BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AK/AO- 44-48/2017]

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

Ms. Vidya Srinivasan (PAN: AAGPS0203B); **Shri V Srinivasan** (PAN: AAGPS0200C); **Ms. Suchitra Murali Balakrishnan** (PAN: AANPM0944L); **Shri Narayan Sethuraman** (PAN: AABPS8733R); **Shri Murali Srinivasan Venkataraman** (PAN: AAAHM0331E)

In the matter of

Hydro S & S Industries Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) received a letter of offer by Kingfa Sci. & Tech. Co. as the acquirer to acquire 16,65,874 fully paid-up equity share at Rs. 42.70 per share (representing 26% of the total equity and voting rights) of Hydro S & S Industries Ltd. (hereinafter referred to as **'Target Company'/ 'the Company'**). The shares of the company were listed at Bombay Stock Exchange Limited (hereinafter referred to as **'BSE'**), Madras Stock Exchange Ltd. (hereinafter referred to as **'MSE'**) and traded at National Stock Exchange of India Limited (hereinafter referred to as '**NSE**') under arrangement with MSE. The public announcement of the same was made on May 20, 2013. On perusal of the letter of

offer, SEBI *inter alia* observed that Ms. Vidya Srinivasan, Mr. V Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. Narayan Sethuraman and Ms. Suchitra Murali Balakrishanan, promoters of the company (hereinafter referred to as the **'Noticees'/ 'Noticee Promoters'/'Promoter Noticees'**) in the past had not complied with the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations, 1997'**) and/ or SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'Takeover Regulations, 2011'**) within the due dates, as applicable. During the course of Adjudication proceedings, it was noted that the Noticees had also violated the provisions of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). Further, the disclosures under the Takeover Regulations, 1997 and Takeover Regulations, 2011 were received at a date later than the date of compliance informed by the Manager to the Offer to SEBI at the time of making the open offer.

2. Vide Order Ref: AK/AO-101-104/2015 dated October 29, 2015, it was *inter alia* held that the Promoter Noticees had violated the following applicable provisions of Takeover Regulations, 1997/ Takeover Regulations, 2011/ PIT Regulations, and accordingly penalties as stated below were imposed on the Promoter Noticees:

Date of transaction	Name of Noticee	Violation of Regulation	Penalty (Rs.)
21.03.2011	Ms. Vidya Srinivasan	7(1) of Takeover Regulations, 1997	3.5 lacs (Three lacs fifty thousand only)
	Ms. Vidya Srinivasan	13(3) r/w. 13(5) of PIT Regulations	3.5 lacs (Three lacs fifty thousand only)
	Mr. V. Srinivasan		3.5 lacs (Three lacs fifty thousand only)
31.10.2012	Ms. Vidya Srinivasan	29(2) r/w. 29(3) of Takeover Regulations, 2011	4 lacs (Four lacs only)
	Mr. Murali Srinivasan Venkatraman		3 lacs (Three lacs only)
	Mr. Narayan Sethuramon		3 lacs (Three lacs only)
	Ms. Vidya Srinivasan	13(3) r/w. 13(5) of PIT Regulations	4 lacs (Four lacs only)
	Mr. Murali Srinivasan Venkatraman		3 lacs (Three lacs only)
	Mr. Narayan Sethuramon		3 lacs (Three lacs only)

Date of transaction	Name of Noticee	Violation of Regulation	Penalty (Rs.)
	Ms. Vidya Srinivasan	13(4A) r/w. 13(5) of PIT Regulations	4 lacs (Four lacs only)
	Mr. Murali Srinivasan Venkatraman		3 lacs (Three lacs only)
	Mr. Narayan Sethuramon		3 lacs (Three lacs only)
31.12.2012	Ms. Suchitra Murali Balakrishanan	13(4A) r/w. 13(5) of PIT Regulations	2 lacs (Two lacs only)
	Ms. Suchitra Murali Balakrishanan	29(2) r/w. 29(3) of Takeover Regulations, 2011	2 lacs (Two lacs only)
	Mr. Murali Srinivasan Venkatraman		2 lacs (Two lacs only) (payable jointly and severally)
	Mr. V. Srinivasan		
	Mr. Narayan Sethuramon		
	Ms. Vidya Srinivasan		

3. The said Order dated October 29, 2015 was appealed against before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT'**) by the Promoter Noticees. The Hon'ble SAT vide its Order dated March 17, 2016 set aside the Adjudication Order dated October 29, 2015 and restored the appeals to the file of SEBI for passing fresh order on merits and in accordance with law.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as Adjudicating Officer vide Order dated September 4, 2013 under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the '**SEBI Act'**) read with Regulations 44 and 45 of Takeover Regulations, 1997 and Regulations 35 of Takeover Regulations, 2011 and Section 15I and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules'**) to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violations of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable. Vide Proceedings of the Whole Time Member appointing the Adjudicating Officer dated October 28, 2014, the undersigned was also appointed as the Adjudicating Officer to inquire into and adjudge for the alleged violations of PIT Regulations. Pursuant to the Order

of the Hon'ble SAT dated March 17, 2016, the matter was restored to the undersigned for passing fresh order on merits and in accordance with law.

SHOW CAUSE NOTICE, HEARING AND REPLY

5. Show Cause Notices No. EAD-6/AK/VS/27298/2013, EAD-6/AK/VS/27299/2013, EAD-6/AK/VS/27332/2013, EAD-6/AK/VS/27303/2013 and EAD-6/AK/VS/27331/2013 dated October 24, 2013 (hereinafter referred to as the **'SCNs'**) were issued to the Noticees under rule 4 of the Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15A(b) of SEBI Act for the alleged violation specified in the said SCN. The said SCNs were delivered and acknowledged by the Noticees. The Noticees vide their individual letters each dated November 7, 2013 sought more time to reply to the SCN, which was acceded to. Vide individual replies each dated November 22, 2013, the Noticees filed their reply to the SCN.

6. In the interest of natural justice and in terms of Rule 4(3) of the SEBI Rules, the Noticees were granted an opportunity of hearing on December 11, 2013 vide hearing notice dated November 26, 2013. Mr. Vinay Chauhan and Mr. K C Jacob, Authorized Representatives (ARs) appeared on behalf of the Noticees and reiterated the submissions made by the Noticee vide replies dated November 22, 2013. During the hearing, the ARs were advised to provide the details of the transfers/ acquisitions such as whether the same was off-market, physical/ demat, details of any deed of settlement/ agreement entered into between the promoters etc.

7. Vide individual letters dated December 16, 2013, Noticees informed that they have applied for consent proceedings and requested to keep the matter in abeyance. Subsequently the Noticees vide their letters dated March 18, 2014 requested for withdrawal of their consent applications and SEBI vide letters dated March 24, 2014 informed the Noticees that their consent applications were treated as withdrawn.

8. Vide individual letters dated December 20, 2013, Noticees *inter alia* submitted as follows:

a) *That the transactions involved in the matter were off-market transfer of shares and that all shares involved in the said off-market transfers were in the demat form;*

b) *That no consideration was involved since the acquisitions/ transfers were in the nature of inter-se transfers between the Promoters, pursuant to Deed of Settlement/ Gift made by the Transferor in favor of the Transferees, who are also close relatives;*

c) *That in the matter of SEBI vs. Cabot International Capital Corporation Limited {2004 52 SCL 307 (BOM)}, despite of the fact that Cabot had not filed any report under Regulation 3(4) of Takeover Regulations, which was mandatory, the Hon'ble High Court concurred with the view of Hon'ble SAT that non filing of the report in question was technical and minor defect or breach based on bonafide belief that Cabot was not liable or required to submit the report in view of the admitted exemption available under the SEBI Act and the Regulations;*

d) *That it has been pointed out that in the matter of ERP Soft Systems Limited, the Adjudicating Officer took a lenient view and exonerated the Noticees therein from the charges leveled as per the SCN, despite returning a finding of violation of provisions of Regulation 29(2) of Takeover Regulations, 2011 & Regulation 13 of PIT Regulations, inter alia on the ground that transfer was by way of transmission and not a voluntary act, though neither the Takeover Regulations nor PIT Regulations carve out an exemption for not making disclosure when the acquisition is by way of transmission of shares.*

9. Details with respect to the alleged non-disclosure were independently also sought from BSE vide email dated November 26, 2013. BSE vide email dated November 26, 2013 sent the details of the disclosures made by the promoters. As noted above, it was observed from the details provided by BSE that the Noticee promoters had also defaulted in timely disclosure of their shareholding under the PIT Regulations. It was also observed that BSE had received almost all of the disclosures at a later date than the date informed by the Manager to the Offer in the compliance status forwarded to SEBI at time of making the open offer.

10. Vide Proceedings of the Whole Time Member appointing the Adjudicating Officer dated October 28, 2014, the undersigned was also appointed as the Adjudicating Officer to inquire into and adjudge for the alleged violations of PIT Regulations.

