regulations, 2011 and also the requirement of the provisions of Regulation 13 (1), 13(4A) read with Regulation 13 (5) of the PIT Regulations, 1992.

5. The SCN dated January 8, 2016 was served on the Noticees. As the Noticees were minors at the time of the relevant transactions, they were represented by their legal guardian, Mr. Kamal Khetan, during the course of the present proceedings. Vide letter dated January 29, 2016, the legal guardian on behalf of the Noticees mentioned the following:-

- *The disclosure under Regulation 29(1) of SAST Regulations, 2011 is required to be filed only on acquisition of shares or voting rights in the Company by the acquirer along with the PACs which entitle them to exercise 5% or more shares or voting rights in the Company. Accordingly, the shareholding of both the acquirer and PACs needs to be considered for the applicability of filing disclosure under Regulation 29(1) of SAST Regulations, 2011.*
- *The aggregate shareholding of Akrur Khetan and Anupama Khetan along with PAC was 74.72% in the Company even before the preferential allotment was made by the Company on August 22, 2013 to its shareholders. Accordingly, the provisions of Regulation 29(1) of SAST Regulations, 2011 were not applicable to the Noticees as the shareholding*

of Akrur Khetan and Anupama Khetan together with PACs post preferential allotment has not increased beyond 5%, instead it has reduced by 0.52%.

- *Post the preferential allotment of shares, the aggregate shareholding of all the promoters in the Company reduced from 74.72% to 74.20% i.e. by 0.52%. For the purpose of applicability of disclosure under Regulation 29(1), it is the post preferential allotment shareholding of the acquirer along with PACs is required to be seen and not the pre preferential allotment shareholding.*
- *As the percentage of voting rights of the acquirer along with the PACs pursuant to additional acquisition of shares by way of preferential allotment made by the Company has not increased beyond 5%, the disclosure under Regulation 29(1) of SAST Regulations, 2011 was not applicable.*
- *It is also submitted that the format for disclosure to be filed under Reg 29(1) of SAST Regulations, 2011 requires the disclosure of shareholding details of the acquirer along with PAC which further leads to the conclusion that it is the aggregate shareholding of the acquirer and PAC which is required to be disclosed and not the individual shareholding.*
- *Further, pursuant to the preferential allotment of shares to Akrur Khetan and Anupama Khetan, the shareholding of each of the Noticees increased from 3.73% to 6.40% in the Company. This resulted into an increase in the shareholding of each of the Noticees by 2.67% in the Company and accordingly, Regulation 29(2) of SAST Regulations, 2011 was applicable to the Noticees.*
- *The shareholding of each of the Noticees increased by more than 2% (i.e. 2.67%) in the Company pursuant to the preferential allotment, Regulation 29(2) of SAST Regulations, 2011 was applicable to them and accordingly, disclosures under Regulation 29(2) was filed by the Noticees within the prescribed time limit.*
- *Considering the above, the disclosure under Regulation 29(1) is applicable if the shareholding of the acquirer together with PACs aggregates to 5% or more shares in the Company whereas disclosure under Regulation*

29(2) is applicable if any person together with the PACs holds shares entitling them to 5% or more shares in the Company and there is a change in shareholding which results in shareholding falling below 5% and also if such change exceeds 2% of the total shareholding in the Company.

