

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. AK/AO- 30-41 /2017]**

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

In respect of

**Shri Amul Sumatichandra Mehta** (PAN: AAHPM0112E), **Shri Yugesh Sumatichandra Mehta** (PAN: AFFPM5967A), **Shri Akul Yugesh Mehta** (PAN: ALEPM3353K), **Mr. Jayendra Yugesh Mehta** (PAN: AAGPM3471M), **Ms. Mrudula Amul Mehta** (PAN: AAFPM7346A), **Ms. Maitri Amul Mehta** (PAN: ACPPM8715K), **Ms. Rachna Amul Mehta** (PAN: AFFPM9255H), **Ms. Sunali Yugesh Mehta** (PAN: AHEPM4649L), **Senator Investment Private Limited** (PAN: AAEC3302A), **Touristor Investments Pvt. Ltd.** (PAN: AABCT1257G), **Yug Investment Pvt. Ltd.** (PAN: AAACY0239J) and **Amul Sumatichandra Mehta-HUF** (PAN: AAAHA5202N)

In the matter of

Safari Industries (India) Limited

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**BACKGROUND**

1. A letter of offer under regulations 10 and 12 of the Takeover Regulation was made by Mr. Sudhir Jatia as the Acquirer and Ms. Neeti Jatia as the Person Acting in Concert (**PAC**) to acquire 5,98,000 fully paid up equity share of Rs. 10/- each at Rs. 170/- per share (representing 20% of the total issued and subscribed equity share capital and 20% of the voting right) of Safari Industries (India) Limited (hereinafter referred to as **“The Company”**). The public announcement of the same was made on September 09, 2011. The equity shares of the company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as **‘BSE’**).

2. On perusal of the letter of offer, SEBI observed that the erstwhile promoters of the Company Shri Amul Sumatichandra Mehta, Shri Yugesh Sumatichandra Mehta, Shri Akul Yugesh Mehta, Mr Jayendra Yugesh Mehta, Ms Mrudula Amul Mehta, Ms Maitri Amul Mehta, Ms Rachna Amul Mehta, Ms Sunali Yugesh Mehta, Senator Investment Private Limited, Touristor Investments Pvt. Ltd., Yug Investment Pvt. Ltd. and Amul Sumatichandra Mehta-HUF (hereinafter referred to as the **“Noticees”/ “Promoters”**) in the past had not complied with Regulation 8(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **"Takeover Regulations"**) within the due date during the year 2006. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **“SEBI Act”**) were initiated against the Noticees under Section 15A(b) of SEBI Act to inquire into and adjudicate the alleged violation of the provision of Regulation 8(2) of the Takeover Regulations.
3. In the matter, an Order dated January 29, 2014 was passed, and a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) was imposed on each of the Noticees. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as **‘SAT’**) in Appeal No. 77 of 2014 vide Order dated October 01, 2014, while setting aside the adjudication order dated January 29, 2014 and restoring to the file of the Adjudicating Officer for passing fresh order on merits and in accordance with law after giving personal hearing to the appellants viz. the Noticees aforesaid had *inter alia* stated that the fresh order on merits be passed as expeditiously as possible and preferably within four months from the date of the said Order. Further, the Hon'ble SAT vide Order dated January 29, 2015 in the Miscellaneous Application No. 51 of 2015 moved by SEBI had allowed two months extension of time for passing the final Order.
4. Subsequently, vide Adjudication Order dated March 27, 2015, it was held that the Noticees had violated the aforesaid Regulation 8(2) of the Takeover Regulations and had accordingly imposed a penalty of Rs. 2,00,000/- (Rupees Two Lakh Only) each on the Noticees.

5. The said Order dated March 27, 2015 was appealed against before the Hon'ble Securities Appellate Tribunal (SAT) by the Noticees. The Hon'ble SAT vide its Order dated November 20, 2015, set aside the Adjudication Order dated March 27, 2015 and restored the appeals to the file of SEBI for passing fresh order on merits and in accordance with law.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

6. The undersigned was appointed as Adjudicating Officer on September 02, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**SEBI Rules**") to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of Regulation 8(2) of Takeover Regulations committed by the Noticee. Pursuant to the Order of the Hon'ble SAT dated November 20, 2015, the matter was restored to the undersigned for passing fresh order on merits and in accordance with law.

#### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

7. Show Cause Notice (hereinafter referred to as "**SCN**") Ref. Nos. EAD-6/AK/VS/29262/2013, EAD-6/AK/VS/29265/2013, EAD-6/AK/VS/29270/2013, EAD-6/AK/VS/29275/2013, EAD-6/AK/VS/29277/2013, EAD-6/AK/VS/29279/2013, EAD-6/AK/VS/29282/2013, EAD-6/AK/VS/29287/2013, EAD-6/AK/VS/29289/2013, EAD-6/AK/VS/29290/2013, EAD-6/AK/VS/29291/2013 and EAD-6/AK/VS/29292/2013 dated November 18, 2013 were issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations, details of which are as follows:

<b>S.No.</b>	<b>Entity</b>	<b>Violation of Regulation</b>	<b>Due date for compliance</b>	<b>Actual date of compliance</b>	<b>Delay (No. of Days)</b>
1	Amul Sumatichandra Mehta	8(2)	21.04.2006	28.04.2006	7
2	Yugesh Sumatichandra Mehta	8(2)	21.04.2006	28.04.2006	7
3	Akul Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
4	Jayendra Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
5	Mrudula Amul Mehta	8(2)	21.04.2006	28.04.2006	7
6	Maitri Amul Mehta	8(2)	21.04.2006	28.04.2006	7
7	Rachna Amul Mehta	8(2)	21.04.2006	28.04.2006	7

S.No.	Entity	Violation of Regulation	Due date for compliance	Actual date of compliance	Delay (No. of Days)
8	Sunali Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
9	Senatory Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
10	Touristor Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
11	Yug Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
12	A S Mehta HUF	8(2)	21.04.2006	28.04.2006	7

8. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.

9. The Noticees vide letter dated November 25, 2013 sought extension of 30 days time to reply to the SCN. Vide email dated November 26, 2013, the Noticees were advised to submit their reply to the SCN by December 16, 2013. Shri Amul Mehta submitted reply dated December 16, 2013 to the SCN on behalf of himself and other Noticees *inter alia* admitting to the alleged charges. Vide the aforesaid reply, the Noticees have *inter alia* stated as follows:

- i. *That for the financial year ending March 31, 2006, the Noticees had made the disclosure in terms of Regulation 8(2) of the Takeover Regulations on April 28, 2006 against due date of April 21, 2006 (i.e. a delay of 7 days);*
- ii. *That the delay was inadvertent, unintentional and of a technical or minor nature. It did not cause any harm to any of the shareholders of the company or public at large as the information necessary to be available in the public domain i.e. the Stock Exchange, was available pursuant to the quarterly filing by the company under clause 35 of the Listing Agreement;*
- iii. *That none of the Noticees have made any disproportionate gain or unfair advantage as a result of delay in compliance with the Takeover Regulations.*

10. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticees were granted an opportunity of hearing on January 08, 2014 vide notice dated December 10, 2013 and the said notice was duly acknowledged by the Noticees. Accordingly, Shri Ramakant Kini,

Shri Supreme Waskar and Shri Pradumnya Patil from Sterling Associates (hereinafter referred to as 'ARs'), appeared on behalf of the Noticees and reiterated the submissions made vide reply dated December 16, 2013. During the hearing, the ARs submitted that Shri Amul Mehta was the main holder and other promoters were his relatives as joint holders, hence only Shri Amul Mehta may be considered as responsible for making the disclosures. ARs were advised to submit copies of the disclosures made by the Noticees under Clause 35 of the Listing Agreement to the Exchange for the quarters ended December 2005 and March 2006 along with the acknowledged receipts of the Bombay Stock Exchange Ltd. (BSE) and copy of the report filed with the company under Regulation 8(2) of Takeover Regulations on April 28, 2006. ARs were further advised to inform any past non-compliance by the Noticees concerned with respect to Takeover and/ or Insider Trading Regulations as well as action taken by SEBI, if any, against the Noticees in the past. ARs undertook to provide the aforesaid documents/ information by January 15, 2014.