11. In view of the above, a supplementary SCN Ref. No. EAD6/AK/VRP/35136/2014/1-5 was issued to the Noticees on December 9, 2014 (hereinafter referred to as the '**Supplementary SCN**') for the alleged violations by the Noticee Promoters of PIT Regulations and/ or Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable, by taking into consideration the disclosure details forwarded by BSE.

12. The Noticees vide individual letters dated December 26, 2014 sought time to submit their reply to the Supplementary SCN. The request was acceded to. Subsequently, the Noticees filed individual replies dated January 09, 2015 to the Supplementary SCN. In the interest of natural justice and in terms of Rule 4(3) of the SEBI Rules, Noticees were granted an opportunity of hearing on January 15, 2015 vide hearing notice dated December 26, 2014. On the scheduled date, Authorized Representatives (ARs) of the Noticees, Mr. Vinay Chauhan and Mr. K C Jacob, appeared on their behalf and reiterated the submissions made by the Noticee in the replies dated January 9, 2015. Thereafter, vide email dated September 23, 2015 the Noticees were given an opportunity to file further submissions, if any, apart from the replies/ submissions already placed on record in the matter. The Noticees replied on September 28, 2015 stating that they had no further submissions to make.

13. The Noticees have *inter alia* made the following submissions vide their individual replies dated November 22, 2013 and January 9, 2015**:**

    a) *That they were the promoters of the target company for over two decades till July 3, 2013 (when Kingfa Sci & Tech Co Ltd acquired the control over the target company by buying the shareholding of the then promoter group entities). At the relevant time as a part of the promoter group, they along with others were in control over the target company and that the factum of their being one of the promoters and being part of the promoter group and details of their shareholding etc. were already in public domain, inter alia by virtue of continuous quarterly disclosures made by the target company to the stock exchanges under clause 35 of the listing agreement;*

b) That they have had an impeccable track record and no action has been taken against them by any regulatory body including SEBI, save and except the matter under reference;

c) That all the acquisitions as referred to in the SCNs were bonafide and were made transparently with full disclosures in the ordinary course of business

14. Further, with respect to acquisitions/ transfers made on March 21, 2011, October 31, 2012 and December 31, 2012, the Noticees have made the following submissions:

A. **Acquisition/ Transfer Date March 21, 2011:** (Acquisition by Ms. Vidya Srinivasan and transfer by Mr. V Srinivasan)

i. That the acquisition by Ms. Vidya Srinivasan and transfer by Mr. V Srinivasan on March 21, 2011 was in the nature of inter se transfer of shares amongst promoters, whereby they had acquired/ transferred 12.09% shares to each other;

ii. That consequent to the aforesaid acquisition/ transfer there was no change in the total shareholding of the promoter group and no change in the management or control of the target company;

iii. With regard to the alleged delay in making the disclosure regarding acquisition/ transfer made on March 21, 2011 under PIT Regulations and Takeover Regulations, it was submitted that by oversight the necessary disclosures to the company and stock exchanges were intimated by ordinary post, which might have been belatedly received by them;

iv. That disclosures under both PIT Regulations and Takeover Regulations were sent vide different letters all dated March 23, 2011, however, strangely disclosures under PIT Regulations was published by the stock exchange on April 04, 2011 and disclosure under Takeover Regulations was published on April 11, 2011. It has been denied that there was a delay of 19/ 16 days in making disclosures under the Takeover Regulations as alleged and that at the highest there could be 12 days delay as in the case of PIT Regulations as alleged in the first SCN issued;

v. That admittedly, the disclosures might have been belatedly received by the stock exchanges.

B. ***Acquisition/ Transfer Date October 31, 2012: (****Acquisition by Ms. Vidya Srinivasan and transfers made by Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon)*

i. *That the acquisition made by Ms. Vidya Srinivasan on December 31, 2012 was in the nature of inter-se transfer of shares amongst promoters, wherein Ms. Vidya Srinivasan had acquired 27.02% shares from Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuraman, who had transferred 14.54% and 12.48% shares respectively to her;*

ii. *Since the total acquisition of 27.02% was covered by exemption provided under Regulation 10 of Takeover Regulations, 2011, Ms. Vidya Srinivasan had also made a disclosure on October 22, 2012 to the stock exchanges and the target company regarding the (then) proposed acquisition in consonance with Regulation 10(5). Thereafter, post the acquisition on October 31, 2012, she had filed the requisite disclosures dated November 01, 2012 under Regulation 29(2) and Regulation 10(6) of the Takeover Regulations, 2011;*

iii. *With regard to alleged delay of three days in making the disclosure regarding acquisitions/ transfers made on October 31, 2012 under PIT and Takeover Regulations to the stock exchanges and alleged delay of one day in making disclosures to the target company, it is submitted that the requisite letter containing the disclosure as required under Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 and under PIT Regulations, was sent by courier dated November 01, 2012 to the stock exchanges (BSE & MSE). The said courier was to be delivered on the next day i.e. November 02, 2012, but, it appears that either the courier got delivered on November 03, 2012 or the stock exchange after receiving the same on November 02, 2012 (i.e. Friday), might have published the disclosure on November 05, 2012, since November 03, 2012 and November 03, 2012 were Saturday and Sunday respectively;*

iv. *In the circumstances, wherein the acquirer Ms. Vidya Srinivasan and transferors Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuraman had filed the disclosures in time, there is no violation of provision of Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 and Regulation 13 of PIT Regulations as alleged. It was also pointed out while replying to the supplementary SCN that as per the earlier SCN, the delay for making disclosure under the Takeover Regulations was only one day;*

C. ***Acquisition/ Transfer Date December 31, 2012: (****Acquisition by Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon and transfer by Ms. Suchitra Murali Balakrishnan)*

i. *That the acquisition made by Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon was in the nature of inter-se transfer of shares amongst promoters, wherein they had each acquired 0.72% shares from Ms. Suchitra Murali Balakrishnan;*

ii. *That further the transfer made by Ms. Suchitra Murali Balakrishnan on December 31, 2012 was in the nature of inter se transfer of shares amongst promoters, wherein she had transferred 2.88% shares to Ms. Vidya Srinivasan (0.72%), Mr. Murali Srinivasan Venkatraman (0.72%), Mr. V Srinivasan (0.72%) and Mr. Narayan Sethuramon (0.72%);*

iii. *That since the total acquisition of 2.88% was covered by exemption provided under Regulation 10 of Takeover Regulations, 2011, each of the acquirers had also made a disclosure on December 24, 2012 to the stock exchange and the target company regarding the (then) proposed acquisition in consonance with Regulation 10(5);*

iv. *That thereafter, post the acquisition on December 31, 2012, each of the acquirers had filed the requisite disclosures dated January 02, 2013 (all couriered under one cover) under both Takeover Regulations and PIT Regulations to the stock exchanges, since January 01, 2013 happened to be a holiday on account of New year;*

v. *With regard to alleged delay of two days in making the disclosure to the stock exchange regarding acquisitions made on December 31, 2012 by Ms. Vidya Srinivasan and Mr. V. Srinivasan, alleged delay of one day in making disclosure to the stock exchange regarding acquisitions made on December 31, 2012 by Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon, and alleged delay of two days in making the disclosure to the stock exchange regarding transfer of shares by Ms. Suchitra Murali Balakrishnan, it has been submitted by each of the acquirers/ transferors, as applicable, that post the acquisition/ transfer vide letter dated January 02, 2013 (all couriered under one cover), the requisite disclosure under both Takeover Regulations and PIT Regulations were sent to the stock exchanges, since January 01, 2013 happened to be a holiday on account of New Year. Further, as regards the alleged delay of one day in making disclosure to the target*

company under the Takeover Regulations, 2011 and PIT Regulations pursuant to the acquisition/ transfer, it has been submitted that the same was sent by courier dated January 02, 2013 to the target company;

vi. *That the inadvertent delay occurred due to new year holidays going on at the relevant time, as the concerned staff handling documentation/ compliances etc. were on leave and not available. Further that as per the earlier SCN, the delay alleged under Takeover Regulations was only one day;*

vii. *That admittedly the disclosures have been made, albeit belatedly, to the stock exchanges, which have been received by them and disclosures published on their website.*

15. The Noticees have further also submitted as follows:

a. *That the alleged violations (pertaining to filing of belated disclosures) are at the highest a technical, procedural and venial breach;*

b. *That the alleged violations are not deliberate and intentional;*

c. *That the alleged violations have not caused any loss to any investor and also not adversely affected the shareholders of the target company or the securities market in any manner since the shareholding of the promoter group remained same and individual promoters shareholding details were all along in public domain;*

d. *That there were no shareholder/ investor complaints;*

e. *That the Noticees have not made any gain or gained any unfair advantage;*

f. *That the alleged violation of Takeover Regulations and PIT Regulations are arising out of the same transaction and that Regulation 7(1) and Regulation 7(1A) of the Takeover Regulations, Regulation 29(2) of Takeover Regulations, 2011 and Regulation 13 of PIT Regulations are not stand alone regulations, but, one is corollary of the other;*

g. *In the matter, reference has been made to the Order dated September 04, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Pvt. Ltd. Vs. SEBI, wherein it has been held that:*

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

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

16. Subsequent to the remand of the matter, an opportunity for personal hearing was granted to the Promoter Noticees on August 10, 2016 vide hearing Notice dated July 08, 2016. Vide email dated August 09, 2016 the Authorized Representatives (ARs) of the Noticees requested that the hearing be rescheduled as they were preoccupied on the scheduled date. Accordingly, vide email dated August 23, 2016, the Noticees were informed that the hearing had been rescheduled for September 29, 2016. On the scheduled date, Mr. Vinay Chauhan, Advocate and Mr. K.C. Jacob, Advocate, ARs, appeared on behalf of the Promoter Noticees.

