

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/JP/ 115 - 120 /2017]

UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005 AND UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.

In respect of:-

1. Hotel Rugby Limited (PAN: AAACH1088G)
2. Ms. Darshana Mahendra Thacker (PAN: AAACG5396E)
3. Mr. Mihir Mahendra Thacker (PAN: AADPT8286G)
4. Mr. Mahendra Ramanlal Thacker (PAN: ACUPT3010F)
5. Crystal Hospitality Services Ltd. (PAN: AABCC4312R)
6. Mr. Maunik Mahendra Thacker (PAN: AADPT7880J)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') carried out investigations in the shares of Hotel Rugby Limited (**HRL**) for the period from March 01, 2012 to March 30, 2013 (Investigation period) to find out the possible irregularities / violations. The investigations *inter - alia* revealed that (1) Hotel Rugby Limited, (2) Ms. Darshana Mahendra Thacker, (3) Mr. Mihir Mahendra Thacker, (4) Mr. Mahendra Ramanlal Thacker, (5) Crystal Hospitality Services Ltd. and (6) Mr. Maunik Mahendra Thacker (hereinafter referred to as '**the Noticee No. 1 to 6**' respectively or all referred to as '**the Noticees**' collectively) had failed to comply with the various provisions of the Securities

Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**') read with Clause 35 of the Listing Agreement, the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**')

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and appointed undersigned as the Adjudicating Officer vide order dated May 14, 2015 under section 23 I of the SCRA and section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 & rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**Adjudication Rules**'), to inquire into and adjudge under section 23 A (a) of the SCRA and section 15A (b) of the SEBI Act, the violations of section 21 of SCRA read with Clause 35 of the listing agreement, regulation 13(3), 13(4), 13(4A), 13 (5) & 13 (6) of the PIT Regulations; and regulation 29(2), 29(3), 31(1), 31(2) & 31(3) of the SAST Regulations, alleged to have been committed by the Noticee(s)

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A Show Cause Notice dated May 12, 2016 Reference No. E&AO/RA/JP/13911/2016 was issued against Noticee No. 1 and another common Show Cause Notice dated May 12, 2016 Reference No. E&AO/RA/JP/13913/2016 was issued against the Noticee No. 2 to 6 (both the show cause notice are referred to as the '**SCN**' / '**SCNs**') under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against Noticee No. 1 under sections 23 A (a) of the SCRA and against Noticee No. 2-6 under section 15A (b) of the SEBI Act, for the alleged violation of failure to make the required disclosures upon acquiring / purchasing or selling/disposing

of the shares etc. in contravention of provisions of SCRA, Listing Agreement, PIT Regulations and SAST Regulations. The allegations levelled against the Noticees are as under:

Allegations against Noticee No. 1

A. During the course of investigation, it was revealed from the reply of National Stock Exchange India Ltd. (**NSE**) that the Noticee No. 1 / HRL had not included details of pledges on promoter's shareholding, in the shareholding pattern submitted to the (NSE) for Quarter ending September 30, 2012, however, it had included such details of pledges in the shareholding pattern submitted to BSE Ltd. (**BSE**) for the same Quarter. Under section 21 of SCRA, the Company is required to comply with listing agreement (clause 35 of the listing agreement) to give details of pledge on promoter shareholding to the Stock Exchange (s). Detail of pledge of shares by the Promoters and non-inclusion of the same by the Noticee No. 1 in the shareholding pattern submitted to the (NSE) for Quarter ending September 30, 2012, was enclosed as Annexure II along with SCN. Therefore, it was alleged that the Noticee No. 1/ HRL had violated clause 35 of listing agreement with NSE read with section 21 of SCRA.

B. It was further revealed that the Noticee No. 1 had received intimation / disclosures from Promoter namely- Ms. Darshana Thacker (Noticee No. 2) under regulation 13(4) & 13(4A) of PIT Regulations within 2 working days from date of her sell transaction. However, allegedly, the Noticee No. 1, in turn, had failed to make disclosure to the BSE and had also allegedly failed to make disclosure within the stipulated time to NSE under regulation 13(6) of PIT Regulations. Details of intimation of sell transaction to the Noticee No. 1 by said promoter / Noticee No. 2 and consequent non-disclosure/delayed disclosure by the Noticee No. 1 are mentioned in below table.

Date of Transact ion	Name of entity	Sell Quantit y	Disclo sure require d u/r	Date of intimation to company	Required date of disclosure s	Date of Disclosur e at NSE	Date of Disclosu re at BSE	Violation
03/05/12	Darshana Thacker	70,000	13(6) of PIT Reg.	04/05/2012	08/05/2012	24/05/2012	Not Reported	Delayed Disclosure

C. The aforesaid provisions of SCRA / Listing Agreement and PIT Regulations are produced as under;

SCRA

Conditions for listing

21. Where securities are listed on the application of any person in any recognised stock exchange, such person shall comply with the conditions of the listing agreement with that stock exchange.

Clause 35 of Listing Agreement

The issuer company agrees to file with the exchange the following details, separately for each class of equity shares / security in the formats specified in this clause, in compliance with the following timelines, namely:-

(a).....

(b) On a quarterly basis, within 21 days from the end of each quarter,

PIT Regulations

Disclosure by company to stock exchanges.

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

D. It was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee No. 1 liable for monetary penalty under section 23 A (a) of the SCRA and under section 15A (b) of the SEBI Act.

Allegations in respect of Noticee No. 2 / Darshana Mahendra Thacker (Promoter and Director of HRL)

A. Investigation revealed that shareholding of Noticee No. 2 / Darshana Mahendra Thacker declined by 33,02,542 shares (23.06% of share capital in HRL) during investigation period. Out of 33,02,542 shares, 25,35,000 shares were reduced due to pledge invocation and remaining was due to sell transactions in open market. A copy of de-mat statement of the Noticee No. 2 was enclosed as Annexure II along with SCN. Details of pledge transactions, alleged non-disclosure of change in shareholding, irregularities under PIT Regulations and SAST Regulations etc. in respect of the Noticee No. 2, are shown below:

S. N.	Date of Transaction	Type /Nature of Transaction	Transaction Quantity (% share capital)	Disclosure required U/r	Required date of disclosures	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
1	16-Jul-12	Creation of pledge	5,25,000 (3.67%)	31 (1) r/w 31(3) of SAST Reg.	25-Jul-12	01-Aug-12	26-Jul-12	Delayed Disclosure
2	25-Jul-12	Invocation of pledge	5,25,000 (3.67%) + 6,25,000 (4.36%)	31 (2) r/w 31(3) of SAST Reg.	03-Aug-12	Not Reported	21-Nov-12	Delayed Disclosure
				29 (2) r/w 29(3) of SAST Reg.	27-Jul-12	No disclosure	No disclosure	No disclosure
				13 (4) and 13(4A) r/w 13(5) of PIT Reg.	27-Jul-12	No disclosure	No disclosure	No disclosure
3	31-Oct-12	Invocation of Pledge	6,90,00 (4.82%)	29 (2) r/w 29(3) of SAST Reg.	2-Nov-12	No disclosure	No disclosure	No disclosure
				13 (4) and 13(4A) r/w 13(5) of PIT Reg.	2-Nov-12	No disclosure	No disclosure	No disclosure
4	31-Jan-13	Invocation of pledge	6,95,000 (4.85%)	31 (2) r/w 31(3) of SAST Reg.	11-Feb-13	11-Apr-13	08-Apr-13	Delayed Disclosure
				29 (2) r/w 29(3) of SAST Reg.	4-Feb-13	No disclosure	No disclosure	No disclosure
				13 (4) and 13(4A) r/w 13(5) of PIT	4-Feb-13	No disclosure	No disclosure	No disclosure

