BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. - SRP/ DL/AO: 226-233 /2011]

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

In respect of

1.	**Mr. Ashwani Dewan**	**PAN : AAFPD7245M**
2.	**Mr. Anuj Dewan**	**PAN : AAPPJD0979F**
3.	**M/s. Six Sigma Realty Private Limited (formerly Competent Surveyors Pvt. Ltd.)**	**PAN : AADCC2366H**
4.	**M/s. Lee Infratech Pvt. Limited (formerly Lee Hotels Pvt. Ltd.)**	**PAN : AABCL4775H**
5	**Ms. Sunita Dewan**	**PAN : AGSPD2548J**
6	**M/s. ADB Trade Services Pvt. Ltd.**	**PAN : AAFCA1109A**
7	**M/s. Conchem Construction Pvt. Ltd.**	**PAN : AAACC5677B**
8	**M/s. Jas Expoship (P) Ltd.**	**PAN : AAACJ8422C**

In the matter of

M/s. A. V. Cottex Limited

BACKGROUND IN BRIEF

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had observed, while examining the offer document filed with it towards open offer made by Mr. Sudhir M. Naheta and Ms. Rajkumari S. Naheta in terms of regulations 10 and 12 of the SEBI (Substantial Acquisition of

Shares and Takeovers) Regulations, 1997 (hereinafter referred to as "**SAST Regulations**") to the shareholders of M/s. A. V. Cottex Limited (hereinafter referred to as "**AVCL/Company**") for acquisition of 11,98,380 shares constituting 20% of the total share capital of AVCL, certain non-compliances of the SAST Regulations by the Company and its promoters, namely (i) M/s. Conchem Construction Pvt. Ltd., (ii) Mr. Ashwani Dewan, (iii) Ms. Sunita Dewan, (iv) Mr. Anuj Dewan, (v) M/s. ADB Trade Services Pvt. Ltd., (vi) M/s. Competent Surveyors Pvt. Ltd. (presently known as Six Sigma Realty Pvt. Ltd., (vii) M/s. Lee Hotels Pvt. Ltd. (presently known as Lee Infratech Ltd.) and (viii) M/s. Jas Expoship (P) Ltd. (hereinafter collectively referred to as **"the Promoters/ the Noticees")**. Based on those observations **i**t was alleged that the Promoters acquired shares/voting rights in AVCL on various occasions during the year 2006 - 2007 but did not comply with the provisions of regulations 7(1), 7(1A), 11(1) and 11(2) of the SAST Regulations. During the relevant period, the shares of the Company were listed on the Bombay Stock Exchange Ltd. (**BSE**), the Delhi Stock Exchange Ltd. (**DSE**) and the Ahmedabad Stock Exchange Ltd. (**ASE**).

2. The said violation/contravention of the provisions of the SAST Regulations, if established, make the Noticees liable for penalty under section 15H (ii) and/or 15 A (b) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer vide order dated January 04, 2010 under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalty by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules"**) to inquire into and adjudge under section 15A (b) and 15H (ii) of the SEBI Act, the alleged violation/contravention of the aforesaid provisions of the SAST Regulations, by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice (**SCN**) was separately issued to each of the Noticees on March 11, 2010 under rule 4 of the Rules to show cause as to why inquiry be not initiated against them and penalty be not imposed under sections 15A (b) and 15H (ii) of the SEBI Act for the alleged violation of the provisions of regulations 7(1), 7(1A), 11(1) and 11(2) of the SAST Regulations.

5. In response to the SCN, the Noticees informed vide their letter dated June 19, 2010 that they have filed consent application before SEBI for settlement of the matter through the consent process. However, the consent terms as offered by the Noticees were subsequently rejected by the concerned authority. Intimation regarding rejection of consent application of the Noticees was received by the undersigned from SEBI on December 24, 2010. On receiving of the said information,

the undersigned once again advised the Noticees vide letter dated March 08, 2011 and thereafter, vide letter dated April 01, 2011 to file their replies to the SCN. In response to the same, the Noticees, vide a common letter dated April 14, 2011, requested for one-month's time to file their reply. Subsequently, they filed separate but similar replies in respect of the allegations vide their respective letters dated May 09, 2011. On perusal of the same, it was decided to conduct inquiry in the matter and for the purpose an opportunity of hearing was granted to the Noticees on June 28, 2011. Hearing on June 28, 2011 was attended by the authorized representatives of the Noticees namely, Mr. Anoop Dawar (Advocate) and Mr. Nishant Datta (Advocate). During the hearing, the authorized representatives, *inter alia,* submitted that they would file additional written submissions in the matter. The said additional submissions, in respect of the allegations were subsequently made by the Noticees vide their letter dated July 05, 2011.

