BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/DPS/ 249 /2017]

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:

M/s Polytex India Limited

(PAN No. AAACP7020Q)

401, 4th Floor, Nisarg Apartment,

Besant Road, Vile Parle – West,

Mumbai 400056

In the matter of KGN Enterprise Limited, Polytex India Limited and Gemstone India Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has initiated adjudicating proceeding against M/s Polytex India Ltd, (**the Noticee / Polytex**). Adjudication proceedings have been initiated against the Noticee for the alleged violations of regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992'**) read with 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations, 2015'**).

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15I 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 (hereinafter referred to as **'Adjudication Rules'**) vide order dated October 26, 2015, to inquire into and adjudge under section 15A(b) of the SEBI Act, the violations of regulation 13(6) of PIT Regulations read with 12(2) of PIT Regulations, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2017/1166/1 dated January 13, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticee 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 under section 15A(b) of the SEBI Act for the aforesaid alleged violation of PIT Regulations.

4. The observations made under the examination and the allegations levelled against the Noticee in the SCN are mentioned hereunder;

5. SEBI conducted an investigation into the dealings in shares of KGN Enterprises Limited (KGN), Polytex India Ltd, (PIL) and Gemstone Investments Ltd. (GIL) [All the scrips are listed on BSE]. The scrip-wise period of investigation and price/volume movement in these scrips noticed during the investigation period are given below:-

Scrip	Investigation period		Opening Price (volume) on first day of the period (Rs)	Closing price (volume) on last day of the period (Rs.)	Low price(volume) during the period (Rs.)	High Price(volume) during the period (Rs.)	Avg. no. of (shares) traded daily during the period

GIL	April 18, 2012 to December 17, 2012	Price	9.1	15.75	8.89 (18/04/12)	20.65 (17/09/12)	613411
		Vol	735713	1512824	735713	1130515	
KGN	December 27, 2011 to December 17, 2012	Price	200	396.25	177.25 (02/04/12)	898 (24/01/12)	65560
		Vol.	17372	57287	11 (23/03/12)	253764 (19/03/12)	
PIL	April 13, 2012 to December 17, 2012	Price	136.5	250.85	134.15 (18/04/12)	281 (23/11/12)	102835
		Vol.	91058	77481	5382 (01/08/12)	294476 (02/11/12)	

6. The category wise shareholding pattern in the scrip of PIL is given below:-

Particular	Quarter ended on March 2012			Quarter ended on June 2012			Quarter ended on Sep 2012		
	No of shareholders	No of shares	%	No of shareholders	No of shares	%	No of shareholders	No of shares	%
Promoter Holding	4	9496000	70.34	4	9496000	70.34	4	9496000	70.34
Non Promoter Holding	772	4004000	29.66	780	4004000	29.66	760	4004000	29.66
Total Share	776	13500000	100	784	13500000	100	764	13500000	100

Particular	Quarter ended on Dec 2012		
	No of shareholders	No of shares	%
Promoter Holding	5	9496000	70.34
Non Promoter Holding	744	4004000	29.66
Total Share Capital	749	13500000	100

7. Anugrah Stock & Broking Pvt. Ltd. became part of Promoter group on acquiring shares from other entities of the promoter group. There was no change in the promoter's holding. The details of the no. of shares held by the promoter and promoter group is given below;

	Quarter ended on March to Sep. 2012		**Quarter ended on Dec 2012**	
Name	**No of shares**	**%**	**No of shares**	**%**
Arvind Mulji Kariya	2,547,500	18.87	2,387,500	17.69
Jigna Arvind Kariya	2,200,500	16.3	2,200,500	16.3
Paresh Mulji Kariya	2,197,500	16.28	2,097,500	15.53
Sadhana Paresh Kariya	2,550,500	18.89	2,350,500	17.41
Anugrah Stock & Broking Pvt Ltd	-	-	460,000	3.41
	9,496,000	70.34	9,496,000	70.34

8. During investigation it was observed that the addition of Anugrah Stock Broking Pvt. Ltd. (Anugrah) as a promoter on 02/11/2012, Anugrah has made disclosure u/r 13(2A) of SEBI (PIT) Regulations, 1992, to the Noticee on 05/11/2012 was provided as **Annexure – 2** of SCN. Investigation alleges that the Noticee failed to make the disclosure to BSE u/r 13(6) of PIT Regulations, 1992, which has been confirmed by BSE vide its email dated March 23, 2015 which was placed as **Annexure – 3** of SCN. During investigation information was sought from the Noticee, however, the Noticee has not confirmed that the said disclosure has been made by it to BSE, which was placed as **Annexure – 4** of SCN.

