

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. BM/AO- 63/2012]

**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

Rajiv Rajaram Kashyap

PAN No. ACUPK9810E

In the matter of

Fact Enterprises Ltd.

FACTS OF THE CASE IN BRIEF

1. Investigations were conducted by SEBI in respect of huge off-market transfer of shares at National Securities Depository limited (hereinafter referred to as “**NSDL**”) and Central Depository Services (I) Ltd (hereinafter referred to as “**CDSL**”). It was observed that Mr. Rajiv Rajaram Kashyap (hereinafter referred to as ‘**the Noticee**’) the Managing Director of Fact Enterprises Ltd (hereinafter referred to as “**Company**”) transferred shares of the company to Mr. Manish Ajmera (hereinafter referred to as ‘**Mr. Manish**’), Mr. Homiyar Firoze Mistry, (hereinafter referred to as ‘**Mr. Homiyar**’) Mr. Uday Chandra Mohite (hereinafter referred to as ‘**Mr. Shri Uday**’) Mrs. Urmila Lakhotia (hereinafter referred to as ‘**Smt. Urmila**’) and Mr. Mukesh Saboo (hereinafter referred to as ‘**Shri Mukesh**’) during the period 01.07.2009 to 09.09.2009.

2. Upon examination into the dealing in the shares of the Company it was observed that the Noticee transferred 11,00,000 shares (21.79%) between 01.07.2009 to 09.09.2009. The share holding of the Noticee in the company was reduced from 24.88% to 4.57%. The shares of the company are listed at Bombay Stock Exchange (hereinafter referred to as '**BSE**'). The paid-up capital of the company during July 2009 to September 2009 was 50,47,800 shares.
3. It was observed that the Noticee was holding 12,55,694 shares and had transferred 11,00,000 shares (21.79%) between 01.07.2009 to 09.09.2009. Therefore the Noticee's holding came down to 2,30,694 shares (4.57%) on 30.09.2009 from 12,55,694 shares (24.88%) and consequently was under an obligation to make disclosures under Regulation under 13(3) and 13(4) read with 13 (5) of SEBI (Prohibition of Insider Trading) (hereinafter referred to as '**PIT Regulations**') and Regulation 7(1A) read with 7 (2) of SEBI (Substantial Acquisition of Shares & Takeover) (hereinafter referred to as '**SAST Regulations**'). However allegedly no such disclosure was made by the Noticee under Regulation 13(3) and 13(4) read with 13 (5) of PIT Regulations and Regulation 7 (1A) read with 7 (2) of SAST Regulations. It was alleged that through the aforesaid act the Noticee has violated Regulation 13(3) and 13(4) read with 13 (5) of PIT Regulations and Regulation 7 (1A) read with 7 (2) of SAST Regulations. Consequently the Noticee was liable for penalty under Section 15 A (b) of SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. I was appointed as the Adjudicating Officer, vide order dated March 10, 2011, under Section 15 I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Rules**') to inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation of Regulation 13(3) and 13(4) read with 13 (5) of PIT Regulations and Regulations 7 (1A) and 7 (2) of Takeover Regulations committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as “SCN”) dated May 16, 2011 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of PIT Regulations and SAST Regulations. A supplementary to the show cause notice dated 16.05.2011 was issued vide letter dated 10.09.2012.
6. The details of transfers by which there were change in the share holdings of the Noticee was given in the SCN as reproduced hereunder :

Paid up capital of the company	Date of transfer	No. of shares held by you prior to transfer	No. of Shares received	Quantity transferred	% change in holding	No. of shares held by Noticee after transfer / sale
50,47,800	01.07.09	12,55,694		75000	1.49%	11,80,694
	24.07.09	11,80,694	75000	---	1.49%	12,55,694
	01.08.09	12,55,694		100000	1.98%	11,55,694
	25.08.09	11,55,694		100000	1.98%	10,55,694
	01.09.09	10,55,694		100000	1.98%	9,55,694
	01.09.09	9,55,694		100000	1.98%	8,55,694
	01.09.09	8,55,694		200000	3.97%	6,55,694
	03.09.09	6,55,694		100000	1.98%	5,55,694
	08.09.09	5,55,694		175000	3.46%	3,80,694
	09.09.09	3,80,694		150000	2.97%	2,30,694

7. The Noticee was also called upon to show cause as to why an inquiry should not be initiated against him and penalty be not imposed under Section 15A (b) of the SEBI Act for the alleged violations. The SCN was duly acknowledged by the Noticee. The Noticee submitted

its reply to the SCN vide letter dated 25.05.2011. A supplementary show cause notice was sent to the Noticee on 10.09.2012 rectifying the penalty provisions under Sec15 A (b).