11. Vide letter dated January 15, 2014, Noticees submitted the following documents:

- i. *Copy of the Shareholding Pattern of the company for the quarter ended December 31, 2005 pursuant to clause 35 of the Listing Agreement filed with BSE vide company's letter dated January 13, 2006 and acknowledged by BSE on January 19, 2006;*
- ii. *Copy of the Shareholding Pattern Summary form for free-float indices as on March 31, 2006, copy of the Controlling/ Strategic Holders form and copy of the form disclosing the holdings of 1% & above filed by the company with BSE vide letter dated April 26, 2006 and acknowledged by BSE on May 02, 2006; and*
- iii. *Report under Regulation 8(2) of the Takeover Regulations filed with the company on April 28, 2006. The date of filing of report by the Noticees with the company is April 28, 2006. It was, however, noted that the same has been initialed as on the same date, but, without the receiving official's name or the company's seal of receiving the documents.*

12. Subsequent to the Hon'ble SAT Order dated October 01, 2014 setting aside the Adjudication Order dated January 29, 2014 passed in the matter and restoring to the file of the

Adjudicating Officer for passing fresh order on merits and in accordance with law after giving personal hearing, an opportunity for personal hearing was granted to the Noticees on February 23, 2015 vide hearing Notice dated February 04, 2015. On the scheduled date, the ARs of the Noticees appeared on behalf of the Noticees and filed written submissions dated February 19, 2015 from Noticee Shri Amul Mehta and reiterated the submissions made therein. The ARs submitted that the company had made the disclosure under Regulation 8(3) of the Takeover Regulations within the prescribed time i.e. on April 17, 2006, however, the disclosures under Regulation 8(2) of the Takeover Regulations were received by the company from the promoters only on April 28, 2006. The ARs further submitted that the obligation under Regulation 8(2) of the Takeover Regulations applies to '*a promoter*' and for the delay under Regulation 8(2) in the matter only Shri Amul Mehta should be considered liable.

13. Vide written submissions dated February 19, 2015, the Noticee Shri Amul Mehta on his own behalf and on behalf of the other Noticees has *inter alia* submitted as follows:

- i. *That at the relevant time, the Company was a small cap company with a paid-up capital of 26 lakh equity shares of Rs.10/- each. The market capitalization of the Company at the relevant time was approx. Rs. 7.3 crore only. Scrip of the Company was illiquid scrip. Average daily traded volume on BSE during the relevant period i.e. April 21, 2006 to April 28, 2006, was merely approx. 1,350 shares;*
- ii. *That as per Regulation 8(2) of the Takeover Regulations, a promoter or every person having control over the company is required to make the disclosure to the company every year about the number of shares and percentage of voting rights held by him and person acting in concert with him in that company within 21 days from the financial year ending March 31;*
- iii. *That at the relevant time, Noticees were part of the promoters/ promoter group of the company and there was no obligation on the promoters to make any disclosure to this effect with the stock exchange;*

- iv. *That as per Regulation 8(3) of the Takeover Regulations, every listed company is under an obligation to disclose to the concerned stock exchange, the promoter shareholding held by them in the company within thirty days from the financial year ending;*
- v. *That in the instant case, the company had filed the necessary disclosures under Regulation 8(3) to the Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE') on April 17, 2006. A copy of the disclosure dated April 11, 2006 made by the company under Regulation 8(3) of the Takeover Regulations and received by BSE on April 17, 2006 together with its acknowledgement was provided;*
- vi. *That further for the financial year ending March 31, 2006, the Noticees had made the disclosure in terms of Regulation 8(2) of the Takeover Regulations on April 28, 2006 against the due date of April 21, 2006 (i.e. a delay of 7 days);*
- vii. *That Annual disclosure about holding of equity shares in the company is required to be made by a promoter to that company under regulation 8(2) and there is no obligation to make disclosure to the stock exchange under regulation 8(2) of the Takeover Regulations, and the disclosure by the promoter to the company is only in the form of an internal communication between the company and a promoter, as such, delay in making disclosure to the company has no impact on the trading of the company's securities at the stock exchange. The disclosure under Regulation 8(3) was made by the company within stipulated period i.e. on April 11, 2006, which was duly acknowledged by BSE on April 17, 2006, hence, material compliance of the regulatory requirement to protect the interest of investors in the securities market was complied, as the requisite information for relevant period was available in public domain;*
- viii. *That the Noticees came to know about such compliance under Regulation 8(3) by the company after the passing of the adjudication order dated January 29, 2014 when they made enquiries with the company and requested it to provide the requisite information in this regard;*
- ix. *That there was no change in the shareholding of the Noticees with respect to the period in question, and the information was available on the record of the company and the stock exchanges in view of the disclosure made by the company with BSE under clause 35 of the*