17. The ARs *inter alia* cited the judgment dated December 16, 2015 of the Hon'ble SAT in the matter of *Ravi Mohan v/s. SEBI* and submitted a copy of the same. The ARs further sought time up to October 07, 2016 to make additional submissions in the matter. Accordingly, vide individual letters dated October 60, 2016 the Noticees filed additional written submissions in the matter. The Noticees reiterated their earlier replies and also *inter alia* stated as follows:

    a) *That Regulation 29(3) is restricted in its applicability only to "allotment of shares" and "acquisition of shares". The same is not applicable at all to cases of "sale/ disposal of shares". Since Regulation 29(3) does not set out any event relating to the sale of shares specified under Regulation 29(2), the question of complying with Regulation 29(2) within two days of sale of shares does not arise at all. The Noticees sought to rely upon the judgment of the Hon'ble SAT in the matter of Ravi Mohan Vs SEBI (date of Order December 16, 2015) involving interpretation of provisions of Regulation 7(1A) of the erstwhile Takeover Regulations, 1997. It has been further stated that Regulation 7(1A) is similar to the provisions of Regulation 29(2) and 29(3) of Takeover Regulations, 2011;*
    b) *Further that under Regulation 13(3), a person who holds more than 5% shares in a Target Company is required to make a disclosure if the change exceeds 2% of the total shareholding of the Target Company. Further, under Regulation 13(4A), a person who is a promoter of the Target Company has to make a disclosure with regard to change in his*

shareholding, if the change exceeds 5 lacs in value or 25000 shares or 1% of total shareholding, whichever is lower. It has been stated that in the given case, the same person would be covered by both the Regulations, as in the case at hand. The contents/ substance of disclosures made by the Noticees under both the Regulations are the same. Though the Forms (Form C and D) are different, but in substance both are same. In fact the requirements under Regulation 13(4A) are more stringent. Therefore, when the disclosure under Regulation 13(4A) has been made, automatically disclosure requirements under Regulation 13(3) are also covered. The Noticees have submitted that that the duplication involved in the disclosures may be considered a mitigating factor.

18. During the course of the adjudication proceedings, the Hon'ble Supreme Court vide its Order dated November 26, 2015 in the matter of *SEBI v. Roofit Industries Ltd.* opined that the Adjudicating Officer had no discretion under Section 15J in deciding the quantum of penalty for offences committed between 2002 and 2014, other for than penalty under Section 15F(a) and Section 15HB of the SEBI Act. However, subsequently, another Bench of the Hon'ble Supreme Court in the matter of *Siddharth Chaturvedi v. SEBI* vide Order dated March 14, 2016 stated that the matter deserved consideration at the hands of a larger Bench. Accordingly, the Supreme Court directed that the papers of these appeals be placed before the Hon'ble Chief Justice of India for placing these matters before a larger Bench. Hence, the current Adjudication proceedings were kept on hold until determination of the issue of applicability of Section 15J to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

19. However, subsequent to the amendment made vide the Finance Act, 2017 to Section 15J of the SEBI Act, 1992 (notified on April 26, 2017), the following Explanation has been inserted in Section 15J:

''Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, 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.''.

20. Thus, it is now settled that Section 15J also applies to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

21. Subsequent to the notification of the Finance Act, 2017 and the amendment made thereby to Section 15J of the SEBI Act, an opportunity of personal hearing was granted to the Noticees vide the hearing notice dated April 19, 2017. On the scheduled date of hearing, i.e. May 15, 2017, Mr. K.C. Jacob, Advocate and AR, appeared on behalf of the Promoter Noticees and reiterated their earlier submissions and placed on record the Adjudication Order dated May 12, 2017 in the matter of Bakulesh Tramnaklal Shah.

22. Subsequently, vide letter dated June 02, 2017 (emailed on June 05, 2017) and letter/ email dated July 26, 2017, Mr. Murali Srinivas Venkatram submitted that he is the son of Ms. Vidya Srinivasan and Mr. V Srinivasan. Vide letter dated June 02, 2017, emailed on June 05, 2017, Mr. Murali Srinivas Venkatram has further stated that Ms. Vidya Srinivasan expired on May 08, 2017 and forwarded a scanned notarized copy of the death certificate of Late Ms. Vidya Srinivasan. Further, vide letter/ email dated July 26, 2017, Mr. Murali Srinivas Venkatram stated that Mr. V Srinivasan expired on July 25, 2017 and forwarded a copy of Medical Certificate of cause of death issued by the Corporation of Chennai, Health Department in respect of Late Mr. V Srinivasan and the copy of Burial Ground Report of Death. Vide the said letters/ emails, Mr. Murali Srinivas Venkatram has *inter alia* submitted that since Ms. Vidya Srinivasan and Mr. V. Srinivasan are no more alive, the adjudication proceedings against Ms. Vidya Srinivasan and Mr. V Srinivasan are liable to be abated. Vide email dated July 27, 2017, Mr. Murali Srinivas Venkatram advised to submit an attested/ notarized copy of the death certificate of Late Mr. V Srinivasan at the earliest. Accordingly, vide email dated August 3, 2017, Mr. Murali Srinivas Venkatram submitted a scan of the notarized copy of the death certificate of Late Mr. V Srinivasan.

23. Further, an email was sent to the AR of the Noticees clarifying that as regards the transaction dated December 31, 2012, the Noticee Promoters viz. Ms. Vidya Srinivasan, Mr. Murali

Srinivasan Venkatraman, Mr. V. Srinivasan and Mr. Narayanan Sethuramon each had acquired 46,000 shares from Noticee Promoter Ms. Suchitra Murali Balakrishnan on December 31, 2012, as per the details enclosed at Annexure-2 of Supplementary Show Cause Notice dated December 09, 2014. Thus, since the acquisition by each of the Noticee promoters viz. Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon exceeded 25,000 shares and further, disposal by Noticee Promoter Ms. Suchitra Murali Balakrishnan (total of 1,84,000 shares) also exceeded 25,000 shares/ 1% of the shareholding, disclosure under Regulation 13(4A) was triggered in respect of each of the promoter Noticees viz. Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V. Srinivasan, Mr. Narayanan Sethuramon and Ms. Suchitra Murali Balakrishnan. And, since the disclosure was not made within the time specified under Regulation 13(5) of PIT Regulations, it was *inter alia* alleged that the promoter Noticees viz. Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V. Srinivasan, Mr. Narayanan Sethuramon and Ms. Suchitra Murali Balakrishnan had *inter alia* violated Regulation 13(4A) read with 13(5) of PIT Regulations w.r.t. transaction dated December 31, 2012. The Noticees were advised to make further submissions, if any, by July 26, 2017. It was informed therein to the AR of the Noticees that that the written submissions already made as well as submissions made at the hearings have been taken on record. However, no reply has been received till date.

CONSIDERATION OF ISSUES AND FINDINGS

24. I have examined the SCNs and the supplementary SCNs issued to the Noticees, the submissions made by the Noticees in their replies and during the personal hearings and the documents available on record. The allegation against the Noticees is regarding violation of the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011 and/or PIT Regulations, as applicable.

25. In this regard, at the very outset I note that vide letter dated June 02, 2017 it has been stated that Ms. Vidya Srinivasan expired on May 08, 2017 and Mr. V Srinivasan expired on July 25, 2017. Notarized copies of the death certificates of Late Ms. Vidya Srinivasan and of Late Mr. V

Srinivasan was also provided. I note that In the matter ***of Padmalaya Telefilms Ltd. (November 2, 2006), the Hon'ble WTM, SEBI*** *inter-alia* held that:

"…Since the proceedings were initiated against the personal acts of omission of a person who is no more alive to face the penalty, the proceedings against him are liable to be abated".

26. Further, in Girijandini vs. Bijendra Narain (AIR 1967 SC 2110), the Hon'ble Supreme Court, *inter-alia* observed that in case of personal action, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.

