BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/JP/8-12 of 2015]

UNDER SECTION 23-I OF SECURITIES CONTRCATS (REGULATION) ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRCATS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

Adjudication Order in respect of:-

(1) E-Land Apparel Limited (Formerly known as Mudra Lifestyle Limited)- (PAN: AACCM6461E)
(2) E-Land Asia Holding Pte Limited(PAN: AACCE8910A)
(3) Mr. Murari Bisheshwar Agarwal(PAN:ADOPA8257C)
(4) Mr. RavinderBisheshwar Agarwal(PAN:ADPPA1180R)
(5) Mr. Vishwambharlal Kanahiyalal Bhoot(PAN: AENPB1243F)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') during the course of examination observed that the (1) Mudra Lifestyle Ltd. (Now known as E-Land Apparel Limited), (2) E Land Asia Holding Pte Ltd., (3) Mr. Murari Bisheshwar Agarwal, (4) Mr. Ravindra Bisheshwar Agarwal and (5) Mr. Vishwambharlal Kanahiyalal Bhoot(hereinafter referred to as '**the Noticee No. 1 to 5'** respectivelyor all are collectively referred as **'the Noticees')**had failed to comply with the Minimum Public Shareholding (**MPS**) norms as stipulated under Rule 19 (2) (b) and 19 A of the Securities Contracts (Regulation) Rules, 1957 (hereinafter referred to as **'SCRR'**). The Noticee No. 1 is the Companylisted on BSE Ltd. (**BSE**) and National Stock Exchange of India Ltd. (**NSE**) and the Noticee No. 2 to 5 are the Promoters / Directors of the Company / Noticee No. 1.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings against the Noticees and appointed the undersigned as Adjudicating Officer under section 23I of the Securities Contracts (Regulation) Act (hereinafter referred to as **'SCRA'**)read with rule 3 of the Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as '**Adjudication Rules'**)vide order dated April 13, 2015,to inquire into and adjudge under section 23 E and 23H of the SCRA for the alleged violations of rule 19 (2) (b) and 19 A of the SCRR.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAO/RA/JP/13645/2015 dated May 14, 2015 (hereinafter referred to as **"SCN"**) was served upon the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed upon it under sections 23 E and 23 H of the SCRA for the alleged violation of rule 19 (2) (b) and 19 A of the SCRR.Following allegations were levelled against the Noticeesin the SCN;

(a) *From the shareholding pattern and from the disclosures made by the Company / Noticee No.1, it was revealed that the total Promoter Group's holding in the Company / Noticee No. 1 was 65.87% during the quarter ended June 2011; and on July 23, 2011, one of the company's promoter viz. E Land Fashion China Holding Ltd. (now Noticee No.2) had acquired 20% shares in the Company which had increased the promoter Group's shareholding from 65.87% to 85.87%. The shareholding pattern of the Company / Noticee No.1 (as per BSE website) is shown in a table below.*

Quarter Ending Date	***Promoter's Holding in Company***
June 30, 2010	*54.49%*
June 30, 2011	*65.87%*
September 30, 2011	*85.87%*
September 30, 2012	*85.87%*
June 30, 2013	*87.79%*
September 30, 2014	*75%*

(b) *Due to increase in promoter Group's shareholding from 65.87% to 85.87% on July 23, 2011 which was beyond the maximum permissible limit of upto 75% for the Promoter group, the Company/Noticee No. 1 was required to achieve the compliance with MPS norms on or before July 22, 2012 (i.e. within 12 months period from July 23, 2011 the date when the Public Shareholding came down below than 25%) however, allegedly the MPS norms was complied with by the Noticees belatedly only on September 26, 2014. Therefore, allegedly the Noticees had failed to comply with the MPS norms as stipulated under Rule 19 (2) (b) and 19 A of the SCRR.*

(c) *For the non compliance of MPS norms as stipulated under Rule 19 (2) (b) and 19 A of the SCRR, the Whole Time Member of SEBI vide interim order No. WTM/PS/08/CFD/JUNE/2013 dated June 04, 2013 and final order No. WTM/PS/47/CFD/NOV/2014 dated November 24, 2014 had observed that there was non compliance with the MPS norms as stipulated under Rule 19 (2) (b) and 19 A of the SCRR by the Noticees from the period July 23, 2012 till September 26, 2014 (as on September 26, 2014, the Noticees belatedly complied with MPS norms).*

(d) *In view of the above, it was alleged that the Noticees No. 1 being the Company and Noticee No. 2 to 5 being its Promoters / Directors had delayed in complying with the mandated MPS requirements and thereby violated Rule 19 (2) (b) and 19 A of the SCRR. Copies of all the Annexures relied upon under the SCN viz. (order appointing the undersigned as Adjudicating Officer (Annexure I), shareholding pattern in Company / Noticee No. 1 for the aforesaid Quarters (Annexure II) and copies of aforesaid 2 orders of Whole Time Member of SEBI (Annexure III & IV) were provided to the Noticees along with SCN.*

(e) *The aforesaid alleged provision of rule 19 (2) (b) and 19 A are reproduced as under;*

Requirements with respect to the listing of securities on a recognised stock exchange.

19. (2) Apart from complying with such other terms and conditions as may be laid down by a recognised stock exchange, an applicant company shall satisfy the stock exchange that;

"(b)(i) At least twenty five per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was offered and allotted to public in terms of an offer document; or

(ii) At least ten per cent of each class or kind of equity shares or debentures convertible into equity shares issued by the company was ofered and allotted to public in terms of an offer document if the post issue capital of the company calculated at offer price is more than four thousand crore rupees:

Provided that the requirement of post issue capital being more than four thousand crore rupees shall not apply to a company whose draft offer document is pending with the Securities and Exchange Board of India on or before the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, if it satisfies the conditions prescribed in clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957 as existed prior to the date of such commencement:

Provided further that the company, referred to in sub-clause (ii), shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of listing of the securities, in the manner specified by the Securities and Exchange Board of India."

Continuous Listing Requirement.

19A. (1) Every listed company [other than public sector company] shall maintain public shareholding of at least twenty five per cent.:
Provided that any listed company which has public shareholding below twenty five percent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2010, shall increase its public shareholding to at least twenty five per cent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.

Explanation: For the purposes of this sub-rule, a company whose securities has been listed pursuant to an offer and allotment made to public in terms of sub-clause (ii) of clause (b) of sub-rule (2) of rule 19, shall maintain minimum twenty five per cent public shareholding from the date on which the public shareholding in the company reaches the level of twenty five percent in terms of said sub-clause.

