

**BEFORE THE ADJUDICATING OFFICER  
SECURITIES AND EXCHANGE BOARD OF INDIA  
[ADJUDICATION ORDER NO. AK/AO- 126-132 /2014]**

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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

**Ms. Sarita Mansingka** (PAN ACTPM9125D)  
**Shri Prashant Deorah** (PAN ACKPD6555F)  
**Shri Anil Patodia** (PAN AAGPP4150Q)  
**Ms. Poonam Patodia** (PAN AAGPP4148Q)  
**Shri Kishorilal Patodia** (PAN AAFPP4771J)  
**Shri Abhijeet Patodia** (PAN AOBPP1752P)  
**Shri Divansh Mansingka** (PAN AQOPM5026G)

In the matter of

M/s. W W Technology Holdings Limited

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**FACTS OF THE CASE IN BRIEF**

1. A letter of offer was made by Mr. Paresh Mulji Kariya (herein after referred to as '**the Acquirer**') to acquire 63,700 fully paid up equity share of Rs 10/- each at an offer price of Rs. 26/- per equity share (representing 26% of the total paid-up equity share capital and voting rights) of M/s. W W Technology Holdings Limited (hereinafter referred to as '**the company**'). The public announcement of the same was made on November 02, 2012 and the shares of the company were listed at Bombay Stock Exchange Ltd. (herein after referred to as '**BSE**')
2. While examining the letter of offer document of the Acquirer to acquire the shares of the company, it was observed that the erstwhile promoters of the company, viz. Ms. Sarita Mansingka, Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia, Shri Abhijeet Patodia and Shri Divansh Mansingka (hereinafter referred to as '**the promoters**'/ '**the Noticees**') failed to comply with the requirement of SEBI (Substantial Acquisition of Shares

and Takeovers) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations, 1997**'). Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, 1997, Adjudication proceedings under Chapter VI-A of SEBI Act, 1992 (hereinafter referred to as "**Act**") were initiated against the promoters/ Noticees under Sec 15 A (b) and 15H(ii) of SEBI Act, 1992, as applicable, to inquire into and adjudicate the alleged violations by the promoters/ the Noticees.

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

3. The undersigned was appointed as the Adjudicating Officer vide Order dated September 02, 2013 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 (hereinafter referred to as 'SEBI Rules') to inquire into and adjudge under Section 15A(b) and 15H(ii) of the SEBI Act for the alleged violation of Regulation 7(1A) read with 7(2) and Regulation 11(1) read with Regulation 14(1) of the Takeover Regulations, 1997 by the promoters/ the Noticees, as applicable.

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

4. A common Show Cause Notice (hereinafter referred to as '**SCN**') Ref. No. EAD-6/AK/VG/30878/2013, EAD-6/AK/VG/30879/2013, EAD-6/AK/VG/30885/2013, EAD-6/AK/VG/30887/2013, EAD-6/AK/VG/30889/2013, EAD-6/AK/VG/30881/2013 and EAD-6/AK/VG/30891/2013 dated November 29, 2013 was issued to the promoters viz. Ms. Sarita Mansingka, Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia, Shri Abhijeet Patodia and Shri Divansh Mansingka respectively under Rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations as detailed below. A copy of status of compliance document received from the Manager to the Offer was also sent along with the SCN. The details of the same are as given below:

**i) Disclosure Violations:**

Sr. No.	Regulation/Sub-Regulation	Due date for compliance as mentioned in the Regulation	Actual date of compliance	Delay (No. of days)
1	7(1A)	04.09.2002	06.11.2012	3716
2	7(1A)	29.12.2002	14.12.2012	3638
3	7(1A)	05.02.2003	14.12.2012	3600
4	7(1A)	29.12.2002	17.12.2012	3641
5	7(1A)	02.04.2011	Not complied	Not complied

With regard to the aforesaid violation, other additional details of the transaction are as below:

Name of the Acquirer	Date of the transaction	Sale(-ve) / purchase		Total promoters shareholding (in %)	
		No. of shares	%	Pre-acquisition	Post-acquisition
Saritadevi Mansingka	02.09.2002	6,750	2.76	43.89	46.64
Prashant Deorah	27.12.2002	10,000	4.08	46.64	56.64
Anil Patodia		7,500	3.06		
Poonam Patodia		7,000	2.86		
Kishorilal Patodia	03.02.2003	5,000	2.04	56.64	60.73
Abhijeet Patodia		5,000	2.04		
Divansh Mansingka	31.03.2011	42,480	17.3	60.67	60.67

**ii) Non compliance by the promoters with regard to provisions of chapter III of the Takeover Regulations, 1997 are as under:**

It was observed that certain promoters had violated Regulation 11(1) read with Regulation 14(1) of Takeover Regulations, 1997 during the financial year 2002-03. The details of the said transaction are as under:

Name of the Promoter	Holding of the Promoter Group (Opening)	Date of Transaction	Shares Acquired		Holding of the Promoter Group (Closing)
			No. of Shares	%	
Prashant Deorah	1,14,280 (46.64%)	*27.12.2002	10,000	4.08	1,38,780 (56.64%)
Anil Patodia			7,500	3.06	
Poonam Patodia			7,000	2.86	
Kishorilal Patodia	1,38,780 (56.64%)	03.02.2003	5,000	2.04	1,48,780 (60.73%)
Abhijeet Patodia			5,000	2.04	

*\*Inadvertently mentioned in the SCN as 12.12.2002 instead of 27.12.2002*

It is observed from the above that the promoter holding had increased from 46.64% to 60.73% (total increase of 14.09%) in the financial year 2002-03 due to acquisitions made by the Noticee promoters viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia. Pursuant to these acquisitions, promoter group's holding, thus, increased by more than 5% in one financial year, triggering the open offer under Regulation 11(1) read with Regulation 14(1) of the Takeover Regulations, 1997. However, no such open offer was made in accordance with the provisions of Regulation 11(1) read with Regulation 14(1) of the Takeover Regulations, 1997.