9. The relevant extracts of the investigation report, which details the violations alleged to have been committed by the noticee, was also provided as **Annexure – 5 (pages 36 to 37 of investigation report)** of SCN**.**

10. It was observed that Anugrah has acquired 460000 shares during the period October 1, 2012 to December 31, 2012 in multiple transactions. Therefore BSE was asked vide email dated January 10, 2017 to confirm whether Noticee has made disclosures in terms of Regulation 13(6) of PIT Regulations during the period October 1, 2012 to December 31, 2012. In this regard, BSE has confirmed vide email dated January 10, 2017 the disclosures received under Regulation 13(6) of PIT Regulations, 1992 which were received from the Noticee along with the disclosures under Regulation 29 of SEBI (SAST) Regulations 2011 during the said period which was placed as **Annexure – 6** of SCN and the disclosures made by the Noticee under PIT Regulations as per BSE website was placed as **Annexure – 7** of SCN**.** The details of which is given below:-

Date of Transaction	Opening balance	Buy Quantity	Closing balance	% holding	Date of disclosure made by Noticee
02/11/2012	0	100000	100000	0.74	No Disclosure
05/11/2012	100000	50000	150000	1.11	No Disclosure
06/11/2012	150000	50000	200000	1.48	No Disclosure
07/11/2012	200000	50000	250000	1.85	No Disclosure

08/11/2012	250000	50000	300000	2.22	No Disclosure
21/12/2012	300000	50000	350000	2.59	28/12/2012
24/12/2012	350000	50000	400000	2.96	28/12/2012
26/12/2012	400000	50000	450000	3.33	28/12/2012
31/12/2012	450000	10000	460000	3.4	03/01/2013

11. In view of the above, it was alleged that the Noticee has not made disclosure under regulation 13(6) of PIT Regulations, 1992 for the transaction took place on November 2, 2012 when Anugrah was included in the promoter group and also for the transaction made on November 5, 6, 7 and 8, 2012. and by not making the said disclosures, the Noticee is in violation of the aforesaid regulation and which is reproduced as under;

> *PIT Regulations*
>
> *Disclosure by company to stock exchanges.*
>
> 13(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.

12. The aforesaid alleged violations, if established, make the Noticee liable for monetary penalty under section 15A(b) of the SEBI Act, which reads as follows:

> *SEBI Act:*
>
> ***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;*

13. In response to the SCN, the Noticee filed its reply dated March 14, 2017. The key submissions/ reply of the Noticee in its reply dated March 14, 2017 towards the SCN are being reproduced below:-

1. We note from a perusal of the SCN that the sole charge against Polytex is that it had failed to make disclosures under Regulation 13(6) of the PIT Regulations 1992 to the stock exchanges pursuant to acquisition of shares by Anugrah Stock & Broking Private Limited ("Anugrah"). On November 2, 2011, November 5, 2012, November 6, 2012, November 7, 2012 and November 8, 2012 (alleged "Violation Dates"), thereby being liable for imposition of monetary penalty under the provisions of Section 15A(b) of the SEBI Act. In this regard, we wish to submit as under:

   a. We submit that as per the scheme of Section 15J of the SEBI Act, the Learned Adjudicating Officer is obligated to take into consideration the mitigating factors as contained therein while adjudging the quantum of penalty to be adjudged under Section 15I of the SEBI Act. However, on a perusal of the 2002 Provision, it appears that the discretionary power vested with the learned Adjudicating Officer under Section 15J of the SEBI Act to determine the quantum of penalty to be imposed as existing under the 1995 Provision had been expunged by the legislature in all its wisdom. While strictly interpreting the 2002 Provision it appears that in the absence of discretionary power, the Learned Adjudicating Officer was left with no other option but to impose the maximum penalty while adjudging alleged violation of Section 15A(b) of the SEBI Act. However, we note that the discretionary power so expunged by the 2002 Provision has since been restored by virtue of the cumulative legislative wisdom in the 2014 Provision.

   b. The Hon'ble Supreme Court of India, in the matter of **SEBI Through its Chairman – vs – Roofit Industries Limited** [2015 (12) SCALE 642], while examining the provisions of Section 15A of the SEBI Act, states as follows:

