BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/RG/PU/165 - 171/2014]

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

In respect of

1. **Shri Udit Agrawal [PAN – ANHPA3288N]**
2. **Ms. Rashmi Agrawal [PAN – AAXPA7947D]**
3. **Shri. Suresh Chand Agrawal [PAN –AAHPA7386E]**
4. **Harish Agrawal (HUF) [PAN –AAAHH2114N]**
5. **Suresh Chand Agrawal (HUF) [PAN – AAKHS8188R]**
6. **Shri Madhur Agrawal [PAN - ALCPA9519K]**
7. **Shri Harish Chandra Agrawal [PAN -AAQPA0371A]**

In the matter of

Capital Trade Links Limited

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the draft letter of offer filed by Krishan Kumar & Sons (HUF) and Neeraj Kumar & Sons (HUF) (acquirers) to acquire 26% share capital of Capital Trade Links Limited (hereinafter referred to as 'CTLL/the company'), a company listed on the Delhi Stock Exchange (DSE).

2. Upon examination it was, inter alia, observed that 1. Shri Udit Agrawal, 2. Ms. Rashmi Agrawal, 3. Shri Suresh Chand Agrawal, 4. Harish Agrawal (HUF), 5. Suresh Chand Agrawal (HUF), 6. Shri Madhur Agrawal and 7. Shri Harish Chandra Agrawal (herein after referred to as Noticee Nos. 1 to 7 and collectively referred to as 'the Noticees') being Promoters of

CTLL had disclosed their aggregate shareholdings to the Stock Exchange and CTLL, as prescribed under Regulation 30(1) and 30(2) read with Regulation 30(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (herein after referred to as the 'Takeover Regulations, 2011') with a delay and thereby, had violated the said provisions of law.

3. Further, Noticee No. 7 viz. Shri Harish Chandra Agrawal, had acquired 2,45,200 (4.91%) shares on August 02, 2005 and September 10, 2005, in addition to the 0.47% of shares of CTLL which he already possessed. Upon the said acquisition, Noticee No. 7's shareholding increased from 0.47% to 5.37% in CTLL which required him to make necessary disclosures under Regulation 7(1) read with 7(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (herein after referred to as the 'Takeover Regulations, 1997'). However, it was observed that Noticee No. 7 had made the necessary disclosures with a delay.

4. SEBI has, therefore, initiated Adjudication proceedings under the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') to inquire into and adjudge the alleged violation of provisions of Regulation 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 by Noticee Nos. 1 to 7 and Regulation 7(1) read with 7(2) of the Takeovers Regulations, 1997 by Noticee No. 7.

Appointment of Adjudicating Officer

5. I have been appointed as the Adjudicating Officer (AO), vide order dated April 02, 2014 under Section 15 I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'said Rules') to inquire into and adjudge under Section 15A(b) of the SEBI Act, the alleged violation of the provisions of law by the Noticees.

Show Cause Notice, Reply and Personal Hearing

6. Separate show cause notices, all dated May 20, 2014 (hereinafter referred to as 'SCN') were issued to the Noticees under Rule 4(1) of the said Rules to show cause as to why an inquiry should not be held and penalty should not be imposed on them under Section 15A (b) of the SEBI Act, for the alleged violation of the abovementioned provisions of law. The Noticees submitted their respective replies to the SCNs vide their individual letters dated June 07, 2014. Thereafter, in order to conduct inquiry, vide notice dated June 23, 2014, an opportunity of personal hearing was granted to the Noticees on July 04, 2014. The authorized representative, Shri Balveer Singh Choudhary, appeared on behalf of all the Noticees on the scheduled date and reiterated the written submissions made by the Noticees in their respective replies.