- *The disclosure requirements under Regulation 29(1) and Regulation 29(2) of SAST Regulations, 2011 are similar as the aggregate shareholding of the acquirer and PACs is required to be disclosed both in Regulation 29(1) and Regulation 29(2) of SAST Regulations, 2011. As the disclosures have been made under Regulation 29(2) of SAST Regulations, 2011 and Regulation 29(1) was not applicable to the Noticees and no public interest is affected, we hereby submit that there is no violation of the provisions of SAST Regulations, 2011 by the Noticees.*
- *The Noticees have quoted various judgments including AO Orders In the matter of Kanel Oil and Exports Industries Limited, Global Securities Limited, Adi Rasayan Limited.*
- *The disclosure under Reg 13(1) is required by any person who holds more than 5% shares or voting rights in any listed company regarding the number of shares or voting rights held by such person on becoming such holder within 2 working days to the Company.*
- *It is submitted that the preferential allotment of shares was made by the Company on August 22, 2013 and receipt of intimation of allotment of shares was received by the noticees on August 23, 2013.*
- *Accordingly, as required under Regulation 13(1) of the PIT Regulations, 1992, the noticees have filed the required disclosure in Form A with the Company within the time period specified under Regulation 13(1).*
- *The details of the disclosure made by the Noticees under Regulation 13(1) are as under*

<i>Name of the Noticees</i>	<i>Date of acquisition/date of receipt of intimation of allotment of shares</i>	<i>Due Date of Filing Disclosure as per Regulation 13(1)</i>	<i>Date of filing of disclosure with the Company</i>	<i>Delay (if any)</i>

Akrur Khetan	23 rd August 2013	27 th August 2013	23 rd August 2013	-
Anupama Khetan	23 rd August 2013	27 th August 2013	23 rd August 2013	-

- *The preferential allotment of shares was made by the Company on August 22, 2013 and receipt of intimation of allotment of shares was received by the noticees on August 23, 2013. Accordingly, as required under Regulation 13(4A) of the PIT Regulations, 1992, the noticees have filed the required disclosure in Form D with the Company as well as the stock exchanges where the shares of the Company are listed within the time period specified under Regulation 13(5) (i.e. within 2 working days from the date of receipt of intimation of allotment of shares). The sequence of the events from the date of receipt of intimation of allotment of shares to the date of filing of disclosure under Regulation 13(4A) by the noticees is as under*

<i>Date</i>	<i>Day</i>	<i>Events</i>
23 rd August, 2013	Friday	Date of receipt of intimation of allotment of shares
24 th August, 2013	Saturday	Holiday (not considered as working day)
25 th August, 2013	Sunday	Holiday (not considered as working day)
26 th August, 2013	Monday	1st working day
27 th August, 2013	Tuesday	Filing of disclosure under Regulation 13(4A) i.e. 2nd working day

- *In relation to calculation of working days, reference can be drawn to the order of Securities Appellate Tribunal in the case of Dhaval Janardhan Nanavati vs SEBI (Appeal no. 24 0/2014) wherein it has been held that Saturday and Sunday are considered as holidays and not to be considered for the purpose of calculation of working days. Accordingly, 24th August, 2013 (being Saturday) and 25th August, 2013 (being Sunday) respectively are not considered as working days.*

6. Thereafter, in terms of Rule 4(3) of the Adjudication Rules, opportunity of personal hearing was granted to the Noticees on March 03, 2016 vide letter dated February 18, 2016. Shri Shyam Mehta, Senior Advocate along with Shri Yogesh Dharnidharka and Mrs. Rachana Hingarajia (hereinafter referred to as '**Authorized Representatives**'/ '**ARs**') appeared on behalf of the Noticees on the stipulated date of hearing i.e. on March 03, 2016 and made the following observations/submissions:--

- The ARs reiterated the submissions made by Shri Kamal Khetan (the legal guardian on behalf of the Noticees) in his reply dated January 29, 2016.
- ARs submitted the fact that disclosure was made under Regulation 29(2) of SAST Regulations, 2011 and should be viewed as a mitigating factor and the intention of the Noticee was not to avoid making the disclosures.
- The ARs mentioned that they would file additional reply in the matter.

7. Thereafter, Shri Kamal Khetan, vide his letter dated March 15, 2016 made additional submissions in the matter and while reiterating the earlier submissions made by the Noticees vide their letter dated January 29, 2016, the following additional submissions were made on behalf of the Noticees:-

Regulation 13(1) of the PIT Regulations is reproduced as under:

- *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.*
- *On perusal of the above, the disclosure under 13(1) is required by any person who holds more than 5% shares or voting rights in any listed*

company regarding the number of shares or voting rights held by such person on becoming such holder within 2 working days to the Company.

