BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO: EAD-12/AO/SM/EE/19-29/2017-18]

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

In respect of:

S.No	Noticee	S.No	Noticee
1	Shri Vikram Himatsingka (HUF) (Pan No. AADHV8276J)	2	Ms Aditi Himatsingka (Pan No.AEIPB4750N)
3	Ms. Anuradha Himatsingka (Pan No.AASPM5653P)	4	Shri Vikram Himatsingka (Pan No.AAQPH2906N)
5	Shri Ajit Kumar Bhuwalka (Pan No.AGZPB4007B)	6	Ms. Madhuri Himatsingka (Pan No.AANPH4865R)
7	Shri. Avishek Himatsingka (Pan No.AASPH1474M)	8	M/s. Himatsingka Chemicals Pvt. Ltd (Pan No. AAACH6414N)
9	Shri Ravi Shankar Jhunjhunwala (Pan No.AABPJ5051B)	10	Shri Prakash Himatsingka (Pan No. AAQPH3238R)
11	M/s Variable Plaza Pvt. Ltd (Pan No. AAACV8935A)		

In the matter of M/s P.H. Trading Limited

<u>Facts Of The Case:</u>

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') received a Draft Letter of Offer (hereinafter referred to as "DLOF") filed by Shri Vikram Himatsingka (HUF) and Ms. Aditi Himatsingka (**"Acquirer")** to make public announcement to acquire the shares of M/s P H Trading Limited (hereinafter referred to as "target company /PHT") in compliance with the SEBI Order no. WTM/RKA/EFD-DRA II/33/2015 dated April 24, 2015 (hereinafter to as "SEBI Order") by Shri Vikram Himatsingka (HUF) and Ms. Aditi Himatsingka along with persons acting in concert, Shri Prakash Himatsingka, Ms Madhuri Himatsingka, Shri Vikram Himatsingka, Shri

Ravi Shankar Jhunjhunwala, Shri Avishek Himatsingka, Ms. Anuradha Himatsingka, Shri Ajit Kr Bhuwalka, M/s Variable Plaza Pvt. Ltd. and M/s Himatsingka Chemicals Pvt. Ltd (hereinafter collectively referred to as the Noticees). All the Noticees were the promoters of PHT.

2. During examination of DLOF, SEBI had observed that Noticees had not made disclosures with respect to the acquisitions as required under SEBI (Substantial Acquisition of Shares and Takeovers), 1997 (hereinafter referred to as "SAST Regulations, 1997) and SEBI (Substantial Acquisition of Shares and Takeovers), 2011 (hereinafter referred to as "SAST Regulations, 2011) and thus violated the provisions of Regulation 7(1A), Regulation 11(2) read with Regulation 14(1) of SAST Regulations, 1997 read with Regulations 35(2) of SAST Regulations, 2011 and Regulations 29(2), 30(1) and 30(2) of SAST Regulations, 2011.

The equity shares of PHT were listed on Bombay Stock Exchange (hereinafter "BSE") and Calcutta Stock Exchange (hereinafter "CSE").

3. The examination of DLOF by SEBI led to following allegations against the Noticees:

3.1. <u>Non-Disclosure under SAST 1997:</u>

a) It was alleged that on the following instances, promoters of PHT had acquired shares and had not made required disclosure mandated under Regulation 7(1A) of SAST Regulations, 1997 read with 35(2) of SAST Regulations, 2011 :-

Details of transactions:

Name of Acquirer	**Date of acquisition**	**No. and % of shares acquired**	**Shareholding of the acquirer (No. and %)**	
			Pre-acquisition holding of the acquirer	**Post-acquisition holding of the acquirer**
Aditi Himatsingka and Anuradha Himatsingka	01/07/2007*	20,000 (4.16%)	2,94,950 (61.45%)	3,14,950 (65.61%)
Aditi Himatsingka	17/08/2009	20,000 (4.16%)	3,14,950 (65.61%)	3,34,950 (69.77%)
Vikram Himatsingka (HUF)	30/09/2009	16,110 (3.36%)	3,34,950 (69.77%)	3,51,060 (73.14%)

***** as informed in the DLOF , since the actual date of acquisition is not available, the first day of the quarter has been assumed as the date of acquisition.***

3.2. Public Announcement to acquire shares under SAST 1997:

It was alleged that in the following instances, Noticees failed to make a public announcement to acquire shares of PHT under Regulation 11(2) read with Regulation 14(1) of SAST Regulations, 1997 read with 35(2) of SAST Regulations, 2011.