B. It was alleged that for pledge invocation given in sr. no. (2 to 4) in above table, Noticee No. 2 was required to report to the Company under regulation 13(3) of PIT Regulations as the change in her shareholding was more than 2%. However, the Noticee No. 2 had allegedly failed to make any disclosure to the Company under regulation 13(3) of PIT Regulations regarding said pledge invocations.

C. Further, the Noticee No. 2 being the promoter/director of the HRL had sold 7,67,542 shares in market (the change in her shareholding exceeded 25,000 shares from the last disclosure) and for which she was required to report / disclose to the Stock Exchange and to the Company within 2 working days as per regulations 13(4) & 13(4A) read with regulation 13(5) of PIT Regulations. Also, the said change in shareholding exceeded 2% of share capital of the Company and therefore, the Noticee No 2 was required to report to the Company within 2 working days as per regulation 13(3) of PIT Regulations. In respect of sell transactions of the Noticee No. 2, investigation revealed following irregularities under PIT Regulations.

S N	Date of Transaction	Type /Nature of Transaction	Transaction Quantity	Disclosure required U/r	Required date of disclosures	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
1	25-Apr-12	Sell	60,000	13 (4) and 13(4A) of PIT Reg.	27-Apr-12	03-May-12	30-Apr-12	Delayed Disclosure
2	26-Apr-12	Sell	65,000	13 (4) and 13(4A) of PIT Reg.	30-Apr-12	02-May-12	30-Apr-12	Delayed Disclosure
3	03-May-12	Sell	70,000	13 (4) and 13(4A) of PIT Reg.	07-May-12	No disclosure	No disclosure	No disclosure

D. In view of the above non disclosures about creation / invocation of pledge and selling of shares, it was alleged that the Noticee No. 2 had violated regulation 31(1), 31(2) read with 31(3), regulation 29(2) read with 29(3) of the SAST Regulations; and regulations 13(3), 13(4), 13(4A) read with 13(5) of the PIT Regulations.

Allegations in respect of Noticee No. 3 / Mr. Mihir Mahendra Thacker (Promoter of HRL)

E. Investigation revealed that the shareholding of Mr. Mihir Mahendra Thacker / Noticee No. 3 (promoter of HRL) was reduced by 7,35,000 shares (5.13% of share capital) during investigation period. Out of 7,35,000 shares, 6,75,000

shares were reduced due to pledge invocation. A copy of de-mat statement of the Noticee No. 3 was enclosed as Annexure-III along with SCN. Details of pledge transaction, alleged non-disclosure of change in shareholding, violations under PIT Regulations and SAST Regulations etc. as observed during the investigation in respect of the Noticee No. 3, are shown below:

S N	Date of Transactio n	Type /Nature of Transaction	Transaction Quantity (% share capital)	Disclosure required U/r	Required date of disclosure s	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
1	02-Nov-12	Invocation of pledge	6,75,000 (4.71%)	31 (2) r/w 31(3) of SAST Reg.	13-Nov-12	01-Mar-13	28-Feb-13	Delayed Disclosure
				29 (2) r/w 29(3) of SAST Reg.	06-Nov-12	Not Reported	Not Reported	No disclosure
				13(4A) r/w 13(5) of PIT Reg.	06-Nov-12	Not Reported	Not Reported	No disclosure

F. It was also alleged that for the said transaction of pledge invocation given in above table, the Noticee No. 3 was required to report to the Company under regulation 13(3) of PIT Regulations as the change in his shareholding was more than 2%, however, the Noticee No. 3 had allegedly failed to make any disclosure to the Company under regulation 13(3) of PIT regulation.

G. In view of the above non disclosures about invocation of pledge / change of more than 2%, it was alleged that the Noticee No. 3 had violated regulation 31(2) read with 31(3), regulation 29(2) read with 29(3) of the SAST Regulations and regulations 13(3), 13(4A) read with 13(5) of the PIT Regulations.

Allegations in respect of Noticee No. 4 / Mr. Mahendra Ramanlal Thacker (Promoter /Director of HRL)

H. Investigation revealed that the Noticee No. 4 / Mr. Mahendra Ramanlal Thacker (being the promoter/director of the HRL) had sold shares in market, (change in his shareholding exceeded 25,000 shares from the last disclosure) and for which he was required to report to Stock Exchange and the Company within 2 working

days as per regulations 13(4) and 13(4A) read with 13(5) of PIT Regulations. A copy of de-mat statement of Noticee No. 4 was enclosed as Annexure-IV along with SCN. Details of sell transaction, alleged non-disclosure of change in shareholding, violations under PIT Regulations etc. as observed during the investigation in respect of the Noticee No. 4, are shown below;

S N	Date of Transaction	Type /Nature of Transaction	Transaction Quantity	Disclosure required U/r	Required date of disclosures	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
1	26-Apr-12	Sell	25,000	13(4) & 13(4A) r/w 13(5) of PIT	30-Apr-12	02-May-12	30-Apr-12	Delayed Disclosure

- I. In view of the above non disclosures about sell transaction, it was alleged that the Noticee No. 4 had violated regulation 13(4) and 13(4A) read with 13(5) of PIT Regulations.

Allegations in respect of Noticee No. 5 / Crystal Hospitality Services Ltd (Promoter of HRL)

- J. Investigation revealed that the Noticee No. 5 / Crystal Hospitality Services Ltd. (being the promoter of the HRL) had sold shares in market (the change in its shareholding exceeded 25,000 shares from the last disclosure) for which it was required to report to the Stock Exchange and to the Company within 2 working days as per regulations 13(4A) read with 13(5) of the PIT Regulations. Also, the change in shareholding exceeded 2% of share capital of the Company for which it was required to report to the Company within 2 working days as per regulation 13(3) of the PIT Regulations. A copy of de-mat statement of the Noticee No. 4 was enclosed as Annexure-V along with SCN. Details of sell transaction, alleged non-disclosure of change in shareholding, violations under PIT Regulations etc. as observed during the investigation in respect of the Noticee No. 5, are shown below:

S N	Date of Transaction	Type /Nature of Transaction	Transaction Quantity	Disclosure required U/r	Required date of disclosures	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
1	26-Apr-12	Sell	1,10,000	13(4A) r/w 13(5) of PIT Reg.	30-Apr-12	02-May-12	30-Apr-12	Delayed Disclosure

K. In view of above non-disclosure about sell transaction, it was alleged that the Noticee No. 5 had violated regulation 13 (3), 13(4A) read with 13(5) of PIT Regulations.