(2) Where the public shareholding in a listed company falls below twenty five per cent atany time, such company shall bring the public shareholding to twenty five per centwithin a maximum period of twelve months from the date of such fall in the mannerspecified by the Securities and Exchange Board of India.

4. In response to the SCN, the Noticee No. 1 (E-Land Apparel Ltd.)through letter dated June 03, 2015 intimated the change of name of Mudra Lifestyle Ltd. to E-Land Apparel Ltd. with effect from February 02, 2015 and requested that all correspondence be addressed to it in the matter. The Noticee No. 1 also requested for an extension of 3 weeks' time to file reply towards the SCN and requested for a personal hearing in the matter.

5. As no reply was filed by all the Noticees within the stipulated time or within the time as sought by Noticee No. 1, therefore, for the purpose of inquiry, an opportunity of hearing was granted to the Noticeeson July 31, 2015 vide hearing notice dated July 14, 2015. In the said notice of hearing, the Noticees were *inter-alia* asked to submit their reply on or before July 27, 2015.

6. In respect to said notice of hearing, the Noticee No. 1 & 2 vide their e-mail dated July 28, 2015and the Noticee No. 3 to 5 vide their e-mail dated July 27, 2015 confirmed their presence for the scheduled hearing. The Noticee No. 3 to 5 vide said e-mail also assured to file their replies towards the SCN by July 31, 2015. Due to certain exigencies, aforesaid scheduled hearing was postponed and the Noticees were informed of such postponement vide e-mails dated July 29, 2015.

7. In the meantime, Noticee No. 1 & 2 filed their reply dated July 25, 2015 towards the SCN (received by this office on August 03, 2015). However, no reply towards the SCN was received from the Noticee No. 3 to 5 despite commitment made by them in their aforesaid e-mails.

8. Thereafter, another opportunity of hearing was granted to the Noticees on August 13, 2015 vide hearing notice dated August 03, 2015. Again, in the said notice of hearing, the Noticee No. 3 to 5 were *inter-alia* asked to submit their reply on or before August 10, 2015.

9. The hearing on August 13, 2015on behalf of Noticee No. 1 & 2 wasattended by their authorised representatives namely- Mr. Ravichandra Hegde -

Advocate, Ms. Ms. Yugandhara Khanwilkar- Advocate(from J. Sagar Associates), Mr. Ashitosh Sheth – company secretary / compliance officer and Mr. Jung Ho Hong - authorised representative of the Noticee No. 1 & 2. The hearing on behalf of Noticee No. 3 to 5 was attended by the authorized representative namely- Mr. JoyJacob- Advocate, Mr. Vishawabharlal Kanahiyalal Bhoot (Noticee No. 5) and Mr. Arman Agarwal s/o Mr. Murari Bisheshwar Agarwal (Noticee No. 3). The submissions made by aforesaid authorized representatives of Noticees were recorded.

10. During the course of hearing, the Noticee No. 1 and 2 agreed to submit additional written submission and to provide copies of certain agreements dated October 15, 2010 within a period of 7 days; and accordingly, the hearing was concluded in respect to them. As no reply was field by the Noticee No. 3 to 5, they agreed at the time of hearing to submit the same within a period of 2 weeks along with certain documents/evidences.

11. Consequent to hearings, the Noticee No. 1 & 2 and the Noticee No. 3 to 5 filed their additional submissions / reply towards the SCN dated August 20, 2015 and August 25, 2015 respectively. In their reply dated August 25, 2015 (at Para 2.7 page 7) the Noticee No. 3 to 5 desired another opportunity of hearing in the matter consequent to their written submissions.

12. Keeping in view the principle of natural justice at larger extent, another opportunity of hearing on September 18, 2015 was provided to the Noticee No. 3 to 5 vide e-mail dated September 08, 2015. The said e-mail was sent to the Noticee No 3 to 5 and to their authorized representative viz. Khaitan & Co. Advocates at the e-mail IDs from which they communicated in the present adjudication proceedings. The said e-mail was duly served upon them (Noticee No. 3-5 and their advocate) and proof of service of such e-mail upon them is placed on records. It was clearly stated in the said e-mail that this is the final opportunity of hearing and failing to attend the same on aforesaid scheduled date, the matter would be proceeded further on the basis of

material available on records. Vide aforesaid e-mail it was *inter-alia* informed to the Noticee No. 3-5 that they may appear before for hearing on September 18, 2015 or they may file their additional written argument / submissions if any, on or before September 18, 2015 instead of appearing for hearing.

13. Hearing on September 18, 2015 on behalf of Noticee No. 3 to 5 was attended by the authorized representative namely- Mr. Joy Jacob- Advocate. During hearing, the aforesaid authorized representative of Noticees reiterated as stated in their reply dated August 25, 2015 and also stated that they have filed their additional submissions at documents inward section of SEBI. Thereafter, additional submissions dated September 18, 2015 was received from Noticee No. 3-5.According the hearing in the matter is completed towards all the Noticees (Noticee No. 1-5).

14. The core cubmissions made by the Noticeestowards the SCN in their aforesaid replies/ additional submissionsand during the course of hearing, are mentioned below;

Reply of the Noticee No. 1 & 2

(a) On July 23, 2011, Noticee No. 2 acquired 65.84% equity stake in Noticee No. 1 Company in accordance with the provisions of the SAST Regulations.*Pursuant to the acquisition, the then promoters i.e. Noticees No. 3 to 5 (Original Promoters) were holding 20.03% of the shareholding of Noticee No. 1 Company. The said acquisition on July 23, 2011* ("date of trigger") *increased the shareholding of the promoter group from 65.84% to 85.87%.*

(b) The said reduction of excess shareholding of the promoter group was to be made by July 22, 2012 (i.e. within a period of 12 months from the date of trigger). However, the said compliance with the MPS norms was made by Noticee No. 1 Company belatedly on September 26, 2014.

(c) It is an admitted position that there has been a delay in compliance with the MPS norms as required by SEBI, however, the delay was unintentional and was caused for various extraneous reasons beyond the control of the Noticees.

(d) Before the preferential allotment, Murarilal Agarwal, Ravindra Agarwal and Vishwabharlal Bhoot (Original Promoters) held 1,96,11,589 shares in Noticee

No. 1 Company which amounted to 54.49%. The public shareholding consisted of 1,63,78,880 shares amounting to 45.51%.