Period	Pre-acquisition shareholding of promoter group	No. and % of shares acquired	Post-acquisition shareholding of promoter group
2004-05*	259,420 (54.05%)	11,930(2.48%)	271,350 (56.53%)
2005-06*	271,350 (56.53%)	24,200(5.04%)	295,550 (61.57%)
2006-07*	295,550 (61.57%)	19,400 (4.04%)	314,950 (65.61%)

***as informed in DLOF.**

3.3. It was alleged that in the following instance Noticees had made delayed public announcement to acquire shares of PHT under Regulation 11(2) read with Regulation 14(1) of SAST Regulations, 1997read with 35(2) of SAST Regulations, 2011**.**

Period	Pre-acquisition shareholding of promoter group	No. and % of shares acquired	Post-acquisition shareholding of promoter group	Delay
2009-10^	314,950 (65.61%)	43,710 (9.11%)	3,58,660 (74.72%)	Open offer was made in July 2015 pursuant to SEBI no. WTM/RKA/EFD-DRA II/33/2015 dated April 24, 2015. Delay of over six years

^as informed in DLOF acquisition of 43,710 shares were by Mrs. Aditi Himastsingka of 20,000 shares on 17.08.2009 and by Mr. Vikram Himatsingka (HUF) of 23,710 shares on 30.09.2009, 20.10.2009 and 16.11.2009.

3.4. *Non-Disclosure under* SAST 2011:

It was alleged that in the following instances, Noticees had failed to make disclosure as mandated under Regulation 30(1) and 30(2) of SAST Regulations, 2011.

S.No	Due date of compliance	Actual date of compliance
1	12/04/2012	Not complied
2	09/04/2013	Not complied
3	10/04/2014	Not complied
4	09/04/2015	Not complied

3.5. It was alleged that in the following instances Noticees had failed to make disclosure mandated Regulation 29(2) SAST Regulations, 2011 :

Name of sellers	Date of sale	Pre-acquisition shareholding of promoter group	No. and % of shares sold	Post-acquisition shareholding of promoter group	Due date of compliance
Aditi Himatsingka and Vikram Himatsingka (HUF)	28/02/2014	358,660 (74.72%)	43,710 (9.11%)	314,950 (65.61%)	04/03/2014

4. BSE had confirmed that no disclosures under Regulations 7(1A) of SAST Regulations, 1997 for the year 2009-2010 and 2010-2011 and under Regulations 29(2) and 30(2) of SAST Regulations 2011 for the period from 2012 to 2015 were received from the Noticees.

5. It is noted that the public announcement to acquire shares was made in July 2015 belatedly pursuant to SEBI order directing the Noticees to make public announcement to acquire shares as a result of trigger of Regulation 11(2) of SAST Regulations 1997 during the year 2009 and thereby the Noticees belatedly complied with the provisions of Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997 read with Regulation 35(2) of the SAST 2011

Appointment of Adjudicating officer

6. In view of the allegations made during the course of examination of DLOF, SEBI had initiated Adjudicating proceeding under Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act") to inquire and adjudge:

6.1. under section 15 A (b) of SEBI Act for alleged violation/non-compliance of the provisions of Regulations 29(2), 30(1) & 30(2) of SAST Regulations 2011 and Regulation 7(1A) of SAST Regulations, 1997 read with Regulations 35(2) of SAST Regulations, 2011 committed by the Noticees.

6.2. under section 15H (ii) of SEBI Act 1992 for the alleged violation of Regulation 11(2) read with Regulation 14(1) of SAST Regulations, 1997 read with Regulations 35(2) of SAST Regulations, 2011, committed by the Noticees.

7. SEBI had appointed Shri D.S. Reddy as Adjudicating Officer vide order dated April 25, 2016 in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as Rules) read with section 15I of SEBI Act and penalty be not imposed under section 15 A (b) and under section 15H (ii) of SEBI Act for alleged violation/non-compliance of the provisions of SEBI Act and SAST Regulations, 1997 read with Regulation 35(2) of the SAST 2011 and SAST 2011 by the Noticees. Subsequent to transfer of the case, I have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017 for the Noticee No. 1 and June 09, 2017 for the Noticees 2-11.