*Listing Agreement, as also disclosures made by the company under Regulation 8(3), thus, the investors were not deprived of the requisite information about shareholding of the Noticees during the period April 21, 2006 (due date of filing disclosure under Regulation 8(2)) to April 28, 2006 (actual date of disclosure). Further that investors in the securities market were entitled to the said information by April 30, 2006 i.e. the due date of filing of disclosures under Regulation 8(3) by the company, however, in the extant case, the disclosure under Regulation 8(3) was made by the company on April 11, 2006 itself i.e. much before the due date. Hence, information about the Noticees shareholding was available in public domain during the period from April 21, 2006 to April 28, 2006;*

- x. That since disclosure under Regulation 8(2) is not required to be made to the stock exchange, but, is required to be made only to the company, hence, it has no direct relationship with the investors in the securities market;*
- xi. That no prejudice can be caused to the investors on account of delayed/ non-filing of disclosure under Regulation 8(2) by a promoter with the company, so long as requisite disclosure under Regulation 8(3) is made by the company with the stock exchange;*
- xii. That the default was one time default and not recurring default and the Noticees have clean track record and have never been charged for committing breach of SEBI Regulations in the past;*
- xiii. That as per the plain interpretation of the language of regulation 8(2) of Takeover Regulations and intent of the legislature during the relevant period in question, disclosure obligation would suffice if 'a promoter' makes disclosure of the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that Company to the company. Further the industry practice for disclosure under regulation 8(2) of Takeover Regulations was that a promoter files disclosure under regulation 8(2) of Takeover Regulations of the number and percentage of shares or voting rights held by him and by persons acting in concert with him. In the present case it is Mr. Amul Mehta, being a promoter who allegedly delayed in filing the disclosure for relevant period in question and only he is responsible for the alleged technical breach of regulation 8(2) of Takeover Regulations. The other Noticees were holding nominal shares at the relevant time;*



- xiv. *That the action to hold each Noticee severally liable for the same violation under Regulation 8(2) of the Takeover Regulation is harsh and inconsistent with the earlier decision taken by SEBI/ SAT in similar cases;*
- xv. *That in several other cases the adjudicating officers of SEBI have imposed consolidated penalty on all the defaulters in relation to defaults pertaining to disclosures under Takeover Regulations. Also that the amount of penalty is unreasonably high and not commensurate with the technical violation;*
- xvi. *That in the matter of Shri Anil Kumar Sharda, wherein for the violation of regulation 8(2) of the Takeover Regulations in relation to Jaihind Synthetics Ltd., vide Adjudication Order dated November 27, 2009, Adjudicating Officer held one person liable for violation of regulation 8(2) of the Takeover Regulations, wherein there was also change in the shareholding of Mr. Anil Kumar Sharda during the relevant period and imposed penalty of Rs. 15,000/-.*

14. Subsequent to the remand of the matter vide SAT's Order dated November 20, 2015, an opportunity for personal hearing was granted to the Noticees on August 09, 2016 vide hearing Notice dated July 08, 2016. Vide email dated August 04, 2016, the Noticees requested for an adjournment in the matter. The request of the Noticee was granted, and the personal hearing was adjourned and rescheduled on September 15, 2016. However, on account of Anant Chaturdashi falling on September 15, 2016, hearing was again rescheduled to September 21, 2016. Since the Counsels representing in the matter were pre-occupied on the said date, the hearing was rescheduled to September 27, 2016, which, however, had to be cancelled due to unavoidable circumstances. Thereafter, vide email dated October 05, 2016, the Noticees were requested to indicate their convenient dates, and accordingly the hearing was rescheduled for November 25, 2016.

15. On the scheduled date, Mr. Nimay Dave, Mr. Ramakant Kini, Mr Subham Chatterjee, Mr. Pradyumna Patel and Mr. Kishor Takmoge, Authorised Representatives (ARs) of the Noticees appeared for the personal hearing. The ARs were requested to clarify whether the Noticees

were individual promoters or constituted a promoter group/were acting in concert during the financial year ended March 31, 2006. Further, in case they constituted a promoter group/were acting in concert, the ARs were advised to submit documentary evidence in support thereof. The ARs referred to Annexure C of the Noticees letter dated January 15, 2014 wherein the names of the promoters having control over the Company and also names of persons acting in concert as on March 31, 2006 were listed out. The ARs were also advised to provide the name and designation of the official of the Company at the relevant point of time, who had received the filing made by the Noticees in terms of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the financial year ended March 31, 2006, as the documentary evidence of acknowledgment produced by the Noticees did not have the name of the Company official nor the stamp of the Company.

