BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-2/DSR/PU/45-50/2014]

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 Ashvarya Maheshwari [PAN – AFDPM6673H]**
2. **Shri Krishan Kumar Maheshwari [PAN – AAEPM6036E]**
3. **Ms. Sandhya Maheshwari [PAN – AAGPM4886N]**
4. **Ms. Shobha Maheshwari [PAN – AAQPM1541G]**
5. **Shri Vinod Kumar Maheshwari [PAN – AAQPM3937L]**
6. **Shri Ashok Kumar Maheshwari [Not available]**

In the matter of

Euro Finmart Ltd.

Background

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an examination into the draft letter of offer filed by Shri Alok Kumar Agarwal, for which Public Announcement was issued on August 27, 2012 to acquire 26% shares in the scrip of Euro Finmart Ltd. (hereinafter referred to as 'EFL). Upon examination it was, inter alia, observed that Shri Ashvarya Kumar Maheshwari, Shri Krishan Kumar Maheshwari, Ms. Sandhya Maheshwari, Ms. Shobha Maheshwari, Shri Vinod Kumar Maheshwari and Shri Ashok Kumar Maheshwari (herein after referred to as 'the Noticees')were Promoters at EFL and had failed to disclose their aggregate shareholdings to the Stock Exchanges and EFL, as required under Regulations 30 (1), 30 (2) read

with Regulation 30 (3) of the of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (herein after referred to as the 'Takeover Regulations').

Appointment of Adjudicating Officer

2. I have been appointed as the Adjudicating Officer (AO), vide order dated August 29, 2013 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "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 15A(b) of the SEBI Act, the alleged violation of the provisions of law by the Noticees.

Show cause Notice, Reply and Personal Hearing

3. Separate show cause notices all dated September 26, 2013 (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 15A (b) of the SEBI Act for the alleged violation of the provisions of Regulations30 (1), 30 (2) read with Regulation 30 (3) of the Takeover Regulations. The SCNs were issued through registered post, however, returned undelivered and therefore the same were served to the Noticees by way of affixture as per Rule 7 of the said Rules.

4. However, in order to conduct inquiry, an opportunity of hearing was granted to the Noticees on January 31, 2014 vide letters dated January 10, 2014. The same were served to the Noticees by way of affixture as per Rule 7 of the said Rules and also by speed post. The Noticees confirmed their attendance vide all their letters dated January 20, 2014. The authorized representative, Shri Balveer Singh Choudhary, appeared on behalf of the Noticees on the said date and submitted that the Noticees do not take part in the company's day to day

affairs and therefore they were not aware of the disclosures to be filed in the new format. They have made the same as soon as it was brought to their knowledge. Further, the authorised representative stated that this is their first and only delay and requested one week's time to file their written submissions. The Noticee Nos. 1 to 5 have submitted a common reply dated February 03, 2014 to the SCN, wherein they denied all the allegations made against them. Shri Vinod Kumar Maheshwari vide letter dated February 03, 2014 submitted that Noticee No. 6, i.e. Shri Ashok Kumar Maheshwari, had expired on February 01, 2012 and also enclosed a copy of the death certificate dated February 07, 2012, issued by the Municipal Corporation of Greater Mumbai.

Consideration of Issues, Evidence and Findings

5. I have carefully perused the charges made against the Noticees as mentioned in the SCN, written submissions and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

a. **Whether the Noticees have violated Regulations30 (1), 30 (2) read with Regulation 30 (3) of the Takeover Regulations?**
b. **Whether the Noticees are liable for monetary penalty prescribed under Section 15 A (b) of the SEBI Act for the aforesaid violation?**
c. **If so, what should be the quantum of monetary penalty?**

6. Before proceeding, I would like to refer to the relevant provisions of the Takeover Regulations which read as under:

<u>Takeover Regulations</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."

7. It has been alleged in the SCN that the Noticees being Promoters of EFL had failed to disclose their aggregate shareholdings to the Stock Exchanges and EFL, as required and however, made the same on April 24, 2012, with a delay of 12 days.