      "In the connected appeals before us, the Appellant has imposed a penalty of Rs.75 lakhs despite the failure having continued for substantially more than 75 days. Learned Senior Counsel for the Appellant has contended that the Appellant has discretion to impose a penalty below the number of days of default regardless of the words whichever is less. He has argued that there would be no purpose of Section 15J if the Adjudicating Officers discretion to fix the quantum of penalty did not exist, and that such an interpretation would render certain Sections of the SEBI Act as expropriatory legislation due to the crippling penalties they would impose. We do not agree with these submissions. The clear intention of the amendment is to impose harsher penalties for certain offences, and we find no reason to water them down. The wording of the statute clarifies that the penalty to be imposed in case the offence continue for over one hundred days is restricted to Rs.1 crore. No scope has been given for discretion. Prior to the amendment, the Section provided for a penalty not exceeding one lakh fifty thousand rupees for each such failure, thus giving the Appellant the discretion to decide the appropriate amount of penalty. In

this context, the change to language which does not repose any discretion is even more significant, as it indicates a legislative intent to recall and remove the previously provided discretion. Additionally, Section 15J existed prior to the amendment and was relevant at that time for adjudging quantum of penalty. Once this discretionary power of the adjudicating officer was withdrawn, the scope of Section 15J was drastically reduced, and it became relevant only to the Sections where the Adjudicating Officer retained his prior discretion, such as in Section 15F(a) and Section 15HB. This ought to have been reflected in the language of Section 15I, but was clearly overlooked. Section 15J has become relevant once again, subsequent to the Securities Laws (Amendment) Act, 2014, which changed Section 15A(a), with effect from 8.9.2014….

…. The purpose of amendment was clearly to re-introduce the discretion of the Adjudicating Officer which was taken away by the SEBI (Amendment) Act, 2002. Had the failure of the Respondent taken place between 29.10.2002 and 8.9.2014, the penalty ought to have been Rs. 1 crore, without the possibility of any discretion for reduction."

c. However, the Hon'ble Supreme Court in the matter of **Siddharth Chaturvedi – vs SEBI** [Civil Appeal No. 14730 of 2015] and two other connected matters decided on March 14, 2016 examined in detail the decision of the Hon'ble Supreme Court in the matter of Roofit Industries Limited. After carefully examining its earlier order passed in the matter of Roofit Industries Limited, the Hon'ble Court stated as follows:

*"**10.** Prima facie, we find it a little difficult to subscribe to both the views contained in paragraph 4 as well as in paragraph 5 of the said judgment. The expression "shall have due regard to" is a very known legislative device used from the time of Julius v Bishop of Oxford (1880) LR 5 AC 214 (HL), and followed in many judgments both English as well as of our Courts as words vesting a discretion in an Adjudicating Officer. The question which arises in the present appeals is whether the expression "namely" fixes the discretion which can be exercised only in the circumstances mentioned in the three clauses set out in Section 15J, or whether it would also take into account other relevant circumstances, having particular regard to the fact that it is a penalty provision that the Court is construing. As this needs to be authoritatively decided for the failure, it would be better if we refer it to a larger Bench for such authoriatative pronouncement.*

***11.** We also find it a little difficult to accept what is stated in paragraph 5 of the judgment. It is very difficult, keeping in view, particularly, two important legal facets – one the doctrine of harmonious construction of a statute; and two, the fact that we are construing a penalty provision of statute which is to be strictly construed, Section 15A, post amendment in 2002, is suddenly given a pride of place, and Section 15J is made to yield entirely to it. The familiar expression otwithstanding anything contained" does not appear in the amended Section 15A. This being the case, it is a little difficult to appreciate as to how one can construe Section 15A, as amended, in isolation, without regard to Section 15J. Infact, the facts of the present case would go to show that where there is allegedly only a technical default, and the three parameters of Section 15J would allegedly be satisfied by the appellants, namely, that no disproportionate or unfair advantage has been made as a result of the default; no loss*