16. Vide letter dated December 20, 2016, the Noticees stated that one Mr Shekhar Thakare who was employed with the Company, had received on behalf of the Company, the disclosures under Regulation 8(2) of the Takeover Regulations for the financial year ending on March 31, 2006. The Noticees also annexed a letter from the said Mr. Shekhar Thakere affirming that he had received the aforementioned disclosure on behalf of the company.
17. Thereafter vide letter dated February 06, 2017, the Company was also requested to confirm receipt of the aforesaid disclosure by the Company on April 28, 2006. By an undated letter received on February 27, 2017, the Company confirmed that they had received the disclosure made by the ex-promoters of the Company, i.e., the Noticees under Regulation 8(2) of the Takeover Regulations for the (financial) year ended March 31, 2006 on April 28, 2006.
18. During the course of the adjudication proceedings, the Hon'ble Supreme Court vide its Order dated November 26, 2015 in the matter of *SEBI v. Roofit Industries Ltd.* opined that the Adjudicating Officer had no discretion under Section 15J in deciding the quantum of penalty for offences committed between 2002 and 2014, other for than penalty under Section 15F(a) and Section 15HB of the SEBI Act. However, subsequently, another Bench of the Hon'ble

Supreme Court in the matter of *Siddharth Chaturvedi v. SEBI* vide Order dated March 14, 2016 stated that the matter deserved consideration at the hands of a larger Bench. Accordingly, the Supreme Court directed that the papers of these appeals be placed before the Hon'ble Chief Justice of India for placing these matters before a larger Bench. Hence, the current Adjudication proceedings were kept on hold until determination of the issue of applicability of Section 15J to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

19. However, subsequent to the amendment made vide the Finance Act, 2017 to Section 15J of the SEBI Act, 1992 (notified on April 26, 2017), the following Explanation has been inserted in Section 15J:

*“Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.”.*

20. Thus, it is now settled that Section 15J also applies to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

21. Subsequent to the notification of the Finance Act, 2017 and the amendment made thereby to Section 15J of the SEBI Act, vide individual hearing notices dated April 06, 2017, another opportunity of personal hearing was granted to the Noticees on April 20, 2017. In response, vide email dated April 19, 2017, Mr. Amul Mehta on behalf of himself and all the other Noticees reiterated that the Noticees were one promoter group and requested to consider the written/ oral submissions that have been placed on record during the adjudication proceedings.

## **CONSIDERATION OF ISSUES**

22. I have carefully perused the written submissions of the Noticees, the submission made at the personal hearings and the documents available on record. It is observed that the allegation against the Noticees is that they had failed to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006 within the stipulated time.

23. The issues that, therefore, arise for consideration in the present case are:

- i. Whether the Promoter Noticees were required to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006?
- ii. If so, whether the Promoter Noticees have violated the provision of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006?
- iii. If so, whether the Promoter Noticees were individual promoters or did they constitute 'Promoter group' acting in concert under the Takeover Regulations?
- iv. Does the violation, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
- v. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

## **FINDINGS**

24. Before moving forward, it is pertinent to refer to the provisions of Regulation 8(2) of Takeover Regulations, which reads as under:

### ***Regulation 8(2) of Takeover Regulations:***

#### ***Continual disclosures.***

**8. (2)** *A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or*

*voting rights held by him and by persons acting in concert with him, in that company to the company.*

25. The first issue for consideration is whether the promoter Noticees were required to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006. I find from the Shareholding Pattern of the Promoter group as available on BSE's website that the Noticees were the promoters of the company at the relevant point of time. The Noticees, I find, in their submissions have also admitted that they were a part of the promoters/ promoter group of the company. Further, I find that as per Regulation 8(2) of the Takeover Regulations, a promoter or every person having control over a company is required within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.
26. The next issue for consideration is whether the Noticees have violated the provisions of Regulations 8(2) of the Takeover Regulations for the financial year ended March 31, 2006. I find that the SCN alleged that the disclosure under Regulation 8(2) of the Takeover Regulations were made by the Noticees to the company only on April 28, 2006, details of which are at para 7 above.
27. From the table at para 7 above, it is observed that for the financial year 2006, the due date for compliance by the promoter Noticees as per the Takeover Regulations was April 21, 2006. I find here that one of the Noticees, viz. Shri Amul Mehta vide reply dated December 16, 2013 to the SCN on behalf of himself and on behalf of the other Noticees has *inter alia* admitted that the Noticees for the financial year ending March 31, 2006 had made the disclosure under Regulation 8(2) of the Takeover Regulations only on April 28, 2006, against the due date of April 21, 2006 (i.e. with a delay of 7 days). Thus, I note that the Noticees have specifically admitted the delay of 7 days in making the disclosures under Regulation 8(2) of the Takeover Regulations for the financial year ending March 31, 2006. Thus, I find that the Noticees have

admitted the violation of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006.

