

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD/AO/BJD/VS/259/2018-19

**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:

Jayshriben Maniar
PAN: AGQPP0881N
Plot no. 2215/a, Gokul,
Nr. Fulwadi Chowk, Hill Drive,
Bhavnagar, Gujarat - 364002

In the matter of Cupid Trades and Finance Ltd.

BACKGROUND

1. Based on receipt of complaints from investors, an investigation was conducted into the alleged irregularities in trading in the scrip of Cupid Trades and Finance Ltd. (hereinafter referred to as the “company”/ “Cupid”) and the possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 and Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations 2003 for the period June 19, 2013 to November 05, 2013. (hereinafter referred to as the Investigation Period or ‘IP’).
2. During the investigation it was *inter alia* observed that Jayshriben Maniar (hereinafter referred to as “Noticee”) failed to make disclosures for off-market transactions leading to acquisition of shares which was a violation of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as “SAST Regulations, 2011”) and SEBI (Prohibition of Insider trading) Regulations, 1992 (hereinafter referred to as “PIT regulations, 1992”). From the transaction statement of the Noticee, it was observed that she acquired more than 5% of the total shareholding of the Company on June 24, 2013. Details of the transactions made by the Noticee in the scrip of Cupid Trades & Finance Ltd. during the investigation period is given below:

Sr. No.	Date of transaction	No. of shares	Type of Transaction	Total share holding	% of shares held	Discl		Type of Discl
						Company	SE	
1	23-May-13	51	Off-market transfer from Bhansali Value Creations P L	51	0.01	-	-	-
2	24-May-13	51	Off-market transfer to JM Financial Services Ltd.	0	0	-	-	-
3	24-Jun-13	29000	Off-market transfer from Corporate Space Managers P L	29000	3.02	-	-	-
4	24-Jun-13	30500	Off-market transfer from Somar Commodities P L	59500	6.2	not discl	not discl	*#
5	25-Jun-13	4602	Sell	54898	5.72	-	-	-
6	25-Jun-13	1700	Off-market transfer from Shankheshwar Metal P L	56598	5.9	-	-	-
7	26-Jun-13	38800	Off-market transfer from Shah Tradewing Gujarat P L	95398	9.94	not discl	not discl	@ \$
8	26-Jun-13	8000	Sell	87398	9.1			
9	27-Jun-13	12000	Sell	75398	7.85	not discl	not discl	@ \$
10	28-Jun-13	4240	Sell	71158	7.41	-	-	-
11	01-Jul-13	9000	Sell	62158	6.47			
12	02-Jul-13	32000	Sell	30158	3.14	not discl	not discl	@ \$
13	04-Jul-13	4500	Sell	25658	2.67	-	-	-
14	05-Jul-13	9413	Sell	16245	1.69	-	-	-
15	08-Jul-13	5427	Sell	10818	1.13	-	-	-
16	10-Jul-13	8300	Sell	2518	0.26	-	-	-
17	17-Jul-13	2518	Off-market transfer from Bhansali Value Creations P L	0	0	-	-	-
* 29(1) r/w 29(3) of SEBI(SAST) Reg., 2011.				# 13(1) of SEBI (PIT) Reg., 1992.				
@ 29(2) r/w 29(3) of SEBI(SAST) Reg., 2011.				\$ 13(3) r/w 13(5) of SEBI (PIT) Reg., 1992.				