8. The Noticee Nos. 1 to 5 submitted that they are a part of the promoter group and do not participate in the day to day functioning of EFL. Further, they submitted that the new Takeover Regulations, 2011 were notified somewhere in September 2011 and since they were not a part of the day to day functioning of the company, they were not aware of the change in period of reporting and structure of reporting. The Takeover Regulations 1997 stipulated that they had to disclose their holdings only to the company within 21 days of the end of the financial year and in compliance of the provisions contained in Takeover Regulations, 1997 they disclosed their holdings to EFL on April 12, 2013 and have enclosed copies of the concerned letters submitted to EFL as a part of their written submissions. EFL had vide its letter dated April 16, 2013 informed them regarding the provisions contained in the new Takeover Regulations, 2011, wherein they had to disclose their shareholdings to the stock exchanges also and have enclosed a copy of the said letter from EFL as a part of their written submissions. They made the requisite disclosures to the stock exchanges within 7 working days of the

receipt of the intimation from EFL i.e. by April 24, 2013. They have always followed all the procedures as stipulated by any regulatory authority, followed all rules/regulations/instructions etc. issued by any government agency and their intention has always been to comply with the rules /regulations/filings etc. and not to conceal any information. This is the only year wherein the disclosures have been delayed by a few days and that too due to the change in the Regulations. Further, the default is not repetitive in nature. They have never been penalized and have maintained a clean track record till date and undertake to comply with all Acts/rules /regulations etc., in letter and in spirit. Further, no unfair gain or advantage has occurred to them and also no harm has been caused to the retail investors.

9. It is observed that EFL is listed on both, the BSE and the DSE. I note that Noticee Nos.1 to 5 have indeed made disclosures to EFL on April 24, 2013. The reply of the Noticees in not convincing in as much as they ought to have made the disclosures on time in terms of the said Takeover Regulations. It is a settled principle of law that ignorance of law is no excuse. It is mandatory to comply with the Regulations and the same cannot be ignored. SEBI is duty bound to enforce compliance of these Regulations in addition to giving equal treatment and opportunity to all shareholders/investors while protecting their interests along with bringing about transparency in the transactions. The disclosure made under Regulations 30 (1), 30 (2) read with Regulation 30 (3) of the Takeover Regulations by a promoter is 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 any 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 have neglected their duty of making the disclosures in compliance with Regulations 30 (1), 30 (2) read with Regulation 30 (3) of the Takeover Regulations.

10. Hence, the violations on the part of the Noticee Nos. 1 to 5 cannot be taken lightly as they failed to make the necessary disclosures on time for a period of 12 days for which they are liable for monetary penalty under Section 15A (b) of the SEBI Act. In Appeal No. 66 of 2003 - *Milan Mahendra Securities Pvt. Ltd. Vs SEBI* – Order dated April 15, 2005, 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."*

11. Further, Noticee No. 5 Shri Vinod Kumar Maheshwari vide letter dated February 03, 2014 submitted that Noticee No. 6, i.e. Shri Ashok Kumar Maheshwari had expired on February 01, 2012. In view of the 'Certificate of Death' as issued by the Municipal Corporation of Greater Mumbai, Government of Maharashtra as proof thereof, the proceedings against Noticee No.6 , i.e. Shri Ashok Kumar Maheshwari stand abated.

12. Section 15 A (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;

13. 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."

14. 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."

15. 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 is not repetitive in nature.

ORDER

16. 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 a penalty on the Noticee no. 1 to 5 ,as per the table given below, under Section 15 A (b) of the SEBI Act. In my view, the penalty imposed on the Noticees is commensurate with the defaults committed by them.

S. No.	**Name of the Noticee**	**Penalty**
1	Shri Ashvarya Kumar Maheshwari	₹ 1,00,000/-(Rupees One Lakh Only)
2	Shri Krishan Kumar Maheshwari	₹ 1,00,000/-(Rupees One Lakh Only)
3	Ms. Sandhya Maheshwari	₹ 1,00,000/-(Rupees One Lakh Only)

4	Ms. Shobha Maheshwari	₹ 1,00,000/-(Rupees One Lakh Only)
5	Shri Vinod Kumar Maheshwari	₹ 1,00,000/-(Rupees One Lakh Only)

17. The above penalty amount 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 (CFD-DCR), Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, BandraKurla Complex, Bandra (E), Mumbai – 400 051.

18. 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: February 11, 2014 **D. SURA REDDY**

Place: Mumbai **ADJUDICATING OFFICER**