Allegations in respect of Noticee No. 6 / Mr. Maunik Mahendra Thacker (Promoter of HRL) along with other Noticee No. 2-5.

L. Investigation revealed that as per certain disclosures made to the Stock Exchanges, the Noticee No. 2 to 6 have declared themselves to be PAC and they are PAC as per their immediate/relation connection and being promoter group in term of regulation 2(1)(q), (2)(iv)&(v) of SAST Regulations. Investigation revealed that certain transactions of creation of pledge / invocation of pledge and selling of their shareholdings by the Noticee No. 2-6 / promoters were not disclosed in term of PIT Regulations and SAST Regulations.

M. Investigation revealed that the Noticee No. 6 (being promoter of HRL) had made the required disclosures within stipulated time under the PIT Regulations for his sell transactions (exceeding 2% of share capital of the Company). However, the Noticee No. 6 being part of the promoter group and was PAC with other aforesaid Noticee No. 2-5 in respect of their sell transactions, all the Noticee No. 2-6 (including the Noticee No. 6), were required to make disclosures under regulation 29 of SAST Regulations by virtue of change in their shareholding due to their sell transactions. Details of Noticee No. 2-6 sell transactions in market, alleged non-disclosure of change in shareholding, violations under SAST Regulations etc. as observed during the investigation in respect of the Noticees, are shown below.

S. No	Entity Name	Date of Trading/ Event	Sell Quantity	Opening Holding of PAC	% share capital	Closing Holding of PAC	Required date to be reported by entity	Date of Disclosure to NSE	Date of Disclosure to BSE
1	Darshana M Thacker	24-Apr-12	100,000	65.31%	0.70%	64.62%	27-Apr-12	07-May-12	04-May-12
2	Crystal Hospitality Services Private Limited	25-Apr-12	60,000	64.62%	0.42%	64.20%	27-Apr-12	07-May-12	04-May-12
3	Darshana M Thacker	25-Apr-12	60,000	64.20%	0.42%	63.78%	27-Apr-12	07-May-12	04-May-12
4	Mahendra R Thacker	25-Apr-12	60,000	63.78%	0.42%	63.36%	27-Apr-12	07-May-12	04-May-12
5	Mihir M Thacker	25-Apr-12	60,000	63.36%	0.42%	62.94%	27-Apr-12	01-Aug-12	26-Jul-12
6	Maunik M Thacker	25-Apr-12	60,000	62.94%	0.42%	62.52%	27-Apr-12	01-Aug-12	26-Jul-12
Trading of PAC between 24 and 25 April			400,000	65.31%	2.79%	62.52%	27-Apr-12		
7	Crystal Hospitality Services Private Limited	26-Apr-12	110,000	62.52%	0.77%	61.75%	30-Apr-12	07-May-12	04-May-12
8	Darshana M Thacker	26-Apr-12	65,000	61.75%	0.45%	61.30%	30-Apr-12	07-May-12	04-May-12
9	Mahendra R Thacker	26-Apr-12	25,000	61.30%	0.17%	61.12%	30-Apr-12	07-May-12	04-May-12
10	Crystal Hospitality Services Private Limited	27-Apr-12	50,000	61.12%	0.35%	60.78%	02-May-12	07-May-12	04-May-12
11	Darshana M Thacker	27-Apr-12	50,000	60.78%	0.35%	60.43%	02-May-12	07-May-12	04-May-12
Trading of PAC between 26 and 27 April			300,000	62.52%	2.09%	60.43%	02-May-12		

N. In view of the above non disclosures about their sell transactions, it was alleged that the Noticee No. 2-6 had violated regulation 29(2) r/w 29(3) of SAST regulations.

O. Shareholding Pattern in the scrip of HRL showing change of shareholdings of the Noticee No. 2-6 as compared to the last disclosures (viz. from Quarter ending December 2011 to Quarter ending June 2013) upon aforesaid creation/invoke of pledge and sell transactions as revealed, were enclosed collectively as Annexure VI along with SCN.

P. The aforesaid provisions of PIT Regulations and SAST Regulations are produced as under;

PIT Regulations

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

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

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

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

13 (4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(4A) Any person who is a promoter or part of promoter group of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person from the last disclosure made under Listing Agreement or under sub-regulation (2A) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

13 (5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

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

SAST Regulations

Disclosure of acquisition and disposal.

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

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

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

Disclosure of encumbered shares.

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

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

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

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

(b) the target company at its registered office.

4. Since, the allegations levelled against the Noticees are identical in nature involved under the investigation carried out by SEBI in the same scrip of Hotel Rugby Ltd. / HRL, therefore, both the aforesaid SCNs / cases against the all the Noticees, are being decided in this common order.
5. In respect to the SCN, Noticee No. 1 had submitted reply dated July 25, 2016. The Noticee No. 2 to 6 vide their common letter dated June 21, 2016 had sought extension of time till July 25, 2016 to submit reply in the matter. Thereafter, the Noticee No. 2 to 6 had submitted their common reply dated July 25, 2016 towards the SCN.
6. It is relevant to mention that the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

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

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

7. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticees on June 15, 2017 vide notice of hearing dated May 23, 2017. The scheduled hearing on June 15, 2017 was attended by the Mr. Mahendra Thacker-Director of the Hotel Rugby / Noticee No. 4 in person along with Mr. Sudesh Kumar Vidyadhar Joshi -Practicing Chartered Accountant as the Authorised Representatives (**AR**) of the Noticees. During the course of hearing, the AR of the Noticees had stated that they shall submit additional reply within two weeks enclosing evidence in their support and their additional reply may be read as final submission. AR also stated that there was no malafide on the part of Noticees and requested to take a lenient view in the matter.
8. Thereafter, the Noticee No. 1 had filed its additional reply dated June 28, 2017 and the Noticee No. 2 to 6 had filed their common additional reply dated July 08, 2017. The submissions made by the Noticees under their aforesaid replies / additional replies / during the course of hearing, are as under;

Reply of Noticee No. 1 / Hotel Rugby Ltd.