- *It is submitted that the noticees had prepared and signed the disclosure under Regulation 13(1) of the PIT Regulations. However, the same was not filed with the Company. On review of our file, no correspondence with the Company with respect to filing of form under Regulation 13(1) of the PIT Regulations is available.*
- *Further, noticees also submit that they have inadvertently included the disclosure under Regulation 13(1) of the PIT Regulations as Annexure -5 in the earlier response filed with your office on January 30, 2016 which was available with the noticees only as a signed copy and the same has never been filed with the Company by the noticees.*
- *Based on understanding of the noticees in interpreting the requirements of law, the noticees (being part of the promoter group) further submit that they were under bonafide belief that they were not bound to make any disclosure under Regulation 13(i) of the PIT Regulations as the same is not applicable to them.*
- *Pursuant to preferential allotment of shares, the noticees, being part of the promoter group, were required to make disclosure in Form D with the Company as well as the stock exchanges under Regulation 13(4) read with 13(5) of the PIT Regulations within 2 working days from the date of receipt of intimation of allotment of shares. Accordingly, the disclosures were filed by the noticees in Form D under Regulation 13(4A) of PIT Regulations within the prescribed time period (refer Annexure 1).*
- *Without prejudice to the above, the disclosure requirements under Regulation 13(1) and Regulation 13UA) of the PIT Regulations are similar as pre and post acquisition shareholding of the person acquiring the shares is required to be disclosed under both Regulation 13(1) and Regulation 13(4A) of the PIT Regulations. As the disclosures have been made under Regulation 13(4A) of the PIT Regulations and Regulation 13(1) was not applicable to the noticees and no public interest is affected, we hereby*

submit that there is no violation of the provisions of the PIT Regulations by the noticees.

➤ *We also request you to please intimate us the next date of hearing.*

8. Subsequently, Noticees were provided with another opportunity of personal hearing on July 04, 2017. During the course of hearing, Mr. Balveer Singh Choudhary and Ms Rachana Hingarajia, Authorised Representatives on behalf of the Noticees, mainly reiterated the earlier submissions made by the Noticees during the course of the proceedings. Thereafter, vide letter dated July 11, 2017, Noticees filed additional reply/submissions in the matter.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case, the material available on record and the submissions made by Mr. Kamal Khetan on behalf of the Noticees, vide letters dated January 29, 2016, March 15, 2016 and July 11, 2017. The SCN has alleged that Noticees have failed to make the necessary disclosures w.r.t their acquisition of shares of the company, which was required to be made in terms of Regulation 29(1) read with Regulation 29(3) of the SAST Regulations, 2011 and Regulation 13(1) & Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations, 1992.
10. Before moving forward, the relevant extracts of the provisions of the SAST Regulations, 2011 and PIT Regulations, 1992 allegedly violated by the Noticees are mentioned as under-

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.

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

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

PIT Regulations, 1992

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.

(4A) *Any person who is a promoter group of 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 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.