6. The written and oral submissions made by the Noticees are mainly to the following effect :

- *That non-compliance of the provisions of the SAST Regulations was only a technical fault. During the period AVCL was undergoing financial crises and was under BIFR. It did not have adequate efficient professional staff to advice or comply with the regulations. It would have happened on account of lack of legal and technical support.*

- *That the said irregularities are not serious in nature and have not harmed the interest of any investor or resulted into any unfair advantage or gain to the Promoters. Further, the said irregularity has not affected the market equilibrium or the stability of the capital market and the same is required to be condoned. The Promoters had no malafide intention to suppress any information. AVCL was undergoing financial constraints and was not in position to appoint learned personnel to look after the compliance matters as per provisions of law. The lapse was totally unintentional and not with intention to suppress any information and the same deserves to be condoned.*

- *That a major fire incident in the factory premises of the company in May 2000 resulted in closure of its operations. The balance sheet of the Company as at March 31, 2001 reflected erosion of its entire net worth as a consequence thereof, the company was registered with BIFR as a sick industrial company.*

- *Subsequently, a rehabilitation scheme was prepared for consideration by the operating agency, Canara Bank. The net worth of the company turned positive during 2004-05 and the company was discharged from the purview of Sick Industrial Companies (Special Provisions) Act, 1985 on January 30, 2006. However, the company was under severe financial constraints and this was the primary reason why it could not seek appropriate legal and technical support for the compliances in question.*

Unless further steps for infusion of funds in the company were taken, it was feared that the company would again slip in the negative and become sick.

- *That the Persons Acting in Concert (majority whereof consisted of the promoters of the company) acquired 24, 51,500 number of shares during the year 2006. Part of these transactions constitute inter se transfers amongst promoters and were permitted under takeover code. However, due to lack of technical and legal support, the compliances specified under SAST Regulations for availing exemption could not be made. The Noticees also provided a gist of the acquisitions made during the relevant period as under:*

Acquirer	***Shares acquired from public***	***Shares acquired from/within promoter group***	***Total shares acquired***
ADB Trade Services Private Limited	*1,77,000*	*2,08,600*	*3,85,600*
Anuj Dewan	*0*	*2,46,800*	*2,46,800*
Mr. Ashwani Dewan,	*0*	*0*	*0*
Conchem Construction Private Limited	*1,96,900*	*2,32,500*	*4,29,400*
Jas Expoship Private Limited	*4,33,800*	*90,100*	*5,23,900*
Lee Infratech Private Limited	*4,50,200*	*0*	*4,50,200*
Six Sigma Reality Private Limited	*1,73,800*	*2,41,800*	*4,15,600*
Sunita Dewan	*0*	*0*	*0*
Total	*14,31,700*	*10,19,800*	*24,51,500*
Highest price	*₹ 0.10*	*₹ 10.00*	
Lowest price	*₹ 0.10*	*₹ 0.10*	

- *Had the erstwhile promoter group given a public offer, the price as the then prevailing market price calculated as provided under regulation 20 of the SAST Regulations would have been ₹ 10 /- (being highest price paid by erstwhile promoters for acquiring shares then and the lowest price ₹ 0.10 paise). Even if takeover to be triggered as on today, a public offer would have to be given at the price of ₹ 14.50/-. The participation of public at large was unlikely and no public shareholder would have tendered shares.*

- *That if open offer was made it would have been at ₹ 10 /-. However, there may not have been any large public participation. Further, considering the then scenario, the scope of return on investment to the shareholders would have been negligible.*

- *That the cost incurred to make open offer would have been prohibitive and no shareholder would have offered shares in the open offer which would have resulted in a futile exercise.*

