BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO.AK/AO-75-81/2015]

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

M/s. Jayalaxmi Holdings Pvt. Ltd.,M/s. Brinan Investments Pvt. Ltd.,M/s. Alk Holding Pvt. Ltd.(Amalgamated to M/s. Great View Properties Pvt. Ltd. (PAN:AADCG9697H),**Mr. Rohan Khatau**(PAN: AOKPK6871R),**Mr. MH Khatau**(PAN: Not Available),**Mr. PH Khatau**(PAN: AGVPK5316J) and **Mr. HA Khatau**(PAN: AABPK4771D)

Inthe matter of

M/s Khatau Exim Limited
(Now known as M/s Velox Industries Limited)

FACTS OF THE CASE

1. A letter of offer in compliance with Regulation 10 and 12 ofSecurities and Exchange Board of India (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as**'Takeover Regulations, 1997'**)was filed by Mr. Nav Rattan Munjal (**Acquirer**) to acquire 49,800 equity shares of Rs. 10/- each (representing 20% of the paid up and voting equity share capital) of M/s. Khatau Exim Ltd (hereinafter referred to as the**'the Company')** at an offer price of Rs.27.34/- .The Public Announcement of the same was made on March 15, 2011 and the shares of the company were listed at Bombay Stock Exchange Ltd. (**BSE**) and Pune Stock Exchange Ltd. (**PSE**).

2. While examining the letter of offer document, Securities and Exchange Board of India (hereinafter referred to as **SEBI**) observed that the promoters of the target company viz. M/s. Jayalaxmi Holdings Pvt. Ltd., M/s. Brinan Investments Pvt. Ltd., M/s. Alk Holding Pvt. Ltd., Mr. Rohan Khatau, Mr. MH Khatau, Mr. PH Khatau and Mr. HA Khatau(hereinafter collectively referred to as **'Promoters'**/ '**Noticees')** had failed to comply with theprovisions of Regulations 8(1) and 8(2) of the Takeover Regulations, 1997 within the due datefor 9 consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for 2 consecutive financial years from FY 2008-09 to FY 2009-2010. It was

further observed from the letter of offer that the Noticees/promoters of the companyviz. Mr. Rohan Khatau, M/s. Alk Holding Pvt. Ltd., M/s. Brinan Investments Pvt. Ltd. and M/s. Jayalaxmi Holdings Pvt. Ltd. *inter alia*had also violated the provisions of Regulation 11(2) read with Regulation 14 of the Takeover Regulations, 1997.

3. Based on the aforesaid information with respect to non-compliance of Takeover Regulations, 1997, as applicable, 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 Promoter Noticees under Section 15A(b) and/ or Section 15H(ii) of SEBI Act, as applicable, to inquire into and adjudicate the alleged violation of the provision of Takeover Regulations, 1997.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed asthe Adjudicating Officer vide Order datedSeptember 02, 2013under 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) and 15 H(ii) of the SEBI Act for the alleged violation of the Takeover Regulations, 1997.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notices (hereinafter referred to as '**SCN**') Ref. No. EAD-6/AK/32370/2013, EAD-6/AK/32371/2013, EAD-6/AK/32374/2013, EAD-6/AK/32379/2013, EAD-6/AK/32383/2013, EAD-6/AK/32389/2013 and EAD-6/AK/32390/2013 dated December 12, 2013 wereissued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of the Takeover Regulations, 1997, as applicable. The Promoter Noticees were also called upon to show cause as to why an inquiry should not be initiated against them and penalty be not imposed under Section 15A(b) and/ or Section 15H(ii) of the SEBI Act, as applicable, for the alleged violations committed by them. The copies of the relevant pages of the letter of Offer and the shareholding pattern for the relevant years as per the BSE website were sent along with the respective SCNs.

6. The Noticees vide email dated January 03, 2015 sought for extension of time to make their submissions to the SCN dated December 12, 2013. The request of the Noticees was acceded to and the Noticees were granted time till January 20, 2014 to make their submissions to the SCN. M/s.

Great View Properties Pvt. Ltd.vide letter dated January 21, 2014 *inter alia* informedthat the Noticees viz. M/s. Alk Holdings Pvt. Ltd. (hereinafter referred to as **'Alk'**), M/s. Brinan Investments Pvt. Ltd.(hereinafter referred to as '**Brinan'**) and M/s. Jayalaxmi Holdings Pvt. Ltd.(hereinafter referred to as **'Jayalaxmi'**) have amalgamated with M/s. Great View Properties Pvt. Ltd. (hereinafter referred to as '**GVPPL'**) w.e.f January 28, 2011 by the Order of High Court, Bombay.Further, it was *inter alia* also stated that since the matter is very old, they are in the process of obtaining the necessary documents and requested for some more time to make their submissions.

7. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticees were also granted an opportunity of personal hearing on January 24, 2014 vide hearing notice dated January 16, 2014. Mr. Pradip H. Udeshi and Mr. Miten Chawdaappeared on behalf of the Noticees and *inter alia*submitted that an application for consent proceeding and a detailed reply to the SCN would be filed by February 15, 2014. Since noreply was received from the Noticees subsequent to the personal hearing, videemails dated March 19, 2014 and August 22, 2014, and further vide letter dated August 25, 2014,the Noticees were advised to make their submissions to the SCN.