(e) After the preferential allotment, pursuant to the Share Subscription Agreement (SSA) dated October 15, 2010, the Original Promoters continued to hold 1,96,11,589 shares in Noticee No. 1 which presently constitutes 40.87% of the total shareholding of Noticee No. 1. E-Land Fashion China Holdings came to hold 1,20,00,000 shares amounting to 25%. As such the total promoter shareholding came to be 65.87% while the public shareholding continued to be 1,63,78,880 shares which post preferential allotment amounted to 34.13%. Copies of the share Subscription Agreement dated October 15, 2010 and an Amendment to the Share Subscription Agreement dated August 4, 2011 are annexed and marked as Exhibit A and Exhibit B.

(f) Pursuant to an Amendment to the Share Purchase Agreement dated October 15, 2010, the shareholding of the Original Promoters was reduced from 40.87% to 20.03% of the total equity share capital of the Noticee No. 1. Simultaneously, E-Land Fashion China Holdings acquired 3,15,98,094 shares from the Original Promoters and as a result its shareholding in Noticee No. 1 increased from 15.005% to 65.84% of the total equity share capital of the Noticee No. 1. The said Shareholders Agreement dated October 15, 2010 is annexed hereto and marked as Exhibit E.

(g) In June 2011, after the open offer, the Original Promoters continued to hold 1,96,11,589 shares in Noticee No. 1 which amounted to 40.87%. E-Land Fashion China Holdings came to hold 2,15,98,094 shares amounting to 45.005%. As such the total promoter shareholding came to be 85.875% while the public shareholding comprised of 67,80,786 shares which was 14.13% as on June 6,2011.

*(h) We state that Noticee No. 2 on one part and Noticees No. 3,4 and 5 on the other were parties to a shareholders agreement executed on October 10,2010 ("*SHA*"). Clause 2.6.1 of the SHA contemplated a situation where the shareholding of the promoter group could cross the threshold of 75% and also provided for appropriate mechanism and remedy to reduce such excess shareholding.However Noticee No. 3, 4 and 5 disregarded the mandatory obligation envisaged under clause 2.6.1 and failed to fulfill their obligations under the SHA which resulted in the breach of the terms. Noticee No. 2 vide letters dated July 14, 2012 and May 3, 2013 made repeated requests to the defaulting parties and made several efforts requesting Noticee No. 3, 4 and 5 to dilute their shareholding in accordance with the SHA and also the applicable law and rules in this regard.*

(i) Noticee no. 1 Company's networth was in the negative as at March 31, 2014, which led to drop in the market price of the shares below par value of ₹ 10. These factors coupled with the fact that were internal scuffles between the promoter group rendered it impossible for Noticee No. 1 Company to consider

any form of reduction of share capital including the issuance of bonus shares. In such a scenario, Noticee No. 1 Company was rendered helpless although there was a continuing default on their part in so far as the compliance with the MPS norms are concerned.

(j) On account to internal discord and disagreement between Noticee No. 2 and noticees No. 3 to 5, Noticee No.1 Company was unable to comply with the MPS Requirement within the timeline prescribed which was the direct and only cause for the breach of the provisions of the SEBI Act and SCRA, MPS norms in particular .

(k) It is pertinent to note that Noticee No. 2 and Noticees No. 3 to 5 entered into a settlement agreement dated July 1, 2013 (''Settlement Agreement'') with a view to resolve their differences and to achieve the MPS requirements. Copy of the settlement Agreement is annexed herewith and marked as ''Annexure C".

(l) As per the Settlement Agreement, upon receipt of the stipulated settlement amount, the Original Promoters were to withdraw all claims and complaints filed against Noticee No. 1, its directors and other officials under Section 138 of the Negotiable Instruments Act, 1881. The list of cases which were filed and withdrawn are listed in "Annexure D". Given such unrest amongst the group, there was no possibility of any compliance with the MPS norms.

(m) In order to comply with the MPS requirements, the Original Promoters appointed a merchant banker, Motilal Oswal Investment Advisors Limited to handle their assignment of compliance with the MPS norms. Pursuant to the appointment of the merchant banker, the Original Promoter vide its letters dated September 23, 2014 informed the BSE of the proposed offer for sale ("OFS") of 51,80,000 equity shares of face value of ₹ 10 each aggregating to 10.79% of the total paid-up equity share capital of Noticee No. 1 Company as on September 19,2014. Copy of the letter dated September 23, 2014 is attached herewith and marked as "Annexure E".

(n) Subsequently vide its letter dated September 24,2014, Noticee No. 1 Company requested National Depository Securities Limited and Central Depository Services (India) Limited to temporarily lift the 'ISIN level freeze' executed by NSDL and CDSL on the shares of Noticee No. 1 Company held in the name of the Original Promoters for the purpose of the proposed OFC. Copy of the letter dated September 21, 2014 is attached herewith and marked as "Annexure E".

(o) The Original Promoters thereby on September 26, 2014, made an offer for sale of approximately 51,80,000 equity shares of face value of ₹ 10 each representing 10.79% of the total paid-up share capital of Noticee No.1 Company, through the stock exchange mechanism in accordance with circular no. CIR/MRD/DP/18/2012 dated July 18, 2012 issued by the SEBI and as

amended by SEBI vides its circular no. CIR/MRD/DP/27/2012 dated August 8, 2014.

(p) *Pursuant to the OFS, Notice No .1 Company achieved compliance with MPS norms on September 26, 2014. The shareholding pattern of Noticee No. 1 Company for the quarter ending September 30, 2014 evidencing the same is attached herewith and marked as "Annexure J". On complying with MPS norms, Noticee No. 1 Company vide its letter dated November 27, 2014 informed BSE and NSE about the same with a request to remove all restrictions relating to trading, voting rights etc., against Noticee No. 1 Company, its directors, promoters and promoters group which were in operation by SEBI interim order dated June 4,2014.*

(q) *As observed by the Hon'ble Supreme Court in Hindustan Steel v State of Orissa, in the present case,the breach was unintentional and no benefits have accrued to the promoter entities as a result of such non-compliance. Morever, in the case of Bharjatiya Steel Industries v Commissioner, Sales Tax, U.P., the Supreme Court stated that existence of mens rea is relevant if an assessing authority has the discretion not to levy any penalty.*

