BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/VB/AO/103-108/2017-18]

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. Manmohan Sahu (PAN :AQZPS4181K)
2. Indira Sahu (PAN : AVLPS4179A)
3. Badrinarayan Mahapatra (PAN: BBUPM8980K)
4. Pradeep Kumar Mahapatra (PAN: AZEPM4223A)
5. Netrananda Sahu (PAN : ALAPS5078D)
6. Chittaranjan Sahu (PAN: BSQPS6399B)

In the matter of Swarnajyothi Agrotech & Power Limited (formerly known as 'Octant Industries Limited')

BRIEF FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) examined disclosure related violations, if any, in the matter of Swarnajyothi Agrotech & Power Ltd (formerly known as 'Octant Industries Ltd') (hereinafter referred to as '**SAPL**') and observed certain non-compliances of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **"SAST, 1997"**) and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as "**SAST, 2011**").

2. While examining the disclosure related violations in SAPL, it is observed that Dr V Ravichandran entered into an agreement for the purchase of real estate with Mr. Manmohan Sahu who was the Managing Director of SAPL and a Tri-party Escrow Agreement was executed on September 08, 2011, whereby Manmohan Sahu (Noticee-1), Indira Sahu (Noticee-2), Badrinarayan Mohapatra (Noticee-3), Pradeep Kumar Mahapatra (Noticee-4), Netrananda Sahu (Noticee-5), Chittaranjan Sahu (Noticee-6), Promoters of SAPL (hereinafter collectively referred to as **"Promoters / Noticees"**) , Rupiya Paisa Fininvest Consultancy Pvt Ltd (Rupiya) and Mahanadhi Investment Advisory Services Pvt Ltd (Mahanadhi) pledged 1,45,00,409 shares as collateral into the account of Ms.V Vasantha Lakshmi who was acting in concert with Dr V Ravichandran. It is noted that the Noticees while undertaking the aforesaid transaction had violated the provisions of Regulation 8A(2) of SAST, 1997, Regulation 3(1) of the SAST,2011 and Regulation 31(1), Regulation 31(2) read with Regulation 31(3) of the SAST,2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Prasad Jagdale was appointed as the Adjudicating Officer vide communique dated February 23,2016 under Section 19 read with Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 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 'Adjudication Rules') to inquire into and adjudge under Section 15A(b) and 15H(ii) of the SEBI Act, the violation of Regulation 8A(2) of SAST, 1997, Regulation 3(1), Regulation 31(1) and Regulation 31(2) read with Regulation 31(3) of the SAST,2011 alleged to have been committed by the Noticees. Pursuant to the transfer of Shri Prasad Jagdale, Shri Suresh Gupta was appointed as Adjudicating Officer and thereafter, the Adjudication proceedings have been transferred to the undersigned vide Order dated May 18, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (hereinafter referred to as '**SCN**') dated December 29, 2017 was issued to the Noticees under Rule 4 of the Adjudication Rules communicating the alleged violations of certain provisions of SAST, 1997 and SAST, 2011. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15A(b) and 15H(ii) of the SEBI Act for the alleged contravention of SAST, 1997 and SAST, 2011.

5. The details in respect of violation / non-compliance by the Noticee are as given below:

   a) It was alleged that 80,00,000 shares were pledged by the promoters of SAPL with Ms.V Vasantha Lakshmi who was acting as PAC with Dr. Ravichandran during the period July 26,2011 to September 14,2011. The abovementioned creation of pledge by promoters required disclosure under Regulation 8A(2) of SAST, 1997. As per Regulation 8A(2) of SAST,1997, Noticees, forming part of the promoter of SAPL, were required to make disclosure with respect to the details of such pledge of shares to SAPL, within 7 working days from the date of creation of pledge on shares of SAPL held by Noticees. It was alleged that Noticees had not made the required disclosures and their inactions have led to the violation of Regulation 8A(2) of SAST, 1997.

   b) Thereafter, during the period June 08,2012 to July 25, 2012, 13,55,409 shares constituting 5.33% of the total shareholding in SAPL were pledged by the promoters of SAPL with Ms.V Vasantha Lakshmi who was acting as PAC with Dr. Ravichandran

   c) It is also observed that promoters had pledged 1,29,72,250 shares of SAPL with Power Finance Corporation Ltd (hereinafter referred to as '**PFC**') from October 18, 2012 to May 21, 2013

   d) It is observed that on September 25, 2011, purchase consideration for the real estate of Rs. 4 crores was paid by Dr. V. Ravichandran to Mr. Manmohan Sahu.