3. From the above table, it was observed that on June 24, 2013, Noticee acquired 59,500 shares through two off-market transactions which constituted 6.2% of the shares of the company. Through these transactions, the shareholding of Noticee exceeded 5% of shares of the Company and therefore was required to make disclosures in terms of provisions of Regulation 29(1) of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992. Therefore, it is alleged that Noticee having failed to disclose the aforesaid acquisition has violated the provisions of Regulation 29(1) of SAST Regulations, 2011 and Regulation 13 (1) of PIT Regulations, 1992. Further as mentioned in the table above, it is also alleged that the Noticee has on three instances failed to make disclosures required to be made under Regulation 13 (3) read with 13(5) of PIT Regulations, 1992 and Regulation 29(2) read with 29(3) of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned has been appointed as the Adjudicating Officer vide order dated May 19, 2017 in place of Ms. Anita Kenkare, General Manager under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") to inquire into and adjudge the alleged violation of Regulations 29(1) & (2) r/w Regulation 29(3) of SAST Regulations, 2011, Regulations 13(1) & 13(3) read with 13 (5) of PIT Regulations, 1992 by the Noticee in the scrip of Cupid Trades and Finance Ltd.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice dated October 31, 2017 bearing number EAD/AD/BJD/MAS/27048/4/2017 (hereinafter referred to as 'SCN') was issued to the Noticee *inter alia* with respect to the aforesaid allegations. In response to the same, the Noticee vide her letter dated December 05, 2017 sought additional documents. Further, in view of the facts and circumstances of the case, the Noticee was provided with an opportunity of hearing on October 29, 2018 with an advise to submit its reply, if any, on the allegation mentioned at para 4 above. In response, the Noticee filed her reply on the allegations vide her letter dated October 25, 2018 and October 29, 2018. The Noticee vide her replies *inter alia* submitted as under:

".....

1. *As per SCN, it is observed Noticee was holding 51 (0.01%) shares of Cupid Trades and Finance Limited (CTFL) as on 23.05.2013. Noticee then through off - market purchased / acquired few more shares of CTFL and on 24.06.2013 acquired some 30,500 shares which increased Noticee's cumulative holding to 6.2% (59,500 shares). Subsequently, Noticee bought more shares and the cumulative holding went upto 9.94% (95,398 shares). Thereafter, Noticee sold certain shares which reduced shareholding to 7.85% and finally on 02.07.2013, Noticee's shareholding went down to 3.14% (30,158 shares).*

Date	No. of Shares	% of shareholding
23.05.2013	51	0.01%
24.06.2013	30,500	6.2%
26.06.2013	95,398	9.94%
27.06.2013	75,398	7.85%
02.07.2013	30,158	3.14%
17.07.2013	NIL	NIL

2. Noticee submits that the equity capital of the Company was very small i.e. 9,60,000 shares only (of Rs. 10 each) and hence, acquisition of small quantity of shares was amounting to crossing of threshold limits. Further, the trading in the securities of the Company was suspended w.e.f January 07, 2015 and therefore, non-disclosure has not caused any prejudice to the securities market.
3. Therefore, it is alleged that Noticee has violated Regulation 29(1) and (2) of SEBI SAST Regulation and Regulation 13(1) and (3) of SEBI PIT Regulations by not making appropriate disclosures as required under law. It is pertinent to note that SEBI vide summons dated 04.03.2015 was issued to Noticee. The said summons of SEBI was duly answered by Noticee vide reply dated 07.03.2015.
4. Noticee submits that she is small retail non-promoter shareholder and somehow came to hold the abovementioned quantity of shares. Noticee being lay investor was not aware about disclosure to be made by retail investors. Neither the company nor the trading member made noticee aware or drew her attention to it. It is further submitted that Noticee is senior citizen and is widow woman looking after her house. Noticee was suffering from Paralysis (in both legs).
5. It is pertinent to mention that the company CTFL in its quarterly disclosures for the quarter ended June 2013 disclosed Noticee holding as 7.41% which was subsequently reduced to zero in the quarter ending September 2013. Hereto annexed and marked as **Annexure "A" (colly)** are copies of company CTFL's disclosures made to BSE for the quarters ended, June 2013 and September 2013 (downloaded from BSE Website).