8. In continuation to the SCN dated December 12, 2013, a supplementary SCN dated January 30, 2015 was issued to the Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau.It was *inter alia*allegedvide supplementary SCN dated January 30, 2015 thatin the year 1997-98, the promoter of the company, Mr.Rohan Khatau along with the persons acting in concert (PACs) viz. Alk, Brinan, Jayalaxmi, Ms. MH Khatau, Mr. PH Khatau andMr. HA Khatauhad acquired 27,525 (11.05%) shares of the company during the year 1997-98, but, *inter alia* failed to comply with Regulation 11(2) read with Regulation 14 of the Takeover Regulations, 1997. It was further *inter alia*alleged that in the year 2003-04, the promoter entities viz. Alk, Brinan and Jayalaxmi along with the PACs viz.Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau acquired 40,000 (16.06%) equity shares during the year 2003-04, but, *inter alia*failed to comply with Regulation 11(2) read with Regulation 14 of the Takeover Regulations, 1997.

9. Vide letter dated February 25, 2015 the Noticeesviz.Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau while admitting that they were the promoters of the company during the relevant period has *inter alia*submitted as follows:

9.1 *Allegation regarding violation of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997*

- *That apart from relying on the status of compliance with the provisions of Chapter II of the Takeover Regulations, 1997 by the then promoters of the Company given in the Open Offer Letter of Offer dated June 29, 2011, SEBI does not have any independent findings of any investigation or inquiry in the matter to level such an allegation;*
- *That neither SEBI nor the Adjudicating Officer had the benefit of looking into the matter or background facts to assess the facts and determine whether proceedings should at all be initiated in this regard;*
- *That the alleged violations date back to nearly 19 years ago and it is impossible to prove compliance for want of records. It is wholly unreasonable to level an allegation two decades later and expect that innocence should be proven. Such an approach violates the constitutional provision available in India of the law not requiring the subject to prove innocence. On the contrary there needs to be a positive allegation of a violation on the basis of positive evidence of non-compliance. Moreover, acute delays and latches in initiating proceedings are wholly unsustainable and it would not be proper to expect a Noticee to prove innocence without access to old records, which it would not be reasonably expected to remain available. There is a catena of judgments of courts holding that delays and latches in initiating proceedings are untenable and in the instant case, the delay is writ large on the record since the alleged period of violation was nearly two decades ago;*
- *That since the time of the alleged violation/non-compliance of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997, majority ownership and control of the Company has changed hands. Further, Alk,* Brinan and Jayalaxmi *have amalgamated with the Amalgamated Company and hence have lost their identity. Currently, the Noticees including Amalgamated Company have no records to disprove any allegations of such non-compliance/violations;*
- *That it is a settled law that the onus of laying a charge is on the authority levelling the charge, and without doing so, it is not legally permissible to ask a noticee to disprove a charge or show cause why it should not be penalized. It is equally settled law that a weakness (i.e. in the instant case non availability of really old records after the erstwhile promoter Noticees have sold off their stake in the Company and some of the Noticees have*

amalgamated into another company) in the ability to defend can never become the strength of proving a charge;

- *That the allegations made by SEBI in the SCN are merely on suspicions and conjecture based on the details given in the Open Offer Letter of Offer. There has been no investigation or independent application of mind by SEBI and the prosecution's case cannot rest on the weakness of the defence;*
- *That out of the 11 alleged instances of non-compliance / delayed compliance, SEBI too has acknowledged that there has been compliance in 10 out of the 11 instances, but that there has been an alleged delay of just a few days. None of these delays are material in character and therefore do not deserve regulatory penal intervention;*
- *With regard to the one instance of apparent non-compliance, SEBI has equated "No Records Available" with "Not Complied' - this is an approach completely alien to law. The only instance of apparent non-compliance is in the nature of absence of disproof being conflated to proof of non-compliance. They are unable to provide positive proof but it is evident that the Noticees would stand to gain nothing by not making these disclosures particularly when there have been disclosures before and after these instances;*
- *That it is a settled law that no one should be put to proceedings after a delay so inordinate that it is impossible for him to disprove the charge. In this case there is complete absence of any evidence to prove the charge either. In State of Punjab vs Chaman Lai Goyal, the Supreme Court of India has ruled that a delay in instituting proceedings by so long a period that renders a reasonable defence of a charge impossible, would by itself constitute a breach of the principles of natural justice. It can never be argued that the onus of disproving a charge should first be discharged by the person accused of violation and that inability to do so would necessarily render the charge as being proven. Such an approach is contrary to all known principles of natural justice applicable in India;*
- *That without prejudice to the foregoing, Clause 35 of the Listing Agreement also mandates submission of the certain details with the stock exchanges by all listed companies, separately for each class of equity shares/security in the specified formats. In substance, such public filings under the Listing Agreement are in pari materia with the disclosures required under Regulation 8(1) and 8(2) of the Takeover Regulations, 1997. And there has been complete compliance under Clause 35 of the Listing Agreement and this has been clearly mentioned in the Letter of Offer relating to the Open Offer, on which SEBI has squarely relied upon;*