Thereafter, Manmohan Sahu failed to honor the terms and conditions of the Agreement dated September 8, 2011. Pursuant to this, Ms. Vasantha Lakshmi acting as PAC with Dr. Ravichandran invoked 8160000 pledged shares belonging to promoters

e) Further, out of 1,45,00,409 shares pledged with Ms. Vasantha Lakshmi acting as PAC with Dr. Ravichandran, 56,52,174 shares were under lock-in until February 09, 2013. On February 14 and 15, 2013 after the lock-in period had expired, 56,75,794 shares were also invoked out of which 11,95,409 shares were belonging to Chittaranjan Sahu, one of the Noticees. The above invocation of pledge required disclosure by the Noticees under Regulation 31(2) read with Regulation 31(3) of SAST, 2011

f) It was also alleged that on March 28, 2013, 1,21,00,409 shares invoked by Ms. V Vasanthalakshmi acting as PAC with Dr. Ravichandran were returned to the promoters and other investors after Manmohan Sahu repaid the entire dues and was discharged from the liabilities. Out of the total 1,21,00,409 shares returned, 69,55,409 shares (27.34% of the total share capital) were belonging to promoters. Pursuant to such acquisition of shares, the shareholding of promoters in the company crossed 25% and were required to make public announcement for open offer under Regulation 3(1) of SAST, 2011. However, it is alleged that Noticees had failed to make public announcement in accordance with Regulation 3(1) of the SAST, 2011.

6. Thereafter, the Noticee-1 vide email dated January 26, 2017 sought time 45 days to reply. Vide letter dated January 30,2018, Noticees were granted time upto February 19, 2018 to reply to the SCN and appear for the personal hearing on February 26,2018. Thereafter, vide Email dated February 02,2018 sought the personal hearing to be rescheduled to February 05,2018. Vide Email dated February 02,2018 the Noticees were advised to appear for hearing on February 05,2018. On February 06,2018, Noticee-1 and Nagendra Kumar K appeared as AR on behalf of Noticees. Thereafter,

vide letter dated February 12,2018 the Noticees submitted a reply and *inter alia* made the following submissions:

I am authorized to reply for and on behalf of the other promoters as they are my family members and relatives.

We submit that we deny the alleged violations of the Regulation 8A (2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 and Regulation 31 (1) read with Regulation 31 (3) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011. We also submit that there had been no trigger to make a public announcement for open offer under Regulation 3 (1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 2011. Accordingly, we submit that we are not liable for any penalty to be imposed under the provisions of Section 15A (b) and 15H (ii) of the Securities and Exchange Board of India Act, 1992. We submit the following grounds for your kind perusal and consideration for adjudicating the matter.

DISCLOSURE OF PLEDGE OF SHARES OF SWARNAJYOTHI AGROTECH AND POWER LIMITED

We submit that there had been a Company Secretary in Whole-Time employment of Swarnajyothi Agrotech and Power Limited (SAPL) and the necessary documents for disclosure of details of, the pledge of shares of SAPL with Ms. V Vasantha Lakshmi (acting for Dr V Ravichandran) and Power Finance Corporation Limited (PFC), to the Company and Stock Exchanges were obtained. We strongly believe that the said documents were filed with the appropriate authorities in accordance with the Regulations of SEBI.

However, we are unable to lay our hands on the proof of having filed documents due to passage of time, shifting of the office from one place to another and the desertion of all employees on account of closure and later, the auction of the factory by the bank to an Asset Management Company. The Company is virtually defunct without factory and other assets and employees. The Indonext platform BSE (the shares are listed on virtually non-existing Pune and Ahmedabad Stock Exchanges only) ceased to exist and the shares are not traded on any exchanges. The shares had never been traded actively on any bourses including BSE platform of Indonext and, in fact, the presence or absence of trading in the shares made no impact in the market nor did the disclosure of any information about the Company impact the price or market in any material way.

In view of the above, we request you to drop the proceedings and absolve us of any penalties.