(r) *It is clear that reduction of the public shareholding below 25% in a listed company is not a breach of the said provision perse. In fact, the said provision in Sub-Rule(2) provides for the date of compliance with such requirement. Merely upon crossing the threshold of 75% by the promoter category would not perse be considered as a violation unless and until the date of compliance is crossed by the promoters. In other words, the date of coming into effectof the mandatory requirement is set in the subject Rule itself and until such date, the crossing of threshold cannot be considered as triggering the violation. Our submission and quoting the three cases namely Hindustan Steel Ltd. v. State of Orissa [1969(2) SSC 627], Barjatiya Steel Industries v. Commisioner , Sales Tax, uttar Pradesh [(2008)11 SSC 617] and the matter of ICICI Securities Ltd. [Order of SEBI before AO dated March 3,2010] cannot be ignored.*

(s) *As already submitted during the personal hearing, there have been many instances (viz. Vimal Oil Foods Ltd., Marathwada Refractories Ltd, and MPS Ltd.) where SEBI has given permission to make an open offer being completely aware that the underlying open offer would attract the minimum public shareholding norms given the promoter shareholding crossing the threshold mentioned in the norms.*

(t) *SEBI vide its notification dated June 4,2013 (" Notification ") noted as under :*

"The Securities Contracts (Regulation) Rules, 1957 were amended in 2010 to provide for minimum and continuous public shareholding requirement in listed companies in private sector at 25%. In terms of these Rules, all listed companies have to comply with the said requirement by June 3, 2013."

(u) *Pursuant to the Notification, by law, Noticee No.1 was bound to comply with the minimum public shareholding requirement only by June 3,2013. As such, the allegation of SEBI that Noticee No.1 delayed in compliance from July 23, 2012 to September 26,2014 does not stand. Noticee No. 1 cannot be held liable for non-compliance, if any, can only be considered from June4,2013 to September 26, 2014.*

(v) *Further as per amendment in Securities Contracts (Regulation) (Amendment) Rules,2014, every listed company shall maintain public shareholding of at least twenty five percent:*

Provided that any listed company which has public shareholding below twenty five percent, on the commencement of the Securities Contracts (Regulation) (Amendment) Rules, 2014, shall increase its public shareholding to at least twenty five percent, within a period of three years from the date of such commencement, in the manner specified by the Securities and Exchange Board of India.

(w) We submit that there is no question of any gain or advantage that has accured to us, let alone any disproportionate gain or unfair advantage. No loss has been caused to any investor nor any complaint was filed by any investor or shareholder and most importantly there have been no instances in past where any regulatory action was initiated against us.

(x) In view of the foregoing facts, submissions and arguments advanced, we humbly request you to dispose of the present proceedings against the Noticee without any penalty whatsoever especially when such grave hardships were occasioned to us.

Reply of the Noticee No. 3 to 5

(y) *The Noticees, Mudra Lifestyle Limited ("Mudra") and E-Land Fashion China Limited ("E-Land") executed a share subscription agreement dated 15 October 2010 ("SSA"), a share purchase agreement dated 15October 2010 ("SPA") and a shareholders agreement dated 15 October 2010 ("SHA") pursuant to which E-Land agreed to acquire equity shares of Mudra constituting a minimum of 51% and a maximum of 67% of the issued, subscribed and paid up capital of Mudra and also to acquire control of Mudra and be a co-promoter of Mudra together with the Noticees upon the consummation of the transactions contemplated under the SSA,SPA and the SHA ("Transaction Documents").*

(z) *Under the SSA, E-Land agreed to acquire 12,000,000 equity shares of Mudra for an aggregate consideration of ₹ 720,000,000/- by way of subscription to fresh issue of equity shares on a preferential allotment basis. E-Land had*

further agreed to purchase 10,000,000 equity shares of Mudra from the Noticees on pro rata basis for an aggregate consideration of ₹750,000,000/-.

(aa) *E-Land completed the aforesaid open offer on 23 July 2011. Under the open offer, E-Land acquired 9,598,094 equity shares of Mudra. The acquisition of the Open Offer Shares by E-Land increased the cumulative shareholding of E-Land and the Noticees(then being the promoters of Mudra) to 85.87%.*

The shareholding of the Noticees in Mudra prior to acquisition by E-Land pursuant to the transaction Documents and the Open Offer Shares is tabulated below:

SHAREHOLDING OF THE NOTICEES PRIOR TO ACQUISITION OF EQUITY SHARES BY E-LAND		*SHAREHOLDING OF THE NOTICEES AFTER THE ACQUISITION OF EQUITY SHARES BY E-LAND PURSUANT TO THE TRANSACTION DOCUMENTS AND THE OPEN OFFER SHARES*	
Total no. of Equity Shares	*Total Shareholding as % of Total No. of Equity Shares*	*Total No. of Equity Shares*	*Total Shareholding as a % of Total No. of Equity Shares*
19,611,589	*54.49%*	*9,611,589*	*20.03%*

(bb) *The Noticees and E-Land continued to be the promoters of Mudra and post the acquisition of the equity shares of Mudra and the total promoter shareholding in Mudra had increased to 41,209,683 shares representing 85.87 of the subscribed, issued and paid up share capital of Mudra.*

(cc) *In terms of Rule 19(A) of the SCRR, the Noticees and E-land were required to bring down the shareholding in Mudra to 75% within a period of one (1) year from 23 July 2011 i.e. 22 July 2012. The Noticees had contractually agreed to divest their shareholding to bring Mudra, E-land and the Noticees in compliance with the MPS norms. However, due to certain commercial disagreements and disputes between E-Land and the Noticees, the parties to the SHA could not perform their respective obligations under the SHA. Nonetheless, the notices were making best efforts to divest their shareholding to be in compliance with the minimum public shareholding norms under the SCRR.*

(dd) *Given the aforesaid reasons both Murarilal B Agarwal (Noticee No. 3) and Ravindra B Agarwal(Noticee No. 4) resigned from the board of directors of Mudra on 16 March 2012 and surrendered all management related responsibilities in Mudra, simultaneously. In light of the above, Murarilal B Agarwal (Noticee No. 3) and Ravindra B Agarwal(Noticee No. 4) were not able to attend office or meetings including the meetings for the compliance of*

MPS norms or for resolution of the commercial disputes with E-land and Mudra.