27. In view of the above, the adjudication proceedings against Late Ms. Vidya Srinivasan and Late Mr. V Srinivasan are liable to be abated without going into the merits of the case. The matter in respect of Late Ms. Vidya Srinivasan and Late Mr. V Srinivasan is accordingly disposed of.

28. The issues that, therefore, arise for consideration in the present case are:

a) Whether the Noticees viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon violated the provisions of Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 during the year 2012, as applicable?

b) Whether the Noticees viz. Mr. Murali Srinivasan Venkatraman, Mr. Narayan Sethuramon and Ms. Suchitra Murali Balakrishnan violated the provisions of Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 during the year 2012/2013, as applicable?

c) Whether the Noticees viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon violated the provisions of Regulation 13(3) and 13(4A) read with Regulation 13(5) of PIT Regulations during the year 2012?

d) Whether the Noticees viz. Mr. Murali Srinivasan Venkatraman, Mr. Narayan Sethuramon and Ms. Suchitra Murali Balakrishnan violated the provisions of Regulation 13(4A) read with Regulation 13(5) of PIT Regulations during the year 2012/2013, as applicable?

e) Do the violations, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?

f) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

29. Before moving forward, it will be appropriate to refer to the relevant provisions of the Takeover Regulations, 1997, Takeover Regulations, 2011 and PIT Regulations which reads as under:

Regulation 7(1), (1A) & (2) of Takeover Regulation, 1997:

Acquisition of 5 per cent and more shares or voting rights of a company.

7. (1) *Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.*

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

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

7(2) *The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—*

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

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

Regulation 29(2) read with 29(3) of Takeover Regulations, 2011:

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.*

29(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

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

(b) the target company at its registered office.

PIT Regulations

[1][Disclosure of interest or holding in listed companies by certain persons - Initial Disclosure]

13. *(1)....*

(2).....

Continual disclosure.

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

(4)....

[1] Substituted for the words "Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure." by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

[2][(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.]

(5) The disclosure mentioned in sub-regulations [3][(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.

FINDINGS

30. At the outset, I find that the Hon'ble SAT vide Order dated March 17, 2016 had quashed the Order dated October 29, 2015 passed in the matter and restored the matter to the file of the adjudication officer for passing fresh order on merit and accordance with law. The said Hon'ble SAT Order while quashing Order dated October 29, 2015 had observed that in view of the discrepancy of facts set out in the show cause notice and the supplementary show cause notice, in relation to the number of days in complying with the provisions of Regulation 7 of Takeover Regulations, the Counsel for the parties had stated that the impugned order be set aside and the matter be restored to the file of adjudication officer for passing fresh order on merits and in accordance with law. The alleged violations in the impugned Order *inter alia* included Regulation 7 of Takeover Regulations, 1997, Regulation 29 of Takeover Regulations, 2011 and Regulation 13 of the PIT Regulations. In view thereof, the ARs were advised to clarify the matter at the hearing held on September 29, 2016.

[2] Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.
[3] Substituted for the symbols, numbers and word "(3) and (4)" by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2011 w.e.f. 16-08-2011.

31. It was pointed out to the ARs at the time of hearing that the supplementary show cause notice was issued to the Noticees clarifying the matter. Further, it was communicated that the subsequent reply given by the Noticees to the Supplementary SCN as well as the submissions made by the ARs at the time of hearing had been taken on record. Thus, it was made clear to the ARs that there was no discrepancy of facts as set out in the show cause notice and supplementary show cause notice. The supplementary show cause notice was based on direct evidence of receipt of disclosure documents as per BSE's records, and the same was already clarified accordingly in the supplementary SCN.

32. Moreover, when ARs were advised to clarify the matter and explain the discrepancy, the ARs could not point out any discrepancy. It was only claimed by the ARs that they did not receive a copy of the supporting evidence of BSE having received the disclosure made by Ms. Vidya Srinivasan in respect of Regulation 7(1) and 7(1A) of Takeover Regulations, 1997 on April 11, 2011 along with the Supplementary SCN. Accordingly, a duplicate copy of the same was provided to the ARs at the time of the hearing.

33. I now proceed with the alleged violations of the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011 and/ or PIT Regulations, as applicable. The details of non-compliance by the Noticees, are as given below:

Name of the Acquirer/ Seller	Date of the transaction	Sale (-ve)/ purchase	Shareholding of the acquirers/sellers (in %)		Shareholding of the promoter group		Due date of compliance	Actual date of compliance	Delay (in days)	Alleged Violations
			Before acq/sale	After acq/sale	Before acq/sale	After acq/sale				
Ms. Vidya Srinivasan	21.03.2011	774,370 (12.09%) (Inter-se transfer)	9.99	22.08	65.38	65.38	23.03.2011	*11.04.11 # 04.04.11	*19 #12	Reg 7(1) & 7(1A) r/w 7(2) of Takeover, 1997 and Reg 13(3) r/w 13(5) of PIT Reg
Mr. V. Srinivasan			12.09	0.00				*08.04.11 #04.04.11	*16 #12	Reg 7(1A) r/w 7(2) of Takeover, 1997 and Reg 13(3) r/w 13(5) of PIT Reg
Ms. Vidya Srinivasan	31.10.2012	1,731,700 (27.02%) (Inter-se transfer)	22.14	49.16	66.50	66.50	02.11.2012	*05.11.12 # To SE 05.11.12 # To Co.03.11.12	*3 # 3 to SE # 1 to Co.	Reg 29(2) r/w 29(3) of Takeover regulations, 2011 and Reg 13(3) and 13 (4A) r/w 13(5) of PIT Reg
Mr. Murali Srinivasan Venkatraman			14.54	0.00						
Mr. Narayan Sethuramon			12.48	0.00						
Ms. Vidya Srinivasan	31.12.2012	46,000 (2.88%) (Inter-se transfer)	49.16	49.88	66.50	66.50	02.01.2013	*04.01.2013 # To SE 4.01.2013 #To Co. 03.01.2013	*2 # 2 to SE #1 to Co.	Reg 29(2) r/w 29(3) of Takeover Regulations, 2011 and Reg 13 (4A) r/w 13(5) of PIT Reg.
Mr. Murali Srinivasan Venkatraman			0.00	0.72				*03.01.2013 # To SE 3.01.2013 #To Co. 3.01.2013	*1 # 1 to SE #1 to Co.	
Mr. V. Srinivasan			0.00	0.72				* 04.01.2013 # To SE 4.01.2013 # To Co. 3.01.2013	*2 # 2 to SE # 1 to Co.	
Mr. Narayan Sethuramon			0.00	0.72				*03.01.2013 # To SE 3.01.2013 # To Co. 3.01.2013	*1 # 1 to SE # 1 to Co.	
Ms. Suchitra Murali Balakrishanan			4.55	1.67				*04.01.2013 # To SE 4.01.2013 # To Co. 3.01.2013	*2 # 2 to SE # 1 to Co.	

*Note: * means compliance under Takeover Regulation with Co. & Exchg.*

 # means compliance under PIT Regulations

SE means Stock Exchange & Co. means to company/ target company

34. As noted above, the proceedings against Late Ms. Vidya Srinivasan and Mr. V Srinivasan are liable to be abated. The issue now for consideration before me is whether the Noticees apart from Late Ms. Vidya Srinivasan and Late Mr. V Srinivasan i.e. Mr. Murali Srinivasan Venkatraman, Mr. Narayan Sethuraman and Ms. Suchitra Murali Balakrishan (hereinafter referred to as the 'surviving Noticees') failed to make the relevant disclosures under the provisions of Takeover Regulations, 1997 and/or Takeover Regulations, 2011 and/ or PIT Regulations, as applicable, within the stipulated time.

35. It was observed that Noticees were the promoters of the Company and executed certain *inter-se* transfers amongst themselves on three occasions i.e. on March 21, 2011, October 31, 2012 and December 31, 2012. I note that the said transactions executed by the Noticees on the aforesaid dates obligated the Noticee promoters to make necessary disclosures under the Takeover Regulations, 1997 and/ or Takeover Regulations, 2011 and/ or PIT Regulations, as applicable, to the Company and/ or the Stock Exchanges where the shares of the company were listed.

36. A detailed examination of these transactions and the disclosures required to be made under the requisite provisions of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011 and/ or PIT Regulations, if any, and the status of compliance by the Noticees to the same have been brought out below:

A. <u>Transaction date March 21, 2011:</u>

i. ***Transaction Details****:* On March 21, 2011, Mr. V Srinivasan transferred 7,74,370 shares amounting to 12.09% of shares and voting rights of the company to Ms. Vidya Srinivasan as a result of which the shareholding of Mr. V Srinivasan in the company fell down to nil and shareholding of Ms. Vidya Srinivasan increased from 9.99% to 22.08%. Since the transaction dated March 21, 2011 was an *inter-se* transfer between promoters Late Ms. Vidya Srinivasan and Late Mr. V Srinivasan and, as noted above, the proceedings against Late Ms. Vidya Srinivasan and Late Mr. V Srinivasan are liable to be abated, the alleged violations arising out of the said transaction are now infructuous and do not warrant any further discussion.

