

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/JP/ 18 - 25 /2015]

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

In respect of:-

- (1) Presha Metallurgical Ltd. (PAN: AACJ4764D)
- (2) Pankhuri Technowave Pvt. Ltd (PAN: AAACP1565A)
- (3) Compass Technologies Pvt. Ltd. (PAN: AABCC5553G)
- (4) Parixit gas Company Ltd. (Pratik Gas Company Pvt. Ltd) (PAN: AADC3812D)
- (5) Ashok Propon Pvt. Ltd. (PAN: AAHCA5792P)
- (6) Darshit Hydro Power Projects Pvt. Ltd. (PAN: AACCD6151A)
- (7) Shankeshwar Metals Pvt. Ltd. (PAN: AACCS1367D)
- (8) Hiralal P Shah HUF (PAN: AADHS6768L)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') upon suspicion of violation of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulations') and the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'SAST Regulations') had conducted investigations in the shares / shareholding in the scrip of Presha Metallurgical Ltd. for the period from April 23, 2012 to March 22, 2013. Investigation *inter – alia* revealed that no disclosures on time were made under regulation 13 (6) of the PIT Regulations by the Presha Metallurgical Ltd. (PML / Company); and no disclosures on time were made under regulation 29 (1) read with regulation 29 (3) of the SAST Regulations by the Preferential Allottees namely:- Pankhuri Technowave Pvt. Ltd. (Pankhuri Technowave), Compass Technologies Pvt. Ltd. (Compass Technologies), Parixit Gas Company Ltd. (Pratik Gas Company Pvt. Ltd) (Parixit Gas), Ashok



Propon Pvt. Ltd (Ashok Propon), Darshit Hydro Power Projects Pvt. Ltd. (Darshit Hydro), Shankeshwar Metals Pvt. Ltd. (Shankeshwar Metals) and Hiralal P Shah HUF (Hiralal HUF) (all seven allottees may be referred as **Preferential Allottees** collectively), regarding the change / increase of shareholding of the Preferential Allottees in the shares of the PML consequent to allotment of shares on May 04, 2012.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudicating Rules**') vide order dated May 08, 2015, to inquire into and adjudge under section 15 A (b) of the SEBI Act, the violations of regulation 13 (6) of the PIT Regulations alleged to have been committed by the PML / Company and the violation of regulation 29 (1) read with regulation 29 (3) of the SAST Regulations alleged to have been committed by the aforesaid 7 Preferential Allottees.

SHOW CAUSE NOTICE, REPLY AND HEARING

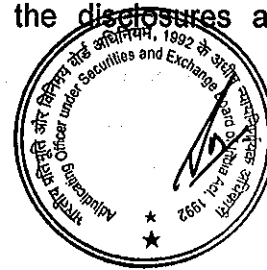
3. Show Cause Notice No. E&AO/RA/JP/19141/2015 dated July 08, 2015 and a common Show Cause Notice No. E&AO/RA/JP/19157/2015 dated July 08, 2015 (hereinafter referred to as "**SCN / SCNs**") were served upon the PML and the Preferential Allottees respectively under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under sections 15A (b) of the SEBI Act for the aforesaid alleged violations of PIT Regulations and SAST Regulations. For the sake of brevity the PML and the Preferential Allottees are collectively referred to as "**the Noticees**".
4. The observations made under the investigations and the allegations levelled against the Noticees in the SCNs are briefly mentioned hereunder;



(a) During the quarter ended June 2012, the total share capital of the PML / Company was increased by 1,00,00,000 shares on account of conversion of equity warrants issued on preferential basis. The shares were allotted to the Preferential Allottees on May 04, 2012. Based on the KYC analysis of the entities, no connection could be established (other than one given in the table below) within the Preferential Allottees *inter-se* or the Preferential Allottees with the PML. The details of shares allotted etc. are given below:-

Sl. No.	Name of the shareholder / Allottees	No. of Shares held	% of share capital	Connection to Other Allottees	Connection to PML
1	Pankhuri Technowave Private Limited	1500000	10.5%	No Connection	No Connection
2	Compass Technologies Private Limited	1500000	10.5%	No Connection	No Connection
3	Parixit Gas Company Ltd	1500000	10.5%	No Connection	No Connection
4	Ashok Propon Pvt Ltd	1500000	10.5%	No Connection	No Connection
5	Darshit Hydro Power Project Pvt Ltd	1500000	10.5%	Anand Trivedi is the common director of Darshit Hydro Power and Shankheshwar Metals	No Connection
6	Shankheshwar Metals Pvt Ltd	1500000	10.5%	Anand Trivedi is the common director of Darshit Hydro Power and Shankheshwar Metals	Ramanlal Trivedi is common director of Shankheshwar Metals and PML. Anand Trivedi is the son of Ramanlal Trivedi.
7	Hiralal P Shah HUF	1000000	7%	No Connection	No Connection
	Total	10000000	69.98%		

(b) During investigation, it was revealed under e-mail dated September 24, 2014 of BSE Ltd- a stock exchange (BSE) that no disclosures under PIT Regulations and SAST Regulations were present in website of BSE about the increase in the shareholding of the Preferential Allottees. SEBI vide e-mail dated November 18, 2014, asked the PML/Company to provide copy of disclosures received by it from the Preferential Allottees and disclosure made by it to the BSE under PIT Regulations and SAST Regulations. The PML vide reply / e-mail dated December 11, 2014 provided the disclosures and



according to the documents sent by the PML, it was revealed that the disclosures with respect to the change in shareholding due to preferential allotment, were made by the Preferential Allottees to PML on May 05, 2012 and PML in turn had disclosed the same to BSE. However, for verification, the said documents were forwarded to BSE for confirmation and BSE vide its e-mail dated January 09, 2015 stated that the said disclosures were received only on December 01, 2014.