(ee) The Noticeees humbly submits that the ailment of Murarilal B Agarwal (Noticee No. 3), the resignation of the Noticees from board of directors of Mudra and exit of the Noticees from the business and management of Mudra had serious implications on their ability to sell the shares of Mudra through an offer for sale and to comply with the MPS norms.

(ff) During the time, Vishwambharlal K. Bhoot (Noticee No. 5) and in some instances Ravindra B Agarwal(Noticee No. 4) continued to make best efforts towards the compliance of the MPS norms including discussions with some of the Merchant Bankers/ Brokers to explore various options for bringing down the promoter shareholding including an offer for sale by the Noticees. The Noticees had, in fact, also appointed Saffron Financial Advisory & Consultancy Private Limited to find potential investors/institutional buyers to acquire part of the equity shares of Noticees held in Mudra for bringing down the promoter shareholding. A copy of the engagement letter dated 31 January 2013 addressed by Saffron Financial Advisory & Consultancy Private Limited to the Noticees is annexed hereto as Annexure "B".

(gg) The total losses of Mudra as on 31 March 2013 has exceeded its entire net worth and Mudra had proposed to make a reference to the BIFR under the provisions of Section 15(1) of the Sick Industrial Companies (Special Provisions) Act, 1985 for determination of the measures that should be adopted by Mudra to revive Mudra.The shares were categorized for trading in the "Periodic Call Auction" system and there was extremely low volume of trading in the shares of Mudra.

(hh) E-Land, by its letters dated 14 July 2012 and 3 May 2013, had informed the Noticees about the provisions of the SHA and their obligation to divest their shareholding in Mudra in order for Mudra to be in compliance with the MPS norms. In response to the letter dated 14 July 2012 of E-Land, Ravindra B Agarwal(Noticee No. 4) vide his letter dated 21 September 2012 informed E-land about the Noticees intention to resolve all the issues between E-Land and the Noticees and requested E-Land for a meeting for arriving at an amicable settlement of all the issues and disputes between E-Land and the Noticees. A copy of letter dated 21 September 2012 is annexed hereto as Annexure "C".

(ii) In response to the letter dated 3 May 2013 from E-Land, Ravindra B Agarwal(Noticee No. 4) by his email dated 6 May 2013, informed E-Land that the Noticees have been actively meeting potential buyers and pursuing divestment of their part shareholding with potential buyers since the last six months. The Noticees further informed that they tried their level best to sell 50,00,000 shares of Mudra at as low as ₹ 8, but, could not find a buyer since E-Land had the management control over Mudra. The Noticees also informed

E-Land that they were willing and were ready to sell the shares of Mudra at the market price of ₹ 9 per equity share or even below the prevailing market price to ensure compliance of the MPS norms. Acopy of email dated 6 may 2013 is annexed hereto as Annexure "D".

(jj) It should be noted that Mudra incurred huge losses in financial years 2012,2013 and 2014 leading to erosion of the networth of Mudra. Attached are the Annual reports of Mudra for the year 2012,2013 and 2014 as Annexure "E". Further, due to erosion of net worth of Mudra and negative net worth, the market price and trading volume of the shares of Mudra dipped below par value on many occasions, a trading chart for the trading period between 1 July 2013 and 26 September 2014 is set out as Annexure "F".

(kk) The Noticees asserts that they were not part of the management of Mudra during such times and was themselves surprised by such a plight for Mudra. Given the reasons above, irrespective of the best efforts of the Noticees, the Noticees were unable to meet the MPS norms under the SCRR due to reasons beyond the control of the Noticees.

(ll) A reference in this regard needs to be made to the legal maxim "lex non cogit ad impossibilia" that mean no one can compela person to do the impossible things. The same was held by Hon'ble Supreme Court of India in Vinod Krishna Kaul vs. Union of India (1996) 1 SCC 41 and Rajesh D Darbar vs. Narsingrao Krishnaji Kulkarni (2003) 7 SCC 219.

(mm) Upon improvement in the market condition, the Noticees again renewed their efforts for complying with the MPS norms and appointed Motilal Oswal Securities Limited on 15 January 2014, as a selling broker for the proposed offer for sale of 5,180,000 equity shares of face value of ₹ 10 each on behalf of the Noticees. A copy of the engagement letter with said stock broker is set out in Annexure "G".

(nn) Even after appointing a competent and experienced broker and agreeing to pay a significant fee of ₹3,994,000/-which was approximately 7.7% of the value of the 'offer of sale ("Advisory Fee"), it took approximately 9 months to complete the offer for sale. It should be noted that the Advisory Fee agreed was much higher than the average market standard of 1%-2%.

(oo) The Noticees states and pleads that the delay in compliance of the 'offer of sale' on the part of the Noticees are purely attributed to:

Mudra incurring huge losses in financial years2012,2013 and 2014;

Erosion of the net worth of Mudra during the non-compliance period;

Lack of liquidity in the shares of Mudra and categorization for trading in the "Periodic Call Auction "sustem;

The market price and trading volume of the shares of Mudra dipped below par value on many occasions;

Proposal by Mudra for making a reference to BIFR;

Uncertain political and market conditions prevalent during non-compliance period;

No access to turnaround strategy for Mudra by the Noticees in order for them to give adequate comfort to the investors/ merchant bankers with respect to the business and turnaround plan of Mudra and convince the prospective investors to purchase the shares from the Noticees; and

Containing brittle health condition of the head of family, the Noticees being blood relative remained non-operational in the business of Mudra and otherwise for the more than a year during the non-compliance period.

(pp) For the reasons above, the delay in compliance with Rules 19(2)(b) and 19(A) of the SCRR on the part of the Noticees is (i) purely circumstantial, (ii) attributed to reasons beyond the control of the Noticees. The Noticees further state that have made best effort to comply with the minimum public shareholder norm under the SCRR and even after the Noticees made the best efforts or had the best intention, it was impossible for the Noticees to comply with the requirement of SCRR during the non-compliance period.

(qq) With a view to fulfil their obligations to comply with the requirements of the MPS norms and to attract the investors in the offer for sale, the Noticees offered a huge discount of ₹2.45 per equity share compared to the closing market price of equity shares of Mudra on BSE on 25 September 2014 which was ₹15.20 (i.e. a day prior to the date of sale). Hence, offer for sale was made at a discount of approximately 16% over the last closing price on BSE and thus the Noticees suffered a loss of ₹12,691,000/-.

(rr) Based on the above, the Noticees humbly submits and request for a favorable order of condoning the delays in compliance of MPS norms under the SCRR taking due consideration of the aforesaid hardship faced by the Noticees, not levying any monetary penalty on the Noticees taking due consideration of the losses already suffered by the Noticees and the case laws of Ex- Naik Sardar Singh vs. UoI (1991) 3 SCC 212 and Ranjit Thakur vs. UoI AIR 1987 SC 2386. Also order of withdrawal of the SCN and any proceedings, if already initiated, under the SCRR, or SEBI Act 1992, rules or regulations framed there under.

15. After taking into account the allegations, replies of the Noticees and other evidences / material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

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

a) Whether the Noticees had failed / delayed in complying with the MPS norms as specified in rule 19 (2) (b) and 19 A of the SCRR?

b) If yes, then, whether said violation attracts monetary penalty under sections 23 E and 23H of the SCRA?

c) If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 23J of the SCRA read with rule 5 (2) of the Adjudication Rules?

ISSUE NO. 1- Whether the Noticees had failed / delayed in complying with the MPS norms as specified in rule 19 (2) (b) and 19 A of the SCRR?

17. Before going to examine the case, it would be appropriate to mention about the change that took place in respect of Company and promoters. It is admitted / established on records that the name of Mudra Lifestyle Ltd. was changed to E-Land Apparel Limited on February 02, 2015 and therefore, the liabilities / default regarding said noncompliance of MPS on the part of erstwhile company is assigned / transferred upon the E-Land Apparel Limited (the present company). Further, upon perusal of the entire records / Settlement Agreement" dated July 01, 2013 entered into between Noticee No. 2 and the Noticee No. 3-5, it is observed that the Noticee No. 2 stepped into in place of E-land fashion China Holding Ltd. (erstwhile promoter).

18. I have carefully perused the allegations, submissions of the Noticees and the evidences / material available on records. The facts / details as alleged in the SCN and the annexures thereto, are not in dispute by the Noticees. The submissions of the Noticees towards the allegations are mentioned at para 14 above and same are not repeated for sake of brevity.

19. It is seen from the annexure II of the SCN (shareholding pattern) that at quarter ended on September 30, 2011, the Noticee No. 2-5 (Promoters) were holding 85.87% shares of the Company /Noticee No.1. From the admission of the Noticees and from the material available on records, it is observed that the Company as well as the promoters (the Noticees) did not comply with the

MPS requirements as required under rule 19A (2) of the SCRR, within a period of 12 months from the date (July 23, 2011) when the public shareholding in the company/Noticee No.1 came down below 25%, but complied belatedly on September 26, 2014 as against July 22, 2012.

20. The main contention / defence raised by the Noticees is that the delay in complying with MPS requirement as alleged was not intentional, but was caused due to some internal discord amongst the promoters (Noticee No. 2-5). The Noticee contended that their dispute took a long time since acquisition of shares by Noticee No. 2 which led to delay in compliance and ultimately on September 26, 2014, the MPS requirement was compliedwith by the Noticees.

21. The Noticees submitted that as per rule 19 of the SCRR the time lines for complying with MPS requirements is 1 year from the date on which the public holding came down below than 25%. The Noticees submitted copies of certain documents in their defence viz. agreements executed on October 15, 2010 amongst the Noticees(transaction documents viz. SHA,SSA,SPA), communicationsamongst them, settlement agreement, list of criminal cases filed by Noticee No. 3-5 against Notice No. 1-2 before Ld. Addl. Chief Metropolitan Magistrate, Mumbai under section 138 of the Negotiable Instruments Act etc. showing the efforts taken / hardship faced by them while complying with the MPS norms and reasons for delay caused in such compliance.

22. On perusal of the available material and from the admission of the Noticees, it is observed that there was some internal discord amongst the promoters and that caused the delay in compliance and consequent to the proceedings before Ld. Whole Time Member of SEBI u/s 11, 11(4) and 11B, the Noticees complied with the MPS norms only on September 26, 2014 after delay of more than 2 years (i.e. July 23, 2012 to September 26, 2014).

23. However, said plea of internal discord amongst the Noticees cannot be considered as absolute defence in view of the mandatory provisions of rule 19A (2) read with rule 19 (2) (b) of the SCRR requiring the compliance of MPS norms within stipulated time of 12 months. It was upon the Noticees to meet the requirements of SCRR and the Noticees due to their internal personal dispute cannot dilute the mandate of SCRR. In other words they (Noticees) were *pari delicto*as the delay was due to their own dispute but not on account of unavoidable act of some outside agency / law or due to other reasonable circumstances beyond their control.No one can be allowed to take advantage and be absolved from their own act and conduct / failure towards the obligatory requirements.

24. The Noticee No. 1 & 2 made another contention that as per Securities Contracts (Regulation) Rules, 1957 which were amended in 2010, all listed companies (the minimum and continuous public shareholding requirement in listed companies in private sector at 25%),were to comply under rule 19A by June 3, 2013. The said contention is not acceptable on two counts viz. (i) upon perusal of said rule 19A it is clear that said amendment applies to those company which has the public shareholding below 25% at the time of commencement of said amendment in 2010, but as observed above the public shareholding of Company / Noticee No.1 was not less than 25% at the time of commencement of said amendment, but, it came down only on July 23, 2011, (ii) at the point of time the mandate of rule 19A (2) was very much applicable which requires the MPS compliance within 12 months which infact is admitted by the Noticees in their replies. Further, even if it is assumed that the relaxation of 3 years under said amendment is applicable to the Noticees, even then, there was huge delay of more than 1 year as the MPS norms were complied by the Noticees only on September 26, 2014.

25. The Noticees No. 1 & 2 also contended that as per SCRR amendment Rules 2014, the time line to comply with MPS norms under rule 19Aof SCRR, were

extended to 3 years and therefore, they should not be made liable as they complied the norm on September 26, 2014.

26. I do not agree with the aforesaid contention of the Noticee No. 1 & 2 on the two grounds- (i) at the relevant point of time (July 2011) when the breach was alleged to have been done by the Noticees, the time lines for complying with MPS norms under rule 19 A (2) was 12 months, (ii) the SCRR amendment Rules 2014took place / w.e.f. August 22, 2014 extending time lines of 3 years is applicable only to Listed Public Sector Companyand not to listed companies in the private sector. Therefore, in view of the above, the contention of the Noticees is not acceptable at all. I cannot ignore the fact that while relying and reproducing the said amendment of 2014, the Noticee No. 1 & 2 did not write the word of "Public Sector Company" in said amended provisions of rule 19 A of SCRR which apparently is misguiding in nature.

27. It is relevant to mention here that the Noticee No. 2-5being the promoter/director(s) of the Noticee No. 1are the persons liable for the affairs of the Company. The Noticee No. 2-5 being the promoters holding maximum shares of the company/NoticeeNo. 1 (i.e. 85. 87% during July 2011) werecollectivelyresponsible to maintain the MPS requirements in the company as required in rule 19 (2) (b) and 19A of the SCRR.

28. At this juncture, it is relevant to mention here that manner of divestment of the promoters shareholding to ensure the compliance with the minimum 25% public shareholding threshold is set out under clause 40A (ii) of the Listing Agreement (read with section 21 of the SCRA) which specifies that a listed company shall raise its public shareholding to the required level by any of the methods specified thereunder which also includes sale of shares held by the promoters through secondary market.

29. It is also noted that subsequently, SEBI issued Circulars dated February 08, 2012 and Circular dated August 29, 2012 specified the additional methods that listed companies may achieve the minimum public shareholding

requirement including Rights Issues to public shareholders, with promoters/promoter group shareholders forgoing their rights entitlement.

30. In view of the clause 40A (ii) of the Listing Agreement, it is clear that there is a responsibility (even though indirectly) upon the promoter (s) to divest their excessive shareholding and bring down their shareholding upto or below 75% only and the remaining 25% or more is required to be maintained for the public shareholding in accordance with rule 19 (2) (b) and 19A of the SCRR. Therefore, failing to meet the aforesaid requirements, the promoters / Noticee No. 2-5 are equally liable besides the Noticee No. 1 / Company for the aforesaid irregularities.

31. Here, the question arises further that whether all the promoters are responsible to divest their shareholding or is there any condition / contract amongst themselves to meet the said requirements.

32. The Noticee No. 1-2 in their defence contended that as per agreement “Shareholders Agreement / SHA” dated October 15, 2010 entered into between E-land fashion China Holding Ltd. at one side and Noticee No. 3-5 on other side, it was contemplated under clause 2.6.1 of said agreement that in a situation where the shareholding of the promotergroup crosses the threshold of 75% then, the Noticee No. 3-5 / Original Promoter would sell such numbers of shares held by them as may be necessary in order to maintain the MPS norms. It was contended by the Noticee No. 1-2 thatthe Noticee No. 3, 4 and 5 disregarded the mandatory obligation envisaged under clause 2.6.1 and failed to fulfill their obligations; and therefore, no liability can be fixed upon them/Noticee No.1& 2.

33. Further, the Noticee No. 1&2 stated that they took efforts to comply with MPS norm and accordingly vide letters dated July 14, 2012 and May 3, 2013 made repeated requests to the defaulting parties / Noticee No. 3-5 to dilute their shareholding in accordance with the SHA and applicable laws in this regard.

34. It is noted from the records that the aforesaid clause 2.6.1 of SHA became *non est* / ceased / non effective / terminated *ipso facto* by virtue of a "Settlement Agreement" dated July 01, 2013 entered into between Noticee No. 2 and the Noticee No. 3-5 to settle their internal discord. Therefore, the aforesaid plea of clause 2.6.1 of SHA and the subsequent notice/letters dated July 14, 2012 and May 3, 2013 etc. are not exclusively applicable in favour of the Noticee No. 1 & 2. Accordingly, all the promoters (Noticee No. 2-5) qua the Company (Noticee No.1) are liable to comply with the MPS requirements.

35. The plea of certain efforts / hardship etc. as mentioned in therepliesof theNoticeeswhile belatedly complying withMPS norm, can not be considered an absolute defence to absolve them from the mandatory liablity imposed under the SCRR, though same can be considered as mitigating factors while imposing the monetary penalties.

36. Further, I have carefully perused the case laws relied by the Noticees in their defence. I am of the view that certain case laws as relied by the Noticee No. 3-5 viz. *Vinod Krishna Kaul vs. Union of India (1996) 1 SCC 41 and Rajesh D Darbar vs. Narsingrao Krishnaji Kulkarni (2003) 7 SCC 219*in reference to legal maxim "lex non cogit ad impossibilia" and the case of *First Financial Services Ltd. of SEBI dated December 19, 2014,*does not pertains to the core issue and facts/circumstance of the present case. Needless to say that noncompliance of mandatory provisions of SCRR due to Noticee's personal discord, does not attract any rule of *impossibility* as relied by them in their aforesaid case laws.

37. Further, the Noticee No. 1&2 also relied the case viz. *Hindustan Steel Ltd. v. State of Orissa [1969(2) SSC 627], Barjatiya Steel Industries v. Commisioner, Sales Tax, Uttar Pradesh [(2008)11 SSC 617] and ICICI Securities Ltd. [Order of SEBI before AO dated March 3, 2010]*relating to the issue of unintentional mistakes and *mens- rea* etc., however, upon scrutiny, it is observed that the facts/circumstance and the nature of involvement into irregularities in said cases are different from the facts /circumstance of the present case; and hence cannot be relied in favour of Noticees.

38. Besides aforesaid observations, it is relevant to mention here the objectives of said mandatory SCRR provisionswhich required the availability of a minimum portion/number of shares of the listed securities with the public to ensure that there is a reasonable depth in the market and the prices of the securities are not susceptible to manipulation. Moreover a dispersed shareholding structure is also essential for the sustenance of a continuous market for listed securities to provide liquidity to the investors and to discover fair prices

39. I cannot ignore the following observations made by the Hon'ble Securities Appellate Tribunal in the matter of ***Gillette Limited vs. SEBI (Appeal no. 65 of 2013) decided on July 03, 2013***:

"*24. .....In our opinion, the Appellant seems to have overlooked, whether deliberately or inadvertently, thefact that the underlying philosophy behind the requirement of a minimum public holding of 25% is prevention ofconcentration of shares in the hands of a few market players by ensuring a sound and healthy public float to stave offany manipulation or perpetration of other unethical activities in the securities market which would unfortunately be theirrefragable consequence of the reins of the market being in the hands of a few".*

40. It is also noted from the records that the Whole Time Member of SEBI vide interim order No. WTM/PS/08/CFD/JUNE/2013 dated June 04, 2013 and final order No. WTM/PS/47/CFD/NOV/2014 dated November 24, 2014 had also observed about said was noncompliance / belatedly complied with MPS norms.

41. In view of aforesaid observations and the admitted position by the Noticees, it is concluded that the all the Noticees had failed to meet the MPS requirement within stipulated time of 12 months under rule 19 A (2) read with 19 (2) (b) of the SCRR, and admittedly, they had complied belatedly the same only on September 26, 2014.Therefore, violation of rule 19 (2) (b) and 19 A of the

SCRR(read with clause 40A (ii) of the Listing Agreement/ aforesaid SEBI Circulars)stands establishedagainst the Noticees.

ISSUE NO. 2- Whether said violation attracts monetary penalty under sections 23 E and 23H of the SCRA?

42. In respect of imposition of monetary penalties, I cannot ignore the historical caseof in Hon'ble Supreme Court of India in the matter of***The Chairman, SEBI Vs. Shri Ram Mutual Fund[2006] 68 SCL 216(SC)***wherein it washeld 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".*

43. It is relevant to mention here that said case of *Shri Ram Mutual Fund*(*supra*) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of ***Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008*** on the issue related to income tax act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation and is mandatory and the *mens- rea* is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the case of *Shri Ram Mutual Fund*(*supra*) has been analysed in the legal position and in the correct perspectives.

44. Therefore, the case of *Dharmendra Textile Processor (supra)* which was decided on September 29, 2008 by three judges bench had succeeded over the case of *Barjatiya Steel Industries*decided on March 05, 2008 (as relied by the Noticees).

45. The case laws relied by the Noticees on the issue of imposition of penalties viz. *Ex- Naik Sardar Singh vs. UoI (1991) 3 SCC 212 and Ranjit Thakur vs. UoI AIR 1987 SC 2386, Hindustan Steel Ltd. v. State of Orissa [1969(2) SSC*

627], Barjatiya Steel Industries v. Commisioner, Sales Tax, Uttar Pradesh [(2008)11 SSC 617] and the case of ICICI Securities Ltd. [Order of SEBI before AO dated March 3, 2010] does not relates to the facts/circumstance of the present case and hence cannot be accepted in favour of the Noticees.

46. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, importance of such MPS norm, nature of aforesaid established irregularities of rule 19 (2) (b) and 19 A of the SCRR(read with clause 40A (ii) of the Listing Agreement / SEBI Circulars)by the Noticees and analyising the aforesaid case laws, I am of the firm view that the said violations attracts the imposition of monetary penalties upon the Noticees.

47. Needless to say that the case of Noticee(s) in the matter of *Global Infrastructure Holding Ltd. vs. Adjudicating Officer of SEBI* decided by the Hon'ble SAT, lays down the general requirement to considerfactors enshrined under section 15 J of the SEBI Act while imposing monetary penalties. The same is a statutory requirement under section 23 J of the SCRA / rule 5 of the Adjudication Rules; and is being considered in the next Issue of this order.

48. It is not out of place to mention that the present proceeding arose from a single cause of action or single allegation/breach (i.e. non compliance / belated compliance of MPS norms in a listed company which is a listing condition or a continuous listing requirement for a listed company under rule 19 (2) (b) and 19A of the SCRR). For the aforesaid violation, two provisions of the SCRA viz. 23E and 23H are alleged against the Noticees where the monetary penalties can be imposed upon them. I have carefully perused both the provisions which are also reproduced as under;

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding to twenty-five crore rupees.*

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye- laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which which may extend to one crore rupees.*

49. Upon perusal of aforesaid provisions, it is observed that for the violation of "listing condition / continuous listing requirement", monetary penalty has been prescribed under section 23E of the SCRA which is exclusively/specifically provided for such kinds of breach. Further, from the bare perusal of section 23H of the SCRA, it is clear that the same is a residuary provision and is prescribed for the remaining kinds of violation for which no separate penalty has been provided in the SCRA.

50. Here, I cannot ignore the material legal issue that if for a specific violation a specific provision of penalty has been stipulated, then, for the same violation, another residuary provision cannot be attracted. Accordingly, I am of the view that for the aforesaid established violation of non compliance / belated compliance of MPS norms by the Noticees, the Noticees are liable to be penalized only under section 23E of the SCRA.

51. Thus, the aforesaid concluded violation of rule 19 (2) (b) and 19 A of the SCRR(readwith clause 40A (ii) of the Listing Agreement / SEBI Circulars) by the Noticees makes them liable for penalty under sections 23 E of the SCRA.

ISSUE NO.3 - What would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 23J of the SCRA read with rule 5 (2) of the Adjudication Rules?

52. While determining the quantum of penalty under sections 23 E of the SCRA, it is important to consider the factors stipulated in section 23J of the SCRA read with rule 5 (2) of the Adjudication Rules, which reads as under:-

23J"Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 23-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."

53. Though, no specify disproportionate gains or unfair advantage made by the Noticees or the specific loss suffered by the investors due to such non / delayed compliance of MPS requirement or the repetition of the default, is shown on records. However, it is relevant to consider the importance of such MPS norm which in fact has been explained in Para 38 and 39 above of this order. Further, it would be appropriate to refer here the observations made by the Hon'ble SAT in the following cases:

(a) In the matter of ***Komal Nahata Vs. SEBI decided on January 27, 2014***:- *"Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."* The present provisions of SCRR are equally important as of Takeover and PIT Regulations, hence, the aforesaid principle is applicable for the violation of SCRR too.

(b) In the matter of ***Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014*** *:- "… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

54. Therefore, taking into consideration the facts / circumstance of the case, the fact of enormous delay in complying with the MPS norm requirements, importance of such MPS requirements andsome considering some of mitigating factor / efforts made by the Noticee in order to belatedly comply

with MPS requirements, Iam of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

55. After taking into consideration all the facts and circumstances of the case and considering the aforesaid case laws, I hereby impose a penalty of ₹5,00,000/- (Rupees Five Lakh only) **upon each Noticees** undersection 23Eof the SCRA. Therefore, a consolidated penalty of ₹ 25,00,000/- (Rupees Twenty Five Lakh only) in imposed in the matter. I am of the view that the said penalty would be commensurate with the violations committed by the Noticees.

56. The Noticees shall pay the said amount of penalty by way 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 Chief General Manager, Enforcement Department at the address:- SEBI Bhavan, Plot No. C4A, G Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051.

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

Date: September 29, 2015 **RACHNA ANAND**

Place: Mumbai **ADJUDICATING OFFICER**