BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. JJ/AK/AO - 5/2013]

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

Akriti Realtech Limited
(Now Known as **"Akriti Global Traders Limited")**
(PAN No. AAFCA9480N)

In the Matter of M/s SRS Real Infrastructure Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted an examination in respect of buying, selling and dealing in the shares of M/s SRS Real Infrastructure Limited (hereinafter referred to as **'SRS'**/**'Company'**) which is listed on Bombay Stock Exchange (hereinafter referred to as **'BSE'**).

2. The findings of the examination led to the allegation that Akriti Realtech Limited (Now Known as **"Akriti Global Traders Limited"**) [hereinafter referred to as **"Noticee"**] had violated regulation 29(1) & regulation 29(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

(hereinafter referred to as **'SAST Regulations, 2011'**) and regulation 13(1) & regulation 13(3) read with regulation 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations'**) and therefore consequently, liable for monetary penalty under section 15A(b) of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Piyoosh Gupta had been appointed as Adjudicating Officer vide order dated July 02, 2013 under section 15 I of SEBI Act read with 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 the alleged violations of provisions of SAST Regulations and PIT Regulations. Consequently, upon transfer of Shri. Piyoosh Gupta, the undersigned has been appointed as the Adjudicating Officer vide order dated November 08, 2013.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice No. EAD-5/PG/AK/19041/2013 dated July 31, 2013 (hereinafter referred to as **"SCN"**) was issued to the Noticee under rule 4(1) of the Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15A(b) of SEBI Act for the alleged violation specified in the said SCN. The said SCN was sent through speed post with acknowledgment (SPAD) and was delivered to the Noticee.

5. The Noticee vide letter dated September 03, 2013 submitted its reply to the SCN, which *inter alia* stated as under:

"……

1. *….We would like to state that the non compliances as enumerated under Para 3 to 6 of the SCN are summarized in tabular format as under:*

Effective Date of acquisition (EDA)	***Shareholding prior to EDA***	***No. & % of shares acquired***	***No. & % of share holding post acquisition***	***Due date for compliances under regulation 29(1)of SAST & 13(1) of PIT Regulation***	***Date of actual Compliance***	***No. of days delay***
14/02/2013	*94,71,709 (4.71%)*	*14,85,735 (0.74%)*	*1,09,57,444 (5.45%)*	*18/02/2013*	*19/06/2013*	*120*
21/02/2013	*1,09,57,444 (5.45%)*	*10,29,080 (0.51%) 43,87,162 (2.19%)*	*1,63,73,686 (8.15%)*	*25/02/2013*	*19/06/2013*	*113*

2. *It is on record with BSE that the aforesaid compliances were announced on 19.06.2013 on the BSE website "bseindia.com".*
3. *On the subject of the acquisition of impugned shares, we state that the aforesaid shares, as referred to in the above table, were acquired by us under the "scheme of amalgamation pursuant to section 391 to 394 and other relevant provision of the Companies Act, 1956" filed before the Hon'ble Delhi High Court bearing the Company Petition No. 386 of 2012. Hon'ble Delhi High Court approved the scheme and passed appropriate Order dated 10.12.2012 in the matter…… In pursuance to the aforesaid order, shareholding of SRS held by those 14 companies as listed in the aforesaid order were transferred to our demat account. Hence, merely by virtue of the aforesaid Hon'ble Delhi High Court Order, our shareholding in SRS was increased which triggered compliance requirements under SAST and PIT Regulations.*
4. *We humbly request your honour to appreciate the fact that there is always a time gap between the execution/implementation of any Hon'ble Courts's order and*

analysing/realszing its other related implications/consequences, such as happened in our case.

5. *Thus, we have inadvertently, through oversight, delayed filing of documents with the time period prescribed under the relevant provision of SAST and PIT Regulations. It is pertinent to mention that the impugned transactions did not in any way affect the total number of public shareholding in the SRS company hence it has led to mere non observance of timely reporting of disclosure requirements which has in fact, in realty, no material consequence.*
6. *It is further submitted that, by this off market transaction no gain or unfair advantage accrued to us. Further, it has not caused any harm, loss, damage or disadvantage to investors in general and public shareholders of SRS company in particular.*
7. *Under the facts and circumstances as enumerated herein above, we request you to kindly consider the following facts and circumstances as strong mitigating factors in exonerating us from the alleged violations as mentioned in the SCN.*
    i. *Our company is classified under public shareholdings and the acquisition of shares has also happened from the category of public shareholdings companies therefore it did not result in any change in control of the SRS Company or promoter's shareholding in SRS Company.*
    ii. *It has not adversely affected the interests of any shareholders/stakeholders of the SRS Company in any manner whatsoever and has not put the existing shareholders of SRS Company to any disadvantage.*
    iii. *The said disclosures, when made public, did not have any impact on the trading pattern on the floor of the exchange. For ready references, the daily price volume chart of SRS Company at BSE for June 2013 is enclosed.*
    iv. *By delaying the disclosure requirements, there was no intention to suppress any material information from the shareholders of the company at the relevant time. In fact, the aforesaid Hon'ble Delhi High Court Order was in public domain since its pronouncement.*