NO TRIGGER FOR MAKING PUBLIC ANNOUNCEMENT FOR OPEN OFFER

We submit that the promoters holding in SAPL had never fallen below the threshold of 25% as the Shares of SAPL held by the promoters were only pledged with Dr Ravichandran Group and not sold at any time. The invocation of pledge on account of delay in repayment was not an act of sale on volition (voluntarily) but by operation of law due to the operation of terms and conditions of the Tri-Partite Escrow Agreement. The invocation of pledge was done without our knowledge and subsequently on repayment the shares were restored to the Promoters. Accordingly, there had been no change in the shareholding of the promoters in SAPL nor there any change in management of SAPL any time during the period.

Accordingly, we submit that there had been no trigger for making public announcement for open offer by the promoters. In view of the above we, therefore, request you to drop the proceedings and absolve us of any penalties.

<u>FINANCIAL POSITION OF THE COMPANY AND THE PROMOTERS</u>

The financial position of SAPL and the promoters is in dire straits. The Company is virtually in a defunct state after the factory had been auctioned by the Banker to an Asset Management Company. Presently, the Company has no assets whatsoever and all the employees have left the Company. The promoters are also in the same state as their personal assets have also been auctioned by the Bank along with the factory. The Shares of the Company are not traded in any stock exchanges after the BSE Indonest platform ceased to exist. Neither the Company nor the promoters are in a position to pay even if any penalties are imposed for any alleged omissions or commissions under SEBI Act.

In the last, we humbly request you to condone any technical non compliances/lapses that you may determine in the proceedings and waive any penalties that may be imposed under the Regulations in the normal course in view of the financial position of the promoters and the Company.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

7. I have carefully perused the written submissions of the Noticees and the documents available on record. Before proceeding further, it would be appropriate to recapitulate the relevant facts of the case. it is observed that Dr V Ravichandran entered into an agreement for the purchase of real estate with Mr. Manmohan Sahu who was the Managing Director of SAPL and a Tri-party Escrow Agreement was executed on September 08, 2011, wherein Promoters of SAPL and others pledged 1,45,00,409 shares as collateral into the account of V Vasanthalakshmi who was acting

in concert with Dr V Ravichandran . Thereafter, on September 25, 2011, purchase consideration of Rs. 4 crores was paid by Dr V Ravichandran to Mr. Manmohan Sahu. Thereafter, Manmohan Sahu failed to honor the terms and conditions of the Agreement dated September 8, 2011. Pursuant to this, V Vasanthalakshmi invoked 88,24,615 shares, 34,35,602 shares and 22,40,192 shares of Noticees, Rupiya and Mahanadhi on August 14,2012, February 14, 2013 and February 15, 2013 respectively. Subsequently on March 28, 2013, 1,21,00,409 shares invoked by V Vasanthalakshmi were returned to the Noticees and others after Manmohan Sahu repaid the entire dues and was discharged from the liabilities

8. The issues that arise for consideration in the present case are :

   a) Whether the Noticees had violated the provisions of Regulation 8A(2) of the SAST, 1997, Regulation 31(1), Regulation 31(2) read with Regulation 31(3) of the SAST, 2011 by not making relevant disclosures?

   b) Whether the Noticees had violated the provisions of Regulation 3(1) of the SAST, 2011 by not making a public announcement of an open offer?

   c) Do the violations, if any, attract monetary penalty under Section 15A(b)and 15H(ii) of the SEBI Act?

   d) If yes, what should be the quantum of penalty?

9. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST, 1997 and SAST, 2011 which read as under:-

SAST,1997

Disclosure of pledged shares.

……..

8A (2) A promoter or every person forming part of the promoter group of any company shall, within 7 working days from the date of creation of pledge on shares of that company held by him, inform the details of such pledge of shares to that company.

SAST, 2011

Substantial acquisition of shares or voting rights.

3(1) No acquirer shall acquire 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, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Disclosure of encumbered shares.