6. *Noticee submits that a common investor like her, do not know and cannot be expected to know Insider Trading Regulations and Takeover Code Regulations for trading in the securities market. It is pertinent to mention that neither SEBI nor Exchanges nor member brokers have ever spread any awareness either through brochures, leaflets, investors booklet, contract notes or television / print media advertisement to the investors about such type of special disclosures. It is pertinent to mention that I have never defaulted in any of my settlement obligations.*
7. *The sole onus of disclosures on the lay investor is improper, inappropriate as a lay investor does not have knowledge, infrastructure, wherewithal, logistics, mental strength, time and it is very difficult to remember and take consequential act on such stray exceptional buy / sale transaction. Hence it is requested that a practical view be taken and not hyper technical view.*
8. *Noticee seeks to state that she is small investor and not a SEBI registered intermediary or promoter/ promoter group entity. Further the common investors do not employ any professional such as Chartered Accountant/ Company Secretary / lawyer for keeping track and co-relate their day to day stock market trades with several provisions of different laws.*
9. *Further the disclosures are not at the heart of securities market. Noticee state that the investors' decisions to buy / sell specific securities and at what prices mainly depend on advice, research, fundamentals of the industry and the company, company's performance and its corporate announcements, reputation of promoters, country rating, political or banking events, economic and political conditions at country level and political level, conviction and risk appetite of investors and many such factors / forces / influences the market at macro and micro level. The integrity in the securities market mainly depend on the conduct of various SEBI registered intermediaries participating in the market viz. listed companies, Stock Exchanges, Depositories, main brokers, their sub-brokers, depository participants, and how they service / add value to the investors etc. aspects.*
10. *It is reiterated that Noticee being a retail investor was not aware about any disclosure provision applicable to noticee at the relevant time. Noticee verily believed that she being a non-promoter group entity and purchases of CTFL shares being delivery based (out of investment) does not require any further action on my part. The Noticee states that neither her broker nor the Stock Exchange / Depository Participant / Depository pointed out the requirement of disclosure at the relevant time.*
11. *Noticee had already filed the disclosures to the said company CTFL and BSE, copies of which are attached herewith and marked as 'Annexure-B (colly)'.*
12. *Noticee state that SEBI has introduced a System-driven disclosure to entities, R&TA, Depositories and Nation-wide exchanges dated 1st December, 2015 vide its circular CIR/CFD/DCR/17/2015 wherein the depositories and R&TA will provide information to the*

*Stock Exchanges which will automatically be disclosed if holding goes beyond threshold limits. A copy of the said circular is annexed and marked as **Annexure "C"**.*

13. *In the circumstances, Noticee say that the lapses were unintentional, inadvertent – the non-disclosures were technical as the corporate / stock market world knew about the increase in shareholding through quarterly disclosures by the company to BSE. This was a stray case. Hence, no harm, loss or injury was caused to anyone on account of my non-disclosure at the relevant time. Hence such lapse ought not be considered grave in the facts and circumstances of the case.*
14. *Noticee say that the violations of Regulations 29(1) and (2) of Takeover Regulations, 2011 and Regulation 13(1) and (3) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence one penalty should be levied. I further say that Regulation 29(1) and (2) of Takeover Regulations, 2011 and Regulation 13(1) and (3) of PIT Regulations, 1992, are not stand alone Regulations and one is corollary of other.*
15. *Noticee had no ulterior motive in the non-disclosures at the relevant time. Consequently, such non-compliance at the relevant time had no adverse effect, relevance and significance.*
16. *Noticee crave leave to refer to and rely upon Hon'ble Adjudicating Officer order dated 7th September, 2018 (AO Order No. EAD/SR/SM/AO/63/2018-19) in respect of Vijay Purushottam Das in the matter of In Cap Financial Services Limited.*
17. *Noticee states that she has been facing complications and other health problems. Noticee is required to undergo medical treatment on regular basis.*
18. *MITIGATING FACTORS:*
 - *Noticee has not violated any substantive provision of law.*
 - *Noticee is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law. Noticee have not acted in defiance of law.*
 - *Noticee has not viewed the regulatory proceedings in a non-chalant manner.*
 - *Noticee has not made any unfair gain or advantage in any manner.*
 - *The lapse of non-disclosure on noticee's part is not repetitive in nature.*
 - *I am going through medical treatments as Noticee had suffered from Paralysis (in both legs).*
 - *That the company CTFL is suspended w.e.f 07.01.2015.*

....."

6. Further, the authorized representative of the Noticee appeared for the hearing on October 29, 2018 and reiterated the submissions made in replies of the Noticee as mentioned above.