has been caused to an investor or has been made as a result of the default; no loss has been caused to an investor or group of investors as a result of the default; and there is in fact, no repetitive nature of default, no penalty at all ought to be imposed. What has been done by the appellants here is to fail to adhere to Regulation 13, as alleged in the show cause notice, which failure has occurred on three days and consequently, has allegedly not been repeated by the appellants anytime thereafter. If we were to read Section 15A, as amended in 2002, in the manner suggested by the Division Bench of this Court, it may lead to anomalous results in that the effect of continuing failure to adhere to statutory regulations alleged to have been continued well beyond the period of three days, and which continues till this day, has Rs.1 lakh per day as the minimum mandatory penalty under the provisions, which would culminate in the appellants herein having to pay Rs.1 crore in each of the three appeals. We do not think that this could have been the intention of the Parliament in enacting Section 15A, as amended in 2002. We also feel that on the assumption that paragraph 5 of the judgment is correct, ***it would be very difficult for Section 15A to be construed as a reasonable provision, as it would then arbitrarily and disproportionately invade the appellants' fundamental rights.*** *This being the case, on both the conclusions reached by this Court in paragraphs 4 and 5, as stated by us hereinabove, these matters deserve consideration at the hands of a larger Bench. The Registry is, accordingly, directed place the papers of these appeals before Hon'ble the Chief Justice of India for placing these matters before a larger Bench."*

d. In light of the above, we submit that in these instant proceedings, the subject and context is intrinsically linked to the issues highlighted by the Hon'ble Supreme Court of India in the matter of **Siddharth Chaturvedi – vs – SEBI**. We also note that the Hon'ble Supreme Court has referred the matter to a larger bench which is to be constituted to examine the provisions of Section 15A and Section 15J of the SEBI Act. We note that it is alleged in the SCN that in case the violations as alleged are established, Polytex will be liable for imposition of monetary penalty under the provisions of Section 15A(b) of the SEBI Act. Thus, till such time the context, purport, extent, legislative intent etc. of Section 15A of the SEBI Act is determined by the Hon'ble Supreme Court of India in light of Section 15J of the SEBI Act, we submit that in the interest of justice and equity, these proceedings should be kept in abeyance till such time the Hon'ble Supreme Court pronounces its judgment in this regard.

e. We also note that the principal allegation against Polytex is that Anugrah acquired 4600 shares of Polytex in multiple transactions from entities of the promoter group of Polytex, thereby becoming part of the promoter group of Polytex. On acquisition of shares, Anugrah made the requisite disclosures under the applicable provisions of the PIT Regulations 1992 to Polytex. However, on receipt of the said disclosures from Anugrah, Polytex failed to make the required disclosures to the stock exchanges under Regulation 13(6) of the PIT Regulations 1992. In this regard, we wish to submit as under:

f. Polytex received disclosures from Anugrah and Mr. Arvind Mujli Kariya regarding disposal and acquisition of shares of Polytex under applicable regulations of the PIT Regulations 1992 and

the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 ("SAST Regulations"). On receipt of the said disclosures, Polytex was under the impression that it had promptly communicated the same to the Bombay Stock Exchange ("BSE") by way of its letters dated December 28, 2012 and January 3, 2013. The said disclosures were made under the hand and seal of the company secretary of Polytex.

g. However, on receipt of the SCN, Polytex conducted an internal due diligence of its corporate filings with the BSE. Pursuant to a detailed examination, it was observed by Polytex that the company secretary had inadvertently not forwarded the disclosures required to be filed by Polytex under Regulation 13(6) of the PIT Regulations 1992 with respect to the Violation Dates to the BSE.

h. On becoming aware of the alleged non-complaince, Polytex immediately proceeded to file the disclosures for the alleged Violation Dates with the BSE by way of its letters dated January 27, 2017. Copies of the said letters dated January 27, 2017 are attached hereto and marked Enclosure I.

i. In this regard, we note that SEBI, by way of an email dated March 20, 2015 required Polytex to "provide the details regarding the disclosure made u/r. 1392A, 13(4A) and 13(5) with the direction to "*provide the information by EOD (20/03/2015)".* The said email was received by Polytex at 3:13 pm and Polytex complied with the said direction promptly and sent across the *"disclosures u/r. 13(2A, 13(4A) and 13(5) of the SEBI Prohibition of Insider Trading Regulations, 1992 received from Anugrah Stock & Broking Pvt. Ltd. And disclosures by Polytex India Limited submitted to BSE"* by way of its email of even date at 7:32 pm. The details of the disclosures provided to BSE by way of the letter dated December 28, 2012 were forwarded to SEBI by way of an email dated March 20, 2015.