- *That rather that the form, it is the essence of a provision that must be taken into account, and as such, in the instant case the underlying intent and purpose of the Regulation had been adequately served. In effect, they did not gain any unfair advantage, nor, was there any case of any investor grievance in connection with such filings;*
- *Even assuming that the approach adopted i.e. to substitute proof of a charge with proof of the defence, or to treat the weakness in a defence as a strength of a charge, there is no question of any gain or advantage that has accrued, let alone any disproportionate gain or unfair advantage, nor, any loss has been caused to any investor as a result of the delayed disclosures of the acquisition;*
- *That the shareholding never ever changed for the disclosure to have any consequence, and no shareholder has been deprived of any benefits, nor, has there been any loss caused to them on account of the alleged violation. Further, the alleged delay or non-compliance was without any malafide intention and did not lead to any material benefits to the Noticees.*

9.2 Allegation regarding violation of Regulation 11(2) read with Regulation 14 of the Takeover Regulations, 1997

- *That the allegations in the SCN proceeds upon afundamentally erroneous interpretation of the relevant provisions of the Takeover Regulations, 1997;*
- *That one of the fundamental concepts on which the Takeover Regulations, 1997 is based is that of "persons acting in concert". Every obligation under the Takeover Regulations, 1997 is premised on aggregating the holdings of all "persons acting in concert" and regardless of individual shareholding of any person, the holdings of all persons acting in concert has to be reckoned as a collective aggregated shareholding or voting power;*
- *That from a plain reading of the provision it is only when the collective shareholding of a group of persons acting in concert along with the acquirer goes beyond 5% so as to confer an "additional entitlement" to voting rights, that Regulation 11 would become relevant. In the present case, at each instance, the collective shareholding of the persons comprising the promoter group in the Company prior and post the interse transfer amongst the promoters remained unchanged;*
- *That the SCN ignores the fundamental concept under the Takeover Regulations, 1997 that every acquisition and obligation should be reckoned only in the context of the collective entitlement to voting rights in the hands of all persons acting in concert;*

- *That the interpretation of the Takeover Regulations, 1997 by SEBI is contrary to the legislative intent;*
- *The underlying concept of Bhagwati Committee Reportwas to ensure that persons who have common objectives or purpose of voting rights in a listed company ought to be grouped together for the purpose of determining thresholds for the purpose of Takeover Regulations;*
- *That the position in this regard was clarified by the* ***Hon'ble Bombay High Court in its order dated September 28, 2001 in the case of Shirish Finance & Investment Private Limited v. M. Sreenivasulu Reddy [2002 35 SCL 27 (Bom)]*** *as follows:*

  "...By definition 'acquirer' includes persons acting in concert with the acquirer and, therefore, the acquisitionof the acquirer and all those who act in concert with him is considered to be the acquisition of the acquirer...".
- *That the Takeover Regulations, 1997 were amended from time to time, with the concept of the need to aggregate the holding of persons acting in concert remaining unchanged;*
- *That to determine whether an open offer obligation istriggered, the acquisition of the acquirer should be taken together with two more factors viz. voting rights held by the acquirer himself; and voting rights held by persons acting in concert with him. Unless the charging provision is attracted, there is no requirement for invoking the exemption provisions under Regulation 3. Therefore the inter-se promoter transfers, pursuant to the Acquisitions, fall outside the charging provisions of Regulation 11 since they constitute actions of a unit/group and not in their individual capacities. Since there was no change in the promoter group shareholding/voting rights post such Acquisitions, it would be absurd to allege that the Acquisitions triggered Regulation 11(2) of the Takeover Regulations, 1997;*
- *That the stand adopted by SEBI in the SCN is contrary to the precedent set by it including a plethora of decisions of the Hon'ble Securities Appellate Tribunal ("SAT"). Courts have interpreted the Takeover Regulations, 1997 consistently with one single fundamental principle, i.e. the collective holding alone should be taken into account. This fundamental provisions run across the Takeover Regulations, 1997-not just for triggering provisions of Regulation 10 and 11 but even for disclosures under Regulation 6, 7 and 8 of the Takeover Regulations, 1997. Some of such decisions are referred below:*

- *In the case* ***of Sandip Save & Ors. v. Chairman, Securities & Exchange Board of India [(2003) 41 SCL 47 (SAT), the SAT*** *has ruled that:*

  "...On a combined reading of the above cited definitions it is not possible to agree with Shri Banerjee's submission that in view of the use of the word "acquirer" in singular and the absence of the words "acting in concert" in the regulation excludes an acquirer whose individual holding does not exceed 5%, from complying with the requirement of the regulation. In the light of the definition of the expression 'acquirer' and the 'persons acting in concert' and also taking into consideration the purpose of regulation 7, I am of the view that the acquisition of shares by persons acting in league, is very relevant and the disclosure of such concerted acquisition to the target company and the company in turn to the concerned stock exchange is in tune with the objective of the said disclosure. If one is to accept Shri Banerjee 's contention, that would mean that each person acting in concert could acquire upto 5% shares without making the disclosure and continue- to do so upto 15%, without attracting the requirements of public offer in terms of regulation 10. Such an interpretation would defeat the very purpose of the Regulations. As already stated one of the objects of the Regulations is to protect the interests of the investors through prompt disclosures. In my view the shares acquired by all those persons acting in league has to be taken as a whole for the purpose of regulation 7. Since the Appellant itself having admitted that the holding of the Appellant with its associate (s) exceeded 5% of the paid up capital of Bombay Dyeing , it was incumbent upon the Appellant to make the disclosure, as per regulation 7(1) to Bombay Dyeing..."

- *That the* ***adjudication officer of SEBI in order dated July 31, 2008 in Re: Shri Sanjay Sonvani and Ors.****observed the following:*

  "...Further the above definition of acquirer, read along with the definition of persons acting in concert as contained in regulation 2(l)(d) implies that the commonality of objective between the acquirer and the persons acting in concert clearly mandate that their actions should not be viewed in isolation. Hence in cases where shares have been acquired pursuant to a common objective, the aggregate shareholding of the acquirers and the persons acting in concert have to be taken into account to determine whether the threshold limit prescribed under the regulations have been violated or not..."

- *That it is explicit from the above that the provisions of Regulation 11 of the Takeover Regulations, 1997 provide that it is the collective shareholding of the acquirer and persons acting in concert with him that have to be considered for determining whether any additional shares were acquired or not. In the present case, if SEBI were to ignore this position in law, then in every case, where the individual shareholding of any single person acting in concert has not crossed any triggering thresholds prescribed in Regulation 11 of the Takeover Regulations, 1997, no open offer ought to be triggered. It can never be SEBI's regulatory intention to adopt such a position, which would absurd and would defeat the very scheme and would be contrary to entire history and legacy of takeover regulations in India. Such an interpretation taken by SEBI in the present case, would indeed make the concept of "persons acting in concert" nugatory;*
- *That to take a separate interpretation for Regulation 10 (i.e. collective holding of persons acting in concert to be considered, in Madhuri Pitti and Ors. v. SEBI) and a separate interpretation for Regulation 11 (i.e. individual holding to be considered irrespective of the collective holding, as alleged in the SCN) is completely absurd. Therefore, the provisions of regulation 10 and Regulation 11 of Takeover Regulations, 1997 ought to be similarly interpreted as the underlying intent behind the same is concurrent;*
- *That as the collective holding of the promoter group did not change following the Acquisitions, no open offer was triggered and hence the question of penalty under Section 15H(ii) of the SEBI Act does not arise;*
- *In the Supplementary SCN, the terms "PACs1", "PACs2", "PACs3" and "PACs4" are used - essentially comprising all the very same constituents in different combinations. In fact, this indeed demonstrates that all the constituents of the group of persons acting in concert were all acting in composite group of persons acting in concert. Therefore, the very approach of the Supplementary SCN underlines the arguments made above about how it is wrong to club and combine in one instance and yet attempt to distinguish and separate in other instances on the same set of facts;*
- *That Regulation 3(3) ofthe SEBI (Substantial Acquisition ofShares and Takeovers) Regulations, 2011 was introduced for the first time and cannot be applied retrospectively. This wasaimed to deal with situations where persons in concert transferred shares among one another and changed the degree of ownership. If the exemption provisions were not to apply, there was a need to have a charging provision to trigger an open offer, which led*

to this provision. Since the collective shareholding of any group of persons acting in concert would remain unchanged, there would have been no instance ever of Regulation 3 getting attracted, and therefore this provision was introduced specifically to give meaning to the exemption provisions;

- *That the requirement of considering the individual shareholding of the acquirer disregarding the shareholding of persons acting in concert, was not envisaged under the Takeover Regulations, 1997 and introduced for the first time under the Takeover Regulations, 2011. Applying a position as would be covered under the Takeover Regulations, 2011 to facts to which the Takeover Regulations, 1997 applied, would constitute a retrospective application of the law, which would also be unconstitutional;*
- *That it is trite law that provisions of sub-ordinate legislation such as the Takeover Regulations cannot apply retrospectively. The **Hon'ble Supreme Court of India has, amongst various others, ruled in the case of Income-Tax Officer, Alleppey v. M.C. Ponnoose & Ors. [1970 SCR (1) 678]**:*

  "'...The courts will not, therefore, ascribe retrospectively to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognized limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect..."
- *That the provisions of Section 30 of the SEBI Act does not contain expressly or impliedly contain anything to indicate that the power to retrospectively apply the provisions of the Takeover Regulations is available to SEBI. Further, it is apparent from the express provisions of Regulation 35 of the Takeover Regulations, 2011, that the provisions thereof cannot be retrospectively applied. The **Hon'ble Bombay High Court** has, in the context of Regulation 47 of the Takeover Regulations, 1997 (identical to Regulation 35 of the Takeover Regulations, 2011) ruled **in Harinarayan Bajaj v. Union of India [(2009) 147***

Comp Cases 579 (Bom)] *that the same: " ...nowhere provide for retrospective application of these Regulations..."*

- *Without prejudice to the aforesaid, in order to compensate for the potential loss incurred to any investors, if any due to the alleged violations, the Acquirer of the Open Offer had revised the offer price of Open Offer to Rs. 27.34 (Rupees Twenty Seven Paise Thirty Four Only) per fully paid up equity shares inclusive of interest of Rs. 16.01 (Rupees Sixteen Paise One Only) per fully paid up equity share calculated @ 10% from April 1, 1997 to May 16, 2011 and such additional cost was borne by the Noticees due to the increase in the offer price. Accordingly, any potential loss allegedly attributable to the investors, if any, were in any case on a without-prejudice basis made good with such an increase in offer price in the Open Offer.*

10. Another opportunity of personal hearing was granted to the Noticees on February 26, 2015 in the matter.On the date of the personal hearing on February 26, 2015,Mr.Somasekhar Sundaresan, Mr. Gaurav Singhi and Mr. Dhaval Kothari,Authorized Representatives (hereinafter referred to as**ARs**), and Mr. Pradip H Udeshi (director of GVPPL) appeared on behalf of the Promoter Noticeesand reiterated the submissions made vide letter dated February 25, 2015. The ARs submitted the following cases during the hearing, viz.; Sandip Save v. Chairman, SEBI [2003] 41 SCL 47, Mr. Naagraj G Jain v. Sri Sai Ram dated 17.08.2001, AO Order dated 31.07.2008, Swedish Match v SEBI, SAT order dated 31.10.2013 on Ms. Madhuri Pitti and Ors v. SEBI, ITO Alleppy v. MC Ponnoose (1969), Harinarayan G Bajaj v UOI (2007) SCC Bom 1041, Sirish Finance and Investment v. M Sreenivasulu Reddy and Ors (2001) SCC Bom 838 and State of Punjab v. Chaman Lal Goyal (1995) 2 SCC 570. The ARs further submitted that though the Noticees had not retained copies of filing made to the company under Regulation 8(1) by persons holding more than 15% and under Regulation 8(2) by the promoters, an attempt would be made to obtain the same from the company as per the disclosures made in the letter of Offer. The ARs submitted that they would submit the copies so obtained from the company by March 20, 2015. The ARs further confirmed that there was no past non-compliance of the SEBI Act and Regulations by the Noticees and no action was taken by SEBI in the past against the Noticees.

11. Consequent upon the personal hearing on February 26, 2015, the Noticees vide letter dated March 31, 2015 submitted that they were unable to retrieve the copies of the disclosures made under

Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the relevant period mentioned in the SCN. The Noticees instead submitted the copies of the disclosures made under Regulation 8(3) of the Takeover Regulations, 1997 by the company for the years 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2006, 2009 and 2010.

CONSIDERATION OF ISSUES

12. I have carefully perused the written submissions of the Noticees, the submissions made at the hearing and the documents available on record. It is observed that the allegation against the Promoter Noticees is that they have failed to make the relevant disclosure under the provisions of Regulations 8(1) & 8(2) of the Takeover Regulations, 1997 and Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997.

13. The issues that, therefore, arises for consideration in the present case are:

13.1 Whether the Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatauhave violated the provisions of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997for 9 consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for 2 consecutive financial years from FY 2008-09 to FY 2009-2010?

13.2 Whether the Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau havefailed to comply with provision of Regulation 11(2) read with regulation 14(1) of SEBI Takeover Regulations 4 (four) times i.e., once in the year 1997-98 and thrice during the year 2003-04 by acquiring shares of the company during the said years?

13.3 Do the violations, if any, attract monetary penalty under Section 15 A(b) and/ orSection 15 H(ii) of SEBI Act, as applicable?

13.4 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

14. Before moving forward, it is pertinent to refer to the relevant provisions of Regulation 8(1) and 8(2) and Regulation 11(2) and 14(1)of the Takeover Regulations, 1997 which reads as under:

Regulations 8 (1) and 8(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997

Continual disclosures.

8. (1) *Every person, including a person mentioned in regulation 6 who holds more than [1][fifteen] per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March.*

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.*

Regulation 11(2) as per SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998, w.e.f. 28-10-1998 upto 26-05-2006

Consolidation of holdings*.*

11(2) *An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, fifty five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these 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:*

[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 [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.

[1] Substituted for "ten" by Amendment Regulations, 1998 wef 28-10-1998.

15. Now the first issue for consideration is whether the Promoter Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau have violated the provisions of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for 9 consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for 2 consecutive financial years from FY 2008-09 to FY 2009-2010.The SCN alleged violation/non-compliance by the Promoter Noticees in respect of Regulation 8(1) and 8(2) of Takeover Regulations, 1997 as incorporated in the letter of Offer. The sameis as shown in the tabular form below:

Regulation	Due Date of compliance	Date of compliance	Non compliance / Delay (in no. of days)
8(1) & 8(2)	21.04.1998	25.02.2004	2,136
8(1) & 8(2)	21.04.1999	25.02.2004	1,771
8(1) & 8(2)	21.04.2000	25.02.2004	1,405
8(1) & 8(2)	21.04.2001	25.02.2004	1,040
8(1) & 8(2)	21.04.2002	25.02.2004	675
8(1) & 8(2)	21.04.2003	25.02.2004	310
8(1) & 8(2)	21.04.2004	-	Not complied
8(1) & 8(2)	21.04.2005	28.04.2005	7
8(1) & 8(2)	21.04.2006	22.01.2007	276
8(1) & 8(2)	21.04.2009	07.05.2009	17
8(1) & 8(2)	21.04.2010	13.05.2010	23

16. In the matter, I find that the promoter Noticees vide letter dated February 25, 2015 have*inter alia* contended that the onus of laying the charge is on the authority leveling the charge, and without doing so, it is not legally permissible to ask the promoter Noticees to disprove a charge or show cause why it should not be penalized. Vide the said letter, the promoter Noticees have *inter alia* also stated that SCN merely relies on the 'Status of Compliance by the Promoters' as given in the letter of Offer dated June 29, 2011 and that SEBI has not done any independent findings of any investigation or inquiry in the matter, to level an allegation of non-compliance of Regulation 8(1)/ 8(2) of Takeover Regulations, 1997 against the promoter Noticees.