CONSIDERATION OF ISSUES AND FINDINGS

7. After perusal of the material available on record, I have the following issues for consideration, viz.,

- I. Whether the Noticee has violated the provisions of Regulations 29(1) & (2) r/w Regulation 29(3) of SAST Regulations, 2011 and the provisions of regulation Regulations 13(1) & 13(3) read with 13 (5) of PIT Regulations, 1992?
- II. Whether the Noticee is liable for monetary penalty under section 15A(b) of the SEBI Act ?
- III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

8. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

Issue I: Whether the Noticee has violated the provisions of Regulations 29(1) & (2) r/w Regulation 29(3) of SAST Regulations, 2011 and the provisions of regulation Regulations 13(1) & 13(3) read with 13 (5) of PIT Regulations, 1992?

9. I note the details of the transactions made by the Noticee in the scrip of Cupid during the investigation period which is as given below:

Sr. No.	Date of transaction	No. of shares	Type of Transaction	Total share holding	% of shares held	Discl	
						Company	SE
1	23-May-13	51	Off-market transfer from Bhansali Value Creations P L	51	0.01	-	-
2	24-May-13	51	Off-market transfer to JM Financial Services Ltd.	0	0	-	-
3	24-Jun-13	29000	Off-market transfer from Corporate Space Managers P L	29000	3.02	-	-
4	24-Jun-13	30500	Off-market transfer from Somar Commodities P L	59500	6.2	not discl	not discl
5	25-Jun-13	4602	Sell	54898	5.72	-	-
6	25-Jun-13	1700	Off-market transfer from Shankheshwar Metal P L	56598	5.9	-	-
7	26-Jun-13	38800	Off-market transfer from Shah Tradewing Gujarat P L	95398	9.94	not discl	not discl
8	26-Jun-13	8000	Sell	87398	9.1		
9	27-Jun-13	12000	Sell	75398	7.85	not discl	not discl
10	28-Jun-13	4240	Sell	71158	7.41	-	-

11	01-Jul-13	9000	Sell	62158	6.47		
12	02-Jul-13	32000	Sell	30158	3.14	not discl	not discl
13	04-Jul-13	4500	Sell	25658	2.67	-	-
14	05-Jul-13	9413	Sell	16245	1.69	-	-
15	08-Jul-13	5427	Sell	10818	1.13	-	-
16	10-Jul-13	8300	Sell	2518	0.26	-	-
17	17-Jul-13	2518	Off-market transfer from Bhansali Value Creations P L	0	0	-	-

10. I note that Noticee no. 1 acquired 59,500 shares through two off-market transactions on June 24, 2013 which constituted 6.2% of the shares of the company which is also apparent from the transaction statement of the Noticee. Therefore, through these transactions, the shareholding of Noticee exceeded 5% of shares of the Company.

11. With respect to the aforesaid change in shareholding of the Noticee, I note the following provisions of SAST Regulations, 2011 and PIT Regulations, 1992:

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)

(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

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.*

12. Therefore in view of the provisions of the Regulation 29(1) read with 29(3) of SAST Regulations, 2011, the Noticee was required to make disclosures to the Company and to the exchange within 2 working days and the Noticee was further required to make disclosure to the company within 2 working days under Regulation 13(1) of the PIT Regulations, 1992 with respect to the transactions mentioned at para 10 above.

13. Further, I note that there was a change exceeding 2% in the shareholding of Noticee on June 26, 2013 when she received 38,800 shares of the company and her shareholding increased to 9.94% from 6.62%. Further, on June 27, 2013 the Noticee's shareholding reduced to 7.84% and on July 02, 2013 her shareholding reduced to 3.14%. In this regard, I note the following provisions of the SAST Regulations, 2011 and PIT Regulations, 1992:

SAST Regulations, 2011

Disclosure of acquisition and disposal

29. (1)

(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.*

PIT Regulations, 1992

Regulation 13 of PIT Regulations, 1992:

Initial Disclosure

(1)

Continual Disclosure.

(3) Any person who holds more than 5% shares or 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..

...

(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.*

...

14. Therefore it is alleged that the Noticee holding more than 5% of the shares in Cupid was required to make disclosures under the provisions of regulation 29(2) read with 29(3) of SAST Regulations, 2011 and regulation 13(3) read with 13(5) of PIT Regulations.