- i. In a Shareholding pattern for the quarter ending September 30, 2012, we have included pledge details on Promoters' shareholding which has been submitted to BSE. The same shareholding pattern is also submitted to NSE on 23/10/2012. Since Shareholding pattern which is submitted to BSE contains details of encumbrances, the pattern which is submitted to NSE should contain the same. Further, on the NSE site, the shareholding pattern under reference, is not appearing. In our early reply we did admit about mistake as that time we could not locate copy of shareholding pattern submitted to NSE. However, now we found out the copy thereof which contains the details of encumbered shares. We are enclosing herewith copy of Shareholding pattern submitted to NSE which is duly acknowledge by them as Annexure "1". Since the Company made proper disclosure of pledge in shareholding pattern to the NSE, there is no violation of clause 35 of Listing Agreement with NSE read with Section 21 of SCRA.*
- ii. As far as disclosures from Company under regulation 13(6) of the PIT Regulation is concerned, we state that the company has made disclosure to NSE on 22/05/2012 (Copy enclosed Annexure "2"). However, in SCN it is mentioned that the disclosure is made to NSE on 24/05/2012. Further, we*

are not able to trace the copy of disclosure made to BSE. In this regard, we would like to state that the Company and Promoters has made disclosures of sale of these shares within the prescribed time limit under regulation 13(6) of the PIT Regulations and 29(2) and 29(3) of SAST Regulations. This clearly indicate that there was no intention of hiding any information to the Regulator or to the Stock Exchanges. But since there was series of transactions of sale of shares by various Promoters of the Company, it was inadvertently missed out to file the same with BSE and delayed filed with NSE.

Reply of Noticee No. 2 / Darshana Mahendra Thacker

- iii. As far as disclosure under 31(1) r/w 31(3) regarding creation of pledge in respect of 5,25,000 equity shares is concerned, the disclosure to NSE was made on 27/07/2017 and not on 01/08/2012 (Annexure 1). Hence, there was a delay of disclosure for 2 days and not for 5 days.
- iv. Further, in respect of invocation / pledge on 25/07/2012 in respect of 5,25,000 equity shares and 6,25,000 equity shares is concerned, the Company reported to NSE on 21/11/2012, a copy of letter is enclosed for ready reference as (Annexure "2").
- v. Further the disclosure under 29(2) r/w 29(3) of SAST Regulations and disclosure regarding under 13(4) and 13(4A) r/w 13(5) of PIT Regulations in respect of 5,25,000, 6,25,000, 6,90,000 and 6,95,000 equity shares as invocation of pledge is concerned, the Noticee failed in making the disclosure as we are under the impression that once the information of invocation of pledge is given to the Stock Exchange, there is no need of giving information under 29(2) r/w 29(3) of SAST Regulations and 13(4) and 13(4A) r/w 13(5) of PIT Regulations, as we are not selling the shares. The shares were sold by the pledgee only.
- vi. The disclosure were not made under regulation 13(3) of PIT Regulations. In view of the above, there is violation of non-disclosure under regulation 13(3) of the PIT Regulations.
- vii. In respect of disclosure under 13(3) of PIT Regulations in respect of 60,000 and 65,000 equity shares are concerned, please note that we made disclosure to BSE in time. However, while making disclosure to NSE, there was delay of one or two days.
- viii. As far as 70,000 equity shares are concerned, the disclosure to NSE was made on 24/05/2012 (copy enclosed Annexure 3). However, we are not able to trace the disclosure made BSE in this regard.

- ix. Please note that disclosure under regulation 29(2) read with 29(3) of the SAST Regulations, was already made in time by the Noticee to both the Stock Exchanges.
- x. In case of disclosure about creation/invocation of pledge, there is delay in disclosure. Further in case of selling of the said share, there was no disclosure for the reasons mentioned herein above.

Reply of Noticee No. 3 – Mr. Mihir Mahendra Thacker

- xi. Please note that disclosure to NSE was made on 27/02/2013. However, in SCN, it is mentioned that it was made on 01/03/2013. A copy of disclosure made by us is enclosed Annexure “4”
- xii. We agree that there is a delay in disclosure under regulation 31(2) r/w 31(3) of SAST Regulations. Further disclosure under 29(2) r/w 13(4) is not made regarding invocation of pledge of 6,75,000 shares for the reason mentioned under point no.6 above, thereby there is a violation of regulation 13(3) of PIT Regulations, regulation 29(2) r/w 29(3) of SAST Regulation and regulation 13(3), 13(4A) r/w. 13(5) of PIT Regulation.

Reply of Noticee No. 4 – Mr. Mahendra Ramanlal Thacker

- xiii. Please note that there was no delay in disclosure under 13(4) and 13(4A) r/w 13(5) of PIT Regulations, as the disclosure was made on 30/04/2012 (copy enclosed as Annexure “5”) within the prescribed time limit and not on 02/05/2012 as mentioned in SCN. Since there is no delay, there is no violation of under 13(4) and 13(4A) r/w. 13(5) of PIT Regulations.

Reply of the Noticee No. 5 – Crystal Hospital Services Ltd.

- xiv. Please note that there was no delay in disclosure under 13(4) and 13(4A) r/w 13(5) of PIT Regulations, as the disclosure was made on 30/04/2012 (copy enclosed as Annexure “6”) within prescribed time limit and not on 02/05/2012 as mentioned in SCN. Since there is no delay, hence, there is no violation of under 13(4) and 13(4A) r/w 13(5) of PIT Regulations.

Reply of Noticee No. 6 – Mr. Maunik Mahendra Thacker

- xv. It is stated in SCN that there is no delay in disclosure by Mr. Maunik Mahendra Thacker under PIT Regulations for these sale of transactions of 10,04,200 shares. As far as sale for PAC are concerned, please note that date of disclosure to NSE shown in SCN is not correct. Majority of the

disclosure were made on 04/05/2012 and not 07/05/2012 (copy enclosed as Annexure "7").

xvi. However, in case of Mihir M. Thacker and Maunik M. Thacker, the disclosure is delayed. The same was made on 27/07/2012 and not on 01/08/2012 as mentioned in SCN. Please note that the delay in majority of the case is maximum 4 to 5 days. But at the same time, the disclosure under regulations 13(6) PIT Regulations were made in time. Hence is there is no malafide in making the delayed disclosure under Regulation 29(2) of SAST Regulation.

Common reply of all the Noticees

xvii. From the above, it is clear that filing is missed out in one of the Exchange. Further, filing has been done under one or another regulation with both exchanges. Hence, there is no malafide intention on the part of the Company as well as its Promoters in making delayed disclosure or non disclosure of any information with is supposed to be filed with the BSE.

xviii. Till date there is no change in the Management of the Company, which clearly indicate all the transactions has taken place are normal trading transactions without any intention of changing the Management.

xix. We also state that though in some cases disclosure is not made or made after due date, the same information is disclosed under other regulation in time, which clearly indicates that there was no malafide in non disclosure / delayed disclosure on the part of Promoters and PAC.

xx. Please note that none of the Promoter / PAC has received any additional / dis-proporanate gain or unfair advantage due to defaults made in making disclosure or delayed disclosure.

xxi. Further, due to abovementioned defaults, there is no loss caused to any investor or group of investors. The default caused are at random and not repetitive in nature.

xxii. We, therefore humbly request you to consider the matter sympathetically and request you not to impose any penalty on Promoters or PAC.