5. The Noticee promoters viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia were therefore called upon to show cause as to why an inquiry should not be initiated against them and penalty be not imposed under Section 15 A(b) and 15 H (ii) of the SEBI Act for the alleged violations, as applicable.
6. The promoters/ Noticees replied to the SCN vide a common reply dated December 6, 2013 and have *inter alia* submitted as follows:
  - a. *That the delay in reporting under Regulation 7(1A) of Takeover Regulations, 1997 was due to oversight and as soon as the non compliances were brought to their notice, the promoters/ Noticees made the necessary compliances;*
  - b. *That they were regularly submitting disclosures under Regulation 8(1) and 8(2) of Takeover Regulations, 1997 to the company;*

- c. *That, as correctly pointed out in the SCN, the promoter holding increased from 46.64% to 60.73% in the financial year 2002-03, which triggered the open offer under Regulation 11(1) of the Takeover Regulations, 1997. However, the pricing of the open offer given by the Acquirer Mr. Paresh Mulji Kariya (public announcement made on November 02, 2012) was revised from Rs. 10 per equity share to Rs. 26 per equity share taking into consideration the highest negotiated price paid by the concerned promoters at the time of acquisitions done by them in 2002/2003 triggering open offer violations i.e. Rs. 2.50, the book value of the shares in the preceding financial year March 31, 2002 i.e. Rs. 12.36 and calculating interest @10% for delay till March 2013;*
  - d. *That even if they were required to make an open offer as on date, the price payable to shareholders would not be more than Rs.25.05 per shares, taking the book value of Rs.12.36 per share and adding interest @ 10% till March 31, 2013;*
  - e. *That thus, there was no loss to the shareholders of the company. The highest price as per the above comes to Rs. 25.05 per equity share and the open offer was given at Rs. 26/- per equity share. Thus, the shareholders were compensated with the increase in the open offer price;*
  - f. *That the delay in filing reports under Regulation 7(1A) was due to oversight and lack of knowledge and did not result in any undue benefit being caused to the company or the promoters/ directors of the company, nor, did the non-compliance result in any loss or damage being caused to the Investor Community.*
7. 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 8, 2014 vide notice dated December 26, 2013. On the scheduled date, Mr. Nikesh Jain, Mr. Kevin Koradia and Mr. Brijesh Khandelwal, Authorized Representatives (hereinafter referred to as 'ARs') appeared for the hearing on behalf of the Noticees. The ARs *inter alia* reiterated the written submissions made vide reply dated December 6, 2013. The ARs also submitted that the trading of shares of the company was suspended by BSE due to non compliance with Clause 16 of the Listing Agreement. Furthermore, the AR submitted that Shri Divansh Mansingka was a minor, and had received the shares due to transmission.

8. Vide letter dated January 13, 2014, the Noticees submitted copies of the filings made under the Takeover Regulations, 1997 as well as a copy of the suspension letter and a copy of the in-principle approval received from BSE for revocation of suspension received from BSE. It was stated therein that the trading in equity shares was resumed with effect from January 24, 2012.
9. Further, in response to the details of Registrar & Transfer Agent (hereinafter referred to as 'RTA') sought vide email dated February 07, 2014, the company vide its email dated February 11, 2014 informed that it had not appointed any RTA and that the Registrar work was done in-house by the Company itself and it was only from June 2011 onwards that M/s. Sharex Dynamic (India) Pvt. Ltd. was appointed as the RTA for the company. In view of the same, vide email dated February 11, 2014, the company was requested to provide the details of all such transfers executed from December 2002 upto the appointment of M/s. Sharex Dynamic (India) Pvt. Ltd as RTA, and where the transferors were the shareholders of the company as on December 2002. M/s. Sharex Dynamic (India) Pvt. Ltd vide email dated February 7, 2014 confirmed that it was acting as the Registrar to the Company since June 2011 and further informed that no transfers had taken place during the period from 2011 to November 2, 2012 i.e. upto the date of the public announcement of the offer by the Acquirer Mr. Paresh Mulji Kariya.
10. Vide email dated February 17, 2014, the company provided the aforesaid transfer details. The said details are as given hereunder:

Sr. No.	Name of the transferor	Date of Transfer	Off-market (Yes/No)	Number of Shares transferred	Price per share (Rs.)
1	Frontier Leasing & Finance Limited	December 27, 2002	Yes	10,000	2.50
2	Leena Prabhu	December 27, 2002	Yes	7,500	2.40
3	Nalikant R. Ghiya	December 27, 2002	Yes	5,000	2.50
4	Merrygold Investments Ltd.	December 27, 2002	Yes	2,000	2.50
5	Anand J. Prabhu	February 3, 2003	Yes	5,000	2.40
6	Merrygold Investments Ltd.	February 3, 2003	Yes	5,000	2.40
7	Merrygold Investments Ltd.	February 3, 2003	Yes	9,550	2.50
8	Shree Salasar Investments Limited	August 12, 2010	Yes	12,000	1.00
9	Shree Salasar Investments Limited	August 14, 2010	Yes	11,850	1.00
10	Ravindra Kumar Mansingka	March 31, 2011	Yes	42,680	10.00
11	Tania Industries Pvt Ltd.	June 27, 2011	Yes	23,100	10.00
12	Indsoya Ltd.	June 27, 2011	Yes	24,100	10.00