j. We also note that the disclosures made by Anugrah to Polytex under the PIT Regulations 1992 were also forwarded by Anugrah to the Corporate Relation Department of the BSE. Further, the relevant disclosures which were received from Anugrah and Mr. Arvind Mujli Kariya under the provisions of the SAST Regulations have already been filed by Polytex with the BSE. Thus, we submit that the relevant disclosures pertaining to the transactions whereby Anugrah acquired shares from Mr. Arvind Mujli Kariya and became part of the promoter group of Anugrah was already with BSE, thereby in the public domain.

k. We would also like to draw your attention to the observations of the Hon'ble Securities Appellate Tribunal in the matter of **Vitro Commodities Private Limited – vs – SEBI** [Appeal No. 118 of 2013, decided on September 4, 2013], wherein it was stated as follows:

> *"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of*

first automatically triggers violation of second and hence there is no justification for imposition of penalty for second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 9 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."

l. In the matter of **Reliance Industries Ltd. – vs – SEBI** [Appeal No. 39/2002], wherein the company failed to make relevant disclosure in time under Regulation 7(1) of SAST Regulations, 1997 then Hon'ble SAT observed as follows:

"The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."

m. In the matter of **Akbar Badrudin Badrudin Jiwani – vs – Collector of Customs** [AIR 1990 SC 1579], the Hon'ble Supreme Court of India stated as follows:

"We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd.., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established. It has also been observed in Hindustan Steel Ltd., v State of Orissa (1970) I SCR 753; (AIR 1970 SC 2563) by this Court that:- "The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

n. We also note that the main objective of the SAST Regulations or the PIT Regulations 1992 is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. We understand that correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. In this regard, we submit that it is an admitted position that there has been no change in control of Polytex pursuant to the acquisition of the shares by Anugrah frim Mr. Arvind Mujli Kariya. Further, there has been no change in the shareholding of the promoter group of Polytex pursuant to the acquisition of shares by Anugrah. The relevant disclosures pertaining to the SAST Regulations and the PIT Regulations were already in the public domain as the same had been disclosed to the BSE by Polytex and Anugrah on various dates. Thus, we submit that the shareholders of Polytex were not affected in any way whatsoever by the said alleged non-disclosures under Regulation 13(6) of the PIT Regulations

1992 by Polytex since relevant disclosures were already in the public domain as it had been disclosed to BSE. We also submit that the alleged non-disclosure by Polytex has not caused any amount of disproportionate gain or unfair advantage to Polytex and no investor or group of investors have suffered any amount of loss due to such alleged non-disclosure. We further submit that there was no repetitive nature of default by Polytex in adhering the provisions of the PIT Regulations 1992. Infact, we would like to draw your attention to the fact that the alleged violation of the provisions of Regulation 13(6) of the PIT Regulations is only a technical violations by Polytex, if established, and the parameters of the mitigating factors laid down by Section 15J of the SEBI Act are fully satisfied by Polytex.

14. During the period of instant proceeding, 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."

15. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticee on July 05, 2017 vide notice dated June 12, 2017. Hearing on July 05, 2017 was attended by the authorized representative (AR) of the Noticee. AR reiterated as submitted in its reply dated March 14, 2017 and submitted that we would like to submit additional submissions and also confirm the status of the consent application as mentioned in reply within a week from the date of this hearing. Noticee submitted its additional submissions vide letter dated July 19, 2017 and vide email dated

August 10, 2017 confirmed that it had not filed application of consent/ settlement terms with SEBI.

16. Noticee submitted its additional submissions vide letter dated July 19, 2017, which is reproduced below:-

(i) *On receipt of disclosures from Anugrah, by letters dated December 28, 2012 and January 3, 2013, Polytex had promptly forwarded the requisite disclosures to the Bombay Stock Exchange ("BSE") genuinely believing that it had communicated and made complete disclosures to the BSE. However, upon receipt of the Show Cause Notice, Polytex realized that disclosures in respect of the Violation Dates had been missed out.*

(ii) *Accordingly, immediately be letter dated January 27, 2017, Polytex file the requisite disclosures with the BSE in respect of the Violation Dates. Copies of the letters vide which the said disclosures were made to the BSE have been provided earlier as attachment to the Polytex Reply and as such are part of the record of these proceedings.*

(iii) *Thus, it was due to complete inadvertence and nothing else that the disclosures for the transactions that took place on Violation Dates remained to be communicated to the BSE.*

(iv) *Therefore, breach, if any, was entirely unintentional and purely technical and therefore, does not merit imposition of penalty. [See Reliance Industries Limited v. SEBI. Appeal No. 39 of 2012].*

(v) *Without prejudice to any of the aforesaid, Polytex further submits that the Learned AO ought to consider the mitigating factors set out in Section 15J of the SEBI Act, 1992 whilst adjudging the quantum of penalty, if any, sought to be imposed, in the present case.*

(vi) *In this regard, Polytex states and submits that the Finance Act, 2017 was amended Section 15J by inserting an explanation, which reads as follows:*
"For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudicate the quantum of penalty under Section 15A to 15E, clauses (b) and (c) of Section 15F, Section 15G, Section 15H and 15I-IA shall be and shall always be deemed to have been exercised under the provision of this section."