<u>Show Cause Notice, Reply And Personal Hearing:</u>

8. Common show cause notice No. EAD-2/DSR/BKM/22082/2016 dated August 05, 2016, (hereinafter referred to as 'SCN') was issued to the Noticees under the provisions of Rule 4 (1) of the Rules by the erstwhile Adjudicating Officer to show cause as to why an inquiry should not be initiated against the Noticees and penalty be not imposed under the provisions of Section 15A(b) and section 15H (ii) of the SEBI Act for the alleged violation specified in the SCN.

9. The Noticees failed to make submission to the SCN, but SEBI received a common reply dated August 17, 2016,wherein all Noticees had requested to give a date for hearing at the end of October/November 2016.

10. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, the Noticees were granted an opportunity of personal hearing before the undersigned on July 26, 2017 at SEBI, Mumbai. All Noticees had requested for the fresh date of hearing, hearing was rescheduled and was held on August 11, 2017. All Noticees informed that on behalf of all the Noticees, they have appointed Ms. Maneka Jha to represent their matter. The same was attended by Ms. Maneka Jha(hereinafter referred to as “AR”), AR has informed that Noticees did not file the required disclosures as mentioned in the SCN. Hence, all non-compliance by the Noticees accepted.

Consideration of Issues, Evidences and Findings:

11. I have carefully perused the charges levelled against the Noticees as per the SCN, and the materials/documents available on record. The issues that arise for consideration in the present case are :

I. **Whether Noticees had violated**

a. **Regulations 29(2), 30(1) & 30(2) of SAST Regulations, 2011, for non-disclosure.**
b. **Regulation 7(1A) of SAST Regulations, 1997 read with Regulations 35(2) of SAST Regulations, 2011, for non-disclosure**
c. **Regulation 11(2) read with Regulation 14(1) of SAST Regulations, 1997 read with Regulations 35(2) of SAST Regulations, 2011, for failure to make a public announcement to acquire shares and delay in making such public announcement.**

II. **Does the violations, if any, attract monetary penalty under Sections 15 A (b) and section 15H (ii) of SEBI Act.**

III. **If so, what should be the quantum of monetary penalty?**

12. Before proceeding further, it is pertinent to refer to the relevant provisions of the SAST Regulations which read as under:

SAST Regulations, 1997
Acquisition of 5 per cent and more shares or voting rights of a company.

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.

Consolidation of holdings.

11. (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 or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures seventy-five per cent (75%)‘, the words and figures ninety per cent (90%)‘ were substituted.
Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-

(i) *the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;*
(ii) *the post-acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).*

Timing of the public announcement of offer.

14. (1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:
Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government or the State Government as the case may be, for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in regulation 10 or regulation 11 or the transfer of control over a target Public Sector Undertaking.

SAST Regulations, 2011
<u>Disclosure of acquisition and disposal.</u>
29.(1) …….
(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.

<u>Continual disclosures.</u>

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.

<u>Repeal and Savings.</u>

35.(1) ………
(2) Notwithstanding such repeal,— (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations.

13. Issue I: Whether Noticees had violated of Regulations 29(2), 30(1) & 30(2) of SAST Regulations, 2011 and Regulation 7(1A) of SAST Regulations, 1997 read with Regulations 35(2) of SAST Regulations, 2011 for non-disclosure and Regulation 11(2) read with Regulation 14(1) of SAST Regulations, 1997 read with Regulations 35(2) of SAST Regulations, 2011 failure to make an open offer and delay in making an open offer.

14. <u>Findings:</u>

I have carefully perused the documents/material available on record, and the confirmation of the AR during the course of personal hearing that the Noticees failed to make disclosures as per SAST Regulations and accepted the non-compliances . In the light of the instances mentioned above, I am of the view that Noticee No. 1, 2 and 3 have violated the provisions of Regulation 7(1A) of SAST 1997 read with Regulations 35(2) of SAST Regulations, 2011, Noticee No. 1 and 2 have violated the provisions of Regulation 29(2) of SAST Regulations, 2011 and Noticee No. 1 to 11 have violated the provisions of Regulation 30(1) and 30(2) of SAST Regulations, 2011 and hence liable for monetary penalty under section 15A (b) of SEBI Act, 1992.