9. Since, the hearing / inquiry is concluded in the matter, therefore, the matter needs to be proceeded further on the basis of material available on records.

After taking into account the allegations, replies of the Noticee(s) and evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

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

- a) Whether the Noticee(s) had failed to make the required disclosures under the PIT Regulations, SAST Regulations and SCRA read with Listing Agreement as alleged in the SCN / SCNs.
- b) Whether the failure, if any, on the part of the Noticee(s), would attract monetary penalty under section 15 A (b) of the SEBI Act and 23 A (a) of the SCRA.
- c) If yes, then, what would be the monetary penalty that can be imposed upon the Noticee(s) taking into consideration the factors stipulated in section 15J of the SEBI Act, section 23 J of the SCRA read with rule 5 (2) of the Adjudication Rules?

ISSUE NO. 1 - Whether the Noticee(s) had failed to make the required disclosures under the PIT Regulations, SAST Regulations and SCRA read with Listing Agreement as alleged in the SCN / SCNs.

Findings in respect of Noticee No. 1 / Hotel Rugby Ltd.

11. It was alleged that Noticee No.1 (being the listed company at BSE and NSE) had not included details of pledges on Promoter's shareholding in the shareholding pattern submitted to NSE for the quarter ending September 30, 2012, however, the same was so given in the shareholding pattern submitted to BSE.

12. In respect to the allegation, the Noticee No. 1 had submitted that the same shareholding pattern which was submitted to BSE, was also submitted to NSE on October 23, 2012. In support of said submission, the Noticee enclosed

Annexure – I (a letter dated October 23, 2012 under the subject ‘Shareholding pattern – clause 35 for the quarter ended September 30, 2012’). I have examined the said Annexure – I and observed that Noticee’s aforesaid letter was acknowledged by NSE on October 23, 2012 and the details of encumbered shares are shown in the said statement submitted to NSE. Therefore, the allegation levelled against the Noticee No. 1 of not including details of pledges on Promoter’s shareholding in the shareholding pattern submitted to NSE, do not stand established.

13. It is not out of place to mention that as per requirement of clause 35 of Listing Agreement, an issuer company is required to file with the Exchange the required Shareholding pattern within 21 days from the end of each quarter, however, as the said details was submitted to NSE on October 23, 2012, there was 2 days delay as against the stipulated requirement. Nonetheless, delay in submission of shareholding pattern to Stock Exchange is not the allegation in the matter, as the allegation levelled against the Noticee No.1 was limited to the extent of ‘not including the details of pledge of promoters in the shareholding pattern’ submitted to NSE (which has otherwise been refuted by the Noticee No.1 as observed above), therefore, I am not going beyond the allegation levelled.

14. It was also alleged against Noticee No.1 that it had received intimation / disclosures from promoters namely- Ms. Darshana Thacker under regulation 13(4) and 13(4A) of the PIT Regulations within time, however, the Noticee No.1 had in turn failed to make the disclosure to BSE and had also failed to make disclosure within stipulated time to NSE under regulation 13(6) of the PIT Regulations. In respect to this allegation, the Noticee No.1 had stated that it had made the disclosure to NSE on May 22, 2012 and in the support, it had provided Annexure – II (an acknowledgement by NSE dated May 22, 2012 of such disclosure). I have noted that even if the Noticee No.1 had made the disclosure on May 22, 2012 to NSE, however, still there is a delay of 13 days as the said

disclosure was required to have been made on May 08, 2012 in terms of regulation 13(6) of the PIT Regulations.

15. In respect of allegation that no such disclosure was made by the Noticee No. 1 to BSE under regulation 13(6) of the PIT Regulations, the Noticee No. 1 had stated that it is not able to trace the copy of disclosure made to BSE. I have noted from the records that Noticee No. 1 had failed to make the disclosure to BSE which infact has not been refuted by Noticee No.1. Therefore, I am of the view that despite receipt of intimation / disclosures from the said promoter under regulation 13(4) and 13(4A) of the PIT Regulations regarding her sell transaction of 70,000 shares within 2 working days, the Noticee No.1 had in turn failed to make the disclosure of such sell transaction to the BSE; and also made belated disclosures to NSE. Accordingly, it is established that Noticee No. 1 had violated regulation 13(6) of the PIT Regulations.

Findings in respect of Noticee No. 2 (Ms. Darshana Mahendra Thacker)

16. It was alleged that upon creating of pledge and invocation of pledge of below tabulated shares by the Noticee No. 2 (who is the promoter / director of HRL), the violations as mentioned in the table below (including all the details) has been committed by her.

S. N.	Date of Transaction	Type /Nature of Transaction	Transaction Quantity (% share capital)	Disclosure required U/r	Required date of disclosures	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
1	16-Jul-12	Creation of pledge	5,25,000 (3.67%)	31 (1) r/w 31(3) of SAST Reg.	25-Jul-12	01-Aug-12	26-Jul-12	Delayed Disclosure
2	25-Jul-12	Invocation of pledge	5,25,000 (3.67%) + 6,25,000 (4.36%)	31 (2) r/w 31(3) of SAST Reg.	03-Aug-12	Not Reported	21-Nov-12	Delayed Disclosure
				29 (2) r/w 29(3) of SAST Reg.	27-Jul-12	No disclosure	No disclosure	No disclosure
				13 (4) and 13(4A) r/w 13(5) of PIT Reg.	27-Jul-12	No disclosure	No disclosure	No disclosure
3	31-Oct-12	Invocation of Pledge	6,90,00 (4.82%)	29 (2) r/w 29(3) of SAST Reg.	2-Nov-12	No disclosure	No disclosure	No disclosure
				13 (4) and 13(4A) r/w 13(5) of PIT Reg.	2-Nov-12	No disclosure	No disclosure	No disclosure
4	31-Jan-13	Invocation of pledge	6,95,000 (4.85%)	31 (2) r/w 31(3) of SAST Reg.	11-Feb-13	11-Apr-13	08-Apr-13	Delayed Disclosure

S. N.	Date of Transaction	Type /Nature of Transaction	Transaction Quantity (% share capital)	Disclosure required U/r	Required date of disclosures	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
				29 (2) r/w 29(3) of SAST Reg.	4-Feb-13	No disclosure	No disclosure	No disclosure
				13 (4) and 13(4A) r/w 13(5) of PIT	4-Feb-13	No disclosure	No disclosure	No disclosure

17. In respect to the allegations for non-disclosure of creation of pledge, the Noticee No. 2 had admittedly stated that in respect of 5,25,000 shares (3.67% of the share capital) the disclosure was made to NSE on July 27, 2012 and not on August 01, 2012 as alleged. In support of her submission, she had enclosed Annexure – 1. I have examined the said Annexure and observed that the required disclosure was acknowledged by NSE on July 27, 2012 and therefore, there was a delay of 2 days only. It is also observed from the records that there was a delay from the end of Noticee No. 2 in making disclosure to BSE.