- (c) In view of the above, it was alleged that the PML had failed to disclose the aforesaid change of shareholding of Preferential Allottees to the BSE in term of regulation 13 (6) of PIT Regulations and the Preferential Allottees had failed to make disclosures to the BSE in terms of regulation 29 (1) read with regulation 29 (3) of the SAST Regulations. Aforesaid alleged provisions of law are mentioned below;

PIT Regulations

Disclosure by company to stock exchanges.

(6) Every listed company, within two working days of receipt, shall disclose to all stock exchanges on which the company is listed, the information received under sub-regulations (1), (2), (2A), (3), (4) and (4A) in the respective formats specified in Schedule III.

SAST Regulations

Disclosure of acquisition and disposal.

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

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and (b) the target company at its registered office.

- (d) It was stated in the SCNs that the aforesaid alleged violations, if established, would make all the Noticees liable for monetary penalty under section 15 A (b) of the SEBI Act.

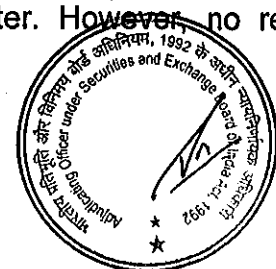


5. In respect to the SCN, the PML through its e-mail dated August 04, 2015 requested for extension of time to submit reply as the same is being prepared by gathering all the information and it had also requested for personal hearing in the matter. Vide communiqué dated August 05, 2015, PML was asked to serve upon its 2 promoters (viz. Bipin C Gadhiya and Mr. Govind Senma) a show cause notice No. E&AO/RA/JP/19142/2015 dated July 08, 2015 issued against them (promoters) at the address available in its records as the said show cause notice was returned undelivered by the Postal Department. PML was also asked that in case the show cause notice cannot be served on them/promoters on their current addresses available with it, then, affix the same at the outer door or other conspicuous part of their premises evidenced by two witnesses and forwards the original service report / affixture report on priority basis. Vide said communiqué the PML was also asked to forward current contact details available in its records (viz. all addresses, e-mail IDs, phone numbers etc.) of said two promoters.
6. In response to the said communiqué, the PML vide letter / reply dated August 19, 2015 again stated that it is gathering the details / disclosures in respect of show cause notice issued against its promoters and also need some more time to file reply towards the SCN issued against it. PML stated that it had made all the required disclosures from its side on time as the BSE vide its e-mail dated February 16, 2015 confirmed receipt of disclosures under regulation 13 (6) of the PIT Regulations from the PML/Company. However, the PML had failed to submit proof of service / affixture of show cause notice upon its promoters and also failed to submit current contact details available in its records of said two promoters (viz. all addresses, e-mail IDs, phone numbers etc.).
7. As no further reply, proof of service / affixture of show cause notice upon its promoters and current contact details of said two person/promoters were provided by the PML, therefore, vide notice dated October 06, 2015, PML was asked to submit its reply towards the SCN and also to submit service report / affixture report of the show cause notice issued against its promoters on or before October 16, 2015. Vide said notice, the PML was also provided with an opportunity of hearing on October 27, 2015 as requested by it. It was clearly



mentioned in the said notice that if no reply / appearance is made by it on the aforesaid date of hearing, then, the matter would be decided further on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules. It was also indicated in the said notice that failing to comply with the direction of *Quasi-judicial Authority* / failing to submit the report of service / affixture of the show cause notice issued against its promoters, may attract action under Indian Penal Code / SEBI Act or other extant laws. The said notice dated October 06, 2015 was sent through Speed Post AD at the address as mentioned in the letter head of the PML in its reply dated August 19, 2015, however, surprisingly, the said notice was returned undelivered by the postal department with remarks "Left".

8. On November 05, 2015, the undersigned received a copy of same reply dated August 19, 2015 was again forwarded by the PML again and no other reply/documents /annexure were provided therewith.
9. In respect to the SCN, the Preferential Allottees viz. Ashok Propon, Darshit Hydro, Parixit Gas vide their e-mail dated August 03, 2105 and the Compass Technologies and Shankeshwar Metal vide e-mail dated August 04, 2105 made identical submission for seeking some more time to file reply towards the SCN and also desired personal hearing in the matter. A reply dated August 18, 2015 was received from Sarlaben H. Shah (for Hiralal HUF) intimating that her husband Mr. Hiralal Shah had expired on October 08, 2012 and attached his death certificate. She also submitted that she do not know about any such transactions made by her husband.
10. Thereafter, following Preferential Allottees submitted their replies on similar lines along with annexures (viz. letters dated May 05, 2015 addressed to BSE regarding disclosures) towards the SCN viz. Pankhuri Technowave (reply dated August 11, 2015), Ashok Propon (reply dated August 12, 2015), Shankeshwar Metal (reply dated August 10, 2015), Compass Technologies (reply dated August 11, 2015), Darshit Hydro (reply undated but received on August 17, 201 by SEBI) and also desired personal hearing in the matter. However, no reply



towards the SCN was received from the Parixit Gas despite it had sought some more time to submit reply vide its aforesaid e-mail dated August 03, 2105.