11. In the context of the present proceedings, I have observed from the material/records made available that the Noticees were minors during the relevant period when they were allotted additional shares of the company through the preferential allotment. I observe from the KYC documents/records on file that, Akrur Khetan was born on September 27, 2001 and Anupma Khetan was born on January 31, 1996. Thus, at the time of the preferential allotment of shares of the company and consequent enhancement of the shareholding of Akrur Khetan and Anupma Khetan by way of additional shares of the company allotted to them through the preferential allotment on August 22, 2013, both Akrur Khetan and Anupma Khetan i.e the Noticees in the context of the present proceedings were minors i.e. they were below the age of 18 years at the time of the relevant transactions.
12. The fact that Noticees have not made the necessary disclosures under Regulations 29(1) of SAST Regulations and 13(1) of the PIT Regulations is not disputed by the Noticees. In this regard, the ARs on behalf of the Noticees have contended that since the Noticees were part of the promoter/promoter group of the company and the fact that pursuant to the preferential allotment, the aggregate shareholding of the promoter/promoter group of the company was 74.20% (i.e total shareholding of the promoters/promoter group of the company was always above the threshold limit of 5% of the total share capital of the company), the disclosure obligations u/r 29(1) of SAST Regulations and under Regulation 13(1) of the PIT Regulations on the part of the Noticees did not arise at all. The AR has contended that for the purpose of reckoning the disclosure requirements u/r 29(1) of SAST Regulations and u/r 13(1) of PIT Regulations, the threshold of 5% has to be calculated after consolidating the shareholding of the promoters/promoter group as a whole and pursuant to the preferential allotment, the consolidated shareholding of the promoters/promoter group of the company had reduced from 74.72% (prior to preferential allotment) to 74.20% (after the preferential allotment). It was further contended by the AR that there was no provision under the SAST Regulations & PIT Regulations to calculate the threshold limit of 5% on

individual basis. The AR vehemently argued that the consolidated shareholding of the Noticees along with other members of the promoter group and the persons acting in concert (PACs) have to be considered before arriving at a conclusion regarding Noticees violating the requirements of Regulation 29(1) of SAST Regulations & Regulation 13(1) of the PIT Regulations. Hence, the AR on behalf of the Noticees was of the view that there was no obligation on the part of the Noticees to make the disclosures u/r 29(1) of SAST Regulations and Regulation 13(1) of the PIT Regulations.

13. The above contentions of the AR made on behalf of the Noticees cannot be accepted. The requirements laid down in the aforementioned Regulations do not require any acquirer to aggregate the shares acquired and/or held by him together with the shares of any other promoters or persons acting in concert with the promoters. If the individual shareholding of the acquirer has crossed the prescribed threshold limit laid down in terms of the above Regulations, then he is under an obligation to make the necessary disclosures mandated under the aforementioned provisions of SAST Regulations and PIT Regulations. The above factual position was made amply clear by Hon'ble SAT in its judgment dated April 29, 2014 in the matter of G Suresh vs SEBI (appeal no. 39 of 2014) wherein Hon'ble SAT had observed the following:

"It may be mentioned that the disclosure requirements under Regulation 7 of SAST Regulations require every acquirer alone to make a declaration of his holding, if any, together with the shares acquired by him. Regulation 7(1) does not require the acquirer to aggregate the shares acquired and/or held by him together with shares of any other person including person acting in concert with him. The question of the Appellant holding shares along with person acting in concert with him aggregating to more than 15% is irrelevant for the purpose of making declarations under Regulations 7(1) read with Regulation 7(2). If an acquirer acquires shares when acting in concert with others which acquisition exceeds the limit prescribed, declarations have to be made by the acquirer and person acting in concert as well. True and timely disclosures by

an acquirer of shares in a company or an important regulatory tool intended to serve a public purpose of disseminating this information to the company as well as to Stock Exchange expeditiously. Such disclosures are very important as they help investors to take an informed decision in investing in the scrip of said company". (Emphasis supplied)

I note that the aforementioned observations of Hon'ble SAT was made in the context of the appellants failing to make the stipulated disclosures under Regulation 7(1) r/w 7(2) of SAST Regulations, 1997. I am of the view that the disclosure requirement specified under Regulations 7(1) r/w 7(2) of SAST Regulations, 1997 is akin to the disclosures mandated under the provisions of Regulations 29(1) of SAST Regulations and 13(1) of PIT Regulations. Therefore, in view of the above observations, the contention of AR that the disclosure thresholds and consequent obligation cast under SAST Regulations & PIT Regulations should be reckoned on the basis of the consolidated shareholding of the promoters/promoter group & PACs and not on the basis of the individual shareholding crossing the threshold limit is baseless and without any merit.