- *That the price at which the shares were traded on re-listing and the current price at which the shares of the company are traded are much higher as compared to the price at which the open offer was to be made i. e. ₹ 14.50/- approx. Thus ultimately, the company and its shareholders have benefited despite failure to make open offer.*

- *That the trading in shares of the company, at the time of acquisitions in question, was under suspension. However, while the talks with the new management of the company for sale of majority/entire stake were on, the trading in shares of the company was resumed w.e.f. February 2007. A detailed chart showing the movement of price in the shares of the company from February, 2007 till date is as under, which indicate that after resumption of trading, the price at which the shares of the company have been traded has been considerably higher than the price, which could have been offered in the open offer in question. The public shareholders of the company therefore always have an option to exit from the company through stock market trades at a price higher than the price at which the open offer would have beeen triggered:*

Share price movement	*Highest Price*		*Lowest price*	
	Date	*Price*	*Date*	*Price*
2006-07	*30/03/2007*	*15.10*	*13/02/07*	*3.41*
2007-08	*12/12/2007*	*42.65*	*13/08/07*	*6.66*
2008-09	*06/06/2008*	*45.40*	*23/01/09*	*7.15*
2009-10	*06/10/09*	*14.79*	*06/04/09*	*6.51*
2010-11	*15/09/10*	*44.00*	*01/04/10*	*12.01*
April–June 2011	*20/04/11*	*20.01*	*16/06/11*	*10.75*

- *Two of the Noticees namely, Ashwani Diwan and Sunita Dewan have submitted that they had not acquired any shares during the financial year 2006 and they were not required to make any disclosures to the target Company or to the stock exchanges.*

CONSIDERATION OF ISSUES AND FINDINGS

7. I have carefully examined the allegations against the Noticees, the written and oral submissions made by them and the documents available on record. The issues that arise before me to be determined in the present case are that :

   a) Whether for the change/increase in shareholding/voting rights of the Noticees in the Company, they were required to comply with the provisions of regulation 7(1) read with regulation 7(1A) and/or regulations 11(1) and 11(2) of the SAST Regulations and, if yes, then whether the Noticees have complied with the same?

b) Does the non-compliance, if any, on the part of the Noticees attract penalty under section 15H (ii) and/or 15A (b) of the SEBI Act?

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

8. Before moving forward it would be pertinent to refer to the above referred provisions of the SAST Regulations alleged to have been violated by the Noticees. The same are reproduced hereunder :

> ***7. Acquisition of 5 per cent and more shares or voting rights of a company.***
>
> *(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. Acquisition of 5 per cent and more shares or voting rights of a company.***
>
> *(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) 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.*
>
> *11.* ***Consolidation of holdings.***
>
> *(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.*
>
> *(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:*

9. The relevant details of the case based on which the aforesaid allegations have been leveled against the Noticees are succinctly narrated below:

a) Pursuant to regulations 10 and 12 of the SAST Regulations an open offer was made by Mr. Sudhir Milapchand Naheta and Ms. Rajkumari Sudhir Naheta to acquire 11,98,380 equity shares of ₹ 10/- each representing 20 % of the issued and subscribed capital (20.5 % of the voting capital) of AVCL and the offer document in this regard was filed with SEBI by Collins

Stewart Inga Private Limited, the Manager to the Offer. On examination of the same it was, *prima facie*, observed by SEBI that the Noticees, who belong to the promoter group of AVCL, had collectively acquired 4,80,700 shares of AVCL on August 21, 2006 constituting 8.02% of the total issued and subscribed capital of the Company. Relevant details in this regard are given in the table underneath after sub-point 9 (c). On account of the said acquisition their cumulative shareholding/voting rights in the Company increased to 57.63%, thereby triggering the requirement of disclosures to the Company and to the stock exchanges in terms of regulation 7(1) of the SAST Regulations. It is alleged that the Noticees have failed to make the said required disclosures and have thus violated the provisions of regulation 7(1) of the SAST Regulations.