v. *The said violation is only technical, procedural and venial breach and has not caused any adverse consequences to anybody.*

vi. *We have not consciously or deliberately avoided the filing of the requisite information with SRS Company or with the concerned stock exchanges.*

vii. *We have not made any disproportionate gain or derived any unfair advantage.*

viii. *No loss has been caused to any investor or group of investors or to any member of the public as a result of this technical default.*

ix. *The alleged default is not repetitive in nature.*

x. *There is no investor's complaint of any nature whatsoever with regard t our increase in shareholding in SRS company.*

8. *Taking totality view of the aforesaid submission and particularly the fact that the default in timely filing of the documents has happened for the first time, we sincerely request that the same may please be condoned. We assure and undertake the henceforth we will take extra care in filing information within the prescribed time….."*

6. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticee was granted an opportunity of personal hearing on September 06, 2013, vide notice dated August 22, 2013 at SEBI, Northern Regional Office (NRO), Delhi. The said hearing notice was sent through SPAD and was delivered to the Noticee as per the acknowledgement card received. The Noticee vide letter dated September 03, 2013 had requested for postponement of hearing. In the interest of natural justice, the Noticee was granted a final opportunity of personal hearing on November 29, 2013, vide notice dated November 13, 2013 at SEBI, NRO, Delhi. The said hearing notice was sent through via email and through hand delivery via NRO. The said hearing notice was returned undelivered. Thereafter, the said hearing notice was affixed at the last known address of the Noticee i.e. at *"3125, Gali no. 34, Beadonpura, Karol Bagh, New Delhi – 110005"*. The said hearing notice

was also emailed to the Noticee at akritirealch@redfillmail.com. The Noticee did not appear for hearing on the aforementioned date before the undersigned.

7. In view of the above, I am convinced that ample opportunities have been given to the Noticee to appear for personal hearing; however, the Noticee had failed to avail of the same. I, therefore, proceed with the matter on the basis of material available on record.

CONSIDERATION OF ISSUES AND FINDINGS

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

   a. Whether Noticee had violated the provisions of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and the provisions of regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations?
   b. Does the violations, if any, attract monetary penalty under section 15A(b) of the SEBI Act?
   c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

9. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations, 2011 and PIT Regulations, which reads as under:-

SAST REGULATIONS, 2011
Regulation 29

Disclosure of acquisition and disposal.

29.(1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(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.

(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.

(4) …….

PIT REGULATIONS

Regulation 13

Initial Disclosure

(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working 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.

(2)……..

Continual disclosure

(3) Any person who holds more than 5% shares or 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) …….

(5) The disclosure mentioned in sub-regulations (3) and (4) 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.

Disclosure by company to stock exchanges

(6)……..

10. Upon perusal of the documents available on record I find that the shareholding of Noticee in SRS as on February 04, 2013 was 94,71,709 shares i.e. 4.71% of total shareholding of SRS. Noticee had acquired 14,85,735 shares i.e. 0.74% of total shareholding of SRS on February 14, 2013. Thus, by means of said acquisition the shareholding of the Noticee in SRS had increased from 94,71,709 shares i.e. 4.71% of total shareholding of SRS to 1,09,57,445 shares i.e. 5.45% of total shareholding of SRS.

11. Noticee while crossing the threshold limit of 5% specified under regulation 29(1) of SAST Regulations, was required to make the disclosures to the company i.e. SRS and to the stock exchange i.e. BSE as per regulation 29(1) read with regulation 29(3) of SAST Regulations, 2011 i.e. within two days from the date of acquisition i.e. by February 18, 2013, which the Noticee had failed to do.

12. Further, as of the abovementioned acquisition, the Noticee while crossing the threshold limit of 5% specified under regulation 13(1) of PIT Regulations, was required to make the disclosures to the company i.e. SRS as per regulation 13(1) of PIT Regulations i.e. within two working days from the date of

acquisition of shares i.e. by February 18, 2013, which the Noticee had failed to do.