14. I also observe from the submissions made by the AR that the Noticees have made the disclosures under Regulation 29(2) of SAST Regulations, 2011. In this regard, I find that the SCN issued to the Noticees in the context of the present proceedings had not alleged the specific violation of Regulation 29(2) of SAST Regulations, 2011 by the Noticees. As such, I do not think it necessary on my part to deal with the said disclosure made by the Noticees under the provisions of Regulation 29(2) of SAST Regulations, 2011.
15. As regards the allegation made in the SCN that Noticees have failed to make the necessary disclosures u/r 13(4A) of PIT Regulations, I find from the material /records made available that Noticees received the intimation of shares through the preferential allotment on August 23, 2013 and made the relevant disclosures u/r 13(4A) of PIT Regulations to BSE and to the Company on August 27, 2013 i.e on the second working day of the receipt of intimation

of allotment of shares (as August 24, 2013 & August 25, 2013 were holidays on account of Saturday and Sunday). In view of the fact that Noticees have made the disclosures within the stipulated time period, the allegation made in the SCN that they have violated the provisions of Regulation 13(4A) of PIT Regulations is not sustainable.

16. During the course of adjudication proceedings and upon examination of the material/ records made available, it is observed that the Noticees were minors at the time of the relevant transactions in the scrip of the company, which resulted in the alleged violation of the provisions of SAST Regulations and PIT Regulations by the Noticees. The same has also been brought out at para 11 above. In this context, it is relevant to mention the observations made by the Hon'ble Supreme Court of India, in the matter of Ritesh Agarwal and another ...vs SEBI and others (2008) INDLAW SC 989, wherein Hon'ble SC *inter alia* made the following observations:--

"A contract must be entered into by a person who can make a promise or make an offer. If he cannot make an offer or in his favour an offer cannot be made, the contract would be void as an agreement which is not enforceable in law would be void. Section 11 of the Indian Contract Act provides that the person who is competent to contract must be of the age of majority. If Ritesh Agarwal and Deepak Agarwal were minors, as would appear from their birth certificates, they could not have entered into contract.

We, therefore, are of the opinion that subject to any other or further order which the Board may pass as against Shri Surendra Kumar Agarwal and Smt Rooprekha Agarwal, the impugned directions would not be binding on Ritesh and Deepak Agarwal".

17. I further observe that Hon'ble SAT, in its order dated March 12, 2018, in the matter of Aarti Basantani vs SEBI, while referring to abovementioned judgment of Supreme Court of India, had observed the following:-

“The Apex Court in the case of Ritesh Agarwal and Anr. v/s Securities and Exchange Board of India reported in (2008) 8 SCC 205 has held that where fraudulent trades are executed on behalf of the minors then SEBI must proceed against the persons who had executed the fraudulent trades on behalf of the minors and not against the minors.”

18. Further, it is observed that in a proceeding before the Whole Time Member of SEBI in the matter of Babiben Mafatlal Bhansali and Ors decided on December 31, 2008, the Whole Time Member had inter alia observed that *“I find that the SCN was issued to persons who were minors at the time of the commission of the act. I, therefore, do not pass any directions against them except impounding of unlawful gains made in their accounts by their parents on their behalf”*

ORDER

19. Therefore, keeping in view the facts and circumstances of the case, the observations made above and also the principles of law endorsed by Hon'ble Supreme Court and Hon'ble SAT, as mentioned above, I am of the view that it is not a fit case for imposing monetary penalty on the Noticees under section 15 A (b) of the SEBI Act, as the Noticees were minors at the time of the relevant transactions in the scrip of the company. Accordingly, I exonerate the Noticees viz. Akrur Khetan and Anupma Khetan from the allegations levelled against them in the SCN dated January 8, 2016. The SCN dated January 8, 2016 is disposed of accordingly.

20. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to Mr. Kamal Khetan on behalf of the Noticees viz. Akrur Khetan and Anupma Khetan and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: 29.06.2018

SURESH B MENON
ADJUDICATING OFFICER