Consideration of Issues, Evidence and Findings

7. I have carefully perused the charges leveled against the Noticees in the SCNs, written submissions made by them and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

a. **Whether the Noticee Nos. 1 to 7 have violated the provisions of Regulation 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011?**
b. **Whether, in addition to the above violation, the Noticee No. 7 has violated the provision of Regulation 7(1) read with Regulation 7(2) of the Takeovers Regulations, 1997?**
c. **Whether the Noticees are liable for monetary penalty prescribed under Section 15 A(b) of the SEBI Act for the aforesaid violation?**
d. **If so, what should be the quantum of monetary penalty?**

8. Before proceeding further, I would like to refer to the relevant provisions of law, which read as under:

<u>Takeover Regulations, 2011</u>

Continual disclosures.

30(1) *Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

(2) *The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to, –*
(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office."

<u>Takeovers Regulations, 1997.</u>

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.

……

(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.*

9. It has been alleged in the SCN that the Noticees being Promoters of CTLL had disclosed their aggregate shareholdings to the Stock Exchange and CTLL belatedly, i.e. on October 01, 2013 with a delay of 541 days and 174 days, for the years 2012 and 2013, respectively and thereby, had violated the provisions of Regulation 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011. Further, it was noted that the Noticee No. 7 had acquired 2,45,200 (4.91%) shares of CCTL on August 02, 2005 and September 10, 2005, which resulted in an increase in his shareholding from 0.47% to 5.37% in the company. Upon the said increase in the shareholding, the Noticee No. 7 was under an obligation to make necessary disclosures to CTLL and DSE under Regulation 7 (1) read with 7 (2) of the Takeovers Regulations, 1997. However, it was alleged that the said disclosures were made by Noticee No. 7 only on December 02, 2013 i.e. with a delay of 3004 days. Therefore, in addition to the violation of Regulation 30(1) and 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011, the Noticee No. 7 was also alleged to have violated provisions of Takeover Regulations, 1997.

10. The Noticees vide their respective replies dated June 07, 2014 submitted that CTLL was incorporated as a public limited company on December 19, 1984 and the authorized share capital of the company is ₹ 5,00,00,000/- while, the issued, subscribed and paid-up equity share capital of the company is ₹ 4,99,80,000/-. The Company deals in financing and lending money to other Business & Industrial Enterprises as well as investing and dealing in the securities market. It is submitted that CTLL is a company listed on DSE, however, the shares of the company haven't been traded on the stock exchange for around a decade. The Noticees further submitted that Noticee No. 1 became a shareholder of the company only in March 2013 and the shareholding of the other promoters had remained unchanged. The Noticees stated that, during the year 2013-14, they ceased to be the shareholders of the company subsequent to the open offer made by the acquirers (new promoters) of CTLL. The shareholding details of the erstwhile promoters were as under;

S. No.	Shareholder category	Shareholding & voting rights as on 31st March 2012		Shareholding & voting rights as on 31st March 2013	
	Promoters	**No.**	**%**	**No.**	**%**
1	Shri Harish Chandra Agrawal	26,86,400	5.37	26,86,400	5.37
2	Smt. Rashmi Agrawal	9,33,000	1.87	9,33,000	1.87
3	M/s. Harish Agrawal (HUF)	7,60,000	1.52	7,60,000	1.52
4	Shri Suresh Chand Agrawal	9,93,400	1.99	9,93,400	1.99
5	Shri Madhur Agrawal	10,44,200	2.09	10,44,200	2.09
6	Shri Udit Agrawal	0	0	9,42,000	1.88
7	M/s. Suresh Chand Agrawal (HUF)	10,10,000	2.02	10,10,000	2.02
	Total Promoter Group	**74,27,000**	**14.86**	**83,69,000**	**16.74**

11. Furthermore, the Noticees submitted that the shareholding of the said promoter group remained below 15% prior to 2013 and has not exceeded 25% for the past decade. None of the promoters have individually held more than 5% shares in CTLL. In view of the same, the Noticees submitted that the provisions of Regulation 30(1) of the Takeover Regulation are not applicable to them to that extent. Since, under the code of 1997, the promoters were not under the obligation to simultaneously intimate the stock exchange, the requirement went unnoticed by them. However, it is submitted that they have promptly furnished the revised format of disclosures under Regulation 30(2) of the Takeover Regulations, 2011 to the CTLL and DSE and the same has been taken on record by the Merchant Banker of the Acquirers, as well as, the current promoters of the Company.