B. <u>Transaction date October 31, 2012:</u>

i. ***Transaction Details****:* On October 31, 2012, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon transferred 17,31,700 shares amounting to 27.02% of shares and voting rights of the company to Ms. Vidya Srinivasan. As a result, the shareholding of Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon in the company fell down to Nil from 14.54% and 12.48% respectively and the shareholding of Ms. Vidya Srinivasan increased from 22.14% to 49.16%. However, as noted above, the proceedings against Late Ms. Vidya Srinivasan are liable to be abated.

ii. ***Disclosure under Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 by Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon:*** Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon, together with persons acting in concert with them, were holding more than 5% shares in the company. Hence, they were required under Regulation 29(2) to disclose every acquisition or disposal of two percent or more shares of the company. The Noticee promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon had each disposed of more than two percent shares of the company vide transaction dated October 31, 2012 and were required to make disclosure to the Company and the Stock Exchange where the shares were listed within two working days. It has been alleged that there has been a delay of three days in filing disclosure to the exchanges and to the company under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 by Noticee promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon.

iii. ***Disclosure under Regulation 13(3) read with Regulation 13(5) of PIT Regulations by Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon:*** The Noticee promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon were also required to make disclosures under Regulation 13(3) read with Regulation 13(5) of the PIT Regulations by November 02, 2012 as each one of them were individually also holding more than 5%

shares in the company and change in each of their shareholding by virtue of the transaction dated October 31, 2012 exceeded 2% of the total shareholding. However, the disclosure under Regulation 13(3) read with 13(5) of PIT Regulations was made by the Noticee promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon on November 03, 2012 to the company i.e. with a delay of one day;

iv. ***Disclosure under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations by Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon:*** Being promoters of the company, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon were all also required to disclose any change in their shareholding in excess of Rs 5 lakh in value or 25,000 shares or 1% of the paid up capital, whichever is lower, under Regulation 13(4A) (inserted by SEBI (PIT) Amendment Regulations, 2011 w.e.f. 16.08.2011) read with Regulation 13(5) of the PIT Regulations. Since the change in their shareholding after the transaction on October 31, 2012 exceeded 25,000 shares/ 1% of the paid-up capital of the Company, Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon ought to have disclosed the same to the company and the stock Exchange under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations by November 02, 2012. However, the same was disclosed on November 05, 2012 to the stock exchange and on November 03, 2012 to the company. Thus, it was alleged that there was a delay of one day in filing the disclosure under Regulation 13(3) and 13(4A) read with Regulation 13(5) of the PIT Regulations with the company and delay of three days in filing disclosure under Regulation 13(4A) read with Regulation 13(5) of the PIT Regulations with the stock exchange;

v. ***Submissions made by Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon:*** Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon have submitted that the said transaction was covered by exemption provided under Regulation 10 of Takeover Regulations, 2011 and disclosure of the said proposed acquisition was made on October 22, 2012 to the stock exchanges and company under Regulation 10(5). They further submitted that post transfer of shares on October 31, 2012, Mr. Narayan Sethuramon and Mr. Murali Srinivasan Venkatraman had filed the requisite disclosure on November 01, 2012 under Regulation 29(2) and Regulation 10(6) of Takeover Regulations, 2011 and Regulation 13(3)

and Regulation 13(4A) of the PIT Regulations. The Noticees Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon have *inter alia* further explained that the letter containing the disclosure as required under Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 and under PIT Regulations were sent by courier dated November 01, 2012 to the stock exchanges (BSE & MSE). The said courier was to be delivered on the next day i.e. November 02, 2012, but, it has been submitted that it appears that either the courier got delivered on November 03, 2012 or the stock exchange after receiving the same on November 02, 2012 (i.e. Friday), might have published the disclosure on November 05, 212, since November 03, 2012 and November 04, 2012 being Saturday and Sunday respectively.

vi. ***Findings:***

1. Though the concerned Noticees viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon have *inter alia* stated that disclosure of the said proposed acquisition was made on October 22, 2012 to the stock exchanges and company under Regulation 10(5) of the Takeover Regulations, 2011, I note that the ***Hon'ble Securities Appellate Tribunal (SAT) in Premchand Shah and Others V. SEBI (Appeal no. 108 of 2010 decided on 21.02.2011)***, has held as follows:

> *"..... When law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all. Both sets of regulations prescribe formats in which the disclosures are to be made and those are then put out for the information of the general public through special window(s) of the stock exchange which did not happen in this case. The fact that non-disclosure has been made penal makes it clear that the provisions of regulation 7(1A) of the takeover code and regulations 13(3) and 13(4) of the insider regulations are mandatory in nature. Non-disclosure of the information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take an informed decision while making investments."*

2. Further, though it has been submitted that letter containing the disclosure as required under Regulation 29(2) read with 29(3) of the Takeover Regulations, 2011 and under PIT Regulations were sent by courier dated November 01, 2012 to the stock exchanges, I find it pertinent to mention here that ***Hon'ble Securities Appellate Tribunal (SAT) in Mega Resources Ltd. Vs SEBI dated March 19, 2002 (Appeal no. 49/2001)*** has made the following observation:

> *"….the regulation is not simply on sending the information, it requires disclosure. Mere dispatch of the information is short of the said requirement…..Regulation 7(1) requires the acquirer to disclose the aggregate of this holding…Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox…I am not inclined to view that by posting a letter under certificate of posting, stating the shareholding by itself is sufficient compliance of regulation 7(1). In my view the Appellant has failed to comply with the requirement of regulation 7(1), for the reason that it has failed to make the disclosure of the requisite information to Bombay Dyeing."*

3. It has been submitted that the transferors Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuraman had filed the disclosures in time, as such, there is no violation of provision of Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 and Regulation 13 of PIT Regulations as alleged. However, as has been brought out above, the Hon'ble SAT has held that requirement is that the information should reach the person to whom it is meant and the obligation does not end by simply posting the information in a letterbox. The Noticees viz. Mr. Narayan Sethuramon and Mr. Murali Srinivasan Venkatraman have not provided any documentary proof that the disclosure was received by the stock exchanges/ company, as applicable on or before November 02, 2012.

4. In view of the above and in light of the judgments of the *Hon'ble SAT as above*, I conclude that Noticees viz. Mr. Narayan Sethuramon and Mr. Murali Srinivasan

Venkatraman have admitted violation of Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 and Regulation 13(3) and Regulation 13(4A) read with Regulation 13(5) of PIT Regulations for transaction date October 31, 2012. The number of days of delay is as given in table at Para 33 of the Order.

C. Transaction date December 31, 2012:

i. ***Transaction details:*** On December 31, 2012, Ms. Suchitra Balakrishnan transferred 1,84,000 shares amounting to 2.88% of the paid-up capital of the company, i.e 46,000 shares each to Ms. Vidya Srinivasan, Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon as a result of which the shareholding of Ms. Suchitra Balakrishnan fell from 4.55% to 1.67%, and shareholding of Ms. Vidya Srinivasan increased from 49.16% to 49.88% & shareholding of each of Mr. Murali Srinivasan Venkatraman, Mr. V Srinivasan and Mr. Narayan Sethuramon increased from nil to 0.72% respectively. As noted above, the proceedings against Late Ms Vidya Srinivasan and Late Mr. V Srinivasan are liable to be abated.

ii. ***Disclosure under Regulation 29(2) read with Regulation 29(3) of Takeover Regulations, 2011 by Mr. Murali Srinivasan Venkatraman, Mr. Narayan Sethuramon and Ms. Suchitra Balakrishnan:***

Ms. Suchitra Murali Balakrishnan, together with persons acting in concert was holding more than 5% shares in the company and had disposed of 2.88% shares of the company by virtue of transaction dated December 31, 2012. Hence, under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011, she was required to make disclosure of the disposal representing two per cent or more of the shares or voting rights in the company by January 02, 2013. However, it has been alleged that the same was disclosed by her on January 04, 2013 under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011. Thus, it was alleged that there was a delay of two days in filing disclosure under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 by Noticee promoter viz. Ms. Suchitra Murali Balakrishnan.

Similarly Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon, together with persons acting in concert, were also holding more than 5% shares in the company. Hence, they too were required under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 to make disclosure by January 02, 2013 of the acquisition representing two per cent or more of the shares of the company that were acquired acting in concert by virtue of transaction dated December 31, 2012. However, it was alleged that the said disclosure was made on January 03, 3013 by each of Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon. Thus, it was alleged that there was a delay of one day in filing disclosure under Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 by Noticees viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon in respect of acquisitions made by them by acting in concert.