b) It was further observed that the Noticees had collectively acquired 8,56,200 shares (14.29 %) of the Company on May 20, 2006; 2,42,000 shares (4.05%) on June 30, 2006; 1,64, 300 shares (2.74 %) on July 31, 2006; 1,92,600 shares (3.21%) on August 10, 2006 and 4, 80, 700 shares (8.02%) on August 21, 2006 and on all the said 5 occasions the disclosure requirements as specified under regulation 7(1A) of the SAST Regulations were triggered, which the Noticees have allegedly failed to make. Relevant details of such acquisitions are given in the table underneath after sub-point 9 (C).

c) It was also observed that during the financial year 2006-07 the Noticees had collectively acquired shares of AVCL on different dates as detailed below, when the requirement of public announcement was triggered on 4 occasions under regulation 11 (1) and on 9 occasions under regulation 11(2) of the SAST Regulatios, which the Noticees had allegedly failed to comply with -

Date	**Mode of Acquisition**	**Name of the Acquirer**	**No of shares Acquired**	**% of the issued & subscribed shares**	**Cumulative No. of Shares**	**% of the Subcsd Shares**	**Trigger**	**Under Regulation**
1-Apr-06		Opening		0	1,173,625	19.59		
13-Apr-06	off market	Lee Hotels	303,700	5.07	1,477,325	24.66	First	11(1)
20-May-06	Off market	Anuj Dewan	246,800	4.12	1,724,125	28.77		
20-May-06	Off market	Competent	172,500	2.88	1,896,625	31.65		
20-May-06	Off market	ADB Trade	201,100	3.36	2,097,725	35.01		
20-May-06	Off market	Conchem Const	235,800	3.94	2,333,525	38.94	Second	11(1)
30-Jun-06	Off market	Jas Expoship	242,600	4.05	2,576,125	42.99		
10-Jul-06	Off market	Jas Expoship	39,400	0.66	2,615,525	43.65		
31-Jul-06	Off market	Jas Expoship	33,300	0.56	2,648,825	44.21		
31-Jul-06	Off market	Competent	78,300	1.31	2,727,125	45.51		

31-Jul-06	Off market	ADB Trade	49,000	0.82	2,776,125	46.33		
31-Jul-06	Off market	Conchem Const	3,700	0.06	2,779,825	46.39	Third	11(1)
10-Aug-06	Off market	Jas Expoship	56,600	0.94	2,836,425	47.34		
10-Aug-06	Off market	Competent	31,600	0.53	2,868,025	47.87		
10-Aug-06	Off market	ADB Trade	31,500	0.53	2,899,525	48.39		
10-Aug-06	Off market	Conchem Const	72,900	1.22	2,972,425	49.61		
21-Aug-06	Off market	Jas Expoship	90,700	1.51	3,063,125	51.12		
21-Aug-06	Off market	Competent	112,000	1.87	3,175,125	52.99		
21-Aug-06	Off market	ADB Trade	88,200	1.47	3,263,325	54.46		
21-Aug-06	Off market	Conchem Const	77,100	1.29	3,340,425	55.75		
21-Aug-06	Off market	Lee Hotels	112,700	1.88	3,453,125	57.63	Fourth	11(1)
5-Oct-06	Off market	Lee Hotels	1,200	0.02	3,454,325	57.65	Fifth	11(2)
10-Nov-06	Off market	Jas Expoship	46,200	0.77	3,500,525	58.42	Sixth	11(2)
10-Nov-06	Off market	Competent	21,200	0.35	3,521,725	58.77	Seventh	11(2)
10-Nov-06	Off market	ADB Trade	15,800	0.26	3,537,525	59.04	Eight	11(2)
10-Nov-06	Off market	Conchem Const	32,900	0.55	3,570,425	59.59	Nineth	11(2)
10-Nov-06	Off market	Lee Hotels	30,200	0.5	3,600,625	60.09	Tenth	11(2)
30-Nov-06	Off market	Jas Expoship	15,100	0.25	3,615,725	60.34	Eleventh	11(2)
30-Nov-06	Off market	Conchem Const	7,000	0.12	3,622,725	60.46	Twelth	11(2)
30-Nov-06	Off market	Lee Hotels	2,400	0.04	3,625,125	60.5	Thirteenth	11(2)
			24,51,500	**40.91**				

10. In respect of the allegations, I have noted that the Noticees have not disputed or denied that they belong to the promoter group of AVCL or that they are the persons acting in concert. They have also not denied or disputed the above said acquisition of shares or the allegations regarding not making of required disclosures under the regulations 7 (1) and 7 (1A) of the SAST Regulations or their failure in making the required public announcement/open offer in terms of regulation 11 (1) and 11 (2) of the SAST regulations. Rather they have honestly accepted the said lapses and attributed the same to lack of technical and legal support, which as stated, was largely on account of the financial constraints faced by the Company. Two of the Noticees i.e. Sunita Dewan and Ashwini Diwan have stated that they have not acquired shares of the Company during the relevant period and hence, they were not required to make any disclosures to the Company or to the stock exchanges.

11. The relevant extracts of the submissions made by the Noticees have been placed at para 6 above. The Noticees have, *inter alia*, stated that the cost incurred to make open offer would have been prohibitive and no shareholder would have offered shares in the open offer, which would have been

a futile exercise. Had a public offer was made, as per calculations in terms of regulation 20 of the SAST regulations the offer price would have been ₹ 10/- per share and the participation of public at large was unlikely and no public shareholder would have tendered shares. As the Company was under suspension there may not have been any large public participation. Considering the then prevailing scenario, the scope of return on investment to shareholders would have been negligible. Trading in the shares of the Company was resumed with effect from February 2007 and on resumption of trading the shares of the Company were traded at a price considerably higher than the price on which the open offer would have been made. The public shareholders had an option to exit through stock market trades at a price higher than the price at which the open offer would have been triggered. Therefore, even though there was non-compliance of the SAST Regulations the interests of public shareholders have not been adversely affeceted.

12. I do not agree with the above said contentions of the Noticees. The change in shareholding and timely disclosures thereof, is of utmost importance from the point of view of shareholders/investors as it enables them in making prompt decision on investments or even otherwise. Its basic purpose is to bring transparency in the securities market and to keep the market informed about substantial acquisition or sale of shareholding by anybody in a listed company. Although, the Noticees have contended that such non-compliances were unintentional or were technical in nature or it happened due to lack of technical or legal support etc., I cannot ignore the fact that they were under the statutory obligation to make the required disclosures, which they have failed to do, and thereby the shareholders, the investors and the entire market in general, were deptrived of such important information at that relevant point of time. In the matter of the abovementioned contentions of the Noticees that the said lapses are only technical in nature and were unintentional etc. and regarding the importance and relevance of such disclosures, I would first like to refer to the views of the Hon'ble SAT given in the matter of ***Milan Mahendra Securities Pvt. Ltd. Vs SEBI*** *(*Appeal No. 66 of 2003 in Order dated November 15, 2006) –

" … … ..the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market. We cannot therefore subscribe to the view that the violation was technical in nature".

I would also like to mention here that the Hon'ble Supreme Court of India in the matter of ***SEBI Vs. Shri Ram Mutual Fund*** **[2006] 68 SCL 216(SC)** had held that *"… ….. 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…".*

13. Apart from stating such non-disclosures as unintentional technical lapse the Noticees have also stated that during the relevant time they were not aware about the said compliances as due to financial constraints the Company could not avail of appropriate technical and legal support. In this regard, I am of the view that the aforesaid plea cannot absolve the Noticees of the contraventions/violations committed by them. It is the well-known principle of law "*Ignorantia juris non excusat* or *Ignorantia legis neminem excusat* (meaning "ignorance of the law does not excuse" or "ignorance of the law excuses no one") holding that a person who is unaware of a law may not escape liability for violating that law merely because he or she was unaware of its content. Therefore, I am of the opinion that this excuse does not enable the Noticees to escape from the liability for violating the law.

14. In view of the above, I am not inclined to allow any relief or give benefit of doubt to the Noticees. I hold them guilty of not making the required disclosures and thus violating the provisions of regulation 7 (1) of the SAST Regulations on one occasion and regulation 7 (1A) on five occasions as has been stated in para 9 (a) and (b) above.