11. Vide email dated January 23, 2014 and February 03, 2014, the promoters/ Noticees were advised to submit details of whom the shares were acquired from and purpose of the same. In case the shares were purchased pursuant to an agreement, copies of the agreement were sought. The other details of the transactions such as price at which the shares were bought, date when the funds were transferred to the seller along with documental proof such as bank statement showing debit in the bank account and date when the securities were actually received by the promoters along with documental proof, if any, were also sought.
12. Vide letter dated February 24, 2014, the company filed a reply *inter alia* stating that the promoters/ Noticees had not entered into any agreement, the transactions were carried out off market and shares were in physical form. The company also provided copies of the transfer deeds with respect to the acquisitions made by the promoters/ Noticees. From the same, it is observed that the Noticee promoters viz. Mr. Prashant Deorah, Mr. Anil Patodia and Ms. Poonam Patodia had acquired more than 5% shares on December 27, 2002 triggering the open offer under regulation 11(1) read with Regulation 14(1) of the Takeover Regulations, 1997 from entities mentioned at serial numbers (1) to (4) of the table under para 10, at the prices mentioned therein. However, the open offer was not made. Subsequently in the same financial year, the Noticee promoters viz. Mr. Kishorilal Patodia and Mr. Abhijeet Patodia had acquired further shares on February 03, 2003 from entities mentioned at serial numbers (5) and (6) of the table under para 10, at the prices mentioned therein. Vide the aforesaid letter, the company has *inter alia* submitted that the purpose of the aforesaid acquisitions were to acquire substantial stake and take control of the company. The Noticee promoters viz. Mr. Prashant Deorah, Mr. Anil Patodia, Ms. Poonam Patodia, Mr. Kishorilal Patodia, Mr. Abhijeet Patodia, Ms. Sarita Mansingka and Mr. Divansh Mansingka have all vide letter dated February 28, 2014 informed that they accept and confirm the reply dated February 24, 2014 filed by the company. Further, it was *inter alia* also stated in the letter dated February 24, 2014 filed by the company that Mr. Divansh Mansingka had received shares from Mr. Ravindra Kumar Mansingka.
13. Vide further letter dated April 02, 2014, details provided by the company of all transfers executed by the company from December 2002 upto November 02, 2012 i.e. upto the date of

the public announcement of the offer by the Acquirer Mr. Paresh Mulji Kariya and where the transferors were the shareholders of the company as on December 2002, as incorporated at table under para (10) above were given to the Noticee promoters viz. Mr. Prashant Deorah, Mr. Anil Patodia and Ms. Poonam Patodia, Mr. Kishorilal Patodia and Mr. Abhijeet Patodia advising them to offer their comments, if any, by April 15, 2014. In response, vide letter dated April 10, 2014, the Noticee promoter viz. Mr. Kishorilal Patodia *inter alia* stated that they had given their reply vide letter dated February 28, 2014. Similarly, in response, the Noticee promoters viz. Mr. Anil Patodia, Ms. Poonam Patodia and Mr. Abhijeet Patodia also informed that they had already given their reply vide letter dated February 28, 2014. The Noticee promoter viz. Mr. Prashant Deorah endorsed the reply of the other Noticee promoters.

### **CONSIDERATION OF ISSUES**

14. I have carefully perused the written submissions of the promoters/ the Noticees, the submissions made at the time of hearing and the documents available on record. It is observed that the allegation against the promoters/ Noticees is that the promoters/ Noticees failed to make the relevant disclosure under the applicable provisions of the Takeover Regulations, 1997.
15. The issues that, therefore, arise for consideration in the present case are:
  - a. Whether the promoters/ Noticees failed to make disclosures under Regulation 7(1A) read with 7(2) of the Takeover Regulations within the stipulated time?
  - b. Whether the Noticee promoters viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia failed to make open offer under regulation 11(1) of the Takeover Regulations, 1997?
  - c. Do the violations, if any, attract monetary penalty under Section 15 A(b) of SEBI Act?
  - d. 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**

16. Before moving forward, it is pertinent to refer to the provisions of the Takeover Regulations, which reads as under:

### ***Takeover Regulations, 1997***

#### ***7(1A)***

#### ***Between October 24, 2001 and September 8, 2002 (i.e., at time of acquisition by Shri Saritadevi Mansingka)***

*Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall make disclosures of such acquisition as well as the aggregate of his pre and post acquisition of share holding and voting rights to the company when such acquisition aggregates to 5% and 10% of the voting rights.*

#### ***With effect from September 9, 2002 (i.e., at the time of acquisition by Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia, Shri Abhijeet Patodia and Shri Divansh Mansingka)***

*Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

*Explanation.—For the purposes of sub-regulations (1) and (1A), the term acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.*