8. In the interest of natural justice and in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of hearing on 18.07.2011 vide notice dated 01.07.2011 and the said notice was duly acknowledged by the Noticee. The Noticee appeared himself and submitted that he would like to avail consent proceeding.
9. Accordingly the Noticee filed an application for consent terms vide letter dated 3.05.2012 against the SCN dated 16.05.2011 hence the proceedings were kept in abeyance. During the pendency of the consent application, the Noticee Vide letter dated 08.07.2012 informed SEBI that he would be withdrawing the consent proposal and would like to argue the matter before the Adjudicating Officer and requested the date of hearing. Thus the consent proposal was disposed as withdrawn.
10. Second opportunity of hearing was granted on 22.08.2012 vide notice dated 02.08.2012. The Noticee vide letter dated 21.08.2012 sought extension and requested for the hearing to be held in the 2nd week of September, 2012. Thereafter another opportunity of hearing was granted on 11.09.2012 vide notice dated 21.08.2012 and the said notice was duly acknowledge by the Noticee. Subsequently a supplementary show cause notice was also issued to the Noticee on 10.09.2012 rectifying the error made in the penalty provision in para no. 7 of the show cause notice. Noticee appeared in person on 11.09.2012 in the said hearing. During hearing it was brought to the notice of the Noticee that the reply to the show cause notice dated 25.05.2012 was filed by the company and not by him. He was, therefore, advised to reply to the Show Cause Notice as well as supplementary SCN by 20.09.2012.
11. The Noticee submitted his reply to the SCN vide letter dated 20.09.2012 as under:

I, Rajiv Rajaram Kashyap would like to reply in this matter that as I have always maintained that I have complied with all the rules and regulations as required by SEBI Act in due time and in timely manner. As I was misguided and inadvertently all the replies till date was made

by the company and not by me. It was my good fortune that you have explained and guided me properly in the last hearing. As Income Tax Authorities had search our premises and seized all the documents, I was unable to submit my reply. Now since I have arranged all the documents and hereby submitted my explanations and documents in this regard.

As it can be seen from the documents that I have made full disclosure which was required under rule 13 (3), 13 (4) and 13 (5) of PIT Regulation of SEBI Act.

12. There after the Noticee vide email dated 21/09/2012 referring his earlier reply dated 20.09.2012 and stated that, the reply related to regulations under rule 7(1A) r/w 7(2) was not submitted hence he requested three day time to submit necessary disclosure on Monday, 23.09.2012. Accordingly, the Noticee submitted his further reply vide letter dated 23.09.2012 in respect of regulations under rule 7(1A) r/w 7(2) as follows:

With reference to our earlier submissions on 20.09.2012 whereas I had submitted necessary documents regarding disclosure under rule 13(3), 13(4) and 13(3) of PIT Regulations in requisite format, I am here by submitting documents pertaining to disclosure to disclosure under Regulation 7(1A) r/w 7(2) of SAST. Please note I had made ample disclosure in FORM C and FROM D, however I have not made disclosure under specific format under regulation 7(1A) r/w 7(2) to the stock exchange . I have made full disclosure to the company in timely manner in the requisite format under regulation 7(1A) r/w 7(2) of SEBI (SAST) Rule. However I have been misguided no to make any further disclosure regarding transfer of share as I have already made same disclosure in From D under rule 13(3), 13(4) and 13(5) of PIT Regulations. Hence I would like to request to take this matter sympathetically and wish to close this matter as I have complied with all the requisite requirements.

CONSIDERATION OF ISSUES

13. I have carefully perused the written submissions of the Noticee and the documents available on record. It was alleged that the Noticee had transferred 11,00,000 shares between 01.07.2009 to 09.09.2009. Thereby the share holding of the Noticee changed/reduced from 24.88% to 4.57% in the company. There was change in the share holding of the Noticee by more than 1% and also there was change in shareholding of the Noticee by more than 2% in

three instances i.e., on 01.09.2009, 08.09.2009 and 09.09.2009 for which the Noticee was required to make disclosure in term of regulation 13(3), 13(4) of PIT Regulation and in term of regulation 7(1A) of SEBI SAST Regulation respectively. Allegedly the Noticee failed to make the relevant disclosure under the provisions of Regulation 13(3), 13(4) read with 13 (5) of PIT Regulation and under Regulation 7 (1A) read with 7 (2) of SEBI SAST Regulation.