Here I also note that Ms. Vidya Srinivasan and Mr. V Srinivasan have expired, and the proceedings against them are liable to be abated. Nevertheless, at the time of the transfer, the collective acquisition of the PACs including Late Ms. Vidya Srinivasan and Late Mr. V Srinivasan was more than 2%. Thus, even though the allegation of violation of Regulation 29(2) against Late Ms. Vidya Srinivasan and Late Mr. V Srinivasan has become infructuous, the factum of their acquisition cannot also be ignored while considering the allegation against the other two promoters, i.e., Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon.

Disclosures under Regulation 13(4A) read with Regulation 13(5) of PIT Regulations: The Noticee Promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayanan Sethuramon each had acquired 46,000 shares from Noticee Promoter Ms. Suchitra Murali Balakrishnan on December 31, 2012. Thus, since the acquisition by each of the Noticee promoters viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon exceeded 25,000 shares and further, disposal by Noticee Promoter Ms. Suchitra Murali Balakrishnan (total of 1,84,000 shares) also exceeded 25,000 shares/ 1% of the shareholding, disclosure under Regulation 13(4A) had triggered in respect of the Noticee Promoters viz. Mr. Murali Srinivasan

Venkatraman, Mr. Narayanan Sethuramon and Ms. Suchitra Murali Balakrishnan. Further, since the disclosure was not made within the time specified under Regulation 13(5) of PIT Regulations i.e. by January 02, 2013, it was *inter alia* alleged that the promoter Noticees viz. Mr. Murali Srinivasan Venkatraman, Mr. Narayanan Sethuramon and Ms. Suchitra Murali Balakrishnan had also *inter alia* violated Regulation 13(4A) read with Regulation 13(5) of PIT Regulations w.r.t. transaction dated December 31, 2012. It was alleged that the said disclosure was made on January 03, 2013 to both stock Exchange and the company by each of Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon. Thus, it was alleged that there was a delay of one day in filing disclosure with the Exchanges and with the company under Regulation 13(4A) read with 13(5) of PIT Regulations by the Promoter Noticees viz. Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon. Similarly, Noticee Promoter Ms. Suchitra Murali Balakrishnan disclosed to the company on January 03, 2013 and to the stock exchanges on January 04, 2013. Hence it was alleged that there was a delay of two days in filing disclosure to the exchanges and one day in filing disclosure to the company under Regulation 13(4A) read with 13(5) of PIT Regulations by Promoter Noticee Ms. Suchitra Murali Balakrishnan.

iii. ***Submissions inter alia made by Promoter Noticees viz. Mr. Murali Srinivasan Venkatraman, Mr. Narayanan Sethuramon and Ms. Suchitra Murali Balakrishnan:*** The Noticee acquirers Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon submitted that since the total acquisition of 2.88% was covered by exemption provided under Regulation 10, each of the acquirers had made a disclosure on December 24, 2012 to the stock exchange and the Company regarding the (then) proposed acquisition in consonance with Regulation 10(5). Further, the said Noticee promoters concerned have submitted that the requisite disclosure under Takeover Regulations, 2011 and/ or PIT Regulations for transfer/ acquisitions, as applicable, made by them on December 31, 2012 was sent by courier dated January 02, 2013 to the stock exchanges (BSE & MSE) and the Company, since January 01, 2013 happened to be a holiday on account of New Year. The said Noticee promoters have *inter alia* submitted that the inadvertent delay occurred due to new year holidays going on at the relevant time as the concerned staff were on leave and not available. The said Noticee promoters

concerned have further admitted that the disclosures have been made, albeit belatedly to the stock exchanges.

iv. **Findings:**

1. **In view of the above, I find that the Noticee promoters viz. Mr. Murali Srinivasan Venkatraman, Mr. Narayan Sethuramon and Ms. Suchitra Balakrishnan have violated Regulation 29(2) read with 29(3) of Takeover Regulations, 2011 and Regulation 13(4A) read with 13(5) of PIT Regulations for transaction date December 31, 2012. The number of days of delay is as given in table at Para 33 of the Order.**

37. I note further that the surviving Noticees have argued that since the buyers and sellers were both part of the promoter group, the transactions did not lead to a change in the overall shareholding of the company. In the matter, I find that similar facts were examined by the learned Adjudicating Officer in the Order against Bindal Synthetics Private Limited (hereinafter referred to as '**Bindal'**) dated January 31, 2014, wherein the Noticee viz. Bindal was a promoter group company that had sold 2.92% of share capital of the target company Blue Blends (India) Limited (hereinafter referred to as **'BBIL'**) to one Mr. Anand Arya, who was also a part of the promoter group. The said transaction was, thus, *inter se* transfer between the promoters. Further, as a result of this transaction there was no change in the overall promoter shareholding of BBIL. Bindal, the Noticee therein had contended that since the acquirer of the shares Mr. Anand Arya had made the requisite disclosure under the Takeover Regulations, 1997, the disclosure on part of the Noticee Bindal under Takeover Regulations, 1997 was not required, as it would not materially make any difference to the price of the scrip, as the information was already in public domain. The Learned Adjudicating Officer had held that under regulation 7(1A) of the Takeover Regulations, 1997, there is an independent and separate statutory obligation of making disclosure - both on the purchaser as well as seller of the shares, and disclosure by purchaser of shares does not absolve the seller of shares or vice versa from making the relevant disclosure under the afore-mentioned regulation. I further find that vide its Order dated June 09, 2014, the Hon'ble SAT has upheld the said Order of the Adjudicating Officer. It was also held therein that disclosures made

under PIT Regulations does not absolve the acquirer or seller of shares from the obligation to make disclosure under regulation 7(1A) of Takeover Regulations, 1997. Hence, I note that the buyers and sellers are separately liable to make disclosures of the purchase / sale under Takeover Regulations, 2011, even if they form part of the same PAC group. Also disclosure made under PIT Regulations does not absolve the surviving Noticees from making disclosures under Takeover Regulations, 2011, as applicable, and vice versa.

38. Further, subsequent to the remand of the matter, the surviving Noticees have *inter alia* contended that Regulation 29(3) is restricted in its applicability only to "allotment of shares" and "acquisition of shares". The same is not applicable at all to cases of "sale/ disposal of shares". Since Regulation 29(3) does not set out any event relating to the sale of shares specified under Regulation 29(2), the surviving Noticees have argued that the question of complying with Regulation 29(2) within two days of sale of shares does not arise at all. The surviving Noticees sought to rely upon the judgment of the Hon'ble SAT in the matter of *Ravi Mohan Vs SEBI* (Order dated December 16, 2015) involving interpretation of provisions of Regulation 7(1A) of Takeover Regulations, 1997. The surviving Noticees have stated that the provisions of Regulation 7(1A) under Takeover Regulations, 1997 are similar to the provisions of Regulation 29(2) and 29(3) of Takeover Regulations, 2011.

39. In this regard, I note that ***cited judgment of the Hon'ble SAT in the matter of Ravi Mohan Vs SEBI (Order dated December 16, 2015)*** has held that disclosure obligation arising under Regulation 7(1A) of Takeover Regulations, 1997 has to be discharged in accordance with Regulation 7(1A) read with Regulation 7(2). The Hon'ble SAT further observed that Regulation 7(2) does not provide for disclosure obligation arising from sale of shares or voting rights specified under Regulation 7(1A). In such a case, Hon'ble SAT has held that there being no obligation under Regulation 7(2) to make disclosure of sale of shares specified under Regulation 7(1A), the appellant Noticees in the said Order cannot be held guilty of failing to make disclosure under Regulation 7(1A) read with Regulation 7(2) of Takeover Regulations, 1997.

40. However, I find here that in the matter of ***Vizwise Commerce Pvt. Ltd. Vs. SEBI (Order dated January 28, 2015), the Hon'ble SAT*** has discussed the violation of Regulation 29(2) read with 29(3) on sale of shares. In the matter, the Learned Presiding Officer (PO) of the Hon'ble SAT, while opining that no fault can be found with the decision of the adjudicating officer in holding the appellant liable to pay penalty for delay in making disclosures and reducing the penalty for the reasons stated in the said SAT Order, has observed as follows:

> *"…Admittedly, the appellant has dispatched intimation to the exchange as also the company on June 27, 2013 in respect of both the sell transactions that took place on June 18, 2013 and June 25, 2013. Thus, there is a delay of six days in making disclosure in respect of first transaction." (*emphasis supplied)

41. I note that in the cited case, the Learned PO and one of the Learned Members of the Hon'ble SAT had in the same Order held different views while applying Regulation 29(3) to the same transaction of sale of shares. The Learned PO of Hon'ble SAT has taken into consideration delay of six days in making disclosure pursuant to sale of shares, whereas, the Learned Member of Hon'ble SAT has held the view that there is no time limit for disclosure of disposal of shares or voting rights under Regulation 29(3) of Takeover Regulation, 2011.