*(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two days of,—*

*(a) the receipt of intimation of allotment of shares; or*

*(b) the acquisition of shares or voting rights, as the case may be.*

**11. (1)**

**Between October 24, 2001 and September 8, 2002 (i.e., at time of acquisition by Shri Saritadevi Mansingka)**

No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than 75 per cent of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 10 per cent of the voting rights, in any period of twelve months unless such acquirer makes a public announcement to acquire shares in accordance with the regulations

**Between October 1, 2002 and December 29, 2004 (i.e., at time of acquisition by Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia, Shri Abhijeet Patodia)**

No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than 75 per cent of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

**Post November 6, 2009, till notification of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (i.e., at the time of acquisition by Shri Divansh Mansingka)**

No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent., in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

***Timing of the public announcement of offer.***

*14. (1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

*1[Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government 2[or the State Government as the case may be,] for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in regulation 10 or regulation 11 or the transfer of control over a target Public Sector Undertaking.]*

17. The first issue for consideration is whether the promoters/ Noticees failed to make disclosures under Regulation 7(1A) read with 7(2) of the Takeover Regulations, 1997 within the stipulated time. As per the additional details mentioned in the table under Para 4 above, I observe that Ms. Saritadevi Mansingka purchased 6,750 shares of the company on September 2, 2002. Prior to the said purchase, the shareholding of the Promoter group stood at 43.89% and increased to 46.64% post the purchase of shares. As noted above, at the time of the acquisition by Ms. Saritadevi Mansingka, Regulation 7(1A) required that any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of Regulation 11, shall make disclosures of such acquisition as well as the aggregate of his pre and post acquisition of share holding and voting rights to the company when such acquisition aggregates to 5% and 10% of the voting rights. Thus, in terms of the provisions of Regulation 7(1A) as it stood at the relevant point of time, disclosure was required to be made if the acquisition exceeded 5% and 10%. The acquisition of Ms. Saritadevi Mansingka, represented 2.76% of the shares of the company. Thus, she was not required to make any disclosure under Regulation 7(1A) as the Regulation stood at the relevant point of time.

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<sup>1</sup> Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2001, w.e.f. 17-08-2001.

<sup>2</sup> Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002.

Hence, it cannot be said that Ms. Saritadevi Mansingka violated Regulation 7(1A) read with 7(2) of the Takeover Regulations, 1997.

18. Further, I note from the submission made on behalf of Shri Divansh Mansingka and a perusal of copy of filings under Regulation 7(1) of the Takeover Regulations, 1997 that he had received the shares from his late father Shri Ravindra Kumar Mansingka by operation of law, i.e. through transmission of shares. Shri Divansh Mansingka has submitted a copy the death certificate of his father late Shri Ravindra Kumar Mansingka as well as a copy of his own passport showing that Shri Divansh Mansingka as the son of late Shri Ravindra Kumar Mansingka. Further, copies of the filings also show that the shares were received by Shri Divansh Mansingka through transmission. I, however, find that there is no exemption available from making the relevant disclosures under the Takeover Regulations, 1997. Thus, by not making the requisite disclosures, the Noticee viz. Shri Divansh Mansingka had triggered the relevant provisions of Takeover Regulations, 1997. I note from the copies of the filings submitted by Shri Divansh Mansingka that the documents submitted pertain to the filings under regulation 7(1) of the Takeover Regulations, and not Regulation 7(1A) thereof. Moreover, though the receipt stamp of the company is seen on the said disclosure document, there is no acknowledgment of receipt from BSE. Furthermore, I note that Shri Divansh Mansingka has also submitted a duly acknowledged copy of the filing made to BSE under Regulation 7(3) of the Takeover Regulations for the relevant transaction, but, the said filing under Regulation 7(3) of the Takeover Regulations has been made by the company to BSE.
19. I, however, find that the Companies Act distinguishes transmission of shares from transfer of shares. Execution of transfer deed is not required in case of transmission of shares. Further, while transfer of shares relates to a voluntary act on the part of the shareholder, transmission is brought about by the operation of law. Also, I note that Shri Divansh Mansigka was a minor at the time he received the shares by transmission. Taking all of the above into consideration, I am inclined to take a lenient view in the matter, and thus, conclude that transmission of shares is not a fit case for imposition of monetary penalty under Section 15A(b) of the SEBI Act and that Shri Divansh Mansingka is exonerated from the charges leveled as per the SCN.
20. With respect to the acquisition by the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia and Ms. Poonam Patodia, I note that Shri Prashant Deorah, Shri Anil Patodia and Ms.

Poonam Patodia had acquired 10,000 shares (4.08%) 7,500 shares (3.06%) and 7,000 shares (2.86%) respectively on December 27, 2002, as a result of which the shareholding of the promoters rose from 46.64% to 56.64%. Since the cumulative holding of the promoters at that point of time was between 15% and 75% of the paid-up capital of the company, it fell within the ambit of Regulation 11(1) as it existed at the relevant point of time. Under Regulation 7(1A) of Takeover Regulations, 1997, any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of Regulation 11, was required to disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale. Likewise, I find, the promoter Noticees Shri Kishorilal Patodia and Shri Abhijeet Patodia acquired 5000 shares (2.04%) each on February 3, 2003, due to which the shareholding of the promoters went up from 56.64% to 60.73% of the paid-up capital of the company. The cumulative holding of the promoters was still between 15% and 75% of the paid-up capital of the company, it hence, fell within the ambit of Regulation 11(1), as it existed at the relevant point of time. In both the tranches, it is observed from the above that the sale was of more than 2% of the shares of the company, and the cumulative holding of the promoters at that relevant point of time was between 15% and 75% of the paid-up capital of the company, hence, disclosures ought to have been made under Regulation 7(1A) read with 7(2) of Takeover Regulations, 1997 within two days. However, no such disclosures were made by the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia.