28. I further note that vide written submissions dated February 19, 2015, the Noticee Shri Amul Mehta on his own behalf and on behalf of the other Noticees, has *inter alia* stated that the action to hold each Noticee severally liable for the same violation under Regulation 8(2) of the Takeover Regulation is harsh and inconsistent with the earlier decisions taken by SEBI/ SAT in similar cases. I find here that the Noticees have made a mention of the *Adjudicating Order dated November 27, 2009 in the case of Shri Anil Kumar Sharda in the matter of Jaihind Synthetics Ltd. (hereinafter referred to as 'JSL')*. However, in light of the Order of the Hon'ble SAT dated November 20, 2015 in the matter at hand, I note that the said issue has already been determined. I find that the Hon'ble SAT vide Order dated November 20, 2015 has *inter alia* held as follows:

*"20. ...firstly, use of the word 'A promoter' instead of the word 'every promoter' clearly indicates that the disclosure could be made not only by promoter but also by a promoter group. Secondly, by including every person/member in the promoter group within the meaning of 'promoter' it is made clear that the obligation cast on the promoter has also to be discharged by the promoter group. Thirdly, all the entities covered under the promoter group though treated as 'promoter', every such entity may not be holding shares of the Target Company and in that case, if contention of SEBI is accepted it would mean the every promoter covered under the Takeover Regulations must make yearly disclosure even though some of the promoters never held any shares of the Target Company. Having included persons/members of the promoter group within the meaning of 'promoter' under the Takeover Regulations, SEBI cannot now contend that it would be difficult for a promoter in the promoter group to know the shares held by other promoters in the promoter group and their PAC [Persons Acting in Concert] before making disclosure and therefore, every promoter must be directed to make yearly disclosure. Therefore, it is just and reasonable to hold that under the Takeover Regulations the obligation to make yearly disclosure is on the promoter or the promoter group as the case may be.*

...

*23...The obligation to make yearly disclosure under regulation 8(2) and regulation 30(2) of the Takeover Regulations framed by SEBI in the year 1997 & 2011 respectively is on the promoter/promoter group. If the promoters of a listed company are individual promoters then the obligation is on the individual promoters and in case there is a 'promoter group' then the promoter group is required to make yearly disclosure. If the promoter group fails to disclose the shares or voting rights held by the promoters in the promoter group as also their PAC's within the time stipulated under the Takeover Regulations, then, penalty is imposable on the promoter group and the said penalty would be recoverable jointly and severally from the promoters in the promoter group who held shares or voting rights in the Target Company with their PAC's..."*

29. Hence, as per the above cited judgment of the Hon'ble SAT, it becomes clear that the obligation to make yearly disclosure under Regulation 8(2) of the Takeover Regulations is on the promoter/promoter group. However, I find further that the Hon'ble SAT has also observed that if the promoters of a listed company are individual promoters, then the obligation is on the individual promoters and in case there is a 'promoter group' then the promoter group is required to make yearly disclosure. It, therefore, becomes imperative that we determine whether the Promoter Noticees were acting as individual promoters or as a Promoter Group. The next issue that arises is whether the Promoter Noticees were individual promoters or do they constitute 'promoter group' acting in concert under the Takeover Regulations. I find that the Noticees during the hearing dated November 25, 2016 have referred to Annexure C of Noticees letter dated January 15, 2014.

30. Upon examination of the said Annexure C to letter dated January 15, 2014, I find that the same is a copy of the disclosure dated April 28, 2006 made under Regulation 8(2) of Takeover Regulations for shareholding as on March 31, 2006. From the same, I find that all the Noticees have been *inter alia* named as "persons acting in concert" and the disclosure of shares and voting rights held has *inter alia* been made for all the Noticees. Earlier, during the hearing on

January 08, 2013 too, I find that the ARs had submitted that Shri Amul Mehta was the main holder and other Noticee promoters were his relatives as joint holders, hence only Shri Amul Mehta may be considered as responsible for making the disclosures.

31. In view of the above, I find that the Promoter Noticees formed part of the same promoter group. I further find that there is nothing on record to establish anything contrary to the above. In view of the same, I consider the Promoter Noticees herein as PACs, being promoters and part of the same promoter group.

32. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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..."*. Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow.*

33. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

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

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

*(b) to file any return or furnish any information, books or other documents within the time specified 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.*



34. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J 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.*

*[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]<sup>1</sup>”*

35. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. However, the main objective of the Takeover 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. Thus, the cornerstone of the Takeover regulations is investor protection.

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<sup>1</sup> Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017, wef April 26, 2017

36. As per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. I, however, note that the ***Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment-January 27, 2014)*** has observed that:

*“Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”*

In view of the same, the argument put forth by the Noticees that the delay did not cause any harm to any of the shareholders of the company or public at large is not relevant for the given case.

37. In the matter, I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** had observed that:

*“... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.”*

In view of the same, the argument put forth by the Noticees that none of the Noticees have made any disproportionate gain or unfair advantage as a result of delay in compliance with the Takeover Regulations is also not relevant for the given case.

38. I further find that the Noticees have stated that no action has been taken or proceedings initiated against the Noticee in the past, for any offence with respect to Takeover Regulations or Insider Trading Regulations, except for the present adjudication proceeding contemplated under the subject notice.

39. Further, the Noticees have submitted that there was no change in the shareholding of the Noticees with respect to the period in question. The Noticees have stated that the information was available on the record of the company and the stock exchanges in view of the disclosure made by the company with BSE under clause 35 of the Listing Agreement, as also disclosures made by the company under Regulation 8(3) of Takeover Regulations. Thus, the Noticee has stated that the investors were not deprived of the requisite information about shareholding of the Noticees during the period April 21, 2006 (due date of filing disclosure under Regulation 8(2)) to April 28, 2006 (actual date of disclosure).

40. I note that the Noticees have submitted before me the filing made to BSE under Clause 35 of the Listing Agreement for the quarter ending December 2005 and copy of the Shareholding Pattern Summary form for free-float indices as on March 31, 2006, copy of Controlling/ Strategic Holders form and copy of the form disclosing the holdings of 1% & above - filed by the company with BSE as on March 31, 2006. I, however, note from the aforesaid documents produced before me that the shareholding of the Noticees for the quarter ended March 31, 2006 was submitted by the company to BSE vide letter dated April 26, 2006, which was acknowledged by BSE only on May 02, 2006. Thus, I observe that the same was received by BSE much after the delayed filing made by the Noticees to the company on April 28, 2006. Thus, I find that as on April 21, 2006 i.e. the due date for compliance of regulation 8(2) of the Takeover Regulation, the information about the Noticee promoter's holding as on March 31, 2006 was not available in public domain, even as required under clause 35 of the listing

agreement. Besides, I note that ***the Hon'ble SAT vide Order dated June 13, 2014 in the matter of Mafatlal Finance Company Limited (hereinafter referred to as 'MFCL')*** has held that obligation to make disclosure under Regulation 8(1) and 8(2) of the Takeover Regulations, is independent of the obligation to make disclosure under clause 35 of the Listing Agreement, which is on the company.

41. I note here that the Noticees have also provided a copy of the disclosure dated April 11, 2006 filed by the company with BSE, in terms of Regulation 8(3) of the Takeover Regulations as on March 31, 2006. On perusal of the said copy, I find that the Compliance Officer of the company had informed the Exchange that they were sending the details of shareholding obtained under Regulation 8(1) and 8(2) from the acquirers. Further the filing made by the company under Regulation 8(3) mentioned: "*Shareholding/ Voting rights (in number and %) of persons mentioned at (II) as informed to the target company u/r 8(2)*". Further, "(II)" mentioned above referred to "*Promoter(s) or every person having control over a company and also persons acting in concert with him*". Since, however, the Noticees have admitted to have filed the disclosure under Regulation 8(2) of the Takeover Regulations with delay, it becomes crystal clear that when the company filed the disclosure under Regulation 8(3) of the Takeover Regulations to the stock Exchange, the company did not have the disclosures from the promoter Noticees under Regulation 8(2) of the Takeover Regulations.

42. Further, as regards the argument put forth by the Noticees that there was no change in the shareholding of the Noticees during the period in question, I find that ***the Hon'ble SAT vide Order dated June 13, 2014 in the matter of Mafatlal Finance Company Limited (hereinafter referred to as 'MFCL')*** has held that obligation on the promoters to make disclosure regarding the number and percentage of shares or voting rights is irrespective of there being any change in the shareholding or not.