42. Thus, I note that there has been no definitive finding by the Hon'ble SAT on the issue of the applicability of the time limit prescribed under Regulation 29(3) on sale of shares under Regulation 29(2). Hence, in the matter at hand, I feel it is essential that the spirit of the Regulation is considered in its proper perspective before arriving at a finding. The sale of shares also entails change in shareholding, which should also be made available to the shareholders and stakeholders at large on time. In fact, one of the inherent objectives of the Takeover Regulations is the timely disclosure of the change in shareholding. Thus, I am of the view that the same is true for change in shareholding due to sale of shares as well. Having no time limit for such disclosure would defeat the purpose of the Takeover Regulations, 2011.

43. In the matter, I find that the ***Hon'ble Supreme Court of India in K. P. Verghese Vs. Income Tax Officer, Ernakulam & another (1981) 3 SCC 173*** observed as under while dealing with interpretation on statutory provisions:

> "*The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed by Lord Denning, it would be idle to expect every statutory provision to be drafted with devine prescience and perfect clarity. We can do no better than to repeat the famous words of Judge Learned Hand when he said:*
>
> > *..."it is true that the words used, in another literal sense, are the primary and ordinarily less reliable source of interpreting and meaning of any writing; be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning*"

44. It, thus, follows that merely because Regulation 29(3) does not specifically refer to disclosure within two working days of *"disposal of shares",* it does not imply that there is no time limit for disclosure of disposal representing two per cent or more of the shares or voting rights in the target company, although there is a requirement of making such disclosure under Regulation 29(2). Besides, I find that the Reconvened Committee on Substantial Acquisition of Shares and Takeovers under the Chairmanship of the Hon'ble Justice P.N. Bhagwati in its May 2002 Report had also held that reporting of acquisitions/ sales, including purchases or sales at every two percent level, be made to the stock Exchanges and the target company within two days.

45. I, thus, conclude that the intent of the Regulation is that even disposal of shares representing two per cent or more of the shares or voting rights in the target company, is also required to

be made to the target company and the stock exchange where the shares are listed, within two working days of disposal of such shares. This intent also becomes clear from the language of Regulation 29(3) which reads as follows: "*The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days ……".* Hence, I am of the view that the surviving Noticees were required to make disclosure of the disposal of the shares held by them, individually as well as in aggregate being PACs, wherever applicable, to the company and the stock exchange where the shares were listed, within two working days of sale of such shares.

46. The surviving Noticees have further argued that under Regulation 13(3) of the PIT Regulations, a person who holds more than 5% shares in a target Company is required to make a disclosure if the change exceeds 2% of the total shareholding of the target Company. Further, under Regulation 13(4A), a person who is a promoter of the Target Company has to make a disclosure with regard to change in his shareholding if the change exceeds 5 lacs in value or 25000 shares or 1% of total shareholding, whichever is lower. The surviving Noticees vide individual letters have further stated that in a given case, the same person may be covered by both the Regulations, as in the case at hand and contended that disclosures under both the regulations is nothing but in essence a duplication. The surviving Noticees have argued that the contents/ substance of disclosures made by the surviving Noticees under both the Regulations is the same, though the Forms {Form C for Regulation 13(3) and Form D for Regulation 13(4A)} are different, but, in substance both are same. The surviving Noticees have pointed out that in fact, the requirements under Regulation 13(4A) are more stringent. Therefore, the surviving Noticees have argued that when the disclosure under Regulation 13(4A) has been made, automatically disclosure requirements under Regulation 13(3) are also covered. The surviving Noticees have submitted that that the duplication involved in the disclosures may be considered a mitigating factor. In relation to the same, the surviving Noticees have sought to rely upon the Adjudication Order dated May 12, 2017 in the matter of Bakulesh Tramnaklal Shah. I find that in the cited Order, the Learned Adjudicating Officer has relied upon the ***Order of the Hon'ble SAT in the matter of Vitro Commodities Pvt Ltd. Vs SEBI (Order dated September 4, 2013),*** *wherein the Hon'ble SAT had held that:*

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

47. In this regard, I refer to the ***Order of the Hon'ble SAT in the matter of Gurmeet Singh Dhingra vs. SEBI (Order dated November 13, 2014).*** In the said matter, the appellant therein had *inter alia* contended, similar to the case at hand, that the appellant had discharged his primary onus of disclosure to the company and the stock exchange as per Regulation 13(4) of the PIT Regulations, and that SEBI is not justified in initiating proceedings and imposing penalty against the appellant on the ground that disclosures have not been made under regulation 13(3) of the PIT Regulations. The appellants therein had stated that when disclosure is made under regulation 13(4) which is more onerous than the obligation to make disclosure under regulation 13(3), it is futile to insist on making disclosures under regulations 13(3), and it must be held that on making disclosure under regulation 13(4), the requirement of making disclosure under regulation 13(3) is complied with. The Appellants in the said case had also similarly contended that Regulation 13(4) is a special regulation governing directors and officers of a company to disclose to the stock exchange and the company, if there is change in the shareholding pattern of such directors or officers, hence, once such disclosure is made under Regulation 13(4), it is not imperative that disclosure under regulation 13(3) too should be made, as the former being a special provisions, overrides the later.

48. In the matter, I find that the ***Hon'ble SAT vide its Order dated November 13, 2014*** held that they see no merit in the above contentions. I find further that the Hon'ble SAT while holding as such has observed as follows:

"10. Obligation to make disclosure under Regulation 13(3) is independent of the obligation to make disclosure under regulation 13(4) of PIT Regulations. Disclosure

under regulation 13(3) is required to be made in Form 'C', whereas, disclosure under Regulation 13(4) has to be made in Form 'D'. Regulation 13(3) gets triggered when the shareholding of any person holding more than 5% shares or voting rights in any listed company undergoes change in the shareholding and such change exceeds 2% of the total shareholding or voting rights in the company. Regulation 13(4) gets triggered when the shareholding of a person who is a director or officer of a listed company undergoes change from the last disclosure made under regulation 13(2) or under 13(4) and such change exceeds Rs 5 lac in value or 25,000 shares or 1% of total shareholding or voting rights whichever is lower. Thus, it is evident that obligation to make disclosure under regulation 13(3) is independent of the obligation to make disclosure under regulation 13(4).

11. Fact that the expression 'Any person' in regulation 13(3) would include a director or officer of a listed company referred to in regulation 13(4) cannot be a ground to infer that disclosure made under regulation 13(4) would mean complying with the disclosure requirement under regulation 13(3), because, not only the yardstick for triggering respective regulation is different, but also the format of disclosure between the two regulations is different. Therefore, the argument of the appellant that regulation 13(4) is a special regulation and by applying the principle that the special provision must prevail over the general provision contained in regulation 13(3) cannot be accepted, because, the said principle would come in to play only when there is conflict between the two provisions and not otherwise……. In other words making disclosure under regulation 13(4) will not absolve the appellant from making disclosure under Regulation 13(3) of the broker's regulations." (emphasis supplied)

49. I am of the view that the above judgment of the the Hon'ble SAT applies squarely to the case at hand.

50. The ***Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC***) held that *"In our considered opinion, penalty is attracted as soon as the*

contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…". Further in the matter of ***Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT*** had observed *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*."

51. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty on the surviving Noticee promoters viz. Mr. Murali Srinivasan Venkatraman, Mr. Narayan Sethuramon and Ms. Suchitra Murali Balakrishnan under Section 15A(b) of the SEBI Act, which reads as under:

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

52. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J 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.

Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, 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.

53. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the surviving Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the surviving Noticees. However, the disclosures under Regulation 13 of the PIT Regulations aims to make insider trading transparent by facilitating exposure of any illegal trade, and, thereby, serving as a deterrent. Further, the main objective of the Takeover Regulations, 1997 and Takeover Regulations, 2011 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. 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. Thus, the cornerstone of both Takeover Regulations and PIT Regulations is investor protection.

54. Besides, I find that the ***Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- 27.01.2014)*** has observed that:

"Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."

In view of the same, the argument put forth by the surviving Noticees that the alleged violations have not caused any loss to any investor, nor, has it adversely affected the shareholders of the target company or the securities market in any manner, since the shareholding of the promoter group remained same & individual promoters shareholding details were all along in public domain, also that there were no shareholder/ investor complaints - is not relevant for the given case.

55. I also find that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** *had observed that:*

"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."

In view of the same, the argument put forth by the surviving Noticees that the alleged violations were not deliberate and intentional and that the surviving Noticees have not made any gain or gained any unfair advantage is also not relevant for the given case.

56. I note further that the surviving Noticees have submitted that the details of their shareholding were already in public domain, *inter alia* by virtue of continuous quarterly disclosures made by the company to the stock Exchanges under clause 35 of the Listing Agreement. In the matter, I would like to refer to the ***Order of the Hon'ble Securities Appellate Tribunal (SAT) dated June 13, 2014 in the matter of Mafatlal Finance Company Limited (hereinafter referred to as 'MFCL'),*** wherein the Hon'ble SAT has held that obligation to make disclosure under Regulation 8(1) and 8(2) of the Takeover Regulations, is independent of the obligation to make disclosure under clause 35 of the Listing Agreement, which is on the company. Here too, I find that the obligation to make disclosures under the relevant provisions of the Takeover Regulations/ PIT Regulations, as applicable, was on the surviving Noticees. Besides I find that in the extant case, the disclosures under the relevant provisions of the Takeover Regulations,

1997/ 2011 and/ or PIT Regulations were required to be disclosed within two days/ two working days of the receipts of intimation of allotment of shares, or, the acquisition or sale of shares or voting rights, as the case may be, whereas disclosure under clause 35 of the listing agreement is done on a quarterly basis, within 21 days from the end of each quarter.