11. For the purpose of inquiry in the matter and as requested by the Preferential Allottees, vide notice dated October 06, 2015, all the Preferential Allottees were provided with an opportunity of hearing on October 27, 2015. It was mentioned in the said notice that if no appearance / reply is made by them on the aforesaid date of hearing, then, the matter would be decided further on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules. The said notice was communicated through Speed Post AD and through e-mail dated October 06, 2015 at the available e-mail IDs of compassfilling2000@gmail.com, parixitgascompany@gmail.com, ashokpropon@gmail.com, dhydro5@gmail.com, shankheshwar_metal@yahoo.in, and the delivery report of the said notice through e-mail is available on record. However, surprisingly, except in case of Hiralal HUF and Compass Technologies, the said notice (which was issued through Speed Post AD) was returned undelivered by the Postal Department with remarks "Left / Locked" in respect of other Preferential Allottees.

12. In respect of the said notice of hearing, except Hiralal HUF, no other Preferential Allottees appeared for hearing on October 27, 2015. The Hiralal HUF through its authorized representative namely - Ms. Kajal Ankit Shukla (Practicing Company Secretary) attended the hearing on October 27, 2015. During the hearing she submitted that disclosures were made to the BSE on May 08, 2012 vide our letter dated May 05, 2012 and BSE acknowledged the same which is on record. Upon getting notice from SEBI, we had checked the BSE website and found that the said disclosures as made by us on May 08, 2012 were not updated by BSE in its website. Vide aforesaid hearing notice dated October 06, 2015, Hiralal HUF was informed that the SCN was issued for the violation alleged to have been committed by Hiralal P. Shah HUF and not for the alleged violation by Hiralal P. Shah in individual capacity and under law, death of Mr. Hiralal P. Shah cannot absolve the Hiralal P. Shah HUF from the action as alleged. Therefore, the Hiralal HUF was directed to submit the details of rest of the HUF members and



Karta etc. and also advised to submit reply towards the SCN, if any, on or before October 20, 2015. In respect of above intimatio, the authorized representative also filed additional reply dated October 20, 2015 giving detail of members of HUF as – (1) Sarlaben H. Shah and (2) Ashok H. Shah and reiterated that it had made necessary disclosures with BSE.

13. During the course of hearing, Hiralal HUF was asked to submit the original acknowledgement of BSE dated May 08, 2012 for verification and was also asked as to whether the said disclosures to BSE were made by it along with other 6 Preferential Allottees and whether you are connected /related with them or not. In respect of above, authorized representative agreed to confirm from Mrs. Sarlaben H Shah and assured that if it is available, then, the same would be sent within a week. Thereafter, vide an e-mail dated October 28, 2105 (from e-mail ID- *Kajal@kassociates.in*) the aforesaid authorized representative confirmed that they do not have any original acknowledgement of BSE dated May 08, 2012 and the documents submitted by it during the instant proceedings is final one.

14. The undersigned received on November 02 & 05 of 2015 copies of same reply from the Preferential Allottees viz. Pankhuri Technowave, Ashok Propon, Shankeshwar Metal, Compass Technologies and Darshit Hydro, and no other reply/documents /annexure were submitted. Also the said replies were forwarded / attached by Ashok Propon, Compass Technologies and Darshit Hydro vide their e-mail dated October 28, 2015 and by Shankeshwar Metal vide its e-mail dated November 02, 2015.

15. Besides, in order to inquire the veracity of submission of the Noticee(s) that they have made the necessary disclosures to BSE on May 08, 2012, vide communiqué dated October 27, 2015, BSE was asked to clarify / explain by November 04, 2015 as to whether the submission of the PML and Preferential Allottees that they had made necessary disclosures to BSE on May 08, 2012 is correct or not; and also asked BSE to provide explanation/proof on certain points raised in the said letters. Copy of said so called letters dated May 05, 2012 which were claimed by the Noticees to have been sealed / acknowledged by BSE on May 08, 2012 and e-mails



of SEBI/PML/BSE were provided to the BSE along with said communique dated October 27, 2015.

16. In respect of aforesaid communiqué, the BSE vide its letter dated November 05, 2015 while denying the receipt of disclosures on May 08, 2012 stated that the said disclosures were received by it only on December 01, 2014 and provided certain clarification / explanation along with proof in support thereof. The details of said explanation / proof produced by the BSE would be discussed / examined in later part of this order.

17. As the earlier notice of hearing dated October 06, 2015 was returned undelivered from the available address of PML / Preferential Allottee(s), and the Preferential Allottee(s) started communication through e-mail only in the instant proceedings and keeping in view the methods of service as prescribed under rule 7 (b) of the Adjudication Rules, scan copy of said letter of BSE dated November 05, 2015 along with its annexures and the communiqué to BSE dated October 27, 2015 by the undersigned were forwarded / attached to all the 8 Noticees through e-mail / notice dated November 27, 2015 (at ID: preshametallurgicaltd@gmail.com, compassfilling2000@gmail.com, parixitgascompany@gmail.com, ashokpropon@gmail.com, dhydro5@gmail.com, shankheshwar_metal@yahoo.in, sudpradeep@yahoo.com (for Pankhuri Tecnowave as available from website of Ministry of Corporate Affairs under head of Company Master Data) and Kajal@kassociates.in (for Hiralal HUF) and also sent by Speed Post AD to Hiralal HUF). The said notice / e-mail dated November 27, 2015 was duly digitally signed by the undersigned and the same was delivered upon them as the delivery report is available on records.