I also find that Noticees 1-11 have violated Regulation 11(2) read with Regulation 14(1) of SAST Regulations, 1997 read with Regulations 35(2) of SAST Regulations 2011, by not giving public announcement to acquire shares of PHT as mentioned *supra* and hence these noticees are liable for monetary penalty under 15H (ii) of SEBI Act, 1992.

15. Issue II: Does the violation, if any, attract monetary penalty under Sections 15 A(b) and Section 15H(ii)of SEBI Act.

Section 15A(b) the SEBI Act 1992 reads as under:

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

(a) ….

(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 which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Section 15H(ii) of the SEBI Act 1992 reads as under:

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 which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."

I have concluded that Noticees have violated provisions mentioned in para above and hence they are liable for penalty under Section 15A (b) and 15 H (ii) of the SEBI Act.

16. Issue III: If so, what should be the quantum of monetary penalty?

While determining the quantum of penalty under Section 15A(b) and Section 15H(ii), it is important to consider the factors stipulated in Section 15J of SEBI Act, which read 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.*

17. With regard to the above factors, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticees. Further, the default is repetitive in nature. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticees or the amount of loss caused to an investor or group of investors as a result of the default. However, the Noticees by not making relevant disclosures and public announcement for acquiring shares of target company have not only failed to comply with the provisions of SAST Regulations but have also deprived the shareholders of the exit opportunity at the relevant time. I have considered the Order dated April 24, 2015 of SEBI Whole Time member in the instant matter, wherein, Noticees were directed to pay consideration amount alongwith interest at the rate of 10% per annum from November 19, 2009 to the date of payment of consideration, to the shareholders who were holding shares in the PHT on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

ORDER

18. 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 of the Act and Rule 5 of Rules, I hereby impose the following monetary penalty of on Noticees jointly and severally. In my view, the penalty imposed is commensurate with the default committed by the Noticees.

Name of the Noticees	Regulation Violated	Section under which penalty imposed	Penalty Amount in Rupees (Rs.)
Shri Vikram Himatsingka (HUF), Ms. Aditi Himatsingka and Ms. Anuradha Himatsingka	Regulation 7(1A) of SAST 1997 read with Regulation 35(2) of SAST 2011.	15A(b) of SEBI Act,1992	22,00,000 (Rs twenty two lakhs only)

Name of the Noticees	Regulation Violated	Section under which penalty imposed	Penalty Amount in Rupees (Rs.)
Shri Vikram Himatsingka (HUF) and Ms. Aditi Himatsingka	Regulation 29(2) of SAST 2011,		
Shri Vikram Himatsingka (HUF) and Ms. Aditi Himatsingka along with persons acting in concert, Shri Prakash Himatsingka, Ms Madhuri Himatsingka, Shri Vikram Himatsingka, Shri Ravi Shankar Jhunjhunwala, Shri Avishek Himatsingka, Ms. Anuradha Himatsingka, Shri Ajit Kr Bhuwalka, M/s Variable Plaza Pvt. Ltd. and M/s Himatsingka Chemicals Pvt. Ltd	30(1) and 30(2) of SAST 2011,		
Shri Vikram Himatsingka (HUF) and Ms. Aditi Himatsingka along with persons acting in concert, Shri Prakash Himatsingka, Ms Madhuri Himatsingka, Shri Vikram Himatsingka, Shri Ravi Shankar Jhunjhunwala, Shri Avishek Himatsingka, Ms. Anuradha Himatsingka, Shri Ajit Kr Bhuwalka, M/s Variable Plaza Pvt. Ltd. and M/s Himatsingka Chemicals Pvt. Ltd	Regulation 11(2) read with Regulation 14(1) of SAST 1997 read with Regulation 35(2) of SAST 2011	15H(ii) of SEBI Act,1992	10,00,000 (Rs Ten Lakh)

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

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

20. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the "General Manger (Enforcement Department – 1-DRA- III) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

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

21. 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, 2017
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER