

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/SM/AR/2018-19/617-625)**

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

In respect of:

Shri Anil Monga (PAN: AAIPM8309E)

Shri Rajesh Monga (PAN: AAIPM8310R)

Ms. Renu Monga (PAN: AAIPM8311Q)

Shri B B Gandhi (PAN: AAGPG5883M)

Ms. Manya Monga (PAN: ATBPM0838Q)

Ms. Rashi Monga (PAN: AGQPG5792F)

Shri Shivaz Monga (PAN: AKBPM8602M)

Ms. Poonam Monga (PAN: AHRPM2645R)

Shri Jagroop Singh (PAN: Not available)

In the matter of:

M/s Emmsons International Ltd

FACTS OF THE CASE

1. A Letter of Offer dated August 30, 2012 was filed by Shri Anil Monga (hereinafter referred to as '**Noticee 1**' / '**Anil**'), Shri Rajesh Monga (hereinafter referred to as '**Noticee 2**' / '**Rajesh**'), Ms. Renu Monga (hereinafter referred to as '**Noticee 3**' / '**Renu**'), Shri B.B. Gandhi (hereinafter referred to as '**Noticee 4**' / '**Gandhi**'), Ms. Manya Monga (hereinafter referred to as '**Noticee 5**' / '**Manya**'), Ms. Rashi Monga (hereinafter referred to as '**Noticee 6**' / '**Rashi**'),

Shri Shivaz Monga (hereinafter referred to as '**Noticee 7**' / '**Shivaz**'), Ms. Poonam Monga (hereinafter referred to as '**Noticee 8**' / '**Poonam**') and Shri Jagroop Singh (hereinafter referred to as '**Noticee 9**' / '**Jagroop**') along with M/s Emmpac Holdings Pvt Ltd for making an open offer to acquire upto 15,59,486 equity shares representing 26% of the expanded paid up share capital of M/s Emmsons International Ltd (hereinafter referred to as '**EIL**' / '**Company**'). It is observed that Noticee 1 to 9 along with Emmpac Holdings Pvt Ltd were part of the promoter group of EIL and were also persons acting in concert (**PACs**) within the meaning of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**'). Therefore, in the context of the current adjudication proceedings, Noticee 1 to 9 are also hereinafter collectively referred to as '**Noticees**'.

2. While examining the letter of offer dated August 30, 2012, Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed certain instances of non-compliances by the Noticees w.r.t the relevant provisions of the SAST Regulations, 2011. Specifically, it was observed by SEBI that the Noticees had allegedly violated the provisions of Regulations 29(2) r/w 29(3) and Regulation 13(2) (c) r/w Regulation 13(1) of the SAST Regulations, 2011 during the year 2012.
3. The scrip of EIL is listed on the Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**'). The total paid up share capital of EIL prior to February 29, 2012 was Rs. 5.15 crore (represented by 51,48,020 equity shares of face value of Rs. 10/- each). On February 29, 2012, the total share capital of EIL witnessed an increase from 51,48,020 shares to 59,98,020 equity shares as a result of the conversion of 8,50,000 warrants into equal number of equity shares. The aforesaid 8,50,000 warrants were allotted to the Noticees on August 30, 2010, as per the details mentioned below:

Sr. No.	Name of the allottee	No. of equity warrants
1.	Anil Monga / Noticee 1	1,00,000
2.	Rajesh Monga / Noticee 2	2,00,000

3.	Renu Monga / Noticee 3	50,000
4.	B B Gandhi / Noticee 4	50,000
5.	Manya Monga / Noticee 5	50,000
6.	Rashi Monga / Noticee 6	50,000
7.	Shivaz Monga / Noticee 7	2,00,000
8.	Poonam Monga / Noticee 8	50,000
9.	Jagroop Singh / Noticee 9	1,00,000

4. During the course of examination by SEBI, it was observed that the collective shareholding of the Noticees in EIL along with the shareholding of other members of the promoter group of EIL crossed the prescribed creeping limit of 5% as on February 29, 2012 as a result of the conversion of 8,50,000 equity warrants held by the Noticees into equal number of equity shares. It was observed that the consolidated shareholding of the Noticees along with the shareholding of other members of the promoter group of EIL increased from 22,58,724 shares to 31,08,724 shares i.e. the shareholding of the Noticees along with the shareholding of other members of the promoter group of EIL increased from 43.88% to 51.83% against the total shareholding of the company i.e. the collective shareholding of the Noticees in EIL along with the shareholding of the promoter group increased by 7.95%, which resulted in Noticees along with other members of the promoters/promoter group of EIL crossing the threshold creeping limit of 5% during the financial year, as specified under Regulation 3 of the SAST Regulations, 2011. The Noticees were, therefore, under an obligation to make a public announcement of open offer in terms of Regulation 13(1) read with Regulation 13(2)(c) of the SAST Regulations, 2011. It is alleged that the Noticees made the public announcement of open offer with a delay of 85 days and therefore, the Noticees have allegedly violated the provisions of Regulation 13(1) read with Regulation 13(2)(c) of the SAST Regulations, 2011.
5. Further, it was alleged that the Noticees had made delayed disclosure to BSE and to the company u/r 29(2) r/w Regulation 29(3) of the SAST Regulations, 2011. w.r.t their acquisition of 8,50,000 shares of EIL by virtue of the conversion of 8,50,000 warrants on February 29, 2012, which resulted in the enhancement of the shareholding of the Noticees along with the promoter group of the

company by 7.95% during the above said period. Therefore, in view of the failure on the part of the Noticees to make timely disclosures u/r 29(2) r/w Regulation 29(3) of SAST Regulations, 2011, it is alleged that Noticees have violated the aforementioned provisions of the SAST Regulations, 2011. In view of the above violations allegedly committed by the Noticees, adjudication proceedings were initiated against the Noticees under sections 15 H (ii) and 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').

6. In respect of the present proceedings, it is relevant to mention that based on adjudication proceedings initiated by SEBI against Noticee 1 to 4, the Adjudicating Officer, vide his Order dated March 25, 2015, had imposed a penalty of Rs 20,00,000 on the Noticees 1 to 4 for their violation of Regulation 13(1) read with Regulation 13(2)(c) of the SAST Regulations, 2011 and further, a penalty of Rs, 5,15,000 each was imposed on Noticee 1, Noticee 3 & Noticee 4 and a penalty of Rs. 1,00,000 was imposed on Noticee 2 for their violation of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011. Aggrieved by the aforementioned Adjudication Order dated March 25, 2015, Noticee 1 to 4 preferred an appeal before the Hon'ble Securities Appellate Tribunal (**SAT**). The Hon'ble SAT, vide its Order dated March 22, 2016, in Appeal No. 329 of 2015, had set-aside the aforementioned Order of the Adjudicating Officer and restored the matter to the file of the Adjudicating Officer of SEBI for passing fresh order on merits and in accordance with the provisions of law. Vide order dated March 22,2016, Hon'ble SAT, *inter alia*, observed as under:

“For the reason that the Adjudicating Officer has failed to consider the decision of this Tribunal in case of Mr. Raghu Hari Dalmia (Supra) properly and has also not considered the submission made on behalf of the appellants for the delay in making disclosures, we deem it proper to quash and set aside the impugned order and restore the matter for fresh decision on merits.”

APPOINTMENT OF ADJUDICATING OFFICER

7. The undersigned was appointed as the Adjudicating Officer (AO) in the matter w.r.t Noticees 5 to 9, vide communique dated June 22, 2015, under Section 15-I of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of sections 15A(b) and 15H(ii) of the SEBI Act for the alleged failure on the part of Noticees 5 to 9 to comply with the provisions of Regulations 29(2) read with 29(3) and Regulation 13(2)(c) read with Regulation 13(1) of SAST Regulations, 2011. Pursuant to the Order dated March 22, 2016 of Hon'ble SAT in the matter of Noticees 1 to 4, the undersigned was appointed as the AO, vide Order dated April 25, 2017 w.r.t. Noticees 1 to 4 also, in terms of section 15-I of the SEBI Act read with Rule 3 of the Adjudication Rules to inquire into and adjudge under the provisions of sections 15A(b) and 15H(ii) of the SEBI Act for the alleged failure of Noticees 1 to 4 to comply with the provisions of Regulations 29(2) read with 29(3) and Regulation 13(2)(c) read with Regulation 13(1) of SAST Regulations, 2011.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

8. Show Cause Notice reference no. A&E/EAD-3/DRK-DS/22165/2013 dated August 30, 2013 (hereinafter referred to as '**SCN**') was issued to Noticee 1 to 4 in terms of Rule 4 of the Adjudication Rules read with section 15 I of the SEBI Act, to show cause as to why an inquiry should not be held against the Noticee 1 to 4 and penalty, if any, be not imposed on them under the provisions of sections 15A(b) and 15H(ii) of the SEBI Act, for the aforementioned alleged contravention of the provisions of law by the Noticees. The SCN issued to Noticee no. 1 to 4, *inter alia*, mentioned the following :

- a) *Further it is also observed that you along with other promoters and their PACs namely Ms. Manya Monga, Ms. Rashi Monga, Mr. Shivaz Monga, Ms. Poonam Monga, Mr. Jagroop Singh and Emmpac Holdings Pvt. Ltd. of the company, acquired voting rights pursuant to the conversion of*

8,50,000 warrants on February 29, 2012, which increased the shareholding of promoter group in the company by 7.954%. However, you had delayed in complying with Regulation 13(2)(c) read with Regulation 13(1) of the SAST Regulations, 2011. The details are given in the following table:

Regulation 13(2)(c) read with Regulation 13(1) of the SAST Regulations, 2011

Sr. No.	Regulation	Due Date of Compliance	Actual Date of Compliance	Delay (days)
1.	Regulation 13(2)(c) read with Regulation 13(1)	27.02.2012	22.05.2012	85

b) It is further observed that you had made delayed disclosure required under Regulation 29(2) of the SAST Regulations, 2011. The details are given in the following table:

Regulation 29(2) of the SAST Regulations, 2011

Sr. No.	Name of the Promoter	Regulation	Due Date of Compliance	Actual Date of Compliance	Delay (days)
1.	Shri. Anil Monga	29(2)	02.03.2012	19.05.2012	78
2.	Ms. Renu Monga	29(2)	02.03.2012	19.05.2012	78
3	Shri. B.B. Gandhi	29(2)	02.03.2012	19.05.2012	78
4	Shri Rajesh Monga	29(2)	02.03.2012	05.03.2012	3

c) In view of the above facts, it is alleged that your actions have led to the violation of Regulation 13(2)(c) read with Regulation 13(1) of SAST Regulations, 2011 and Regulation 29(2) of the SAST Regulations, 2011.

d) The alleged violation of Regulation 13(2)(c) read with Regulation 13(1), Regulation 29(2) of the SAST Regulations, 2011, if proved, makes you liable for penalty under Sections 15A(b) and 15H(ii) of the SEBI Act.

9. In respect of Noticees 5 to 9, SCNs ref. A&E/EAD-3/SBM-VB/17613/2015/1-5 dated June 25, 2015 were issued and the allegations levelled in the SCNs

issued to Noticee 5 to 9 were mainly on the lines of the SCN dated August 30, 2013 which was issued to Noticee 1 to 4.

10. In response to the SCNs, Noticees vide their letter dated March 7, 2018, filed their detailed consolidated reply and made the following submissions:-

- a) *The second allegation is with respect to delay in complying with the requirements of Regulation 13(2)(c) subsequent to conversion of 8,50,000 warrants on February 29, 2012. In this regard, subsequent to aforesaid conversion, the promoter shareholding increased by 7.954% and as per the provisions of SAST Regulations 2011, an offer was required to be made to the public shareholders on second working day preceding the scheduled date of conversion of the warrants i.e. on February 27, 2012 though the offer was made on May 22, 2012.*
- b) *That the delay had been merely of 85 days and had been on account of unavailability of adequate professional expertise and advice within the Company and the Promoter Group and lack of immediate availability of funds as was required to make public announcement.*
- c) *Moreover, to show our bonafide intention and good faith, at the time of making the offer, we had duly disclosed in the Offer Document being dated August 30, 2012, the delay of 85 Days in making the said offer. Also the Offer Price took into consideration February 27, 2012 as Offer Trigger Date and the Offer Price came to be Rs. 120/- Per Share, also in furtherance to this, we gave due effect to the delay by adding the Interest @10% p.a. to the Offer Price for the period from February 28, 2012 till May 22, 2012 which came to be Rs. 3/- per share. Thus Offer was made at the Total Price of Rs. 123/- per share.*
- d) *With regard to delay in making the disclosures under Regulations 29(2) of SAST Regulations 2011, we humbly submit that the delay had been on account of unavailability of adequate professional expertise within the Company and the Promoter Group. This act was unintentional.*

- e) *That herein due disclosure of the delay was duly made in the Offer Document being dated August 30, 2012 showing our bonafide good faith. Furthermore, the delay of few days had no effect on the General Shareholders of the Company or on any Other Stakeholders.*
- f) *Thus in the view of the aforesaid, it is contended that the delay had been merely technical in nature and had no adverse effect on any Shareholders of the Company and that due Disclosure were made in the Offer Document for the same and thus it is humbly submitted that the meager delay may please be pardoned.*

11. Thereafter, in the interest of natural justice, Noticees were provided with an opportunity of personal hearing on March 19, 2018. Ms. Deepika Vijay Sawhney (hereinafter referred to as 'AR') appeared on behalf of the Noticees on the stipulated date of hearing i.e. on March 19, 2018 and reiterated the submissions made by the Noticees vide their earlier letters. Further, the Noticees were provided with an opportunity to submit additional documents/evidences in support of their submissions/arguments. The Noticees made additional submissions vide their letter dated March 23, 2018 wherein they mainly reiterated the submissions made by them vide their earlier letter dated March 07, 2018. The Noticees also submitted copies of documents/records in support of their submissions/arguments which were made vide their earlier letters and also during the course of the personal hearing.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS:

12. I have carefully perused the submissions made by the Noticees (both oral & written submissions), the allegations levelled against them in the SCNs and also the material/documents on record. I have also carefully perused the observations /directions of Hon'ble SAT vide its Order dated March 22, 2016. The issues that arise for consideration in the present matter are as under:

- a) Whether the Noticees have violated the provisions of Regulation 13(2)(c) read with Regulation 13(1) of the SAST Regulations, 2011?

- b) Whether the Noticees have violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011?
 - c) If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?
13. The relevant provisions of the SAST Regulations, 2011 allegedly violated by the Noticees are as under:-

SAST Regulations, 2011

Timing.

13. (1) *The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.*
- (2) *Such public announcement,—*
- (c) *pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion shall be made on the second working day preceding the scheduled date of conversion of such securities into shares of the target company.*

Disclosure of acquisition and disposal

- 29(2) *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.*
- (3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*
- (a) *every stock exchange where the shares of the target company are listed;*
and
- (b) *the target company at its registered office*

Whether the Noticees have violated the provisions of Regulation 13(2)(c) read with Regulation 13(1) of the SAST Regulations, 2011?

14. I observe that the Noticees were allotted with 8,50,000 warrants on August 30, 2010 by the company for the purpose of raising additional funds. It is not in dispute that Noticees were part of the promoter/promoter group of EIL at the time of the allotment of the warrants and also at the time of conversion of these warrants to equity shares. The details of the warrants allotted to the Noticees are mentioned as under:

Sr. No.	Name	No. of equity warrants allotted	No. of equity shares issued against warrants allotted	Date of conversion
1.	Anil Monga / Noticee 1	1,00,000	1,00,000	Feb 29, 2012
2.	Rajesh Monga / Noticee 2	2,00,000	2,00,000	Feb 29, 2012
3.	Renu Monga / Noticee 3	50,000	50,000	Feb 29, 2012
4.	B B Gandhi / Noticee 4	50,000	50,000	Feb 29, 2012
5.	Manya Monga / Noticee 5	50,000	50,000	Feb 29, 2012
6.	Rashi Monga / Noticee 6	50,000	50,000	Feb 29, 2012
7.	Shivaz Monga / Noticee 7	2,00,000	2,00,000	Feb 29, 2012
8.	Poonam Monga / Noticee 8	50,000	50,000	Feb 29, 2012
9.	Jagroop Singh / Noticee 9	1,00,000	1,00,000	Feb 29, 2012

15. I observe that on February 29, 2012, the aforementioned 8,50,000 warrants held by the Noticees were converted into equivalent number of equity shares. As a result of the conversion of the warrants to equity shares, the collective shareholding of the Noticees along with the shareholding of other promoters / promoter group of EIL increased from 22,58,724 shares (i.e. 43.88% of total shareholding of the Company) to 31,08,724 shares (i.e. 51.83% of total shareholding of the Company). It is observed that the collective shareholding of the Noticees along with other members of the promoter group of EIL increased by 7.95% vis-a vis the total shareholding/share capital of the Company.

16. I observe that in terms of the requirements specified under Regulation 3(2) of SAST Regulations, 2011, the obligation to make a public announcement for open offer is triggered when an entity, along with the persons acting in concert,

holding more than 25% shares of a company acquires shares or voting rights amounting to more than 5% of the total share capital of the company in a financial year, either by itself or along with the persons acting in concert with it. In the instant matter, it is not in dispute that Noticees along with other members belonging to the promoter group of EIL were collectively holding 22,58,724 shares of EIL (representing 43.88% of the total share capital of EIL) prior to the conversion of 8,50,000 warrants into equal number of equity shares. It is also on record that pursuant to the conversion of 8,50,000 warrants to equal number of equity shares on February 29, 2012, the collective shareholding of the Noticees in EIL along with the shareholding of other members of the promoter group of EIL witnessed an increase by 7.95% against the total share capital of the company during the FY ended March 2012. Therefore, in terms of Regulation 13(1) read with 13(2)(c) of the SAST Regulations, 2011, the Noticees were under an obligation to make a public announcement of open offer on the second working day preceding the date of the conversion of the warrants i.e. the Noticees were required to make a public announcement of open offer on February 27, 2012. I observe that Noticees made the public announcement for open offer on May 22, 2012 i.e. with a delay of 85 days. In their submissions, Noticees have also admitted to the fact that there was a delay on their part in making the public announcement pursuant to the conversion of the warrants.

17. In this regard, I note that while admitting to the fact that they had failed to make the public announcement for open offer within the stipulated time period, Noticees have also drawn reference to the language used in section 15 H(ii) of the SEBI Act whereby Noticees have contended that the said penal provision is applicable only in cases wherein any person “Fails” to make a Public Announcement. The Noticees have contended that the word “fails” mentioned in the said penal section is of utmost importance and means that the person who was supposed to do the act prescribed under the said provisions completely failed to do so. Therefore, Noticees have contended that since they made the necessary public announcement with a delay, the said penal section cannot be applied on them. I am not in agreement with the contention of the

Noticees. I am of the view that the term “fails” mentioned in section 15H(ii) of the SEBI Act includes failure to make the public announcement within the stipulated time. It is on record that Noticees have failed to make the public announcement within the stipulated time period i.e. on February 27, 2012. The objective of the SAST Regulations is to provide an orderly framework within which the process of substantial acquisition and takeovers could be conducted in a fair and transparent manner to the advantage of all the stakeholders. Justice Bhagwati Committee Report based on which the SAST Regulations have been drafted, has clearly stated that, while on the one hand the regulations should not impose conditions which are too onerous to fulfill and hence, make the substantial acquisition of shares and takeovers difficult, at the same time they should ensure that such process do not take place in a clandestine manner without protecting the interest of the shareholders. If the aforementioned contentions of the Noticees are to be accepted, it would defeat the aforesaid objective of the SAST Regulations and open the flood gates for the acquirers to make the public announcements at their own whims and fancies without any respect for the regulatory obligations. In this context, it is also pertinent to mention the observations made by Hon’ble SAT in the matter of M/s Shri Housing Private Limited Vs SEBI, vide Appeal No 319 of 2014, decided on July 20, 2015, wherein Hon’ble SAT had observed that *“.....Lastly, section 15H undoubtedly talks about making of open offer by the acquirer in accordance with law and does not talk of delayed open offer. However, such open offer by an acquirer has to be made under the Takeover Regulations, 1997 and regulations have to be looked into and interpreted in totality. Therefore, any offer made by an acquirer after the statutory time limit of 4 days prescribed in Regulations 14(1) would not amount to sufficient compliance of Takeover Regulations and, therefore, the respondent would be justified in imposing suitable penalty in a given situation depending upon the facts and circumstances of each case”*

Therefore, in view of the above observations, the contention of the Noticees in this regard is groundless and devoid of any merit.

18. Noticees have also contended that in the past wherever there was delay on the part of the acquirers to make the public announcement, SEBI has directed the acquirers to make the public announcement along with payment of interest of 10% to the shareholders for the delayed period. In support of their contention, Noticees have drawn reference to various orders passed by WTM of SEBI in the matter of Dhanalxmi Roto Spineers Ltd decided on 06.10.2010, Order in the matter of Nakoda Limited decided on 08.07.2013, Order in the matter of Servotech Engineering Industries Limited decided on January 23, 2015, Order in the matter of Brand Realty Services Limited decided on January 21, 2015 and Order in the matter of Salora International Limited decided on March 4, 2015; wherein WTM had directed the acquirers to make the open offer along with interest payment for the delayed period @ 10% to the shareholders of the respective companies. I have perused the above mentioned orders of WTM – SEBI and I find that these Orders were passed by WTM- SEBI directing the acquirers of the respective companies to make the necessary public announcement of open offer along with interest payment @10% to the shareholders of the respective companies for the delayed period. I further observe that where the acquirers had altogether failed to make any public announcement or made such announcement with a delay, SEBI has been consistently directing such acquirers to make the public announcements and also pay interest for the delayed period. It may be pertinent to note here that payment of interest is the compensation paid to the shareholders of the target companies due to their losing an exit opportunity at the right time as a result of the failure on the part of the acquirers to make the public announcement within the stipulated time period prescribed under the SAST Regulations and such interest payment by the acquirer cannot be considered as a penalty that has been paid by the acquirers.

19. At this juncture, I note that Hon'ble SAT, in its order dated July 20, 2015, in the matter of Shri Housing Pvt. Ltd. vs SEBI has observed that :

“.....We are of the considered opinion that the very purpose of public offer envisaged under the Takeover Regulations, 1997 would be frustrated if the

acquirers are given opportunity to make public announcement after a long lapse of time from the date of acquisition i.e. the date of SPA's are signed by the parties to acquire shares beyond 15% and/or control of a particular company by the acquirer.....It has, therefore, caused definite prejudice to the shareholders of Premier in the matter of exercising their statutory rights / option to exit or to continue with the said company through open offer mechanism at the very inception when the SPA's were entered into by the appellant. Therefore, the violation of such a valuable statutory right of shareholders to exit and/or to continue with the company cannot be compensated by paying meager interest by the acquirer. The time limit of 4 days prescribed in Regulation 14(1) is crucial and important as time is of the essence in such acquisitions and consequent open offer.

Therefore, any offer made by an acquirer after the statutory time limit of 4 days prescribed in Regulations 14(1) would not amount to sufficient compliance of Takeover Regulations and, therefore, the respondent would be justified in imposing suitable penalty in a given situation depending upon the facts and circumstances of the each case."

20. In terms of the requirements laid down under the SAST Regulations, I note that the open offer process includes appointment of a SEBI registered merchant banker as manager to the offer, determination of the offer size and price, opening of an escrow account, making a public announcement in newspapers, filing of the offer document with SEBI, dispatch of the offer document to the eligible shareholders of the target company, etc. By not having complied with the mandatory requirement of SAST Regulations on February 27, 2012, Noticees have avoided the expenditure which otherwise it would have incurred towards the cost of engaging the services of a Merchant Banker, making a public announcement in various newspapers, filing the offer document with SEBI, expenditure on account of dispatch of the offer documents to eligible shareholders etc. To this extent it can be said that Noticees have made unfair advantage. Besides this, the Noticees have failed to fulfill the statutory obligation of making the public announcement on February 27, 2012 and as a

result, denied the statutory right of the shareholders of EIL to exit through the open offer mechanism at the relevant point of time. To this extent, it can be said that there was loss on those investors who genuinely desired an exit from the company during the relevant time. I observe that as against the statutory obligation to make the public announcement on February 27, 2012, Noticees made the public announcement on May 22, 2012 i.e. with a delay of 85 days. The fact that Noticees have paid interest @10% for the delayed open offer has been considered as a mitigating factor. But at the same time, I am of the view that Noticees have to be appropriately penalized for failing to make the open offer within the stipulated time period prescribed under the SAST Regulations. Thus, in light of the above observations, the contention of the Noticees that since they have already paid the interest amount to the shareholders of EIL, no additional penalty should be imposed on them through the present proceedings is without any basis and devoid of merit. The contention of the Noticees that delay in making the public announcement was on account of their inability to arrange funds, lack of professional advice etc. are once again devoid of any merit and cannot be ascribed as valid reasons for not complying with the mandatory statutory obligation.

21. In view of the above observations, I hold that Noticees have violated the provisions of Regulation 13(2)(c) read with Regulation 13(1) of SAST Regulations, 2011 as a result of their failure to make the public announcement of open offer within the stipulated time period. Therefore, in view of the above observations, I hold that Noticees have violated the provisions of Regulations 13(2)(c) read with 13(1) of SAST Regulations, 2011.

Whether the Noticees have violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011?

22. As a result of the conversion of 8,50,000 warrants to equal number of equity shares on February 29, 2012, I note that the total shareholding of the Noticees along with the shareholding of the members of the promoter group of EIL increased from 22,58,724 shares (i.e. 43.88% of total share capital of the Company) to 31,08,724 shares (i.e. 51.83% of total share capital of the

Company). The shareholding of the Noticees in EIL along with the shareholding of the promoter group of the company witnessed an increase by 7.95% of the total share capital of EIL as on February 29, 2012. In terms of the disclosure requirements specified under Regulation 29(2) r/w Regulation 29 (3) of SAST Regulations, 2011, any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company within two working days of the acquisition of shares or disposal to the stock exchanges and to the target company. The Noticees along with other members of the promoter group of EIL were holding 43.88% of the total share capital of the company prior to the conversion of 8,50,000 warrants allotted to the Noticees. Since the shareholding of the Noticees along with members of the promoter group of EIL witnessed a change by 7.95% as a result of the conversion of 8,50,000 warrants to equity shares on February 29, 2012, Noticees were under an obligation to make the necessary disclosures to the stock exchange and to the Company within two working days of the conversion of the warrants in terms of the aforementioned Regulations. Admittedly, Noticees have not made the relevant disclosures within the stipulated time and have made the disclosures with a delay, details of which are brought out as per the Table mentioned below:-

Sr. No.	Name of the Promoter	Regulation	Due Date of Compliance	Actual Date of Compliance	Delay (days)
1.	Shri. Anil Monga	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	19.05.2012	78
2.	Ms. Renu Monga	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	19.05.2012	78
3	Shri. B.B. Gandhi	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	19.05.2012	78
4	Shri Rajesh Monga	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	05.03.2012	3
5	Ms. Manya Monga	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	19.05.2012	78

6	Ms. Rashi Monga	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	19.05.2012	78
7	Shri Shivaz Monga	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	19.05.2012	78
8	Ms. Poonam Monga	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	19.05.2012	78
9	Shri Jagroop Singh	29(2) r/w 29 (3) of SAST Regulations, 2011	02.03.2012	19.05.2012	78

23. In view of their failure to make timely disclosures u/r 29(2) r/w Regulation 29 (3) of SAST Regulations, 2011, as can be observed from the Table above, Noticees have failed to comply with the mandatory statutory obligation. The contentions of the Noticees that disclosures could not be made within the stipulated time period due to lack of professional expertise within the company, the delayed disclosures were non-intentional and a technical lapse on their part, no harm has been caused to the shareholders due to the delayed disclosures etc. are not valid reasons for not complying with the mandatory statutory obligation. The timely disclosures under the SAST Regulations are mandated for the benefit of the investors at large. There can be no dispute that compliance of these regulations is mandatory and it is the duty of SEBI to enforce the compliance of these regulations. In this context, it is relevant to note that Hon'ble SAT, in Appeal no. 66 of 2003, in the case of Milan Mahendra Securities Pvt. Ltd. vs. SEBI, vide its order dated November 15, 2006, had observed that *"the Regulations were framed on the basis of the input provided by a committee headed by Justice P. N. Bhagwati which had recommended that substantial acquisition of shares and takeovers should operate principally to ensure fair and equal treatment to all shareholders in relation to substantial acquisition of shares and takeovers. The object of the Regulations is to give equal treatment and opportunity to all the shareholders and protect their interests. To translate these principles into reality measures have to be taken by the Board to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required....."*

24. Further, the Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI* had observed the following:

“Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations.”

25. In view of the above observations, I hold that Noticees have violated the provisions of Regulation 29(2) r/w Regulation 29(3) of the SAST Regulations, 2011.

If so, what quantum of monetary penalty should be imposed on the Noticees after taking into consideration the factors mentioned in section 15J of the SEBI Act, 1992?

26. As the violations of the aforementioned provisions of SAST Regulations, 2011 by the Noticees have been established, I am convinced that it is a fit case to impose monetary penalty on the Noticees under the provisions of Sections 15H(ii) and 15A(b) of the SEBI Act, which read as under :

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

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

(ii) make a public announcement to acquire shares at a minimum price; or
he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under-*

(b) To file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

27. At this juncture, it is pertinent to mention the observations made by Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India held 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....."*

28. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, 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.*

29. I note that the material made available has not quantified the profit/loss for the violations committed by the Noticees. However, as already observed above, I am of the view that by not making the mandatory public announcement within the stipulated time period and by failing to comply with the disclosure requirements specified under the SAST Regulations within the prescribed time period, Noticees have violated the statutory requirements of law. The contention of the Noticees that they have compensated the investors by paying interest for the delayed public announcement of open offer cannot be a valid ground to escape liability. However, I have nevertheless considered the same as a mitigating factor while arriving at the quantum of penalty on the Noticees.

ORDER

30. In view of my observations / findings discussed above, the facts and circumstances of the case, the various submissions made by the Noticees and the observations/directions of Hon'ble SAT vide its Order dated March 22, 2016, I, in exercise of the powers conferred upon me under section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty of Rs 3,00,000/- (Rupees Three lakh only) on the Noticees viz, Shri Anil Monga, Shri Rajesh Monga, Ms. Renu Monga, Shri B B Gandhi, Ms. Manya Monga, Ms. Rashi Monga, Shri Shivaz Monga, Ms. Poonam Monga and Shri Jagroop Singh, to be paid jointly and severally, under the provisions of Section 15H (ii) of the SEBI Act, 1992 for their violation of Regulation 13(2)(c) read with Regulation 13(1) of SAST Regulations, 2011. Further, for their failure to comply with the disclosure requirements within the stipulated time under Regulations 29(2) r/w 29(3) of SAST Regulations, 2011, I hereby impose a penalty of Rs 5,00,000/- (Rupees Five lakh only) on the above Noticees under the provisions of Section 15A(b) of the SEBI Act, 1992. The Noticees shall be jointly and severally liable to pay the above penalty.
31. The amount of penalty shall be paid by the Noticees either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI- Penalties Remittable to Government of India", A/C No 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of the receipt of this order. The said demand draft or forwarding details and confirmation of e-payments made (in the format as given in the table below) should be forwarded to The Division Chief, Enforcement Department (EFD), Securities and Exchange Board of India, SEBI Bhavan, C-4A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	

4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

32. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticees viz. Shri Anil Monga, Shri Rajesh Monga, Ms. Renu Monga, Shri B B Gandhi, Ms. Manya Monga, Ms. Rashi Monga, Shri Shivaz Monga, Ms. Poonam Monga and Shri Jagroop Singh and also to Securities and Exchange Board of India.

Place: Mumbai
Date: June 27, 2018

SURESH B MENON
ADJUDICATING OFFICER