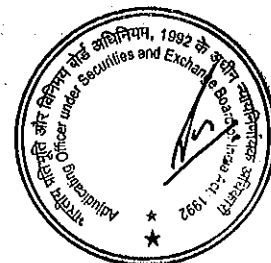
18. Vide said notice / e-mail dated November 27, 2015, all the Noticees were asked to offer their comments and to disprove the stand / explanation / reason as stated by the BSE, if any, along with authenticated proof thereof on or before December 07, 2015. Another opportunity of hearing was also provided to the all the Noticees on December 15, 2015 through said e-mail / notice. It was clearly mentioned in the said e-mail / notice that if no reply / appearance is made by the



Noticee(s) on the aforesaid date of hearing, then, the matter would be decided further on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules. Vide said notice/e-mail PML was again asked to submit reply if any, and the service report / affixture report of the show cause notice issued against its promoters on or before December 07, 2015. It was also mentioned in the said e-mail that failing to comply with the direction of *Quasi-judicial* Authority and failing to submit serve / affixture report of the SCN issued against its promoters, may attract action under Indian Penal Code / SEBI Act or other extant laws.

19. However, the PML without ensuring as required under the said notice/e-mail, surprisingly, through its e-mail dated December 01, 2015 stated that "There is no attachment or not proper so not able to open so mail us again". The said averment of the PML is completely wrong / vague. It is clear from the records of e-mail dated November 27, 2015 that 2 attachment was therein and the attachment can be opened easily as the same were well tested before attaching along with e-mail. Moreover, the averment of the PML is itself vague and contradictory as on one had it says there is no attachment and on other hand it says not able to open. The second part of the submission itself makes clear that there was an attachment in the said e-mail. Further, the PML merely stated that not able to open the attachment, but, neither it explain as to what was the error due to which it was unable to open nor it provided any proof in support thereof.

20. Such false/vague averment of the PML is completely unacceptable as the same are intended to delay and escape from the further process of quasi-judicial proceedings. However, considering the principles of natural justice at large extent, another second notice through e-mail dated December 03, 2015 was sent to the PML having the same contents / attachment as was in earlier e-mail dated November 27, 2015, requiring PML to appear for hearing on December 15, 2015 and offer its comments on BSE's explanation. This time, the PML did not raise any issue viz. attachment is not there or attachment is not opening.



21. In respect to said e-mail/notice dated December 03, 2015, the PML vide e-mail dated December 10, 2015 stated that "we have already couriered you all documents. We hope you received the same. Here we are sending you scan copy of the reply and courier receipt also". However, the PML failed to appear for hearing scheduled on December 15, 2015 and also failed to submit the service/affixture report of the show cause notice issued to its promoters. E-mail dated December 10, 2015 of the PML was containing an attached reply dated December 05, 2015 (1 page) and it had with a very casually approach sought an extension of at least 15 days time for personal hearing without specifying any cogent reasons. The explanations adduced by the PML towards the BSE's letter dated November 05, 2015 are: - (i) that it has filed disclosures on May 08, 2012 (ii) we are trying to get the original documents which were submitted to BSE as our employee left the company (iii) BSE receives huge number of inward documents every day, it seems the documents may have been lost in the inwards section. No documents or considerable submission were made by the PML towards the BSE's explanation which can demand additional inquiry in the matter. From the above, it is clear that the PML was in knowledge of the attachment / explanation of BSE in respect of seal/stamp etc., but failed to rebut the same.

22. Taking into consideration the principle of natural justice at greater extent, another final opportunity of hearing was provided to the PML on December 28, 2105 vide a notice through e-mail dated December 21, 2015 (duly digitally signed by the undersigned). It was clearly mentioned in the said e-mail that in case it want to submit any documents / additional reply in its support, then, the same can be submitted on or before December 26, 2015. It was also indicated in the said e-mail / notice that this is the final opportunity of hearing and if no appearance is made by the PML, then, the matter would be decided further on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules.

23. However, without appearing for hearing on December 28, 2015, PML very surprisingly and vaguely vide its e-mail dated December 25, 2015 had stated that



"please send us pdf copy as this version is not opening. we request you to mail us pdf copies only". Such e-mail by the PML is apparently motivated to avoid and delay the instant proceedings and shows that it does not intend to submit any further reply/explanation/documents in its support. It is clear from the records that the pdf copy was sent to the PML and it can be easily opened as the same was well tested on the system. Needless to say that no question of PDF version arise in said e-mail dated December 21, 2015 as no attachment was there, but a final opportunity of hearing was provided to the PML which the PML had deliberately failed to avail. It is relevant to mention that no further reply/explanation/documents in its support has been filed by the PML consequent to said email dated December 21, 2015. So far, the PML had filed two replies dated August 19, 2015 (2 pages only- only 3 lines at para 3 which are made as reply towards the SCN) and reply dated December 05, 2015 (1 page) without any supporting documents / annexures and no other reply/document on is received from PML after its reply dated December 05, 2015.

24. From the aforesaid observation/conduct of the PML, it is crystal clear and well established that the PML despite came to know about the explanation of BSE in respect of seal/stamp etc., had intentionally chose not to offer its comments or rebut the BSE's stand; and failed deliberately to attended the hearing and also failed to comply with the direction of quasi judicial authority in providing the details of contact of its promoters / in submitting service report /affixture report of show cause notice issued to its promoters.