13. Further, I find that the shareholding of the Noticee in SRS as on February 14, 2013 was 1,09,57,444 shares i.e. 5.45% of total shareholding of SRS. Noticee had acquired 10,29,080 shares (0.51%) on February 18, 2013 and 43,87,162 shares (2.19%) on February 21, 2013 through inter depository transfer on six transaction. Thus, by means of said acquisition the shareholding of the Noticee in SRS had increased from 1,09,57,444 shares i.e. 5.45% of total shareholding of SRS to 1,63,73,686 shares i.e. 8.15% of total shareholding of SRS.

14. As there was a change of more than 2% of shareholding of the Noticee in SRS, the Noticee was required to make the disclosures to the company i.e. SRS and to the stock exchange i.e. BSE as per regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 i.e. within two days from the date of acquisition of shares i.e. by February 25, 2013, which the Noticee had failed to do.

15. Further, Noticee was also required to make the disclosures to the company i.e. SRS, in accordance with the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations i.e. within two working days from the date of acquisition of shares i.e. by February 25, 2013, which the Noticee had failed to do.

16. In the instant case, I find that the Noticee has not disputed the fact that its shareholding as on February 04, 2013 was 4.71% of total shareholding of SRS and it had acquired 0.74% of total shareholding of SRS on February 14, 2013, thereby its shareholding had increased from 4.71% to 5.45%. Noticee has also not disputed the fact that it had further acquired 0.51% on February 18, 2013 and 2.19% on February 21, 2013 through inter depository transfer

on six transaction, thus by means of said acquisitions its shareholding had increased from 5.45% to 8.15%.

17. From the submissions of the Noticee I find that, with respect to the disclosure to be made under regulation 29(1) of SAST Regulations, 2011 for crossing threshold limit of 5%, Noticee had made the said disclosure under regulation 29(2) of SAST Regulations, 2011 instead of under regulation 29(1) of SAST Regulations, 2011 on June 19, 2013 to BSE. The Noticee says that it had made the said disclosure to BSE as against the due date of compliance (February 18, 2013) with a delay of 120 days.

18. Further, Noticee says that with respect to the disclosure to be made under regulation 29(2) of SAST Regulations, 2011 for the acquisition of more than 2% of shares, it had made the said disclosure as against the due date of compliance (February 25, 2013) with a delay of 113 days on June 19, 2013. However from the BSE website, I find that Noticee had made the said disclosure under regulation 29(2) of SAST Regulations, 2011 on July 02, 2013 i.e. with a delay of 128 days.

19. Thus, I am of the view that Noticee was required to make the necessary disclosures under regulation 29(1) & regulation 29(2) of SAST Regulations, 2011 within two working days from the date of acquisitions as specified under regulation 29(3) of SAST Regulations, 2011 to BSE. However, Noticee failed to make the disclosures within the prescribed time limit to BSE as specified under regulation 29(3) of SAST Regulations, 2011.

20. From the submissions and document submitted by the Noticee, I find that Noticee had not submitted any evidence with respect to the disclosures to be made under regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 to the company i.e. SRS. Thus, I am of the view that Noticee had not made any disclosures under regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 to SRS.

21. From the submissions and document submitted by the Noticee, I also find that Noticee had not submitted any evidence with respect to the disclosures to be made under regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations to the company i.e. SRS. Thus, I am of the view that Noticee had not made any disclosures under regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations to SRS.

22. Further, I noted the following reasons of the Noticee:

- The impugned shares were acquired under the scheme of amalgamation pursuant to section 391 to 394 and other relevant provisions of the Companies Act, 1956.
- There is a time gap between the execution/implementation of any Hon'ble Court's order and analyzing/realizing its other related implication/consequences.
- The violations of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and violations of regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations are technical, procedural and venial breach in nature and the same were inadvertent.

23. I am of the considered opinion that such response of the Noticee cannot absolve him from its duties of making disclosures under regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations in the proper format within the time limit prescribed under the respective Regulations. The number of days of delay in making the disclosures has been taken into account from the due date of compliance i.e. after the expiry of two days from the date of transactions.

24. By not making the disclosures on time, the Noticee failed to comply with its statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. There can be no dispute that compliance of regulations is mandatory and it is duty of SEBI to enforce compliance of these regulations. In this connection, it may be noted that the Hon'ble Securities Appellate Tribunal **(SAT)** in Appeal no. 66 of 2003 in the case of Milan Mahendra Securities Pvt. Ltd. vs. SEBI, by its order dated November 15, 2006, has observed that "*the Regulations were framed on the basis of the input provided by a committee headed by Justice P. N. Bhagwati which had recommended that substantial acquisition of shares and takeovers should operate principally to ensure fair and equal treatment to all shareholders in relation to substantial acquisition of shares and takeovers. The object of the Regulations is to give equal treatment and opportunity to all shareholders and protect their interests. To translate these principles into reality measures have to be taken by the Board to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. It is with this end in view that the Regulations require the making of disclosures on pre-acquisition and post-acquisition stages and the requirement in Regulation 7 at post acquisition stage is one among them. As observed, 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*".