18. In respect to the allegation of not making disclosure for the transaction of invocation of pledge of 5,25,000 shares (3.67%) and 6,25,000 shares (4.36%) on July 25, 2012, the Noticee No. 2 had submitted that the company / Noticee No. 1 had made the disclosure to NSE on November 21, 2012 and in support, it had enclosed Annexure–2. I have perused the said Annexure–2 of the Noticee and observed that disclosure regarding said transactions were received by NSE on November 21, 2012. I have observed from the records that for the transaction on July 25, 2012, the Noticee was supposed to make the disclosure by August 03, 2012, but, admittedly the disclosure were made belatedly to NSE / BSE on November 21, 2012 (i.e. delay of more than 3 months).

19. In respect to the allegation of not making disclosure for invocation of pledge of 6,90,000 shares (4.82%) and 6,95,000 shares (4.85%) on October 31, 2012 and January 31, 2013 respectively, the Noticee No. 2 had admittedly failed in making the disclosure and submitted that the same was not disclosed under the impression that once the information of invocation of pledge is given to the Stock Exchange, there is no need of giving information under regulation 29(2) of SAST

Regulations and 13(4) and 13(4A) of PIT Regulations as she is not selling the shares because the shares were actually sold by pledgee.

20. I have observed from the records that for the transaction on October 31, 2012 the Noticee No. 2 was required to make disclosure by November 02, 2012 to both the Exchange(s) under regulation 29 (2) of the SAST Regulations and 13 (4), 13 (4A) of the PIT Regulations, however, admittedly the same was not so made by the Noticee No. 2. I have also observed that for the transaction on January 31, 2013, the Noticee No.2 was required to make disclosure on January 11, 2013 under regulation 31(2) read with 31(3) of the SAST Regulations, however, she had made the disclosure much belatedly to NSE and BSE on April 11, 2013 and April 08, 2013 respectively. For the same transaction, the Noticee No. 2 was required to make disclosure under regulation 29(2) read with 29(3) of SAST Regulations and 13(4) and 13(4A) of the PIT Regulations by February 04, 2013. However, admittedly no such disclosure was made under those provisions.

21. In respect of allegation that the Noticee No. 2 had not made the required disclosure under regulation 13(3) of the PIT Regulations upon change in her shareholding of more than 2% due to pledge invocation given in sr. no. (2 to 4) in above table, Noticee No. 2 had admitted that she had not made disclosure under regulation 13(3) of PIT Regulations.

22. It was also alleged that the Noticee No. 2 being the promoter/director of the HRL had sold 7,67,542 shares in market (the change in her shareholding exceeded 25,000 shares from the last disclosure) and for which she was required to report / disclose to the Stock Exchange and to the Company within 2 working days as per regulations 13(4) & 13(4A) read with regulation 13(5) of PIT Regulations. Also, the said change in shareholding exceeded 2% of share capital of the Company and therefore, the Noticee No 2 was required to report to the Company within 2 working days as per regulation 13(3) of PIT Regulations. The details of sell transactions of the Noticee No. 2 and the corresponding violation are tabulated below.

S N	Date of Transactio n	Type /Nature of Transa ction	Transacti on Quantity	Disclosure required U/r	Required date of disclosures	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
1	25-Apr-12	Sell	60,000	13 (4) and 13(4A) of PIT Reg.	27-Apr-12	03-May-12	30-Apr-12	Delayed Disclosure
2	26-Apr-12	Sell	65,000	13 (4) and 13(4A) of PIT Reg.	30-Apr-12	02-May-12	30-Apr-12	Delayed Disclosure
3	03-May-12	Sell	70,000	13 (4) and 13(4A) of PIT Reg.	07-May-12	No disclosure	No disclosure	No disclosure

23. In respect to the aforesaid allegations, Noticee No.2 had submitted that for 60,000 and 65,000 equity shares, she had made disclosure to BSE in time, however, while making disclosure to NSE there was delay of 1 or 2 days. Further, she had submitted that for 70,000 equity shares, the disclosure to NSE was made on May 24, 2012 (copy enclosed Annexure 3), however, she is not able to trace the disclosure made to the BSE.

24. Though, it is admitted case of the Noticee No. 2 that there was a delay of 1 or 2 days in making required disclosure for the sell transactions on April 25 and April 26, 2012, I have observed from the records that there was actually a delay of 6 days and 2 days in making the required disclosure to NSE for the transactions done on April 25 and April 26, 2012; and there was 3 days delay in making disclosure to BSE for the transaction on April 25, 2012. Further, for the sell transaction on May 03, 2012 of 70,000 shares, I have noted from Annexure – 3 provided by Noticee No. 2 that the disclosure was received by NSE on May 22, 2012, however, the same was belatedly disclosed (15 days delay) as the required disclosure should have been made by the Noticee No. 2 on May 07, 2012. In fact, for the said transaction on May 03, 2012, no disclosure was made to BSE.

25. In view of the aforesaid observations made by me at pre-paras, it is established that upon creation / invocation of pledge, upon change in shareholding exceeded 25,000 shares from the last disclosure and upon change in shareholding exceeded 2% of share capital of the Company, the Noticee No 2 was required to

disclose to the Stock Exchange(s) and to the Company in terms of regulations 13(3), 13(4), 13(4A) read with regulation 13(5) of PIT Regulations and regulation 29(2), 29(3), 31(1), 31 (2) read with regulation 31(3) of SAST Regulations, which it had failed to do so and thereby had violated the same.

Findings in respect of Noticee No. 3 (Mr. Mihir Mahendra Thacker)

26. It was alleged that the shareholding of Mr. Mihir Mahendra Thacker / Noticee No. 3 (being the promoter/director of the HRL) was reduced by 7,35,000 shares (5.13% of share capital) during investigation period and out of 7,35,000 shares, 6,75,000 shares were reduced due to pledge invocation. However, upon said pledge invocation, the Noticee No. 2 was required to report to the Company under regulation 31(2) read with 31(3) of the SAST Regulations, which he had allegedly failed to do so. It was also alleged that upon said pledged transaction, the Noticee No.3 was also required to make disclosure in terms of regulation 29(2) read with 29(3) of the SAST Regulations and regulation 13(3) , 13 (4) and 13 (4A) of PIT Regulations as there was a change in his shareholding of more than 2%, which he alleged failed to do so. Details of said pledge transaction is produced hereunder;

S N	Date of Transaction	Type /Nature of Transaction	Transaction Quantity (%) share capital)	Disclosure required U/r	Required date of disclosure s	Date of Disclosure at NSE	Date of Disclosure at BSE	Violation
1	02-Nov-12	Invocation of pledge	6,75,000 (4.71%)	31 (2) r/w 31(3) of SAST Reg.	13-Nov-12	01-Mar-13	28-Feb-13	Delayed Disclosure
				29 (2) r/w 29(3) of SAST Reg.	06-Nov-12	Not Reported	Not Reported	No disclosure
				13(4A) r/w 13(5) of PIT Reg.	06-Nov-12	Not Reported	Not Reported	No disclosure

27. In respect to the allegation, the Noticee No. 3 submitted that disclosure to NSE was made on February 27, 2013 instead of March 01, 2013 and provided annexure 4 in his support. The Noticee No. 3 had agreed that there was delay in making disclosure under regulation 31(2) r/w 31(3) of SAST Regulations and also admitted that there was violation of regulation 13(3) 13(4A) r/w 13(5) of PIT

Regulations and regulation 29(2) r/w 29(3) of SAST Regulations, as the disclosure were not made regarding invocation of pledge of 6,75,000 shares.