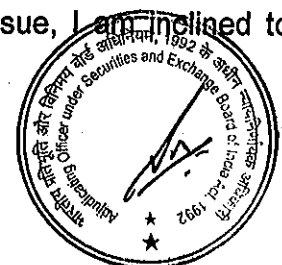
25. As regards to the said notice/e-mail dated November 27, 2015 asking the Preferential Allottees to offer their comments on or before December 07, 2015 towards the stand / explanations as stated by the BSE and to appear at final opportunity of hearing on December 15, 2015, some of the Preferential Allottees viz. Ashok Propon, Compass Technologies, Parixit Gas and Darshit Hydro had vide their identical e-mails dated December 05, 2015 (at almost same time from 14:51 hrs. to 14: 58 hrs.) raised the same vague issue that they are not able to open the attached file without explaining as to what was the error due to which it was unable to open the file and without providing any proof in their support



26. No response / no comments was made by the Pankhuri Technowave and Shankeshwar Metal in respect of said notice/ e-mail dated November 27, 2015. Hiralal HUF vide letter dated December 05, 2015 submitted that it do not know about such stamp/seal, disclosures etc. as the transactions were done by the Karta Mr. Hiralal Shah who had died. It had also stated that no other documents are with it except as provided earlier.
27. The averments of the Ashok Propon, Compass Technologies, Parixit Gas and Darshit Hydro, is completely false/vague and hence unacceptable and same were intended to avoid the further process of quasi-judicial proceedings. It is matter of records that the attached file can be opened as the same was well tested before forwarding to them. However, considering the principles of natural justice at large extent, another notice / e-mail dated December 15, 2015 having the same contents / attachment as was in email dated November 27, 2015 (duly digitally signed) was sent to those 4 Preferential Allottees who vaguely stated that attachment is not opening viz. Ashok Propon, Compass Technologies, Parixit Gas and Darshit Hydro and inter-alia requiring them to offer their comments and to disprove the BSE's stand / explanation if any on or before December 19, 2015 and also to appear on another final opportunity of hearing on December 21, 2015.
28. In the said e-mail dated December 15, 2015, it was categorically stated at para 8 that files attached can be easily opened as the same is well tested in system and in case of difficulty, they may take help of any expert. It was also stated that they may collect the said attached file from the office of undersigned on or before the aforesaid scheduled hearing through authorized representative. Needless to say that it was also categorically indicated at para 9 of the said e-mail that if no explanation / appearance is made by the them on the aforesaid date of hearing, then, the matter would be decided further on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Adjudication Rules.



29. However, without appearing for hearing on December 21, 2015, the said 4 Preferential Allottees again very surprisingly and falsely / vaguely vide their e-mails dated December 16, 2015 (all at time 11:13 hrs. – 11:18 hrs.) had stated that file cannot be opened and send pdf/scanned copy of same. It is relevant to mention there that the said attachment was already in PDF / Scan form only. Their protracted strategy is apparently motivated to avoid and delay the instant proceedings and shows that they have nothing to submit any further reply/explanation/documents in their support.
30. Needless to say that aforesaid attachment can be easily opened as before sending the same, it was well tested and found fit to be opened. The fact cannot be ignored that if they (4 Preferential Allottees) were genuinely intending to defend their case, then, they would have collected the said file /BSE's letter on or before the second final hearing scheduled on December 21, 2015 as was clearly indicated in the aforesaid notice/ e-mail dated December 15, 2015 itself. But, they deliberately failed to appear during the hearings and also failed to offer any comments / documents towards the BSE's explanation.
31. I am of the view that enough opportunities of personal hearing and opportunities to offer comment/produce documents etc. towards BSE's explanations, have been given in the matter to all the Noticees. From the aforesaid observation/conduct of the Preferential Allottees, it is crystal clear and well established that the Preferential Allottees (except Hiralal HUF) despite came to know about the explanation of BSE in respect of seal/stamp etc., had deliberately failed to offer their comments and to attend the hearing in quasi-judicial proceedings. Therefore, keeping in view the aforesaid observations, it is established on records that all the Noticees failed to disprove/rebut the BSE's stand.
32. The principle of natural justice has been duly followed in the matter and whatever submission the Noticees could make, have been made by them and therefore, in order to avoid further delay in the matter and since the fact / nature of allegation under both the SCNs are identical involving the similar issue, I am inclined to



decide on merit the case under this common order taking into account the aforesaid reply made by the Noticees.

33. The aforesaid submissions / replies of all the Noticees (except of Parixit Gas) in the matter, are being mentioned below. Even though no specific reply was received from the Parixit Gas, but keeping in view the identical issue involved, the reply/submissions of the other Noticees are being considered in respect of Parixit Gas as well.

Reply of PML

- (a) *It has done all the required disclosures from its side on time as the BSE vide its e-mail dated February 16, 2015 confirmed receipt of disclosures under regulation 13 (6) of the PIT Regulation from the Company.*
- (b) *It has filed disclosures on May 08, 2012 only and the documents were hand delivered by our company to BSE. However, the person has left the company. We are trying to get the original documents which were submitted to BSE*
- (c) *BSE receives huge number of inward documents every day, it seems the documents may have been lost in the inwards section.*

Identical Reply of Preferential Allottees

- (d) *Presha Metallurgical Limited has allotted 15,00,000 convertible warrants in their board meeting dated 12.05.2011 which were converted in to equity shares as on 04.05.2012.*
- (e) *As per the provisions of section 29(1) read with regulation 29(3) of the SAST Regulations, they have duly submitted the disclosures in the prescribed forms to BSE, and to the Presha Metallurgical Limited. Copies of the acknowledgements enclosed as Annexure A. Further, the Noticees had furnished the relevant information to SEBI vide their letter dated 05.12.2014 in reference to the SEBI communication in the matter. Accordingly, there is no violation of said regulations of 29(1) read with 29(3) of the SAST, and hence the allegations contained in the show cause notice are invalid.*
- (f) *Upon getting notice from SEBI, we had checked the BSE website and found that the said disclosures as made by us on May 08, 2012 were not updated by BSE in its website. Therefore, in December 2014, we again submitted the said disclosures.*
- (g) *SEBI is relying largely on the BSE's statement and without further investigation / inquiry, the SCN is issued.*
- (h) *According to statement BSE confirms its acknowledgements dated 08.05.2012 and also specifies that they received those disclosures again on 01.12.2014.*



which were submitted by us for updating purpose as BSE has not updated such disclosures.