12. Further, Noticee No. 7, has additionally submitted, with regards to the allegation of Regulation 7 (1) read with Regulation 7 (2) of the Takeovers Regulations, 1997, that CTLL was acting as a Non Banking Financial Company (NBFC) and was able to generate only negligible profit of ₹ 1,00,000/- to 2,00,000/- per annum. Since, the company could not achieve the desired and expected levels of growth, some investors sought exit from it but were unable to do so due to lack of liquidity of shares of CTLL on the stock exchange. Therefore, they approached the promoters seeking exit opportunities and consequently, Noticee No.7 had acquired the equity shares from some of the shareholders. The inadvertent error was pointed out to the Noticee No. 7 at an independent review conducted by the company and the same had prompted him to make the required disclosures.

13. The Noticees also submitted that the alleged violations were unintentional and purely technical in nature. There was no change in the control of the company during the period when the alleged violation was committed by them and therefore no loss could have been assumed to have caused to the investors or any other stake holders on account of the non-disclosure of shareholding by them. Further, the shares of CTLL were not traded on DSE during this period.

14. I find that CTLL is listed on the DSE, however, the shares of the company haven't been traded on the stock exchange for more than a decade. I find from the submissions of the Noticees that Noticee No. 1 was not a part of the promoter group in the year 2012. Consequently, only Noticee Nos. 2 to 7 i.e. Smt. Rashmi Agrawal, Shri Suresh Chand Agrawal, M/s. Harish Agrawal (HUF), Suresh Chand Agrawal (HUF), Shri Madhur Agrawal and Shri Harish Chandra Agrawal, jointly possessed 14.86% (74,27,000) equity shares of CTLL in the year 2012 , while the Noticee Nos. 1 to 7 jointly possessed 16.74% (83,69,000) equity shares of CTLL in the year 2013. I observe that as per Regulation 30(1) of the Takeover Regulations, 2011every person along with persons acting in concert, who holds 25% of shares or voting rights in a target company are obligated to make yearly disclosures to the target company and the stock exchange. Since, the Noticees jointly held 14.86% and 16.74% of equity capital, for the years 2012 and 2013, respectively, the said holding was less than the 25% for both the alleged years as mentioned in the Regulation 30(1) of the Takeover Regulations, 2011. Therefore, I conclude that the Noticees have not violated the said provision and cannot be held guilty for the same.

15. I further find from the submissions of the Noticees that the Noticee No. 1 was not a part of the promoter group for the year 2012 and he became a shareholder of the company only in March 2013. I find merit in the said submission and therefore, I conclude that the Noticee No. 1 was not under an obligation to make the disclosures under Regulation 30(2) of the Takeover Regulations, 2011 for the year 2012. However, I find from the records that Noticee Nos. 2 to 7 being part of the promoter group had made the requisite disclosures with a delay of 541 days for the year 2012. Further, I also find that Noticee Nos. 1 to 7 had made the requisite disclosures for the year 2013 with a delay of 174 days. The said delayed disclosures have been admitted by the Noticees. I do not find merit in the contention of the Noticees that, since under the code of 1997, the promoters were not under the obligation to make disclosures to the stock exchange, the requirement went unnoticed by them, as it is a settled principle of law that ignorance of law is no excuse. Therefore, I conclude that Noticee Nos. 2 to 7 have violated the provisions of Regulation 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 for the years 2012 and 2013 while Noticee No. 1 has violated the provisions of Regulation 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 only for the year 2013.

16. Furthermore, I note from the submissions of Noticee No. 7 that he has admitted the delayed compliance of Regulation 7(1) read with Regulation

7(2) of the Takeovers Regulations, 1997 as he was not aware of the requirement to make such disclosure. Therefore, I conclude that Noticee No. 7 has delayed in making the disclosure by 3004 days and thus, violated the said provisions of Takeover Regulations, 1997.