28. I have noted from annexure 4 provided by the Noticee and observed that the disclosures were acknowledged by the NSE on February 27, 2013. The available records also reveals that disclosures were made by him to BSE on February 28, 2013. However, even despite making disclosure on said dates, it is clear that there was a delay of more than 3 months as the Noticee no. 3 was required to make disclosure by November 06, 2012 (in terms of 13(3) 13(4A) r/w 13(5) of PIT Regulations and regulation 29(2) r/w 29(3) of SAST Regulations); and by November 13, 2012 (in term of in term of regulation 31(2) r/w 31(3) of SAST Regulations). Needless to say that it is admitted case of the Noticee No. 3 that there was delay in making disclosure under regulation 31(2) r/w 31(3) of SAST Regulations and no disclosures were made in terms of regulation 13(3) 13(4A) r/w 13(5) of PIT Regulations and regulation 29(2) r/w 29(3) of SAST Regulations.

29. In view of the aforesaid observations/admission, it is established that Noticee No. 3 had violated regulation 29(2), 29(3), 31(2) & 31(3) of the SAST Regulations and regulation 13(3) , 13 (4), 13 (4A) and 13(5) of PIT Regulations.

Findings in respect of Noticee No. 4 (Mr. Mahendra Ramanlal Thacker)

30. It was alleged that the Noticee No. 4 (being the promoter/director of the HRL), had sold 25,000 shares in market on April 26, 2012, (change in his shareholding exceeded 25,000 shares from the last disclosure) and for which he was required to report to Stock Exchange and the Company within 2 working days as per regulations 13(4) and 13(4A) read with 13(5) of PIT Regulations, however, allegedly he failed to make the disclosure.

31. In respect of the allegation, Noticee No. 4 stated that there was no delay in making disclosure under 13(4) and 13(4A) r/w 13(5) of PIT Regulations, as the disclosure was made on 30/04/2012 within the prescribed time limit and not on

May 02, 2012 as mentioned in SCN. In support of the same, Noticee No. 4 enclosed Annexure - 5.

32. I have noted from the available records that Noticee No.4 was required to make the disclosure by April 30, 2012 as against his sell transaction on April 26, 2012. It is noted that Noticee No.4 had made the required disclosure at BSE within the stipulated time viz. April 30, 2012. It is also observed from said Annexure – 5 of the Noticee No. 4 that the required disclosure was acknowledged by NSE on April 30, 2012 instead of May 02, 2012. In view of the above, it is concluded that Noticee No. 4 had made the required disclosures to the NSE and BSE on time and thereby he had not violated the alleged provisions of PIT Regulations and SAST Regulations.

Findings in respect of Noticee No. 5 (Crystal Hospitality Services Ltd.)

33. It was alleged that the Noticee No. 5 (being the promoter of the HRL), had sold 1,10,000 shares in market on April 26, 2012 (the change in its shareholding exceeded 25,000 shares from the last disclosure) for which it was required to report to the Stock Exchange and to the Company within 2 working days as per regulations 13(4A) read with 13(5) of the PIT Regulations; and there was change in shareholding exceeded 2% of share capital of the Company for which it was required to report to the Company within 2 working days as per regulation 13(3) of the PIT Regulations. Allegedly, the Noticee No.5 had failed to make disclosure.

34. In respect to the allegations the Noticee No. 5 had stated there was no delay in disclosure as the same was made on April 30, 2012 within prescribed time limit and not on May 02, 2012 as mentioned in SCN. In support of its submission the Noticee No. 5 had enclosed Annexure – 6.

35. I have noted from the available records that Noticee No.5 was required to make the disclosure by April 30, 2012 as against his sell transaction on April 26, 2012.

It is noted that Noticee No.5 had made the required disclosure at BSE within the stipulated time viz. April 30, 2012. It is also observed from said Annexure – 6 of the Noticee No. 5 that the required disclosure was acknowledged by NSE on April 30, 2012 instead of May 02, 2012. In view of the above, it is concluded that Noticee No. 5 had made the required disclosures to the NSE and BSE on time and thereby he had not violated the alleged provisions of PIT Regulations and SAST Regulations.

Findings in respect of Noticee No. 6 (Mr. Maunik Mahendra Thacker)

36. It was revealed during the investigation that as per certain disclosures made to the Stock Exchanges, the Noticee No. 2 to 6 have declared themselves to be PAC and they are PAC as per their immediate/relation connection and being the promoter group in term of regulation 2(1) (q), (2) (iv) & (v) of SAST Regulations. Investigation revealed that certain transactions of creation of pledge / invocation of pledge and selling of their shareholdings by the Noticee No. 2-6 / promoters were not disclosed by them (being PAC) in term of PIT Regulations and SAST Regulations.

37. SCN stated that the Noticee No. 6 was the part of promoter group and was PAC with other aforesaid Noticee No. 2-5 in respect of their below tabulated sell transactions, and therefore, all the Noticee No. 2-6 were required to make disclosures under regulation 29 of SAST Regulations by virtue of change in their shareholding due to said sell transactions. Details of sell transactions in market, alleged non-disclosure of change in shareholding, violations under SAST Regulations etc. in respect of the Noticee No. 2-6, are shown in the table below.

S. No	Entity Name	Date of Trading/ Event	Sell Quantity	Opening Holding of PAC	% share capital	Closing Holding of PAC	Required date to be reported by entity	Date of Disclosure to NSE	Date of Disclosure to BSE
1	Darshana M Thacker	24-Apr-12	100,000	65.31%	0.70%	64.62%	27-Apr-12	07-May-12	04-May-12
2	Crystal Hospitality Services Private Limited	25-Apr-12	60,000	64.62%	0.42%	64.20%	27-Apr-12	07-May-12	04-May-12
3	Darshana M Thacker	25-Apr-12	60,000	64.20%	0.42%	63.78%	27-Apr-12	07-May-12	04-May-12
4	Mahendra R Thacker	25-Apr-12	60,000	63.78%	0.42%	63.36%	27-Apr-12	07-May-12	04-May-12