- (i) We had given substantial and adequate clarification to SEBI regarding this matter with supporting material evidences. Since there is no violation of any SAST regulations, the provision for monetary penalty under section 15(A) (b) of the SEBI Act as pointed out under show cause notice does not apply to us.

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

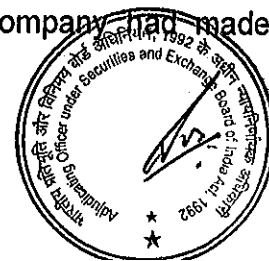
CONSIDERATION OF ISSUES AND FINDINGS

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

- a) Whether the Noticees had made the disclosures to BSE on May 08, 2012 or the BSE received the disclosures only on December 01, 2014?
- b) If the disclosures were not made on May 08, 2012 but were received by the BSE only on December 01, 2014, then, upon such delayed disclosures, is there any violation by the PML of regulation 13 (6) of the PIT Regulations and by the Preferential Allottees of regulation 29 (1) read with regulation 29 (3) of the SAST Regulations?
- c) If yes, then, does the violation, on the part of the Noticees attract monetary penalty under sections 15 A (b) of the SEBI Act?
- d) If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (3) of the Adjudication Rules?

ISSUE NO. 1- Whether the Noticees had made the disclosures to BSE on May 08, 2012 or the BSE received the disclosures only on December 01, 2014?

36. I have carefully perused the allegations, submissions of the Noticees and the evidences / material available on records. The acquisition / allotment of the aforesaid preferential shares by the PML to the Preferential Allottees on May 04, 2012 is not in dispute. The material issue that is involved in the matter is that whether all the Preferential Allottees and the PML/Company had made the



required disclosures regarding aforesaid acquisition / allotment of shares. In this connection, the document relied by the Noticees during the course of investigation as well as during the instant proceedings is the so called letter dated May 05, 2012 addressed to the BSE claiming to have made the disclosures of shares acquired on preferential basis on May 04, 2012. It is the case of the Noticees that the said letter was received by the BSE on May 08, 2012 and its bears the seal / stamp of BSE. Some of the Preferential Allottees viz. Hiralal HUF, Pankhuri and Ashokprpon also submitted that upon notice from SEBI they verified that BSE could not update the said disclosures received by BSE on May 08, 2012, hence, the disclosures were again sent to BSE for updating in December 2014.

37. During the course of inquiry and in order to find the veracity of submissions of the Noticees, vide communiqué dated October 27, 2015 the BSE was asked to offer its clarification/explanation/proof on the following;

- (a) Whether aforesaid 7 letters dated May 05, 2012 along with disclosures (which are sealed / signed dated by BSE) have actually been received by any employee/desk/deptt. of the BSE or not?
- (b) If the said letters were not received by BSE at all, then, how the same contains the BSE seal and signature/initial on said letters?
- (c) Whether the signature/initial over the said seal of BSE pertain to your employee?
- (d) In case you / BSE denies the said seal/signature, then as a matter of sample, provide some documents of other cases containing seal and signature as received by BSE on the day of May 08, 2012.
- (e) Whether BSE is of opinion that the said seal/signature are forged or fraudulently taken by the said Noticees?
- (f) If yes, then, also explain as to whether you have taken any action against the aforesaid Noticees for such fraud / forgery etc. upon knowing of such facts during investigation to which you had e-mailed on January 09, 2015?



38. The BSE vide letter dated November 05, 2015 submitted various clarifications/ explanations and documents in support thereof and the same are produced hereunder;

(a) That the said 7 letters (scanned copies) were received by the BSE from the PML vide their e-mail dated December 01, 2014.

(b) In respect to the e-mail dated December 01, 2014 of the Company/ PML, it is observed that the entire set of documents are stamped/sealed, however, as per practice of the BSE, only the first page of the entire set is handed over to the party making the submission. The Acknowledgment Stamp carries the name "BSE Ltd. Inward Section" above the date and "Contents Not Verified, Sign....." However, the actual stamp that was used on that day mention "Bombay Stock Exchange Ltd." above the dated and "Inwards Section" below the date. The same does not bear the signature / initial of an official /staff member of the Exchange.

(c) In the purported document submitted by the Company, the date on the Inwards Stamp is "08 May 2012" whereas on the actual stamp that is used by the Exchange that date was displayed as "8 MAY 2012". The said purported document appears to bear scanned signature of the signatory, and the same (scanned sign) appears to have been pasted. The letters are dated May 05, 2012 whereas certain annexures are dated May 05, 2014. Based on the above, the contentions raised by the Company are incorrect and false.

(d) The stamp applicable for office copy does not bear the signature/initial of official/staff member of the Exchange.

(e) The Exchange uses two types of stamps- one bearing acknowledgement of the documents received from outside, which would be the office copy and second one for the internal usage for recording the fact of receipt of documents. It may be noted that the inward stamp on the Exchange copy of the documents mentions a (serial) inward number and the date but no initial of any official of the Exchange is affixed thereon. In this context we provide herewith sample copies of both the documents bearing inward stamp (exchange copy) and acknowledgement stamp (acknowledgement copy) affixed by the Exchange. The said documents are marked as Annexure "1" and Annexure "2" respectively.