14. Now the issues that arise for consideration in the present case are :

- a) Whether the Noticee was holding more than 5% of the shares of the company prior to sale of the shares?
- b) Whether the Noticee attracted the disclosure requirements under regulations 13 (3), and 13 (5) of PIT Regulations?
- c) Whether the Noticee is the director or officer of the company at the time of change in his shareholding in the company?
- d) Whether the Noticee attracted the disclosure requirements under regulations 13 (4), and 13 (5) of PIT Regulations?
- e) If so, whether the Noticee complied with the above provisions of PIT Regulations?
- f) Whether the Noticee attracted the disclosure requirement under regulation 7(1A) of SAST Regulation
- g) If so, whether the Noticee complied with the provisions of SAST Regulation?
- h) Does the non-compliance, if any, on the part of the Noticee attract monetary penalty under section 15 A (b) of SEBI Act?
- i) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

15. Before moving forward, it is pertinent to refer to the provisions of Regulation of 13(3), 13(4) read with 13(5) of PIT Regulation and Regulation 7 (1A) read with 7 (2) of SAST Regulation. The provisions are reproduced hereunder:

“Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. (1).....

(2).....

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.*

(5) *The disclosure mentioned in sub-regulations (3) and (4) 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.

The provisions of regulation 7(1A) of SAST are reproduced hereunder:

7 (1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 or under second proviso to sub-regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

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

(2) The disclosures mentioned in [sub-regulations (1) and (1A)] shall be made within two days of,—

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

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

FINDINGS

16. I now proceed with the alleged violations of PIT Regulations

From the documents available before me it is observed that the Noticee was holding 12,55,694 shares as on 30.06.2009 accounting for 24.88% of the paid up capital of the company. Noticee had transferred 11,00,000 shares to different entities/persons between 01.07.2009 to 09.09.2009 therefore the Noticee's holding came down to 2,30,694 shares (4.57%) on 30.09.2009 from 12,55,694 shares (24.88%) as detailed in the table below.

Table A

Paid up capital of the company	Date of transfer	No. of shares held by the Noticee prior to transfer	No. of Shares received	Quantity transferred	% change in holding	No. of shares held by Noticee after transfer / sale	% of shares held by the Noticee
50,47,800	01.07.09	12,55,694		75000	1.49%	11,80,694	24.88%
	24.07.09	11,80,694	75000	---	1.49%	12,55,694	23.39%
	01.08.09	12,55,694		100000	1.98%	11,55,694	24.88%
	25.08.09	11,55,694		100000	1.98%	10,55,694	22.89%
	01.09.09	10,55,694		100000	1.98%	9,55,694	20.91%
	01.09.09	9,55,694		100000	1.98%	8,55,694	18.93%
	01.09.09	8,55,694		200000	3.97%	6,55,694	16.95%
	03.09.09	6,55,694		100000	1.98%	5,55,694	12.98%
	08.09.09	5,55,694		175000	3.46%	3,80,694	11.00%
	09.09.09	3,80,694		150000	2.97%	2,30,694	7.54%

17. I observe from the reply of the Noticee that he was the Managing Director of the company at the relevant time and was holding more than 5% of the share capital of the company before the transfers.

Non compliance of Regulation 13(3), 13(4) and 13(5) of PIT Regulation

- a. I would discuss first whether the Noticee attracted the provisions of Regulation 13(4) of PIT Regulation and if so the violation thereof.
- b. I find from the materials available on record that the Noticee was indeed the Director of the company at the relevant time i.e. at the time of transferring the shares of the company. Further it is observed that the change in shareholding of the Noticee attracted the provisions of 13(4) of PIT Regulations. Hence the Noticee was required to make the disclosure in Form D and as required under 13(5) such disclosure was to be made to the company and to the exchange within 2 working days as detailed below:\

Table: B

Quantity transferred	% change in holding	Date of transfer	Disclosures to be made to the Company and the exchange within:
75000	1.49%	01.07.09	03.07.09
100000	1.98%	01.08.09	03.08.09
100000	1.98%	25.08.09	27.08.09
100000	1.98%	01.09.09	03.09.09
100000	1.98%	01.09.09	03.09.09
200000	3.97%	01.09.09	03.09.09
100000	1.98%	03.09.09	05.09.09
175000	3.46%	08.09.09	10.09.09
150000	2.97%	09.09.09	11.09.09