31(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

31(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

31 (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

10. Now, the first issue for consideration is whether the Noticees failed to make the relevant disclosures to the company under Regulation 8A(2) of SAST, 1997 and to the stock exchange and company under Regulation 31(1), Regulation 31(2) read with Regulation 31(3) of the SAST, 2011. I note that during the period July 26,2011 to September 14,2011 the Noticee-1 to Noticee-5 pledged 80,00,000 shares as collateral into the account of Ms. V. Vasantha Lakshmi, who was acting as PAC with Dr.V.Ravichandran. The said creation of pledge by Noticee-1 to Noticee-5 required disclosure under Regulation 8A(2) of SAST, 1997. Thereafter, during the period June 08, 2012 to July 25, 2012, Noticee-2 and Noticee-6 pledged 13,55,409 shares with Ms.V Vasantha Lakshmi who was acting as PAC with Dr. V Ravichandran. It is also

noted that during the period October 18, 2012 to May 21, 2013, Noticee-1,2,3,4 and 6 pledged 1,29,72,250 shares of SAPL with PFC. The said creation of pledge by Noticee-1,2,3,4 and 6 with PFC and Ms. V Vasanthalakshmi, as the case may be, required disclosure under Regulation 31(1) read with Regulation 31(3) of SAST, 2011. Thereafter, on August 14,2012 Ms. Vasantha Lakshmi acting as PAC with Dr. Ravichandran invoked 81,60,000 pledged shares belonging to Noticee-1 to Noticee-5. Further, on February 14,2013, 11,95,409 shares belonging to Noticee-6 was also invoked by Ms. Vasantha Lakshmi acting as PAC with Dr. Ravichandran. The above invocation of pledge required disclosure by the Noticees under Regulation 31(2) read with Regulation 31(3) of SAST, 2011. I find from the material made available before me that the relevant disclosures have not been made in the prescribed format either to the Stock Exchange or to the company. AR in its reply dated February 12, 2018 had submitted that the shares of SAPL had never been traded actively on any bourses and the presence or absence of trading in the shares made no impact in the market nor did the disclosure of any information about the Company impact the price or market in any material way.

11. I find that in another matter of the instant company, vide E-mail dated February 12, 2018, BSE was advised to submit the listing status of the said company and to also confirm the disclosure requirements to be complied by the said company based on its listing status. BSE vide its Email dated February 12,2018 confirmed that *the Company, Swarnajyothi Agrotech & Power Ltd. was "Permitted to Trade" on the Exchange w.e.f. August 14, 2008. During the period 2011-2013, the company remained under Permitted to Trade category. The trading of the Company under the "Permitted to Trade" category was discontinued w.e.f. March 8, 2017, vide Exchange Notice no. 20170228-18 dated February 28, 2017 and was procedurally 'delisted' from the Exchange w.e.f. March 31, 2017, vide Exchange Notice no. 20170329-44 dated March 29, 2017.* Further, BSE also submitted that *the company had not signed the Listing Agreement with the Exchange and hence had no obligation to file any disclosures as*

mandated under the erstwhile Listing Agreement or the Listing Regulations. Any filing by the company or its promoters / acquirers to the Exchange was purely on voluntary basis.

12. On perusal of the aforesaid reply of BSE, I note that the company was under the Permitted to Trade category on BSE and had not signed the Listing Agreement with the Exchange and hence had no obligation to file any disclosures. Further, I also note that filing by the company or its promoters / acquirers to the Exchange was purely on voluntary basis as submitted by BSE. Thus, it is clear from the above that there was no compulsion on the Noticees to make the disclosures to BSE. I further note that for a company to trade under Permitted to Trade category on BSE, the company has to be listed on other stock Exchanges. However, nothing has been brought on record to show that the company was listed on some other stock exchange and the requisite disclosure has been made or not made to those stock exchanges. In the absence of any evidence in this regard, I do not find any merit in the allegation that the Noticees have violated the provisions of Regulation 31(1), Regulation 31(2) read with Regulation 31(3) of the SAST, 2011 by not making relevant disclosures to the Stock Exchange.

13. However, on perusal of Regulation 8A(2) of SAST, 1997 and Regulation 31(1), Regulation 31(2) read with Regulation 31(3) of the SAST, 2011, I find that the Noticee 1 to 6 were required to make relevant disclosures under aforesaid Regulations to the company. However, the said Noticees in their reply have submitted that they were unable to provide proof of having filed documents due to reasons such as passage of time, shifting of the office etc. Thus, in the absence of the same, I find that the Noticee-1 to Noticee-5 have not complied with the relevant provisions of Regulation 8A(2) of SAST, 1997, Noticee-1,2,3,4 and 6 have not complied with Regulation 31(1) read with Regulation 31(3) of the SAST, 2011 and Noticee-1 to Noticee-6 have not complied with Regulation 31(2) read with Regulation 31(3) of the SAST, 2011 to the extent of not