(f) As regards to the action by Exchange on fraud/forgery by the Company if any, we state that the documents received by the Exchange on December 01, 2014 was the scanned copy of the claimed original submission, which appears as if it has been submitted on 08/05/2012. However from the documents received from SEBI on January 02, 2015, which were the 'office Copy' of the claimed original submission, we have doubts about genuineness of the document. However, we are looking into the matter if there was any response by the Exchange to the Company in this regard and will revert to you shortly in this regard.

39. I have perused the records viz. allegations, reply of the Noticees and the clarifications made by the BSE during the inquiry. During the inquiry / examination, BSE stated that it uses two types of stamps- one bearing acknowledgement of the documents received from outside, which would be the office copy and second one for the internal usage for recording the fact of receipt of documents. The inward stamp on the exchange copy of the documents mentions a (serial) inward number and the date but no initial of any official of the Exchange is affixed thereon. BSE also enclosed sample copies as Annexure I for inward stamp (exchange copy) and Annexure II for acknowledgement stamp (acknowledgement copy) affixed by the BSE. Here, it is relevant to mention that the sample of seal as sought under instant proceedings and as provided by the BSE pertain to the period of May 08, 2012 only, the date on which the Noticees are relying / contending the so called acknowledgement by BSE.

40. I have examined the sample of Annexure II of the BSE (seal / stamp acknowledgement copy) and the so called acknowledgement seal / stamp copy as relied by the Noticees put on their letters dated May 05, 2012. It is observed that the so called seal / stamp of the BSE as shown upon the copy of letter dated May 05, 2012 of the Noticees, is different when compared to the actual seal / stamp of the BSE (as shown in annexure 2 of BSE) during that period on the following grounds.

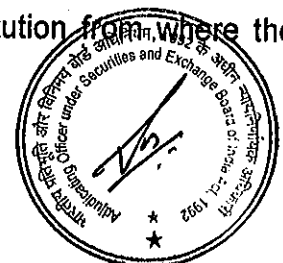


41. The acknowledgment seal as relied by the Noticees upon the said letters contain the contents from top to bottom as: - "BSE Ltd." "Inward Section" "Date" "Contents Not Verified" "Sign....." However, from the perusal of the records of the BSE (Annexure II) the actual stamp that was used by the BSE on that day contain the content from top to bottom as: - "Bombay Stock Exchange Ltd." "Date" "Inward Section". Therefore, many differences have been observed in said two seal. Firstly, the Exchange name is written in short form on the seal as relied by the Noticees, but in the sample seal as provided by the BSE, full name of Exchange was shown to have been printed on the seal/stamp. Secondly, the date on the seal as relied by the Noticees is shown as "08 MAY 2012" whereas on the actual stamp that is used by the BSE the date is displayed as "8 MAY 2012". Thirdly, the seal as relied by the Noticees shows mark of "Sign....." whereas no mark of "sign" is appearing on the sample seal as provided by the BSE. It is categorically explained/confirmed by the BSE that the seal/stamp applicable for office copy does not bear the signature/initial of official/staff member of the Exchange.
42. Here, I cannot ignore the material fact as observed in detail at Para No. 17 to 31 that the Noticees were provided the scanned copy of the said BSE letter dated November 05, 2015 vide many e-mails to refute/disprove the explanation/clarification made by the BSE, however, the same were not disproved by the Noticees with any reliable evidence. No comment were made by the Noticees regarding BSE's observations that the said purported document appears to bear scanned signature of the signatory, and the same (scanned sign) appears to have been pasted.
43. Further, it is observed that all the letters dated May 05, 2012 of the Noticees are identical and two of the Noticees viz. Pankhuri Technowave and Compass Technologies are shown having address of Delhi, Ashok Propon is having address of Mumbai and Parixit Gas, Darshit Hydro , Shankeshwar Metals and Hiralal HUF are having address of Ahmedabad. It is not proved by the Noticee (s) as to how they all made such identical letters if they are not connected amongst themselves and with PML; and how all the letters from ~~three cities~~ were



so called hand delivered at BSE on same date i.e. May 08, 2012. The relation /connections among the Preferential Allottees *inter-se* and with the PML can be seen from the various aspects viz. identical letters/disclosures, identical replies, identical e-mails by them that too made within a gap of 1-2 minutes, common directors as stated in the table indicated in the SCN, similar conduct under the instant proceedings.

44. The Noticees contended that upon getting notice from SEBI, they checked the BSE website and found that the said disclosures as made by them on May 08, 2012 were not updated by BSE in its website and therefore, in December 2014, they had again submitted the said disclosures. I do not accept such contention as it appear to be afterthought and if that was the case, then, after making so called disclosure on May 08, 2012 they could have checked the same with BSE on the immediate subsequent days. Being a listed Company, the PML was supposed to verify the disclosures made by it to the Stock Exchange. Entire act and conduct of the Noticees in the matter suggests that only after receipt of communication from SEBI during the course of investigation, they had later on generated identical so called disclosures related letters dated May 05, 2012.
45. It is also clear from the reply / explanation of the BSE that the disclosures were made belatedly by the Company /PML only vide e-mail dated December 01, 2104 and no separate disclosures were made by the each Preferential Allottees through any e-mail. The Preferential Allottees did not produce any document / e-mail copy which can show that they have individually made disclosures to BSE through e-mails in compliance of regulation 29 (1) and 29 (3) of the SAST Regulations. Although, it appear that the Company made the entire disclosures on December 01, 2104 including the disclosures as required from the Preferential Allottees.
46. Therefore, I am of the view that the BSE's explanation along with authentic proof provided by it in respect of actual seal / stamp used by the Exchange, stands established in absence of any rebuttal by the Noticees. Here, it is relevant to mention that the BSE / Stock Exchange is the only institution from where the



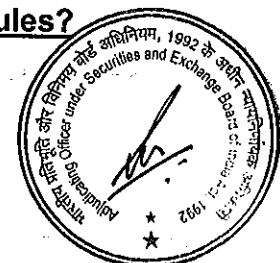
same can be verified for the issue involved, hence, the plea of the Noticees that the SEBI is only relying the BSE's explanation is without any substance.