15. As regards the alleged violation of provisions of regulation 29(2) read with 29(3) of SAST Regulations, 2011, I note that Hon'ble SAT in the matter of Mr. Ravi Mohan et.al. vs. SEBI (Appeal no 97/2014 decided on December 16, 2015) has observed as follows:

“

29.Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants.

.....

33. For all the aforesaid reasons, the issues raised in these appeals are answered as follows:-

a).....

b) Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained.

.....”

16. Keeping in view the text of the regulation 29(2) read with 29(3) of SAST Regulations, 2011, I note that the ratio of the aforesaid decision of the Hon'ble SAT is also applicable to the instant regulations. Therefore the transaction on June 27, 2013 where the Noticee's shareholding reduced to 7.84% and that on July 02, 2013 when her shareholding reduced to 3.14% being the sale transactions do not attract disclosure requirement under Regulation 29(2) read with 29(3) of the SAST Regulations, 2011. Therefore I conclude that the allegation that the Noticee has violated the provisions of regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 with respect to the transactions dated June 27, 2013 and July 02, 2013 is not tenable.

17. However, subject to the conclusion arrived to the para, in view of the provisions of the Regulation 29(2) read with 29(3) of SAST Regulations, 2011, the Noticee was required to make disclosures to the Company and to the exchange within 2 working days with respect to the transaction dated June 26, 2013 and the Noticee was further required to make disclosure to the company within 2 working days under Regulation 13(3) read with 13(5)

of the PIT Regulations, 1992 with respect to the transactions dated June 26, 2013, June 27, 2013 and July 02, 2013 as mentioned at para 13 above

18. In this regard, the disclosures required to be made by the Noticee under Regulations 29(1) & 29(2) read with 29(3) of SAST Regulations, 2011 and Regulation 13(1) and 13(3) read with 13(5) of the PIT Regulations, 1992, vide her reply dated March 07, 2015, Noticee stated that she was not aware of the total equity of the Company and percentage of her share in the total equity of the Company. Further, she also submitted that she was unaware about SAST and PIT Regulations, and its disclosure requirements. I also note that the Noticee vide her reply dated October 29, 2018 submitted before has also not disputed the alleged transactions.
19. Further, I note that the Noticee has submitted the copy of the disclosures under the PIT Regulations and SAST Regulations with respect to the transactions alleged in the instant case which is claimed to have been submitted to the company and exchange under the relevant provision of the SAST Regulations and PIT Regulations. While I note that no evidence has been submitted to show the delivery of the said disclosures to the company and the Exchange, I also note that these claimed disclosures have been made on October 29, 2018 i.e. 5 years after the alleged transactions triggering the disclosure requirement under Regulation 29(1) & 29(2) read with Regulation 29(3) of the SAST Regulations, 2011 and Regulation 13(1) & 13(3) read with 13(5) of the PIT Regulations, 1992 and it is also after almost one year from the date of issuance of the SCN in the instant matter. In view of all the above, I conclude that the Noticee has failed to comply with the provisions of the Regulation 29(1) & 29(2) read with Regulation 29(3) of the SAST Regulations, 2011 and Regulation 13(1) & 13(3) read with 13(5) of the PIT Regulations, 1992.

20. Further, I refer to the following submissions of the Noticee made before me:

“ ...

The sole onus of disclosures on the lay investor is improper, inappropriate as a lay investor does not have knowledge, infrastructure, wherewithal, logistics, mental strength, time and it is very difficult to remember and take consequential act on such stray exceptional buy / sale transaction. Hence it is requested that a practical view be taken and not hyper technical view.

Noticee seeks to state that she is small investor and not a SEBI registered intermediary or promoter/ promoter group entity. Further the common investors do not employ any professional such as Chartered Accountant/ Company Secretary / lawyer for keeping track and co-relate their day to day stock market trades with several provisions of different laws.

Further the disclosures are not at the heart of securities market. Noticee state that the investors' decisions to buy / sell specific securities and at what prices mainly depend on advice, research, fundamentals of the industry and the company, company's performance and its corporate announcements, reputation of promoters, country rating, political or banking events, economic and political conditions at country level and political level, conviction and risk appetite of investors and many such factors / forces / influences the market at macro and micro level. The integrity in the securities market mainly depend on the conduct of various SEBI registered intermediaries participating in the market viz. listed companies, Stock Exchanges, Depositories, main brokers, their sub-brokers, depository participants, and how they service / add value to the investors etc. aspects.