21. With regard to the aforesaid compliances, the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia in their submissions have stated that delay in filing reports under Regulation 7(1A) was due to oversight and lack of knowledge. Thus, I note that the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia have all admitted to the delay in complying with the provisions of Regulation 7(1A) read with Regulation 7(2) of Takeover Regulations, 1997 within the stipulated time for the transactions referred to above. The numbers of days of non-compliance in respect of the same have been enumerated in the table at Para 4 above.

22. The next issue for consideration is whether the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia failed to make open offer under Regulation 11(1) of the Takeover Regulations, 1997. I note that due to the transactions noted at para 4 above, the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia and Ms. Poonam Patodia had acquired on December 27, 2002, 10,000, 7,500 and 7,000 shares respectively and Shri Kishorilal Patodia and Shri Abhijeet Patodia had acquired 5000 shares each on February 3, 2003. As a result of the said acquisitions, the holding of the promoter group increased from 46.64% to 60.73%. Thus, the acquisitions led to an increase of the promoter holding by nearly 14% in the financial year ending on 31st March, 2003. As per Regulation 11(1) of Takeover Regulations, 1997, as at the relevant point of time, no acquirer who, together with persons acting in concert with him held 15 per cent or more but less than 75 per cent of the shares or voting rights in a company, could acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5 per cent of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations. As per Regulation 14(1) of the Takeover Regulations, 1997, the open offer under Regulation 11(1) should be made within four working days of entering into the agreement for acquisition of such shares. However, though the acquisitions by the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia far exceeded the 5% benchmark, they did not make any open offer.
23. I find that promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia in their reply have *inter alia* submitted that as correctly pointed out in the SCN, the promoter holding increased from 46.64% to 60.73% in the financial year 2002-03, which triggered the open offer under Regulation 11(1) of the Takeover Regulations, 1997. Further the concerned promoter Noticees have also admitted that the purpose of the aforesaid acquisitions were to acquire substantial stake and take control of the company. However, I find that no such open offer was made by the concerned promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet

Patodia. It is pertinent to note here that the promoter Noticees viz. Shri Kishorilal Patodia and Shri Abhijeet Patodia acquired shares in the same financial year after the open offer was triggered by the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia and Ms. Poonam Patodia. Since the open offer was not made and the Noticee promoters viz. Shri Kishorilal Patodia and Shri Abhijeet Patodia acquired further shares to acquire substantial stake and take further control of the company, thus, they too were acting in concert with the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia and Ms. Poonam Patodia. Therefore, it is established without doubt that the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia have all violated the provisions of Regulation 11(1) read with Regulation 14(1) of the Takeover Regulations, 1997.

24. I further find that the concerned promoter Noticees have also submitted that the pricing of the open offer by the Acquirer Shri Paresh Mulji Kariya was revised from Rs. 10/- per equity share to Rs. 26/- per equity share taking into consideration - the highest negotiated price paid by the concerned promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia at the time of acquisitions done by them in 2002/2003 triggering open offer violations i.e. Rs. 2.50, the book value of the shares in the preceding financial year March 31, 2002 i.e. Rs. 12.36 and calculating interest @10% for delay till March 2013. It has been further submitted that even if they were required to make an open offer as on date, the price payable to shareholders would not be more than Rs.25.05 per shares, taking the book value of Rs.12.36 per share and adding interest @ 10% till March 31, 2013. It appears to be the case of the Noticee that by this action of the Acquirer Shri Paresh Mulji Kariya, the shareholders of the company have been duly compensated due to increase in the offer price.
25. However, I note from table under para 10 that after the trigger of the open offer due to the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia and Ms. Poonam Patodia acquiring 10,000 shares (4.08%) 7,500 shares (3.06%) and 7,000 shares (2.86%) respectively on December 27, 2002, the following persons/ entities who were the shareholders as at the said point of time had sold shares, as per details given below, prior to the open offer by the Acquirer, Shri Paresh Mulji Kariya, public announcement of which was made on November 02, 2012:

Sr. No.	Name of the transferor	Date of Transfer	Off-market (Yes/No)	Number of Shares transferred	Price per share (Rs.)
1	Anand J. Prabhu	February 3, 2003	Yes	5,000	2.40
2	Merrygold Investments Ltd.	February 3, 2003	Yes	5,000	2.40
3	Merrygold Investments Ltd.	February 3, 2003	Yes	9,550	2.50
4	Shree Salasar Investments Limited	August 12, 2010	Yes	12,000	1.00
5	Shree Salasar Investments Limited	August 14, 2010	Yes	11,850	1.00
6	Ravindra Kumar Mansingka	March 31, 2011	Yes	42,680	10.00
7	Tania Industries Pvt Ltd.	June 27, 2011	Yes	23,100	10.00
8	Indsoya Ltd.	June 27, 2011	Yes	24,100	10.00

26. It is pertinent to note here that shares of the shareholders at Sr. Nos. (1) and (2) above were acquired in the same financial year by the promoter Noticees viz. Shri Kishorilal Patodia and Shri Abhijeet Patodia, who acquired the shares to acquire substantial stake and take further control of the company, after the open offer was triggered by the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia. Further, late Shri Ravindra Kumar Mansingka, the entity at serial no. 6 of the table above, was a promoter, and upon his demise, the shares held by him were transmitted to his minor son Shri Divansh Mansingka.
27. In respect of the acquisitions on December 27, 2002 which triggered Regulation 11 (1) of Takeover Regulations, 1997, an open offer should have been made within four working days as per Regulation 14(1) of the Takeover Regulations, 1997. Hence, the open offer should have been made latest by January 02, 2003, however, the same was not done. By computing the price payable for the aforesaid shareholders who had transferred shares prior to the public announcement by the Acquirer Shri Paresh Mulji Kariya, on the same lines as submitted by the Noticees vide their letter dated December 06, 2013, the price payable to each of the aforesaid shareholders (other than Shri Divansh Mansingka) is given in the table below:



Sr. No.	Name of the transferor Shareholder	Date of Transfer	Highest Negotiated Price Paid (A) (in Rs.)	Book Value as on March 31, 2002 (B)(in Rs.)	Highest Price from Col. A and B (C)(in Rs.)	*Interest @ 10% p.a. per share (D)(in Rs.)	Total Price per share (C) + (D) (in Rs.)
1	Anand J. Prabhu	February 3, 2003	2.50	12.36	12.36	0.11	12.47
2	Merrygold Investments Ltd.	February 3, 2003	2.50	12.36	12.36	0.11	12.47
3	Merrygold Investments Ltd.	February 3, 2003	2.50	12.36	12.36	0.11	12.47
4	Shree Salasar Investments Limited	August 12, 2010	2.50	12.36	12.36	9.45	21.81
5	Shree Salasar Investments Limited	August 14, 2010	2.50	12.36	12.36	9.46	21.82
6	Tania Industries Pvt Ltd.	June 27, 2011	2.50	12.36	12.36	10.53	22.89
7	Indsoya Ltd.	June 27, 2011	2.50	12.36	12.36	10.53	22.89

*\*Interest is computed from the date the public announcement under Regulation 11(1) read with 14(1) of Takeover Regulations, 1997 was required to be made due to acquisitions made on December 27, 2002 i.e. from January 02, 2003 upto the date of transfer of shares*

28. Taking the aforesaid price into consideration, loss to each of the concerned shareholders is as below:

Sr. No.	Name of the transferor Shareholder	Date of Transfer	Price at which sold (Rs.)	Number of Shares transferred	Price payable including interest (Rs.)	Loss to the shareholders (Rs.)
1	Anand J. Prabhu	February 3, 2003	2.40	5,000	62,350	50,350
2	Merrygold Investments Ltd.	February 3, 2003	2.40	5,000	62,350	50,350
3	Merrygold Investments Ltd.	February 3, 2003	2.50	9,550	1,19,088.5	95,213.5
4	Shree Salasar Investments Limited	August 12, 2010	1.00	12,000	2,61,720	2,49,720
5	Shree Salasar Investments Limited	August 14, 2010	1.00	11,850	2,58,567	2,46,717
6	Tania Industries Pvt Ltd.	June 27, 2011	10.00	23,100	5,28,759	2,97,759
7	Indsoya Ltd.	June 27, 2011	10.00	24,100	5,51,649	3,10,649
<b>Total</b>						<b>13,00,759</b>

29. Thus, it is observed from the above that the loss caused to the shareholders who had transferred the shares after the trigger of open offer by the concerned Noticee promoters and before the revised open offer was made by the Acquirer Shri Paresh Mulji Kariya aggregates to approx. Rs. 13,00,759/-. It is also pertinent to note here that the revised open offer to shareholders who had not exited the company as on November 02, 2012, was made by the Acquirer Shri Paresh Mulji Kariya, and, not by the Noticee promoters viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and/ or Shri Abhijeet Patodia. Further, payment of interest is the compensation paid to the shareholders due to their losing an exit opportunity at the right time and is not a penalty on the acquirers. From a perusal of the Orders of the Adjudicating Officers/ Consent Orders available on the SEBI website, I observe that SEBI has been consistently initiating adjudication proceedings under section 15 H (ii) of the SEBI Act even in cases where open offers have been made and interest on the delay has been accounted for. Some of such cases are listed below:

- a. *M/s. Titan International Inc.*: M/s. Titan International Inc., as a result of a overseas offer had indirectly triggered Regulation 13 (2) (e) of SEBI (Substantial Acquisition of Shares and Takeover), Regulations, 2011 (hereinafter referred to as '**Takeover Regulations, 2011**'), with respect to its holding in the target company M/s. Wheels India Ltd., and that by virtue of the same, M/s. Titan International Inc. was obliged to make a public announcement of an open offer on or before August 17, 2012, but, it was actually made only on December 13, 2012. The price offered to the public shareholders of M/s. Wheels India Ltd. pursuant to the open offer made on December 13, 2012 had factored in the interest component payable on the offer price for the period of delay. Subsequent to the same, I find that M/s. Titan International Inc. vide its letter dated February 04, 2013 had made an application in terms of SEBI Circular No. EFD/ED/Cir-1/2007 dated April 20, 2007 and amendment to the said circular dated May 25, 2012, proposing to settle through a consent order, any anticipated proceedings for the delay in compliance of the provisions of Regulation 13(2)(e) of Takeover Regulations, 2011. The same was settled vide Consent Order dated September 12, 2013.
- b. *Mr. Vilas Valunji, Mr. Partha Debnath and Mr. Janardhan Shriniwas Purandare in the matter of M/s. Vybra Automet Ltd.*: In this case, I note that the acquirer Mr. Vilas Valunji along with the