47. In view of the above said examination / inquiry and perusal of the records, it is clear that the copy of letter dated May 05, 2102 of the Noticees showing the so called seal of the BSE, is not genuine but the same appears to have been generated by them afterwards just to cover up their delayed disclosures which were actually made by the Company on December 01, 2014.

ISSUE NO. 2- If the disclosures were not made on May 08, 2012 but were received by the BSE only on December 01, 2014, then, upon such delayed disclosures, is there any violation by the PML of regulation 13 (6) of the PIT Regulations and by the Preferential Allottees of regulation 29 (1) read with regulation 29 (3) of the SAST Regulations?

48. It is established that the disclosures were actually received by the BSE only on December 01, 2014 and the same were required to have been made by the Noticees till May 08, 2012 (within 2 working days as the shares were allotted on 4th May 2012 and on 5th and 6th was the non-working days on account of Saturday and Sunday) in term of PIT and SAST Regulations. Therefore, there was huge delay of around 2 ½ years in making the required disclosures to Stock Exchange / BSE. Hence, taking into account such huge delayed disclosures and also keeping in view the various regular judgments of Hon'ble Securities Appellate Tribunal (SAT) on the similar issues, I am of the view that the PML had violated regulation 13 (6) of the PIT Regulations and the Preferential Allottees had violated regulation 29 (1) read with regulation 29 (3) of the SAST Regulations.

ISSUE NO. 3 & 4 - Does the violation, on the part of the Noticees attract monetary penalty under sections 15 A (b) of the SEBI Act? And If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (3) of the Adjudication Rules?



49. Keeping in view the aforesaid observations made at pre paras of this order, I am of the view that the violation committed by the Noticees are serious in nature especially taking into account the fact of relying upon false / post generated identical letters / disclosures dated May 05, 2012 by the Noticees as established above and the fact that there was huge delay of around 2 ½ years at the end of the Noticees in making disclosures to the BSE.

50. It is relevant here to mention the judgment of the Hon'ble SAT in case of Millan Mahendra Securities Pvt. Ltd. vs. SEBI (Appeal No. 66/2003 decided on November 15, 2006) wherein it was observed that the purpose of the SAST Regulation is to bring about transparency in the transactions and assist the regulator to effectively monitor the transactions in the market, and therefore, it cannot be subscribed to the view that the violations are technical in nature.

51. Thus, the aforesaid violations committed by the Noticees makes them liable for penalty under Section 15A (b) of the SEBI Act which read as follows:

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;

52. While determining the quantum of penalty under sections 15A (b), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

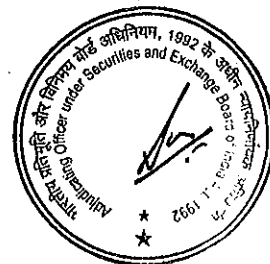
15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.”



53. Before arriving to the quantum of penalty in matter, it is necessary to refer the importance of such disclosures. The main objective of the SAST Regulations or PIT Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well informed decision.

54. 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 disclosures or no repetition of the default by the Noticees is shown on records / Action Taken Report of SEBI (except in case of 2 actions against Shankeshwar Metals). However, considering the facts and circumstance of the case, the purpose of the SAST and PIT Regulation as sated at pre para, taking note of section 15 A (b) of the SEBI Act where the violation attracts the penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less, and also taking into account the recent judgement of Hon'ble Supreme Court of India in the case of SEBI through its Chairman vs. Roofit Industries Ltd & Ors. (Civil Appeal No. 1366 – 1379 of 2005 decided on November 26, 2015) whereby the maximum penalty has been mandated to be imposed upon the violation of section 15 A of the SEBI Act, I am of the view that the penalty of Rupees One Crore needs to be imposed upon each of the Noticees as there was delay of around 2 ½ years (more than 100 days) in making disclosures by the Noticees.

ORDER

55. After taking into consideration all the facts and circumstances of the case, I hereby impose a penalty of ₹ 1,00,00,000/- (Rupees One Crore only) under section 15A (b) of the SEBI Act upon each of the Noticees for the aforesaid violations. Therefore, a total penalty of ₹ 8,00,00,000/- (Rupees Eight Crores




only) is imposed upon on all the Noticees. 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. It is not out of place to mention as established above that the PML had deliberately failed to comply with the direction of quasi judicial authority in providing the details of contact of its promoters / in submitting service report /affixture report of show cause notice issued to its promoters, therefore, the Enforcement Department of SEBI or other concerned Department of SEBI may initiate suitable action if any, against the PML for said non-compliance during the quasi-judicial proceeding.
58. SEBI may also initiate action, if any, for the aforesaid established fact that all the Noticees have afterwards generated the letters dated May 05, 2012 and falsely used the forged seal of BSE dated May 08, 2012 on said letters just to cover up their delayed disclosures which were actually made by the Company on December 01, 2014. If necessary, SEBI may verify from the BSE regarding any action taken by the BSE against the aforesaid Noitcees in respect of false seal/stamp.
59. 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: December 31, 2015

Place: Mumbai


RACHNA ANAND
ADJUDICATING OFFICER