making relevant disclosures to the company. Further, as per the confirmation received from BSE vide Email dated March 08, 2018, Ms. V Vasanthalakshmi was shown under 'promoter category' by SAPL for the quarter ending September 2012 and December 2012. The date when Ms. V Vasanthalakshmi became promoter is not available on record. The shares of Ms. V Vasanthalakshmi were never invoked and rather Ms. V Vasanthalakshmi invoked pledged shares of the other promoters of SAPL as brought out earlier. Thus, Ms. V Vasanthalakshmi despite being shown as promoter of SAPL was not required to make disclosures under Regulation 31(2) read with Regulation 31(3) of the SAST, 2011 as the responsibility for making disclosures under aforesaid regulation has been cast on individual promoter whose shares are invoked rather than on the promoter group collectively.

14. At this juncture, I would like to rely on the Order of Hon'ble SAT in the matter of Alacrity Securities Ltd Vs SEBI wherein the Hon'ble Tribunal has, *inter alia,* held, "…. *as per regulation 8A(2) and 8A(4) of Takeover Regulations, 1997 it was mandatory for* <u>*every*</u> *promoter to disclose to the company all details relating to the pledging of shares of that company held by promoter and that company was required to inform the same to all stock exchanges…".* From the Order, I note that the obligations for pledge related disclosures are on 'every promoter'. The same principle applies to Regulation 31(1) and 31(2) read with Regulation 31(3) of SAST, 2011.

15. In view of the above, I conclude that the allegation of violation of Regulation 8A(2) of SAST, 1997 by Noticee-1 to Noticee-5, Regulation 31(1) read with Regulation 31(3) of the SAST, 2011 by Noticee-1,2,3,4 and 6 and Regulation 31(2) read with Regulation 31(3) of the SAST, 2011 by Noticee-1 to Noticee-6 is established.

16. The next issue for consideration is whether the Noticees by not making a public announcement of an open offer had violated the provisions of Regulation 3(1) of the SAST, 2011. I find from the material made available before me that on March 28,

2013, 1,21,00,409 shares invoked by Ms. V Vasanthalakshmi acting as PAC with Dr. Ravichandran were returned to the promoters of SAPL and Rupiya and Mahanadhi after Manmohan Sahu repaid the entire dues and was discharged from the liabilities. Out of the total 1,21,00,409 shares returned, 69,55,409 shares (27.34% of the total share capital) were belonging to the Noticees. Pursuant to such acquisition of shares, the shareholding of Noticees crossed 25% and Noticees were required to make public announcement for open offer under Regulation 3(1) of SAST, 2011. However, I find from the records before me that Noticees have failed to make public announcement in accordance with Regulation 3(1) of the SAST, 2011.

17. The AR in its reply dated February 12, 2018 had submitted that promoters holding in SAPL had never fallen below the threshold of 25% as the Shares of SAPL held by the promoters were only "pledged" with Dr Ravichandran. I find from the material made available before me that Noticees have also pledged their shares to PFC, a public financial institution and not just only to Dr Ravichandran as claimed in their reply. Further, with respect to the submission that promoters holding in SAPL had never fallen below the threshold of 25%, I find from the shareholding pattern of SAPL during the quarter ended June,2012 the Noticees shareholding as promoters of SAPL was 52.17%. Thereafter, during the quarter ended September, 2012 the promoter shareholding was 52.17%, out of which 32.17% was held by Ms.V Vasantha Lakshmi and thus the Noticee shareholding was effectively 20% (52.17-32.17%) of total share capital in SAPL. Thus, the claim of the Noticees that their holding did not fall below the threshold of 25% does not have any merit. On invocation of pledge by V Vasanthalakshmi, the ownership for the pledged shares were transferred from the promoters to V Vasantalakshmi. Thereafter, when V Vasanthalakshmi re-transferred 69,55,409 shares (27.34% of the total share capital) to Noticees, Noticees shareholding increased to 47.34% (20% +27.34%) and thereby triggered Regulation 3(1) of the SAST, 2011.