It is reiterated that Noticee being a retail investor was not aware about any disclosure provision applicable to noticee at the relevant time.

.....

In the circumstances, Noticee say that the lapses were unintentional, inadvertent – the non-disclosures were technical as the corporate / stock market world knew about the increase in shareholding through quarterly disclosures by the company to BSE. This was a stray case. Hence, no harm, loss or injury was caused to anyone on account of my non-disclosure at the relevant time. Hence such lapse ought not be considered grave in the facts and circumstances of the case."

21. In view of the submission above, I primarily refer to the following observation made by Hon'ble SAT in the matter of Premchand Shah and Others V. SEBI (Appeal no. 108 of 2010 decided on February 21, 2011):

"..... When law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all."

22. With respect to the submission of the Noticee that no harm was caused to any investor because of her default, I note the observation of Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the case of Mrs. Komal Nahata vs. SEBI (Appeal No. 5 of 2014 decided on January 27, 2014) "*...Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance*

of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure. " In this regard, I also note the following observation made by Hon'ble SAT in the matter of Ashok Jain V. SEBI (Appeal no. 79 of 2014 decided on June 09, 2014):

"Under SAST Regulations, 1997 as also under SAST Regulations, 2011 disclosures are liable to be made within specified days irrespective of the scrip being traded on the Exchange or not. Similarly, disclosures have to be made irrespective of whether investors have suffered any loss or not on account of non disclosure within the time stipulated under those regulations..."

23. Further, with respect to the submission of the Noticee that the said non-disclosure was unintentional and that no gain was made by her on account of the default, I note the following observation Made by Hon'ble Securities Appellate Tribunal (SAT) in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014 decided on September 30, 2014):

"...Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, 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..."

24. Therefore in the facts and circumstances of the instant case, I note that the disclosure requirements were failed to be complied by the Noticee and I am not also inclined to accept the submission of the Noticee with respect to such failure on her part to comply with the provisions of the SAST Regulations and PIT Regulations for the reasons mentioned as above. In view of the foregoing, I conclude that the Noticee has violated the provisions of Regulation 29(1) & 29(2) read with Regulation 29(3) of the SAST Regulations, 2011 and Regulation 13(1) & 13(3) read with 13(5) of the PIT Regulations, 1992 subject to the conclusion arrived at para 16 above.

ISSUE II. Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act?

25. From the conclusions arrived at para 24 above, I further conclude that the Noticee is liable for monetary penalty under section 15A (b) of the SEBI Act. The text of the said provision is as follows:

15A. Penalty for failure to furnish, information, return etc.

If any person, who is required under this Act or any rules or regulations made thereunder, -

(a)...

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

...

ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticee ?

26. While determining the quantum of monetary penalty, it is important to consider the factors stipulated in Section 15 J of the SEBI Act, which reads as under :

SEBI Act

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 a group of investors as a result of the default ;*
- c) the repetitive nature of the default*

27. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the

investors as a result of the Noticee's failures. From the documents available on record, it is noted that no prior default is on record.

28. With respect to the conclusion arrived at para 24 above, I also note that Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs. SEBI (Appeal No. 118 of 2013 decided on September 04, 2013) has *inter alia* observed, "*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*". In light of the aforesaid Order by Hon'ble SAT, the said ratio is applicable to the facts and circumstances of the instant case with respect to the violation of regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) of PIT Regulations by the Noticee.

ORDER

29. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995, I hereby impose a consolidated penalty of ₹1,00,000/- (Rupees One Lakh only) on Jayshriben Maniar in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of regulations 29(1) & 29(2) read with regulation 29(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 and regulation 13(1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 by her.

30. Jayshriben Maniar shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into the Bank Account, the details of which are given below:

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

or by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai.

31. Jayshriben Maniar shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI Mumbai :

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7.Payment is made for:	Penalty

32. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy each of this order is being sent to Jayshriben Maniar and also to the Securities and Exchange Board of India, Mumbai.

Mumbai
October 31, 2018

B J Dilip
Adjudicating Officer