5	Mihir M Thacker	25-Apr-12	60,000	63.36%	0.42%	62.94%	27-Apr-12	01-Aug-12	26-Jul-12
6	Maunik M Thacker	25-Apr-12	60,000	62.94%	0.42%	62.52%	27-Apr-12	01-Aug-12	26-Jul-12
Trading of PAC between 24 and 25 April			400,000	65.31%	2.79%	62.52%	27-Apr-12		
7	Crystal Hospitality Services Private Limited	26-Apr-12	110,000	62.52%	0.77%	61.75%	30-Apr-12	07-May-12	04-May-12
8	Darshana M Thacker	26-Apr-12	65,000	61.75%	0.45%	61.30%	30-Apr-12	07-May-12	04-May-12
9	Mahendra R Thacker	26-Apr-12	25,000	61.30%	0.17%	61.12%	30-Apr-12	07-May-12	04-May-12
10	Crystal Hospitality Services Private Limited	27-Apr-12	50,000	61.12%	0.35%	60.78%	02-May-12	07-May-12	04-May-12
11	Darshana M Thacker	27-Apr-12	50,000	60.78%	0.35%	60.43%	02-May-12	07-May-12	04-May-12
Trading of PAC between 26 and 27 April			300,000	62.52%	2.09%	60.43%	02-May-12		

38. It was alleged that due to change of more than 2% of the shareholding amongst the Noticee No. 2-6 due to their sell transactions, they were required to make disclosures in terms of regulation 29(2) read with 29(3) of SAST Regulations.

39. In respect to the allegations, it was stated on behalf of the Noticee No. 6 that majority of the disclosure were made on May 04, 2012 and not on May 07, 2012 and in support, Annexure 7 was enclosed. It was submitted that in case of Mihir M. Thacker and Maunik M. Thacker, the disclosure was delayed as the same was made on July 27, 2012 and not on August 01, 2012 as mentioned in SCN. It was submitted by them that the delay in majority of the case is maximum 4 to 5 days and the disclosure under regulations 13(6) PIT Regulations were made in time.

40. I have perused the available records and observed that the issue of PAC between Noticee Nos. 2 to 6 is not in dispute. It is noted from the available records that for the 6 sell transactions for 4,00,000 shares were done by the Noticee No. 2 - 6 during 24th – 25th April 2012 whereby more than 2% change in their shareholding (PAC holding) was resulted. For said 6 sell transactions, the Noticee No. 2-6 were supposed to make the disclosures by April 27, 2012 (i.e. within 2 working days). It is observed from available records and annexure 7 of the Noticee(s) that regarding 4 sell transactions, the disclosures to BSE / NSE were made in time viz. on May 04, 2012. However, admittedly, in case of remaining 2 sell transactions on 25th April, 2012 (of Mihir M. Thacker and Maunik

M. Thakker), the disclosures were made belatedly to BSE on July 26, 2012 and to NSE on July 27, 2012 (i.e. a delay of around 3 months).

41. Also, it is noted that for 5 sell transactions (for 3,00,000 shares) done by the Noticee No. 2, 4 & 5 on 26th and 27th of April 2012, whereby more than 2% change in their shareholding (PAC holding) occurred, the disclosures for the same should have been made by April 30, 2012 and May 02, 2012 respectively (i.e. within 2 working days), however, it is noted from the undisputed records that the disclosures for the same were made by the PAC / Noticee(s) belatedly on May 04, 2012 to the stock Exchange(s).

42. Therefore, I am of the view that Noticee No. 6 being a PAC with Noticee Nos. 2 to 5 had sold the shares (whereby change of more than 2% of the total shareholding in HRL had resulted), but, made the required disclosures belatedly as observed in pre paras. Therefore, it is concluded that the Noticee No. 6 and / along with Noticee No. 2-5, had not made the required disclosures on time in terms of regulation 29(2) read with 29(3) of SAST regulations and thereby had violated the same.

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

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

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

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

specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees whichever is less;

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

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

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

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

45. No disproportionate gains or unfair advantage made by the Noticees or the loss suffered by the investors due to such non disclosures, is available on records; and no repetition of the default by the Noticees is shown on records. Also, I cannot ignore the fact that in many of the instances, the Noticees had made the required disclosures on time or made them little belatedly in terms of said PIT Regulations and SAST Regulations. Further, non-disclosures of certain instances under the PIT Regulations and SAST Regulations, have been very fairly admitted by the Noticee(s). Notably, the disclosures requirements under some of the provisions of the SAST Regulations and PIT Regulations are corollary in nature.
46. Taking into account the aforesaid mitigating factors, considering the facts and circumstance of the case, the purpose of the SAST and PIT Regulation as observed in the case of *Millan Mahendra Securities Pvt. Ltd. vs. SEBI* (Appeal No. 66/2003 decided on November 15, 2006) decided by the Hon'ble Securities Appellate Tribunal and a judgment dated 23/05/2006, pronounced by the Hon'ble Supreme Court of India in Civil Appeal No. 9523-24 of 2003 in case of *The Chairman of SEBI vs. Shriram Mutual Fund & Another*, I am of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

47. After taking into consideration all the aforesaid facts / circumstances of the case and taking into account that the requirement of aforesaid disclosures under PIT Regulations and SAST Regulations are corollary in nature, therefore, in exercise of the power conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticee(s) under section 15 A (b) of the SEBI Act, as shown in table below;

Name of the Noticee	Amount of Penalty / Provisions of Laws Violated
Hotel Rugby Limited (Noticee No. 1)	₹ 1,00,000/- (Rupees One Lakh only) for violation of regulation 13 (6) of the PIT Regulations.
Ms. Darshana Mahendra Thacker (Noticee No. 2)	₹ 1,00,000/- (Rupees One Lakh only) For violation of regulation 13(3), 13(4) & 13(4A) read with regulation 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of SAST Regulations. ₹ 1,00,000/- (Rupees One Lakh only) for violation of regulation 31(1), 31 (2) read with regulation 31(3) of SAST Regulations.
Mr. Mihir Mahendra Thacker (Noticee No. 3)	₹ 1,00,000/- (Rupees One Lakh only) for violation of regulation 13(3), 13(4), 13 (4A) read with 13(5) of PIT Regulations and regulation 29(2) read with 29(3) of the SAST Regulations. ₹ 1,00,000/- (Rupees One Lakh only) for violation of regulation 31(2) & 31(3) of the SAST Regulations.
Ms. Darshana Mahendra Thacker (Noticee No. 2) Mr. Mihir Mahendra Thacker (Noticee No. 3) Mr. Mahendra Thacker (Noticee No. 4) Crystal Hospitality Services Ltd. (Noticee No. 5) Mr. Maunik Mahendra Thacker (Noticee No. 6)	₹ 1,00,000/- (Rupees One Lakh only) for violation of regulation 29(2) read with 29(3) of SAST regulations. <u>The Noticee No. 2, 3, 4, 5 and 6 shall be liable to pay the said penalty jointly and severally.</u>

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

49. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below;

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

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

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

Date: July 28, 2017

Place: Mumbai

(RACHNA ANAND)
GENERAL MANAGER &
ADJUDICATING OFFICER