(vii) *The above explanation makes it evident it that the Learned AO should consider the factors laid down under Section 15J of the SEBI Act, 1992 for determining the quantum of penalty in respect of those provisions mentioned in the explanation for offences which were committed between 2002 and 2014.*

(viii) *Without prejudice to the aforesaid, in any event, it is well-settled that in such a case, the provision as it stands 'at the time of exercise of the power' ought to be looked at and not the provision as it stood at the time when the alleged violation took place.*

(ix) Moreover, in a case which involves imposition of statutory penalty, it is well-settled that the authority cannot impose penalty ipso facto and ought to (i) consider whether there was any 'mens rea' in commission of the offence and (ii) exercise its direction judiciously based on the facts and circumstances of the case. Therefore, the Learned AO is in any event, vested with inherent powers to consider the facts and circumstances of each case whilst imposing and / or adjudging the quantum of penalty.

(x) It is also submitted that the alleged non-disclosure by Polytex has not caused any amount of disproportionate gain or unfair advantage to Polytex and no investor or group of investors have suffered any amount of loss due to such alleged non-disclosure. Further, it is to be noted that there was no repetitive nature of default by Polytex in adhering the provisions of the PIT Regulations 1992. Infact, it is pertinent to note that the alleged violation of the provisions of Regulation 13(6) of the PIT Regulations is only a technical violation by Polytex, if established, and the parameters of the mitigating factors laid down by Section 15J of the SEBI Act are fully satisfied by Polytex.

(xi) In view of the aforesaid, the Learned AO ought to consider the mitigating factors set out in Section 15J of the SEBI Act, 1992 and the peculiar facts in the present case in adjudging the matter and deciding the quantum of the penalty to be imposed on Polytex, if any.

(xii) Polytex states and submits that the alleged non-disclosure if any has not caused any prejudice to the shareholders of Polytex, for whose protection, the Legislature stipulated that disclosures be made under the SAST Regulations and PIT Regulations. As stated in the Polytex Reply, it is reiterated that there has been neither a change in control of Polytex pursuant to acquisition of shares by Anugrah nor has there been any change in the shareholding of the promoter group of Polytex pursuant to acquisition of shares by Anugrah.

(xiii) It is further submitted that the relevant disclosures pertaining to the SAST Regulations and the PIT Regulations were already in the public domain as the same had been disclosed to the BSE by Polytex and Anugrah on various dates. Thus, Polytex submits that the shareholders of Polytex or investors at large were not affected in any way whatsoever by the said alleged non-disclosures under Regulation 13(6) of the PIT Regulations 1992 by Polytex since relevant disclosures were already in the public domain as it had been disclosed to BSE.

(xiv) In view of the aforesaid facts and circumstances, it is respectfully submitted no penalty may be imposed under Section 15A(b) of the SEBI Act, 1992, for the aforesaid alleged violations.

CONSIDERATION OF ISSUES AND FINDINGS:-

17. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

a. *Whether the Noticee had failed to make the disclosures to BSE, Anugrah was included in the promoter group and also for the transactions done by Anugrah on November 5, 6, 7 and 8, 2012 as stated at Para 6 – 10 of the SCN?*
b. *If the disclosures were not made by the Noticee then, whether the Noticee is in violation of regulation 13(6) of PIT Regulations?*
c. *If yes, then, does the violation, on the part of the Noticee attract monetary penalty under section 15A(b) of the SEBI Act?*
d. *If yes, then, what would be the monetary penalty that can be imposed upon the Noticee?*

18. I have perused the available records and replies of the Noticee in respect of the allegations alleged in the SCN. From the perusal of the SCN at para 6 - 10, it is observed that addition of Anugrah Stock Broking Pvt. Ltd. (Anugrah) as a promoter on 02/11/2012, Anugrah has made disclosure u/r 13(2A) of SEBI (PIT) Regulations, 1992, to the Noticee on 05/11/2012, which triggered disclosure requirements. However, the Noticee failed to make the disclosure to BSE u/r 13(6) of PIT Regulations, 1992, which has been confirmed by BSE vide its email dated March 23, 2015.