- c. I have perused the documents available on record. I find from the reply and the annexure submitted by the Noticee that, the Noticee had disclosed to the company and to the stock exchange as follows:

Table: C

Quantity transferred	% change in holding	Date of transfer	Disclosed to the company and exchange on the following dates that is within two days from the date of transfer.	Complied Yes/No
75000	1.49%	01.07.09	Nil	No
100000	1.98%	01.08.09	03.08.09	Yes
100000	1.98%	25.08.09	27.08.09	Yes
100000	1.98%	01.09.09	03.09.09	Yes
100000	1.98%	01.09.09	03.09.09	Yes
200000	3.97%	01.09.09	03.09.09	Yes
100000	1.98%	03.09.09	05.09.09	Yes
175000	3.46%	08.09.09	10.09.09	Yes
150000	2.97%	09.09.09	11.09.09	Yes

- d. It was observed during investigation that the Noticee did not make the disclosures under Regulation 13(4) of PIT and the same was also confirmed by BSE. The Noticee in his reply has submitted documents showing he made disclosures to the exchange on the due dates and the copy of the letters were bearing the acknowledgements of the exchange. However, the BSE stated that it had not received any such disclosure/document.
- e. The documents provided by the Noticee are the sole evidence in support of its claim that disclosures were indeed made as against the statement made by the Exchange that such documents were not received. In order to provide another opportunity to the Exchange to question the authenticity and veracity of the documents, comments were again sought from the Investigations Department. No adverse comments have been received from the investigation department with respect to the evidential value of the documents presented by the Noticee. Investigation department thereafter stated that AO may decide based on the documents.

f. Given this perspective I am inclined to give the benefit of doubt to the Noticee and hence I am now proceeding based on the documents submitted by the Noticee.

g. From the documents submitted by the Noticee it is observed that he made the requisite disclosures to BSE on the dates as produced in the table : C above except on one day i.e on 01.07.2009. Hence I am constrained to accept the submission made by the Noticee. I observe that out of nine instances the Noticee did not make the requisite disclosure on one instance i.e. on 01.07.2009 and thus failed to comply with Regulation 13(4) of PIT for that transaction.

h. In view of the above Noticee violated the provisions of Regulation 13(4) of PIT.

18. I would now proceed to discuss as to whether the Noticee attracted the provisions of Regulation 13(3) of PIT Regulation and if so the violation thereof.

19. In terms of regulation 13(3) of PIT Regulation, disclosure is required to be made to the company by any person who holds more than 5% shares or voting rights in any listed Company. The disclosure is to be made in Form C about the number of shares or voting rights held and change in such shareholding by any person holding such amount of shares. In my opinion, the above Regulation 13 (3) is not applicable to a person who is a director or officer of a listed company as such persons are specifically covered under sub regulation (4) of Regulation (13) which is enumerated in para 14 above. From the text of the sub-regulations (3) and (4), it can be seen that the disclosure requirements under the said provisions are similar and the obligations of directors/officers of listed companies under Regulation 13 (4) are in fact onerous than those for other persons under Regulation 13(3) of PIT Regulations. The spirit of Regulation 13 is, as its title suggests, disclosure of interest or holding by directors and officers and substantial shareholders in listed companies. This provision prescribes the initial and continual disclosure requirements of the above said classes of persons. Therefore, it is sufficient as long as a director or officer of a listed company fulfils his disclosure requirements under sub-regulation (4) and he is not expected to file returns in the prescribed forms both as a director/officer as well as any other person. In

the instant case I find that the Noticee is the Director of the Company and falls in the realm of Regulation 13(4) and cannot be held responsible for violating both sub regulations (3) and (4) simultaneously. In fact if the disclosures are required to be made both in 13(3) and 13(4) of PIT Regulations by the same person for the same set of transactions it would tantamount to making of double reporting which would not serve any fruitful purpose. Hence, I absolve the Noticee of the charge of violating Regulation 13 (3) of PIT Regulations.