15. In respect of the allegations regarding not making of the required public announcement before acquisition of shares/voting rights of the Company in terms of regulation 11(1) and 11(2) of the SAST Regulations, I have noted from the details provided in the table at para 9 (c) above that at the beginning of the financial year 2006-07 i.e. on April 01, 2006 the cumulative holdings of the Noticees in AVCL was 11,73,625 shares which amounts to 19.59 % of the issued and subscribed capital/voting rights in the Company. By susbsequent acquisitions, as have been detailed in the said table, the cumulative shareholding of the Noticees became 34,53,125 shares i.e. 57.83 % of the issued and subscribed share capital/voting rights in the Company on August 21, 2006. During the said acquisitions made by the Noticees between April 01, 2006 to August 21, 2006, when their cumulatitive shareholding/voting rights in the Company increased from 19.59 % to 57.83 %, on as many as four occasions the requirement of public announcement under regulation 11(1) of the SAST regulations was triggered. Further, I have noted that in between August 21, 2006 to November 30, 2006, by further acquisition of shares/voting rights by the Noticees, their cumulatitive shareholding/voting rights in the Company increased from 57.83% to 60.50 % (i.e. from 34,53,125 shares to 36, 25, 125 shares) and during this period the requirement of public announcement under regulation 11(2) of the SAST Regulations was triggered on as many as nine occasions.

16. In this regard, apart from the submissions regarding lack of technical/legal support etc. that have been discussed in the earlier paras, the Noticees have also stated that even if a public offer was given at that point of time the participation of public at large was unlikely and no public shareholder would have tendered shares and further that considering the then scenario, the scope of return on

investment to the shareholders would have been negligible.The cost incurred to make open offer would have been prohibitive and no shareholder would have offered shares in the open offer which would have resulted in a futile exercise. The Noticees have also stated that the trading in the shares of the company, at the time of acquisitions in question, was under suspension and the price at which the shares were traded on resumption of trades and the current price at which the shares of the company are traded are much higher as compared to the price at which the open offer was to be made i. e. ₹ 14.50/- approx. Thus ultimately, the company and its shareholders have benefited despite their failure to make open offer.

17. Here, I am of the view that it may not be possible to know that how the shareholders would have reacted on knowing about the disclosures regarding acquisition of shares by the Noticess or had the required public announcements been made on time. It cannot be presumed that after public announcement no public shareholder would have tendered shares. I am of the view that in the given scenario, when the shares of the Company were suspended from trading and there was no certainity regarding resumption of trades, there was likelihood of public participation to a greater extent, when the shareholders at large would have got exit opportunity and to dispose of their holdings in a suspended scrip, where no trading was taking place on the stock exchanges. Further, it cannot be presumed that ultimately the shareholders have benefitted due to said failure on their part to make the open offer only on the basis of the fact that on resumption of trading the shares of AVCL were traded at a price higher than the price at which the open offer should have been made. I am of the view that in the then prevailing uncertainties regarding resumption of trading in the shares of the Company, it would not have been possible for anyone to predict that in future if trading of the suspended scrip is resumed, it would be traded at a price higher than the offer price. Here, the fact cannot be ignored that at the relevant point of time the shareholders were deprived of the opportunity to tender their shares in the open offer.

18. It is evident from the above that on acquisition of the said shares of AVCL by the Noticees the requirement of public announcement in terms of regulations 11(1) and 11(2) of the SAST Regulations was triggered on various occasions, which the Noticees have failed to comply with. By not doing so the Noticees not only deprived the shareholders from their legitimate right and opportunity to tender their holdings in AVCL but also benefitted to the extent that incurring of a huge cost towards making of open offer as required under law, was avoided. Therefore, considering all the facts and circumstances of the case, I donot accept the above said contentions/submissions of the Noticees and hold them guilty of violating regulations 11(1) and 11(2) of the SAST Regulations.