19. Further it is observed that Anugrah has acquired 460000 shares during the period October 1, 2012 to December 31, 2012 in multiple transactions, which triggered disclosure requirement. The details of which are given below:-

Date of Transaction	Opening balance	Buy Quantity	Closing balance	% holding	Date of disclosure made by Noticee
02/11/2012	0	100000	100000	0.74	No Disclosure
05/11/2012	100000	50000	150000	1.11	No Disclosure
06/11/2012	150000	50000	200000	1.48	No Disclosure
07/11/2012	200000	50000	250000	1.85	No Disclosure
08/11/2012	250000	50000	300000	2.22	No Disclosure
21/12/2012	300000	50000	350000	2.59	28/12/2012
24/12/2012	350000	50000	400000	2.96	28/12/2012
26/12/2012	400000	50000	450000	3.33	28/12/2012
31/12/2012	450000	10000	460000	3.4	03/01/2013

20. Therefore BSE was asked vide email dated January 10, 2017 to confirm whether Noticee has made disclosures in terms of Regulation 13(6) of PIT Regulations during the period October 1, 2012 to December 31, 2012. In this regard, BSE has confirmed vide email dated January 10, 2017, that it had not received disclosure under regulation 13(6) of PIT Regulations from Noticee for the transaction made on November 2, 2012, when Anugrah was included in the promoter group and also for the transaction done on November 5, 6, 7 and 8, 2012.

21. I note that Noticee in its reply dated March 14, 2017, submitted that, "*on receipt of the SCN, Polytex conducted an internal due diligence of its corporate filings with the BSE. Pursuant to a detailed examination, it was observed by Polytex that the company secretary had inadvertently not forwarded the disclosures required to be filed by Polytex under Regulation 13(6) of the PIT Regulations 1992 with respect to the Violation Dates to the BSE. On becoming aware of the alleged non-complaince, Polytex immediately proceeded to file the disclosures for the alleged Violation Dates with the BSE by way of its letters dated January 27, 2017……*

….We also note that the disclosures made by Anugrah to Polytex under the PIT Regulations 1992 were also forwarded by Anugrah to the Corporate Relation Department of the BSE. Further, the relevant disclosures which were received from Anugrah and Mr. Arvind Mujli Kariya under the provisions of the SAST Regulations have already been filed by Polytex with the BSE. Thus, we submit that the relevant disclosures pertaining to the transactions whereby Anugrah acquired shares from Mr. Arvind Mujli Kariya and became part of the promoter group of Anugrah was already with BSE, thereby in the public domain."

22. I also note that Noticee in its reply relied on judgements of Hon'ble Securities Appellate Tribunal (SAT) in the matter of **Vitro Commodities Private Limited – vs – SEBI** [Appeal No. 118 of 2013, decided on September 4, 2013], wherein it was stated as follows:

"It may be noticed that provisions of Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for second

violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 9 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other."

23. Noticee has relied on the decision of **Hon'ble SAT in Vitro Commodities Private Limited – vs – SEBI** for *Regulation 7(1) of Takeover Regulations, 9 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other.* In the said case, Hon'ble SAT has already distinguished its decision in Vitro Commoditities in its other decisions. For instance, I refer to the Judgements in **CG-Vak Software and Exports Limited Vs. SEBI [Appeal No. 38 of 2014 decided on 23.04.2014], the Hon'ble SAT had observed** *….that case related to violations committed by appellant therein under regulation 13(1) of PIT Regulations which relates to disclosures to be made by a person acquiring shares or voting rights of any listed company in excess of the limits prescribed therein whereas in the present case, we are concerned with violation of regulation 13(6) of PIT Regulations which relate to the disclosures to be made by a listed company to the Stock Exchanges in which the company is listed. Thus the two provisions operate in different fields.*

24. **Hon'ble SAT** while dealing with **Ram Piari and 11 others vs SEBI (Appeal No. 484 of 2015 decided on 20.11.2017) and Bikramjit Ahluwalia vs SEBI (Appeal No. 485 of 2015 decided on 20.11.2017)**, **the Hon'ble SAT had again** referred the Judgements in **CG-Vak Software and Exports Limited Vs. SEBI [Appeal No. 38 of 2014 decided on 23.04.2014], has once again observed ….** *the two provisions operate in different fields.*