17. I note here that as rightly brought out by the promoter Noticees, the SCN relies upon the disclosures made in the letter of Offer dated June 29, 2011 byMr. Nav Rattan Munjal ('Acquirer') to acquire upto 49,800 Equity Shares of Rs. 10/- each representing 20% of the total issued and paid-up equity share capital of the company.The information disclosed in the said letter of Offer has been vetted by the Manager to the Offer M/s. Corporate Professionals, a Merchant Banker registered with SEBI. The

said letter Of Offer, vetted by a SEBI registered intermediary, disclosed as follows: *"As per the information received from the Target Company, there has been a delay in filing the disclosures ……under regulation 8(1) and 8(2) of the Regulations for the years 1998 to 2003, 2005, 2006, 2009 and 2010 by the promoters. Further no record with respect to the disclosure made under regulation 8(1) and 8(2) by the promoters for the year 2004 is available."*

18. Thus, on a perusal of the letter of Offer, it becomes apparent that the Manager to the Offer who has vetted the disclosures made in the letter of Offer, has in 2011 made a clear distinction between records of promoter filing under Regulation 8(1)/ 8(2) of the Takeover Regulations which were not available, from the delayed filing made by the promoters under Regulation 8(1)/8(2). Such distinction would not have been possible unless the Manager to the Offer had carried out the due diligence exercise at the relevant point of time. Under the SEBI (Merchant Banking) Regulations, 1992, the Manager to the Offer is responsible for verification of the contents of the Letter of Offer in respect of the Offer and the reasonableness of the views expressed therein, and is required to submit to the Board at least two weeks prior to the opening of the issue for subscription, a due diligence certificate. I note that the Manager to the Offer M/s. Corporate Professionalsvide due diligence certificate dated March 21, 2011 has *inter alia*confirmed that the disclosures made in the draft letter of Offer/final letter of Offer are true, fair and adequate to enable the investors to make a well informed decision.Any false or untrue certification by the Manager to the Offer would mean the risk of suspension/ cancellation of its registration to act as a Merchant Banker. I, thus, note here that the promoter Noticees have failed to appreciate the fact that a SEBI registered intermediary had carried out the necessary due diligence while concluding that the promoter Noticees had made delayed filings.

19. I agree with the Noticees that the initial burden of proving the allegation rests on the person making the allegation. In the extant matter, as stated earlier, the SCN has been issued based on the due diligence conducted by a SEBI registered Merchant Banker, whereby it was observed that there had been a delay in compliance by the promoters in respect of Regulation 8(1) & 8(2) of the Takeover Regulations, 1997 for certain years. The exact number of days of such delay along with the source of information was disclosed in the letter of offer and was available in public domain. Thus, it is not that the SCN was not supported by evidence as claimed by the Noticees. The disclosure in the letter of Offer based on due diligence exercise conducted by a merchant banker is evidence enough to

prove the charge. The source of information i.e. the company was also disclosed. I note that Noticees have neither questioned the validity of the due-diligence conducted by the Merchant Banker, nor, have the Noticees denied the alleged delayed/ non-compliance of the provisions of the Takeover Regulation. The onus was on the Noticees to point out failure/ lapse, if any, on the part of Manager to the Offer to act diligently in the matter. When a fact is proved in affirmative or evidence is led to prove the same, the onus shifts on the other side to negate the charge.

20. In this context, I note that in the matter of ***A. Raghavamma and Another v. A. Chenchamma and Another*** (AIR 1964 SC 136),while making a distinction between burden ofproof and onus of proof, the Hon'ble Supreme Court has opined as follows:
"There is an essential distinction between burden of proof and onus of proof: burden of proof lies upon the person who has to prove a fact and it never shifts, but the onus of proof shifts. The burden of proof in the present case undoubtedly lies upon the plaintiff to establish the factum of adoption and that of partition. The said circumstances do not alter the incidence of the burden of proof. Such considerations, having regard to the circumstances of a particular case, may shift the onus of proof. Such a shifting of onus is a continuous process in the evaluation of evidence."

21. I find further that the Noticees at the relevant point of time did not deny such information which was in public domain. The Noticees came up with the defense of records being unavailable only at the adjudication stage. However, I note that the Noticees except claiming non-availability of records due to delay in initiating proceedings have not stated anything else. Even for records of 2009 and 2010 which were closer to the open offer in 2011, the Noticees have claimed non-availability of records at their end. However, the Noticees have not given any explanation as to why they did not retain even records that should have been available with them at the time of open offer, despite being within knowledge of the fact that action would be initiated for delayed disclosure made by them as brought out in the letter of Offer.

22. In view of all of the above, I find that the submission made by the Noticees that the SCN had failed to discharge the burden of proof is absolutely misconceived.

23. I note further that the promoter Noticees have stated that the alleged violations dates back to nearly 19 years ago and it is wholly unreasonable to level an allegation two decades later and expect