17. The disclosure made under Regulations 30 (2) read with Regulation 30 (3) of the Takeover Regulations,2011 by promoters and the acquisition of shares made under Regulation 7 (1) read with 7 (2) of the Takeovers Regulations, 1997, are made public only through Stock Exchange and the Company. It is with this end in view that the Regulations require the making of disclosures so that investing public is not deprived of vital information. The disclosures made by companies listed on the stock exchanges are the means to attain such end and therefore, dissemination of complete information is required. However, the Noticees in this case have neglected their duty of making timely disclosures in compliance with Regulations 30 (2) read with Regulation 30 (3) of the Takeover Regulations, 2011 and additionally, Noticee No.7 has also neglected his duty of making timely disclosures in compliance with Regulation 7 (1) & 7 (2) of the Takeovers Regulations, 1997.

18. The above violations make the Noticees liable for monetary penalty under Section 15A (b) of the SEBI Act which reads as under:

> ***15A. Penalty for failure to furnish information, return, etc. -*** *If any person, who is required under this Act or any rules or regulations made thereunder,-*
>
> *…..*
>
> *(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

19. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* –the Hon'ble SAT has observed that, *"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."*

20. At this instant, it is important to quote the observations of the Hon'ble Supreme Court of India in the matter of ***SEBI v. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC)**, *wherein, inter alia, the Hon'ble* Court held: ***"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."***

21. While imposing monetary penalty it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

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

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

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

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

(c) the repetitive nature of the default."

22. I observe that, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the defaults cannot be computed. It is observed that the violation as regards Regulation 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 by Noticee Nos. 2 to 7, is repetitive in nature in asmuch as the said delayed compliance was for two consecutive years i.e. 2012 and 2013 whereas, the violations as regards Regulation 30(2) read with Regulation 30(3) of the Takeover Regulations, 2011 by Noticee No.1 for the year 2013 and Regulation 7 (1) read with

Regulation 7 (2) of the Takeovers Regulations, 1997 by Noticee No.7 are not repetitive in nature.

ORDER

23. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15-I (2) of the SEBI Act read with Rule 5 of the said Rules, I hereby impose the following penalties on the Noticees:

S. No.	**Name of the Noticee**	**Regulation**	**Penal Provisions (as per SEBI Act, 1992)**	**Penalty**
1	Shri Udit Agrawal	30 (2) read with 30 (3) of the Takeover Regulations, 2011 (for the year 2013)	15 A (b)	₹ 10,00,000/- (Rupees Ten Lakh Only) to be paid jointly and severally
2	Ms. Rashmi Agrawal	30 (2) read with 30 (3) of the Takeover Regulations, 2011 (for the years 2012 & 2013)	15 A (b)	
3	Shri. Suresh Chand Agrawal	30 (2) read with 30 (3) of the Takeover Regulations, 2011 (for the years 2012 & 2013)	15 A (b)	
4	Harish Agrawal (HUF)	30 (2) read with 30 (3) of the Takeover Regulations, 2011 (for the years 2012 & 2013)	15 A (b)	
5	Suresh Chand Agrawal	30 (2) read with 30 (3) of the Takeover Regulations, 2011 (for the years 2012 & 2013)	15 A (b)	
6	Shri Madhur Agrawal	30 (2) read with 30 (3) of the Takeover Regulations, 2011 (for the years 2012 & 2013)	15 A (b)	
7	Shri Harish Chandra Agrawal	30 (2) read with 30 (3) of the Takeover Regulations, 2011 (for the years 2012 & 2013)	15 A (b)	
8	Shri Harish Chandra Agrawal	Regulation 7 (1) read with Regulation 7 (2) of the Takeovers Regulations, 1997	15 A (b)	₹ 5,00,000/- (Rupees Five Lakh Only)

24. In my view, the penalty imposed on the Noticees is commensurate with the defaults committed by them.

25. The above penalty amounts shall be paid by the Noticees through a duly crossed demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" and payable at Mumbai within 45 days of receipt of this order. The said demand draft shall be forwarded to the Division Chief, Corporate Finance Department - DCR, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: August 07, 2014 **D. SURA REDDY**

Place: Mumbai **ADJUDICATING OFFICER**