25. Noticee in its reply also submitted that, there has been no change in the shareholding of the promoter group of Polytex pursuant to the acquisition of shares by Anugrah and the said disclosures were already disclosed to BSE by Anugrah. No investor or group of investors have suffered any amount of loss due to such alleged non-disclosure and the provisions of Regulation 13(6) of the PIT Regulations is only a technical violations

and may be taken as mitigating factors laid down by Section 15J of the SEBI Act." *And relied on Judgements of* SAT - **Reliance Industries Ltd. – vs – SEBI** [Appeal No. 39/2002] and In the matter of **Akbar Badrudin Badrudin Jiwani – vs – Collector of Customs** [AIR 1990 SC 1579], the Hon'ble Supreme Court of India.

26. The judgement of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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…".*

27. It is noted that the violation of aforesaid non disclosures had been resulted during November 2012 and as per records no disclosures were made by the Noticee despite the requirement of making the same within 2 working days, however, Noticee has made the said disclosures only after receipt of SCN i.e. on January 27, 2017. Therefore, there has been a delay of around 4 years

28. In view of the aforesaid observation and established violations against the Noticee, it is a fit case for imposing monetary penalty upon the Noticee under Section 15A(b) of the SEBI Act which read as follows:

SEBI Act:
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;*

29. While determining the quantum of penalty under section 15A(b), it is important to consider 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."

30. In the matter of ***Gurmeet Singh Dhingra Vs. SEBI (Appeal No. 353 of 2014) decided on December 13, 2014***:- *"...as per regulation 13(3) read with regulation 13(5) of the PIT Regulations, appellant was obliged to make disclosures within two working days of acquisition or sale of shares or voting rights as the case may be. In the present case, the appellant has neither made disclosure when regulation 13(3) got triggered on account of acquiring 2,49,300 shares of Trinity on September 28, 2009 nor the appellant has made disclosures on sale of shares on December 30, 2009, January 5, 2010, January 8, 2010 and January 23, 2010 when on all the four occasions the sale resulted in decrease in shareholding by more than 2%. Thus, on all the five occasions, it was obligatory on part of the appellant to make disclosure under regulation 13(3) within the time stipulated under Regulation 13(5) of the PIT Regulations. Penalty imposable under Section 15A(b) of SEBI Act for failure to make such disclosure is ₹1 lac each day during which such failure continues or ₹1 crore whichever is less. Since the appellant has failed to make disclosure on all the aforesaid five occasions, penalty imposable for aforesaid five violations would be ₹1 crore each i.e. ₹5 crore in all. As against penalty of ₹5 crore imposable on the appellant for not making disclosure under Regulation 13(3) read with Regulation 13(5) of PIT Regulations on the aforesaid five occasions, the adjudicating officer after considering all mitigating factors has imposed penalty of ₹5 lac which cannot be said to be excessive, arbitrary or unreasonable.*

31. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticees, the specific loss suffered by the investors due to such violations; nor the violations as repetitive in nature. Thus before arriving to the quantum of penalty in the matter, it is necessary to refer the importance of such disclosures. The main

objective of the SAST Regulations or PIT Regulations is to afford fair treatment to shareholders as regards their holdings in the company. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision. I also note that as per SAT judgements, the regulation 13(2A) and regulation 13(6) of PIT Regulations the two provisions operate in different fields. Therefore, taking into consideration the facts / circumstance of the case and the mitigating factors, I am of the view that a justifiable penalty needs to be imposed upon the Noticee to meet the ends of justice.

ORDER

32. After taking into consideration all the aforesaid facts and circumstances of the case, the mitigating factors mentioned above, I, hereby impose a penalty of ₹ 3,00,000/-(Rupees Three Lakh only) on the Noticee / M/s Polytex India Ltd, in terms of the provisions of section 15A(b) of the SEBI Act. I am of the view, that the said penalty would commensurate with the violations committed by the Noticee.

33. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI – Penalties Remittable to 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

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

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	Bank name and Account number from which payment is remitted	UTR No

35. In terms of rule 6 of the Adjudication Rules, copy of this order is sent to the Noticee and also to the SEBI.

DATE: DECEMBER 21, 2017 **RACHNA ANAND**

PLACE: MUMBAI **ADJUDICATING OFFICER**