57. I also note that the surviving Noticees have argued that the alleged violation of Takeover Regulations and PIT Regulations are arising out of the same transaction and that Regulation 7(1) and Regulation 7(1A) of the Takeover Regulations, Regulation 29(2) of Takeover Regulations, 2011 and Regulation 13 of PIT Regulations are not stand alone regulations, but, one is corollary of the other. In the matter, reference has been made to the Order dated September 04, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Pvt. Ltd. Vs. SEBI. However, I am unable to accept this contention of the surviving Noticees. The disclosures under the Takeover Regulations and those under the PIT Regulations are substantially different, and have to be filed under different forms, which vary from each other and those are then put out for the information of the general public through special window(s) of the stock exchange. In the matter, the Order of the ***Hon'ble Securities Appellate Tribunal (SAT) in Premchand Shah and Others V. SEBI (Appeal no. 108 of 2010 decided on 21.02.2011)*** and ***Order of the Hon'ble SAT in the matter of Gurmeet Singh Dhingra vs. SEBI (Order dated November 13, 2014*** have been relied upon in the preceding paras of this Order.

58. I, thus, conclude that:

- **Mr. Murali Srinivasan Venkatraman and Mr. Narayan Sethuramon** have each violated Regulations 29(2) read with 29(3) of the Takeover Regulations, 2011 on 2 occasions, Regulation 13(3) read with 13(5) of PIT Regulations on 1 occasion and Regulation 13 (4A) read with 13(5) of PIT Regulations on 2 occasions;
- **Ms. Suchitra Murali Balakrishanan** has violated Regulations 29(2) read with 29(3) of the Takeover Regulations, 2011 on 1 occasion and Regulation 13 (4A) read with 13(5) of PIT Regulations on 1 occasion.

59. I find that under Section 15A(b) of the SEBI Act, for violation of the aforesaid Regulations, the prescribed penalty is one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

60. I note that reference has been made by the surviving Noticees to the decision of ***Hon'ble High Court of Bombay in the matter of SEBI Vs. Cobot International Capital Corporation Limited (Cobot) {2004 52 SCL 307 (BOM)},*** to highlight the Court's opinion to the effect that despite of the fact that Cobot had not filed any report under Regulation 3(4) of Takeover Regulations, 1997 which was mandatory, the Hon'ble High Court concurred with the view of Hon'ble SAT that non filing of the report in question was technical and minor defect or breach based on bonafide belief that Cabot was not liable or required to submit the report in view of the admitted exemption available under the SEBI Act and the Regulations. However, I note that the extant case is about delayed disclosures in respect of compliances required to be made under the Takeover Regulations/ PIT Regulations. And any transaction which requires compliance to disclosure obligation under the Takeover Regulations/ PIT Regulations, if not complied, is always a serious matter, and cannot be considered a mere 'technical' violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information. Besides, I note that it has since been clarified by the ***Hon'ble Supreme Court in its Order dated May 23, 2006 in the case of Chairman SEBI vs. Shriram Mutual Fund and Anr.,*** wherein the Hon'ble Supreme Court also held that *"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

61. I note further that the surviving Noticees have also pointed out that in the matter of ERP Soft Systems Limited, the Adjudicating Officer took a lenient view and exonerated the surviving Noticees therein from the charges leveled as per the SCN, despite returning a finding of violation of provisions of Regulation 29(2) of Takeover Regulations, 2011 & Regulation 13 of

PIT Regulations, *inter alia* on the ground that transfer was by way of transmission and not a voluntary act, though neither the Takeover Regulations nor PIT Regulations carve out an exemption for not making disclosure when the acquisition is by way of transmission of shares. I note that vide the said Order while taking a lenient view by concluding that transmission of shares is not a fit case for imposition of monetary penalty, it was clearly brought out therein that unlike transfer of shares which relates to a voluntary act on the part of the shareholders, transmission is brought about by the operation of law and sans any voluntary act on their part. The extant case involves *interse* transfer of shares between the Noticee promoters, thus, involving voluntary act on the part of the surviving Noticees. Hence, I find that this contention of the surviving Noticees too does not deserve any merit.

62. Also, even for the sake of argument, assuming that lower penalty has been imposed based on the facts and circumstances of those cases, it does not automatically imply that same lower penalty need to be imposed in the extant case. The determination of penalty in the extant case would depend upon the facts and circumstances of the extant case. In the matter, I would like to refer to the ***Order of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Hybrid Financial Services Limited Vs. SEBI (Appeal No.119 of 2014 and Order dated 12.06.2014)***, wherein SAT had observed as follows:

> *"……. argument that penalty imposed on appellant is excessive compared to penalty imposed in the case of M/s. Kamalakshi Finance Corporation Ltd. (supra) and Gupta Carpet International Ltd. is also without any merit, because, firstly, nothing is brought on record to show that facts in that case are similar to the facts in the present case. Secondly, assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted especially when the Regulations prescribe stringent action for non compliance of disclosure provisions which are mandatory….."*

63. In view of the same, I conclude that the aforesaid Orders referred to by the surviving Noticees cannot become the yardstick for imposing penalty in the extant case and the penalty in the extant case would depend on the facts and circumstances of the extant case.

64. Also, the surviving Noticees being the promoters of the Company had a greater responsibility to ensure compliance with the applicable regulations, and, should have put in place appropriate levels of accountability and checks and balances, to make certain that the documents dispatched by the surviving Noticees were received by the addressee(s) within the timeframe for compliance provided by the underlying regulations. I find that due to the surviving Noticees not ensuring the receipt of documents at the recipients end within the timeframe provided under the relevant provisions of the Takeover Regulations, 1997/ 2011/ PIT Regulations, as applicable, there was delay in dissemination of information to the general investors at every stage as enumerated in the Order.

ORDER

65. After taking into consideration all the facts and circumstances of the case, I impose the following penalty under Section 15 A(b) on the Noticees viz. **Mr. Murali Srinivasan Venkatraman, Mr. Narayan Sethuramon and Ms. Suchitra Murali Balakrishanan**, which will be commensurate with the violations committed by them:

Date of transaction	Name of Noticee Promoter	Violation of Regulation	Penalty
31.10.2012	**Mr. Murali Srinivasan Venkatraman**	29(2) r/w. 29(3) of Takeover Regulations, 2011	**Rs. 6,00,000 (Rupees Six lacs only) (payable jointly and severally)**
	Mr. Narayan Sethuramon		
	Mr. Murali Srinivasan Venkatraman	13(3) r/w. 13(5) of PIT Regulations	**Rs. 3,00,000 (Rupees Three lacs only)**
	Mr. Narayan Sethuramon		**Rs. 3,00,000 (Rupees Three lacs only)**
	Mr. Murali Srinivasan Venkatraman	13(4A) r/w. 13(5) of PIT Regulations	**Rs. 3,00,000 (Rupees Three lacs only)**
	Mr. Narayan Sethuramon		**Rs. 3,00,000 (Rupees Three lacs only)**
31.12.2012	**Ms. Suchitra Murali Balakrishanan**	13(4A) r/w. 13(5) of PIT Regulations	**Rs. 2,00,000 (Rupees Two lacs only)**
	Mr. Murali Srinivasan Venkatraman		**Rs. 2,00,000 (Rupees Two lacs only)**
	Mr. Narayan Sethuramon		**Rs. 2,00,000 (Rupees Two lacs only)**
	Ms. Suchitra Murali Balakrishanan	29(2) r/w. 29(3) of Takeover Regulations, 2011	**Rs. 2,00,000 (Rupees Two lacs only)**
	Mr. Murali Srinivasan Venkatraman		**Rs. 2,00,000 (Rupees Two lacs only) (payable jointly and severally)**
	Mr. Narayan Sethuramon		

66. Further, after taking into consideration all the facts and circumstances of the case, I find that the matter in respect of the Noticees viz. Late Ms. Vidya Srinivasan and Late Mr. V. Srinivasan cannot be proceeded with as the said Noticees have expired. Thus, the matter becomes infructuous and adjudication proceeding are accordingly disposed of.

67. The surviving 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

68. The surviving Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7.Payment is made for: (like penalties/ disgorgement/ recovery/ Settlement amount and legal charges along with order details)	

69. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to SEBI.

Date: August 14, 2017 **Anita Kenkare**

Place: Mumbai **Adjudicating Officer**