their innocence should be proven. However, I find that the promoter Noticees do not even have records of disclosures made by them to the Company under Regulation 8(1)/ 8(2) closer to the open offer in the year 2009 and 2010. Further, it is pertinent to mention here that disclosures under Regulation 8(1)/ 8(2) of the Takeover Regulations, 1997 were not required to be submitted by the promoters to the concerned stock Exchange(s)/ SEBI, but, only to the company. In such a scenario, it is only the company and the promoters who can produce evidence of whether the disclosures were made, and if so, when. For example, if SEBI/ Adjudicating Officer has sent a document to a Noticee, SEBI/ Adjudicating Officer bears the burden of proving delivery of the documents/ notices it has issued to the parties/ Noticees concerned. Hence, if the promoters have filed the disclosures with the company, they should be able to produce proof of delivery thereof. The merchant banker has relied on the information so provided by the company while disclosing in the letter of Offer the fact regarding delayed filingby the promoters *inter alia* under Regulation 8(1) and 8(2) of Takeover Regulations, 1997. The contention now raised by the promoter Noticees pursuant to the issue of SCN that no records are available is especially suspect given the fact that the promoters had not brought any such facts to the notice of SEBI earlier, despite the letter of Offer being in public domain. Any prudent person who is made aware of alikelihood of proceeding being initiated would atleast retain all available records at the point of time. However, I find that the Noticees do not even have records pertaining to the years 2009 and 2010, which were the immediate preceding years to the year of open offer i.e. 2011. Further, neither have the promoter Noticees pointed out any prejudices and disadvantages suffered by them due to the alleged delay in initiating proceedings. Andmere delay in initiating proceedings cannot be a reason for absolving any person of the liability arising under law.

24. There are more than 5,000 listed companies whose promoters were required under Takeover Regulations, 1997 to make annual filing in respect of their holdings as on 31st March to the company under Regulation 8(2) and under Regulation 8(1), if applicable. The extant delayed disclosure by the promoters to the company under Regulation 8(1)/ 8(2)came to notice of the Manger to the Offer while carrying out the due diligence with respect to the compliances made by the promoters under Takeover Regulations, 1997 at the time of open offer by Mr. Nav Rattan Munjal ('Acquirer'). The same was accordingly disclosed in the letter of offer and to SEBI. SEBI thereafter initiated the extant adjudication proceedings in the matter.

25. Besides under the SEBI Act, there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. In the matter of ***Radheyshyam Chiranjilal Goenka Vs. Adjudicating Officer, SEBI, the Hon'ble SAT***on August 31, 2000 held that –

"… adjudication under section 15I for default under section 15F cannot be said to be hit by Article 14 of the Limitation act, as the default identified thereunder being a continuing one, till such time it is made good. In the instant case the default was made good only in September 1999, whereas the adjudication proceedings had commenced much earlier as way back in the year 1998."

26. In the case at hand, I note from the disclosures made in the letter of Offer that the default for the years 1998 to 2003 was made good only in 2004, and thereafter as per the dates provided in para 15above. Further, as has been brought out earlier, the promoter Noticees do not have the records even of disclosures made under Regulation 8(1)/ 8(2) in 2009 and 2010 to prove otherwise, despite the fact that the letter of Offer dated June 29, 2011 had clearly brought out that SEBI may initiate action *inter alia*against the promoters of the company at a later stage. Thus, I note that though the Noticees were made aware in the year 2011 of the fact that SEBI may initiate action against the promoters at a later stage for non-compliances/ delayed compliances listed out in the letter of Offer against them, the promoter Noticees adopted a casual approach to the whole matter. The Noticees did not take due care to preserve the available records of even the immediate preceding period. Hence, the contention of the promoter Noticees that delay is writ large on the record since the alleged period of violation was nearly two decades ago does not hold any merit. Thus under the circumstances, if the Noticees areto be given benefit on the ground that there has been delay in initiating the proceedings, and, therefore, the proceedings should be quashed, I am of the view that it would result in travesty of justice than upholding of justice.

27. I note that the promoter Noticees have contended that the allegation made in the SCN are merely on suspicions and conjecture based on details given in the letter of Offer and that there has been no investigation or independent application of mind by SEBI. If this argument of the Noticees were to be accepted, then the basis of regulatory requirement of appointing a SEBI registered merchant banker for conducting due diligence in an open offerwould become redundant and would also naturally raise the basic question on the *raison d'être* of the merchant banker. I, thus, find that the said argument too does not hold any merit.

28. As per the letter of Offer, I find that no record with respect to the disclosures made under regulation 8(1) and 8(2) by the promoters for the year 2004 is available. In absence of evidence to the effect that the promoter Noticees had delayed filing under Regulation 8(1) and/ or 8(2) of the Takeover Regulations, 1997 for the year 2004, or,did not comply with Regulation 8(1) and/ or 8(2) of the Takeover Regulations, 1997 for the year 2004, I am inclined to give the benefit of doubt to the promoters for that particular year and conclude that violation of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 for the year 2003-04 against the promoter Noticees does not stand established.

29. I further note that as per Regulation 8(1) of the Takeover Regulations, 1997, every person, including a person mentioned in regulation 6 who holds more than fifteen per cent shares (substituted for ten percent by Amendment Regulations, 1998 w.e.f. 28-10-1998) or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the company, in respect of his holdings as on 31st March. I find from the copy of the disclosure under Regulation 8(3) as forwarded to BSE by the Company (copies of which were submitted by the Promoter Noticees along with their reply dated March 31, 2015) and also from the shareholding pattern from the BSE website that the Promoter Noticees viz. Ms. MH Khatau and Mr. PH Khatau held less than the threshold holding requiring disclosure under Regulation 8(1) of the Takeover Regulations, 1997, i.e. ten percent/ fifteen percent shares/ voting rights in the company, as applicable, during the entire period under allegation i.e. from FY 1997-98 to FY 2005-06 and subsequently from FY 2008-09 to FY 2009-2010. I further note that the Noticee Promoter Mr. Rohan Khatau held less than the threshold holding of fifteen percent shares/ voting rights in the company requiring disclosure under Regulation 8(1) of the Takeover Regulations, 1997 during the entire period under allegation, except during the year 1997-98 when his holding was 11.05% as on March 31, 1998 and the threshold limit for disclosure under Regulation 8(1) as at the relevant point of time was ten percent. As regards to the Noticee Promoter Mr. HA Khatau, it is observed that he held more than the threshold holding requiring disclosure under Regulation 8(1) of the Takeover Regulations, 1997, i.e. ten percent/ fifteen percent shares/ voting rights in the company, as applicable, (jointly/individually) only for 6 consecutive financial years from FY 1997-98 to FY 2002-03, out of the entire alleged period. In view of the above, the allegation of Regulation 8(1) of the Takeover Regulations, 1997 against the Noticees viz. Ms. MH Khatau and Mr. PH Khatau are liable to be abated for the entire period of