18. The AR in its reply dated February 12, 2018 have also submitted that invocation of pledge on account of delay in repayment was not an act of sale on volition but by operation of law due to the operation of terms and conditions of the Tri-Partite Escrow Agreement and AR further submitted that the invocation of pledge was done without their knowledge and subsequently on repayment the shares were restored to the Promoters. In this regard, I note that a pledge is invoked when the conditions of agreement entering into the pledge are violated by the pledger. The pledger is deemed to be aware of the consequences of non –repayment of the loans including invocation of pledged securities. Thus, I, find that Noticees cannot claim that the invocation of the pledge by the pledgee was without information as the shares were offered on pledge by themselves and were fully aware that the pledge will be invoked in the event of violation of terms of agreement of the pledge. For the same reasons, I find the argument of the Noticees that the transfer was by operation of law is not acceptable. Thus, the contentions of the Noticee do not have any merit.

19. In view of the above, I conclude that the allegation of violation of Regulation 3(1) of the SAST, 2011 is established against the Noticees.

20. At this juncture, it is noteworthy to quote the observations of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shriram Mutual Fund [2006] 68 SCL 216(SC) that " *In our considered opinion, 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....*". Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed that "*Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*".

21. I have considered other contentions raised by the Noticees in their reply and find no merit in them in the context of the facts and circumstances of the matter in hand. As the violations of the statutory obligation by the noticees under Regulation 8A(2) of SAST, 1997, Regulation 31(1), Regulation 31(2) read with Regulation 31(3) of the SAST, 2011, Regulation 3(1) of SAST Regulations, 2011 have been established, I hold that the Noticees are liable for monetary penalty under section 15A(b) and section 15H(ii) of SEBI Act, which reads as under:-

"Penalty for failure to furnish information, return, etc.

15A. 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;"

"Penalty for non-disclosure of acquisition of shares and takeovers.

15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—

…………………………

make a public announcement to acquire shares at a minimum price; or

…………………………..

………………………………..

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."

22. While determining the quantum of penalty under section 15A(b) and Section 15H(ii) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

Section 15J *-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.

23. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15J of the SEBI Act stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further, no monetary loss to investors have been brought on record and it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticees. I also note from the documents available on record that some of the violations reported are repetitive as detailed in pre-paragraphs.

ORDER

24. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in

Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalties as shown in the table below:

Name of Noticee	**Regulation Violated**	**Penal Provisions**	**Penalty (Amount in Rupees)**
1. Manmohan Sahu 2. Indira Sahu 3. Badrinarayan Mahapatra 4. Pradeep Kumar Mahapatra 5. Netrananda Sahu 6. Chittaranjan Sahu	Regulation 3(1) of SAST Regulations, 2011	section 15H(ii) of the SEBI Act.	Rs.12,00,000 (payable jointly and severally)
1. Indira Sahu 2. Chittaranjan Sahu 3. Manmohan Sahu 4. Badrinarayan Mahapatra 5. Pradeep Kumar Mahapatra	Regulation 31(1) read with Regulation 31(3) of the SAST, 2011	Section 15A(b) of the SEBI Act.	Rs.3,00,000 each for entities at sl No. 1 and Sl No.2 Rs.1,50,000 each for entities at sl No.3 to sl No-5 (pa yable severally)

1. Manmohan Sahu 2. Indira Sahu 3. Badrinarayan Mahapatra 4. Pradeep Kumar Mahapatra 5. Netrananda Sahu 6. Chittaranjan Sahu	Regulation 31(2) read with Regulation 31(3) of the SAST, 2011,	Section 15A(b) of the SEBI Act.	Rs. 1,50,000 each for entities at sl No. 1 to 6. (payable severally)
1. Manmohan Sahu 2. Badrinarayan Mahapatra 3. Pradeep Kumar Mahapatra 4. Netrananda Sahu 5. Indira Sahu	Regulation 8A(2) of SAST, 1997	Section 15A(b) of the SEBI Act.	Rs. 1,50,000 each for entities at sl No. 1 to 5. (payable severally)

25. The amount of the penalty shall be payable by the Noticees as per the above table. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

26. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	

6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

27. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Manmohan Sahu, Indira Sahu, Badrinarayan Mahapatra, Pradeep Kumar Mahapatra, Netrananda Sahu, Chittaranjan Sahu and also to the Securities and Exchange Board of India.

Date: March 16, 2018
Place: Mumbai

K SARAVANAN
GENERAL MANAGER &
ADJUDICATING OFFICER