19. Now coming to the submissions made by two of the Noticees namely, Ashwani Dewan and Sunita Dewan that during the period they had not acquired any shares of AVCL and therefore, they were not required to make any disclosures to the target Company or to the stock exchanges. In this

regard, there is no dispute that Ashwini Dewan and Sunita Dewan belong to promoter group of AVCL and they were persons acting in concert with other promoters in terms of regulation 2 (e) of the SAST Regulations. As has been stated above the cumulative number of shares of AVCL held with the Noticees, including Ashwani Dewan and Sunita Dewan, as on April 01, 2007, was 11, 73,625 shares i.e. 19.59 % of the issued and subscribed share capital of AVCL. Therefore, when more shares were acquired by the promoter group entities and their cumulative holdings surpassed the required threshold of making the disclosures, all of them, irrespective of the fact that individually some of them had not acquired the shares during the relevant period, become "acquirer" in terms of regulation 2 (1) (b) of the SAST Regulations and therefore, become liable to comply with the said provisions of law. Therefore, I do not accept the said contentions of the said two promoters i.e. Ashwani Dewan and Sunita Dewan that during the financial year 2006-07 they had not acquired any shares of AVCL and hence, there is no violation of the SAST Regulations by them.

20. Therefore, in light of the abovementioned facts and circumstances of the case I hold all the Noticees jointly and severally liable for violation of provisions of regulation 7 (1), 7 (1A), 11(1) and 11(2) of the SAST Regulations, for which there is provision for imposition of penalty in terms of sections 15 A (b) and 15 (H) (ii) of the SEBI Act. The provisions of 15 A(b) and 15 (H) (ii) of the SEBI Act are mentioned below:

> ***15A. Penalty for failure to furnish information, return, etc. -*** *If any person, who is required under this Act or any rules or regulations made there under, -*
> *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.*

> ***15H. Penalty for non-disclosure of acquisition of shares and take-overs.***
> *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,-*
> *(ii) make a public announcement to acquire shares at a minimum price*
> *he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

21. While determining the quantum of monetary penalty under section 15 A (b) and 15H (ii) of the SEBI Act, it is important to consider the factors stipulated under section 15J of the 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 result of the default;

(c) the repetitive nature of the default."

22. I have noted that the required disclosures in terms of regulation 7 (1) was not made by the Noticees on one occasion and in terms of regulation 7 (1A) on five occasions, which means that the violations committed by them were repetitive in nature. Further, the Noticees have not made the required public announcements under regulation 11(1) and 11(2) of the SAST Regulations, which were triggered on as many as 13 occasions during the financial year 2006-07. The scrip of AVCL was suspended from trading on BSE with effect from September 06, 1999 and therefore, it would be difficult from the details available with me to arrive at the figures for the notional loss caused to the investors had the public offer been made on time as per the law. The Noticees have stated that even if the open offer was to be made on date of their making of submissions (i.e. 05.07.2011), taking into consideration the interest and other factors the offer price would have been around ₹ 14.50, whereas on resumption of trading in the scrip its share price is much higher, as such no shareholder would tender their share and in a way they have benefitted by the said lapse on their part. It may be true, but as I have stated earlier, the shareholders lost the opportunity of exiting at the time when the shares of the Company were suspended and not being traded. Therefore, loss of opportunity and loss of time suffered by the shareholders, need to be taken into consideration while determining the quantum of penalty to be imposed on the Noticees towards their failure to make the public announcement.

23. Therefore, considering all the above stated facts and circumstances of the case, I am of the opinion that a penalty of ₹ 3.00 lakh on the Noticees in terms of section 15 A(b) of the SEBI Act for violation of regulation 7(1) and 7(1A) of the SAST Regulations and ₹ 15.00 lakh in terms of section 15 H(ii) of the SEBI Act for their failure to make the required public announcement and thus violating the provisions of regulations 11(1) and 11(2) of the SAST Regulations, shall be commensurate with the violations committed by them.

ORDER

24. In terms of the powers conferred upon me under Section 15 I of the SEBI Act read with rule 5 of the Rules, I impose a consolidated penalty of penalty of ₹ 18,00,000/- (Rupees eighteen lakh only) on the Noticees [₹ 3,00,000/- in terms of section 15 A(b) and ₹ 15,00,000 lakh in terms of section 15 H(ii) of the SEBI Act] for the violation/contravention of the provisions of regulations 7(1), 7(1A),

11(1) and 11 (2) of the SAST Regulations. The said amount of penalty shall be paid by the Noticees jointly and severally.

25. The penalty shall be paid by way of a demand draft in favour of “SEBI – Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to The General Manager, Division of Corporate Restructuring, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

26. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date : September 19, 2011 **Satya Ranjan Prasad**

Place : Mumbai **Adjudicating Officer**