43. I further find that the Noticees have *inter alia* stated that Annual disclosure about holding of equity shares in the company is required to be made by a promoter to that company under

regulation 8(2), and that such disclosure by the promoter to the company is only in the form of an internal communication between the company and a promoter, as such, delay in making disclosure to the company has no impact on the trading of the company's securities at the stock exchange. I find it necessary to mention here that disclosure required to be made by the promoter to the company under Regulation 8(2) of the Takeover Regulations, is a requirement under the Takeover Regulations, and, not merely some routine internal communication between the promoters and the company. It is only based on the disclosure under Regulation 8(2), made by the promoters to the company within the stipulated time period, can the company make the disclosure to the stock exchange under Regulation 8(3) within the stipulated time period. Further, any compliance under a statutory requirement cannot be treated on par with routine internal communication, as penalties for non-compliance under the statute would become applicable. Besides, compliance to the time period specified under the Takeover Regulations gains significance from the fact that availability of sufficient time to shareholders for making informed decision was considered as one of the principles by the Bhagwati Committee, while making recommendations in the Committee Report on Takeovers.

44. I find that the Noticees made a delayed disclosure to the company. The delay in the instant case is by seven (7) days on one occasion for the financial year ended March 31, 2006 with regards to making the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations to the Company. The Noticees have submitted that no prejudice can be caused to the investors on account of delayed/ non-filing of disclosure under Regulation 8(2) by a promoter with the company, so long as requisite disclosure under Regulation 8(3) is made by the company with the stock exchange. However, it has now been discovered that the company, while making the filing did not have the disclosures from the promoter Noticees under Regulation 8(2) of the Takeover Regulations.

45. I further find that the Noticees have referred to the fact that the Adjudication Officer in the matter of Mr. Anil Kumar Sharda had imposed a penalty of Rs. 15,000/- in the said matter. I,

however, note here that the ***Hon'ble SAT vide Order dated February 18, 2015 in the matter of Count N Denier (India) Ltd.*** has upheld the penalty of Rs. 2 lacs imposed on the promoter Shri Anil Agarwal therein, for delay of five (5) days in making annual disclosure under Regulation 30(2) read with 30(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for the year ended March 31, 2012. Thus, I note that penalty would vary and depend on the facts and circumstances of each case.

46. Even assuming that lower penalty has been imposed based on the facts and circumstances of a case, it does not automatically imply that same lower penalty need to be imposed in the extant case. The determination of penalty in the extant case would depend upon the facts and circumstances of the extant case. In the matter, I would like to refer to the ***Order of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Hybrid Financial Services Limited Vs. SEBI (Appeal No.119 of 2014 and Order dated June 12, 2014)***, wherein SAT had observed as follows:

*"..... argument that penalty imposed on appellant is excessive compared to penalty imposed in the case of Kamalakshi Finance Corporation Ltd. (supra) and Gupta Carpet International Ltd. is also without any merit, because, firstly, nothing is brought on record to show that facts in that case are similar to the facts in the present case. Secondly, assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted especially when the Regulations prescribe stringent action for non compliance of disclosure provisions which are mandatory....."*

47. I further find that the Noticees have *inter alia* claimed that the violation committed by them were inadvertent, unintentional and of a technical or minor nature. Any transaction which requires compliance of the Takeover Regulations, if not complied, is always a serious matter, and cannot be considered a mere 'technical' violation, even if the transaction is otherwise in compliance. In the given case, I find that the violation has been committed by the promoters of the Company. As promoters of the listed company, the Noticees had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and

purpose. Delayed compliance with disclosure requirements by promoters undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

## **ORDER**

48. After taking into consideration all the facts and circumstances of the case, I impose a total penalty of **Rs. 2,00,000/- (Rupees Two lacs only)** under Section 15 A(b) on the Noticees viz. Shri Amul Sumatichandra Mehta, Shri Yugesh Sumatichandra Mehta, Shri Akul Yugesh Mehta, Mr. Jayendra Yugesh Mehta, Ms. Mrudula Amul Mehta, Ms. Maitri Amul Mehta, Ms. Rachna Amul Mehta, Ms. Sunali Yugesh Mehta, Senator Investment Private Limited, Touristor Investments Pvt. Ltd., Yug Investment Pvt. Ltd. and Amul Sumatichandra Mehta-HUF, to be paid **jointly and severally**, which will be commensurate with the violations committed by the Noticees.
49. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

50. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

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)	

51. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: **July 28, 2017**

Place: **Mumbai**

**Anita Kenkare**  
**Adjudicating Officer**