persons acting in concert Mr. Partha Debnath and Mr. Janardhan Shriniwas Purandare held 14.49% of the paid-up capital of M/s. Vybra Automet Ltd. (hereinafter referred to as VAL). They entered into a Share Purchase Agreement with the promoters of VAL on April 02, 2010 to acquire 13.89% of the paid up capital of VAL, thereby triggering Regulation 14(1) of the Takeover Regulations. The public announcement to acquire 20% of the voting share capital of VAL was made on May 10, 2010 i.e. with a delay of 32 days and interest @ 10% p.a. was paid. Subsequent to the same vide Order dated June 27, 2013, adjudication proceedings under Section 15 H (ii) of the SEBI Act for the alleged violation of Regulation 14(1) of the Takeover Regulations were initiated against the acquirers.

- c. *Mr. Suresh Kumar Poddar in the matter of M/s. Mayur Uniquoters Ltd.:* In this case, I note that the public announcement dated January 23, 2006 was made voluntarily by the Acquirers when they came to know that their acquisition had triggered Regulation 11(1) of the Takeover Regulations in the years 1997, 1998 and 2002. Interest @ 15% p.a. on the price amounting to Rs. 23.03 per share taking the first trigger date as the base was also paid. There was no change of control either because of the three acquisitions or after the open offer. Adjudication proceedings were, however, initiated vide Order dated May 02, 2006 against the acquirers under Section 15H (ii) of the SEBI Act for the alleged violation of Regulation 11(1) read with 14(1) of the Takeover Regulations committed by the acquirers.
- d. *Mr. Paresh Vasani in the matter of M/s. Circuit Systems (India) Ltd.:* In this case, I note that Mr. Paresh Vasani, the promoter of M/s. Circuit Systems (India) Ltd. was allotted 20,00,000 shares by way of preferential allotment on March 31, 2010, due to which the shareholding of Mr. Paresh Vasani increased from 5.40% to 16.87% of the paid-up capital, hence by virtue of the said acquisition, he had triggered Regulation 10 read with 14(1) of the Takeover Regulations. Hence, he was required to make public announcement not later than four working days from the date of such acquisition, but, he failed to do the same. It came to knowledge when offer document was filed by him with SEBI for making open offer to the shareholders in terms of Regulation 11(1) and Regulation 12 of Takeover Regulations for the purpose of consolidation of his holding in M/s. Circuit Systems (India) Ltd. and change in control. SEBI directed Mr. Paresh Vasani to revise the offer price to *inter alia* add 10% per annum for delay in making

public announcement. The offer price was accordingly revised to include the applicable interest. Subsequent to the same adjudication proceedings were initiated against Mr. Paresh Vasani vide Order dated May 04, 2012 under Section 15 H (ii) of SEBI Act for the alleged violation of Regulation 10 of the Takeover Regulations committed by Mr. Paresh Vasani.

30. Thus, I also note that together with directing acquirers to make public announcements and pay interest for the delayed period, SEBI has been further taking a consistent stand of initiating adjudication proceedings under Section 15 H(ii) of the SEBI Act in such cases after the completion of the open offers. It is clear that payment of interest is the compensation paid to the shareholders due to their losing an exit opportunity at the right time and is not a penalty on the acquirers.
31. In view of the above and in light of the specific admission by the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia, I have no doubt of their violation of Regulation 11(1) read with Regulation 14 of the Takeover Regulations, 1997.
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 on the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia for the contravention of Regulation 7(1A) of the Takeover Regulations, 1997, which reads as under:

**SEBI Act, 1992 prior to SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)**

**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 not exceeding five thousand rupees for every day during which the failure continues.

**SEBI Act, 1992 after SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)**

**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. Furthermore, for the violation Regulation 11(1) read with Regulation 14(1) of the Takeover Regulations, 1997, the promoter Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia are liable for penalty under Section 15 H(ii) of the SEBI Act, which reads 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.”*

35. While determining the quantum of monetary penalty under Section 15 A(b) and 15H(ii), 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.”
36. 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. 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 decisions. Thus, the cornerstone of the Takeover regulations is investor protection.
37. As per Section 15A(b) of the SEBI Act, with effect from October 29, 2002, the Noticee promoters are liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Section 15 H(ii) of SEBI Act provides for imposition of monetary penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher, if any person, who is required under the Act or any rules or regulations made there under, fails to make a public announcement to acquire shares at a minimum price. Further, under Section 15-J 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 promoters. 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 promoters. However, I 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 Takeover 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 Noticee promoters that the non-compliance did not result in any loss or damage being caused to the Investor Community is not relevant for the given case.

38. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of Noticee's shares on BSE during the relevant period; and c) the number of occasions in the instant proceeding that the Noticee promoters violated the relevant provisions of the Takeover Regulations.
39. The paid up capital of the company was 2,45,000 shares of Rs. 10/- each aggregating to Rs. 24,50,000/-. I further note from the BSE website that as on December 31, 2002, about 49.27% and as on March 31, 2003, approx. 39.27% of the shareholding was held by the non-promoters. I also note from the letter of offer that the trading in equity shares of the Company was suspended by BSE w.e.f. May 31, 1999 due to non compliance of listing agreement, the Company received an in-principle approval from BSE vide its letter dated August 09, 2011 for revocation of suspension and thereafter the trading was resumed by BSE w.e.f. January 24, 2012. I, thus, note from the same that it was due to delinquency on the part of the Company in complying with the provisions of the listing agreement that resulted in non-trading of the Company's shares on BSE thus, cannot support the Noticee's case for non-compliance with the Takeover Regulations. I further note that the Noticee promoters viz. Shri Prashant Deorah, Shri Anil Patodia and Ms. Poonam Patodia, each violated Regulation 7(1A) on one occasion and Regulation 11(1) read with Regulation 14(1) on one occasion due to acquisition of shares on December 27, 2002. Similarly, the Noticee promoters viz.

Shri Kishorilal Patodia and Shri Abhijeet Patodia each violated Regulation 7(1A) on one occasion and Regulation 11(1) read with Regulation 14(1) on one occasion due to acquisition of shares on February 03, 2003.

40. As promoters of a listed company, the Noticee promoters viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose so that the investors could take a decision whether to buy, sell, or hold the company's securities. Non-compliance/ Delayed compliance with disclosure requirements undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.
41. Further, I find that the Noticee promoters viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia have *inter alia* submitted that the pricing of the open offer given by the Acquirer Mr. Paresh Mulji Kariya (public announcement made on November 02, 2012) was revised from Rs. 10/- per equity share to Rs. 26/- per equity share, thus, there was no loss to the shareholders of the company and that the shareholders were compensated with the increase in the open offer price, hence, further proceedings against them be dropped. I find it pertinent to mention here that the shareholders are entitled to receive interest for the delay involved in receiving the payment of the consideration amount, for the period from the date on which it was due till the date on which the actual payment is made. The interest paid, as such, on a sum which is due to the shareholders is not a penalty, it is the legitimate claim of the shareholders for the delay involved in making payment to them. Thus, I note that the liability to pay interest is a part and parcel of the legal liability to pay compensation upon delay in making an open offer. In fact, as discussed in the earlier part of the Order, it is observed that loss caused to seven (7) shareholders who had transferred the shares after the trigger of open offer by the concerned Noticee promoters and before the revised open offer was made by the Acquirer Shri Paresh Mulji Kariya aggregates to approx. Rs. 13,00,759/-. Besides, I also note that the compensation to other shareholders was paid by the Acquirer Mr. Paresh Mulji Kariya, and, not by the Noticee promoters viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia, who have failed to make an open offer.



42. I further believe that investor confidence in the securities market can be sustained largely by ensuring investors protection. It, thus, becomes imperative to impose monetary penalty also, in addition to payment of interest amount to shareholders in cases of default. I find that Chapter VI-A of the SEBI Act provides for Penalties and Adjudication. In particular, Sections 15A to Section 15 HB are in the form of mandatory provisions imposing penalty in default of the provisions of the SEBI Act and Regulations. The provisions of penalty for non-compliance of the mandate of the Act are with an objective to have an effective deterrent to ensure better compliance of the provisions of the SEBI Act and Regulations, which is crucial for SEBI in order to protect the interests of investors in securities and to promote the development of the securities market. I note here that the Act has not included mens rea or deliberate or willful nature of the default as a factor to be considered by the Adjudicating Officer in determining the quantum.

### **ORDER**

43. After taking into consideration all the facts and circumstances of the case, I impose the following penalties under Section 15A (b) and 15H(ii) of SEBI Act:

<u>Penalty for violation of Regulation 7(1A) read with 7(2) of Takeover Regulations, 1997</u>	
Name	Penalty Amount (Rs.)
<b>Shri Prashant Deorah</b>	<b>3,00,000 (Rupees Three Lac Only)</b>
<b>Shri Anil Patodia</b>	<b>3,00,000 (Rupees Three Lac Only)</b>
<b>Ms. Poonam Patodia</b>	<b>3,00,000 (Rupees Three Lac Only)</b>
<b>Shri Kishorilal Patodia</b>	<b>2,50,000 (Rupees Two Lac Fifty Thousand Only)</b>
<b>Shri Abhijeet Patodia</b>	<b>2,50,000 (Rupees Two Lac Fifty Thousand Only)</b>
<u>Penalty for violation of Regulation 11(1) read with 14(1) of Takeover Regulations, 1997</u>	
Name	Penalty Amount (Rs.)
<b>Shri Prashant Deorah</b>	<b>Rs.50,00,000 (Rupees Fifty Lac Only) to be paid jointly and severally.</b>
<b>Shri Anil Patodia</b>	
<b>Ms. Poonam Patodia</b>	
<b>Shri Kishorilal Patodia</b>	
<b>Shri Abhijeet Patodia</b>	

44. The above penalties will be commensurate with the violations committed by the Noticees.
45. The above named Noticees viz. Shri Prashant Deorah, Shri Anil Patodia, Ms. Poonam Patodia, Shri Kishorilal Patodia and Shri Abhijeet Patodia shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
46. Further, considering the facts and circumstances of the case, I, however, do not find the instant matter fit for imposition of penalty on the Noticees Ms. Sarita Mansingka and Shri Divansh Mansingka in terms of Section 15A(b) of SEBI Act and dispose of the proceedings accordingly.
47. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

**Date: July 31, 2014**

**Place: Mumbai**

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