25. In terms of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 disclosures are required to be made to the company and to the stock exchange and in terms of regulations 13(1) & 13(3) read with regulation 13(5) of PIT Regulations disclosures are required to be made to the company. "Disclose to the company and to the stock exchange" is the clue. According to Black's Law Dictionary "Disclosure" means – act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which

before was secret, hidden or concealed. Thus, the requirement is that complete information should reach the person for whom it is meant.

26. In terms of regulations 29(1) & 29(2) read with regulation 29(3) of SAST Regulations, 2011, the acquirers upon acquiring specified percentage of shareholding of a company are required to disclose the same to the company and to stock exchanges within two days of acquisition/allotment. The holding pattern of shareholding of a company is an important information for all investors. The investors should know who are the major shareholders of a company. Any change in this regard (whether shareholding percentage or the holders thereof) is an important information which can have a bearing on the investment decision of the investors. Failure to make timely disclosures of major changes in shareholding pattern cannot be considered as trivial or of no consequence to be overlooked.

27. The Hon'ble High Court at Calcutta in Writ Petition 331/2001 in the matter of Arun Kumar Bajoria v/s SEBI – Order dated March 27, 2001, made the following observations:-

> *"……the object of Regulation 7 is to inform the investors that an individual has acquired 5 percent shares in the company concerned. If the acquisition has been made by more than one individual in association with each other, it is also obligatory on the part of such individuals to disclose their identity. This can only be done when the information is given to the company. If after the company has received the information, its officer do not read the information and in consequence thereof no information is given to the investors through the concerned stock exchanges, the company is to be blamed but unless the company receives the information, the question of the officers of the company reading the information and then transmitting such information to the investors through the stock exchanges concerned does not, nor can at all arise. Therefore, it is obligatory on the pat of the person so acquiring to inform the company….."*

28. In view of the above, I hold that the Noticee was under an obligation to make the required disclosures under regulation 29(1) & regulation 29(2) SAST Regulations, 2011 within the time limit prescribed under regulation 29(3) of SAST Regulations, 2011 to BSE & SRS and under regulation 13(1) & regulation 13(3) of PIT Regulations within the time limit prescribed under regulation 13(5) of PIT Regulation to SRS. Therefore, I hold that the Noticee have violated the provisions of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations.

29. The provisions of section 15A (b) of SEBI Act is reproduced hereunder:

> ***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, -*
> *(a).....*
> *(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.*
> *(c).....*

30. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)* held that *"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"*.

31. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section15A (b) of the SEBI Act.

32. While determining the quantum of monetary penalty under section 15A (b), I have considered 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."*

33. The object of the SAST Regulations, 2011 and PIT Regulations mandating disclosure of acquisition/sale beyond certain quantity is to give equal treatment and opportunity to all shareholders and protect their interests. To translate this objective into reality, measures have been taken by SEBI to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required. It is difficult, in cases of this nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. There is no material on record which dwells on the extent of specific gains made by the Noticee by not making the specified disclosures on the due dates. Further it is also not possible to ascertain the loss to the investors in monetary terms. The Noticee, in its reply has also submitted that no public shareholders were adversely affected due to the late submission of disclosures. Be that as it may, by virtue of the failure on the part of the Noticee to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. In other words, by not complying with the regulatory obligation of making the disclosures, the Noticee had not provided the vital information within the prescribed time which is detrimental to the interest of investors in securities market. Our entire securities market stands on disclosure based regime and

accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Hence, the violation of the Noticee cannot be viewed lightly. From the documents available on records, it is observed that the violation is not repetitive in nature.

ORDER

34. After taking into consideration all the facts and circumstances of the case, I hereby impose a monetary penalty of ₹ 4,50,000/- (Rupees four lakh fifty thousand only) under section 15A(b) of the SEBI Act and Rule 5(1) of the Rules, on Akriti Realtech Limited (Now Known as "Akriti Global Traders Limited"), for the violation of provisions of regulation 29(1) & regulation 29(2) read with regulation 29(3) of SAST Regulations, 2011 and regulation 13(1) & regulation 13(3) read with regulation 13(5) of PIT Regulations. In my opinion this penalty shall be commensurate with the violations committed by the Noticee.

35. The Noticee shall pay the said amount of penalty by way of demand of 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 Deputy General Manager, Integrated Surveillance Department, SEBI, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: December 27, 2013 **Jayanta Jash**

Place: Mumbai **Adjudicating Officer**