Non compliance of SAST Regulation

20. I would now proceed with the alleged violations of SAST Regulation

As stated in para 13 above the Noticee transferred/sold 11,00,000 share between 01.07.2009 to 09.09.2009. It was observed on three occasions his change in shareholding was more than 2% of the paid up capital as detailed below:

Table : D

Date of transfer	No. of shares held by the Noticee prior to transfer	Quantity transferred	% change in holding	Disclosures to be made to the Company and the exchange within day from the date of transfer	Disclosures made to the Company within due time Yes/NO	Disclosures made to the exchange Yes/NO
01.09.09	8,55,694	200000	3.97%	03.09.09	Yes	NO
08.09.09	5,55,694	175000	3.46%	10.09.09	Yes	NO
09.09.09	3,80,694	150000	2.97%	11.09.09	Yes	NO

21. It is observed that by transfers of shares on 01.09.2009, 08.09.2009 and 09.09.2009 there was change in the shareholding of the Noticee which crossed the 2% limit of the paid up capital of the company. This required him to make disclosures by the respective dates as mentioned in table: D to the company and to the stock exchange where the shares of the company is listed as stipulated under Regulation 7(1A) read with 7(2) of the Takeover Regulations.

22. Noticee in his reply dated 23.09.2012 has submitted that he has made disclosure in respect to Regulation 7(1A) r/w 7(2) of SAST to the company and admitted that he had not made disclosure under specific format under regulation 7(1A) r/w 7(2) to the stock exchange. Thus it is admitted fact that the Noticee failed to make disclosure under regulation 7 (1A) r/w 7(2) to the stock exchange. Therefore, the charge against the Noticee for violation of regulation 7(1A) r/w 7(2) stands established.
23. In view of the above Noticee violated the provisions of Regulation 7(1A) read with 7(2) of SAST.
24. The next issue for consideration as to whether the failure on the part of the Noticee to comply with the provisions of Regulation 13(4) and 13(5) of PIT Regulations and 7(1A) and 7(2) of SAST attracts monetary penalty under section 15A (b) of SEBI Act, and if so what would be the monetary penalty that can be imposed on the Noticee.
25. The object of the PIT and SAST Regulation mandating disclosure of acquisitions beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of such information is required. In this regard I would like to rely upon the findings of Hon'ble SAT in the matter of Milan Mahendra Securities Pvt. Ltd Vs. SEBI (Appeal No. 66 of 2003 and Order dated November 15, 2006) regarding the importance of disclosure in which SAT has observed that, "the purpose of these disclosures is to bring about transparency in the transactions and assist Regulator to effectively monitor the transactions in the market". In terms of regulation 13(4) of PIT and 7(1A) of SAST disclosure was required to be made to the exchange within 2 working days. Failure to make disclosure within the stipulated time period provided in the regulation cannot be considered as trivial or of no consequence to be overlooked. After taking all the facts into consideration, it is established that the Noticee has violated the provisions of Regulation 13(4) and 13(5) of PIT Regulations and 7(1A) read with 7(2) of SAST.

26. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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"*. Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of Takeover code was violated the penalty must follow."*
27. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

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 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

28. While determining the quantum of monetary penalty under Section 15A (b), I have considered the factors stipulated in Section 15J of SEBI Act, which reads as under:-

"15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.”

29. In view of the charges as established, and the facts and circumstances of the case, and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the seriousness of the violation. The disclosure norms of PIT Regulations and the SAST Regulation have been framed in order to bring about the transparency in the market and aim at preventing information asymmetry that may preclude any investor from equal treatment and opportunity with respect to the aforesaid information. Correct and timely disclosures are an essential part of the proper functioning of the securities market and by failure to do so results in preventing investors from taking well-informed decisions. The Noticee, being the Managing Director of the company had more responsibility in ensuring the compliance of disclosure norms. The timely disclosure was of some importance from the point of view of outside shareholders/other investors as that would have prompted them to buy or sell shares of the target company. The Noticee had not made the disclosure to the company and the exchange and hence there was no dissemination of information to the general investor. By virtue of the failure on the part of the Noticee to make the necessary disclosure, the fact remains that the shareholders/investors were deprived of the important information at the relevant point of time. Under these circumstances, the compliance with the disclosure requirements under PIT Regulations and SAST Regulation assumes significance and the Noticee failure to do so have to be viewed seriously and a considerate view is taken with regard to imposition of monetary penalty in the matter.

30. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticee. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticee. I find that the Noticee did not make the disclosure in more than one occasion. Hence the default of the Noticee is repetitive in nature.

ORDER

31. After taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹ 1,75,000/- (Rupees One lakh seventy five thousand only) under Section 15A (b) of SEBI Act, on the Noticee which will be commensurate with the violations committed by him.
32. The Noticees shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Surveillance Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
33. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: 08.11.2012

Place: Mumbai

**BARNALI MUKHERJEE
ADJUDICATING OFFICER**