allegation. Further, the allegation of violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticee viz. Mr. Rohan Khatau is liable to be abated for the entire period of allegation, except for 1997-98. Also, the allegation of violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticee viz. Mr. HA Khatau is liable to be abated for the years 2003-04, 2004-05, 2005-06, 2008-09 and 2009-10.

30. I, thus,note that the holding of the promoter Noticee Mr. Rohan Khatau for the year 1997-98, holding of the promoter Noticee Mr. HA Khatau for the years 1997-98, 1998-99, 1999-00, 2000-01, 2001-02 and 2002-03, and the holding of the promoter Noticees viz. Alk, Brinan and Jayalaxmi for the entire alleged period i.e. 9 consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for 2 consecutive financial years from FY 2008-09 to FY 2009-2010, was above the applicable threshold requiring disclosure to the company under Regulation 8(1) of the Takeover Regulations, 1997. The status of their compliance under Regulation 8(1) for the relevant period is as given in para 15, duly vetted by the Manager to the Offer.However as stated above, I am inclined to give the benefit of doubt to the promoter Noticees viz. Alk, Brinan and Jayalaxmi for the year 2003-04 for which records were not available as at 2011, when the due diligence was conducted by the Manager to the Offer.

31. Further as per Regulation 8(2) of the Takeover Regulations, 1997, I find that the Regulation states that 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. I note that the Noticees in their submissions have admitted that they were the promoters of the company during the relevant time as mentioned in the SCN. Hence, they were required under Regulation 8(2) of the Takeover Regulations, 1997 to disclose their holdings to the company 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. The status of compliance by the promoter Noticees under Regulation 8(2) of the Takeover Regulations, 1997 for 9 consecutive financial years from FY 1997-98 to FY 2005-06 and subsequently again for 2 consecutive financial years from FY 2008-09 to FY 2009-2010is as given in para 15, duly vetted by the Manager to the Offer.However as stated earlier, here too, due to

absence of records, I am inclined to give the benefit of doubt to the promoter Noticees for the year 2003-04.

32. In view of all of the above, it stands established that the promoter Noticees viz.Alk, Brinan, Jayalaxmi,Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatauhave violated Regulation 8(2) of the Takeover Regulations, 1997for 6 consecutive financial years from FY 1997-98 to FY 2002-03, 2 consecutive financial years FY 2004-05 and FY 2005-06 and subsequently again for 2 consecutive financial years FY 2008-09 and FY 2009-2010 (i.e. 10 times). Further, the promoter Noticees viz. Alk, Brinan and Jayalaxmi have also violated Regulation 8(1) of the Takeover Regulations, 1997 for 6 consecutive financial years from FY 1997-98 to FY 2002-03, 2 consecutive financial years FY 2004-05 and FY 2005-06 and subsequently again for 2 consecutive financial years FY 2008-09 and FY 2009-2010 (i.e. 10 times). Promoter Noticee Mr. HA Khatau have violated Regulation 8(1) of the Takeover Regulations for 6 consecutive years i.e. from FY 1997-98 to FY 2002-03. Promoter Noticee Mr. Rohan Khatau has violated Regulation 8(1) of the Takeover Regulations only for the year 1997-98. The respective number of days of delay in compliance of Regulation 8(1) and/ or 8(2), as applicable, in respect of each applicable financial year has been enumerated in the table at Para 15 above.

33. I find that the Takeover Regulations were first framed in the year 1994 as SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994. Pursuant to the recommendations of the Committee chaired by Justice Shri P.N. Bhagwati, the Takeover Regulations were further reframed as Takeover Regulations, 1997. Amendments were made to the Takeover Regulations, 1997 reframed in 1997 from time to time to fine-tune it further.

34. I, however, note that Regulation 8(2) of the Takeover Regulations, 1997 stood as reframed vide Takeover Regulations, 1997 and there were no further amendments made to the same. Further, since Takeover Regulations, 1997 were reframed after taking into consideration the recommendations of the Committee chaired by Justice Shri P.N. Bhagwati, in order to understand the intent of the legislature, I consider it appropriate to refer to the recommendation of the Committee with regard to disclosure requirements. I note that Para 5 of the Justice P.N. Bhagwati Committee Report on Takeovers dated January 18, 1997 deals with 'Disclosures of shareholding and control in a listed company'. Para 5.2, in particular, reads as follows:

"5.2 It may be mentioned that the existing provisions required disclosure by any person to the stock exchanges and the company. For operational ease, and to reduce the duplication of paper work, he would now be required to disclose his holding only to the company and the company in turn would be required to annually report the holdings of the persons to the stock exchanges. ***Additionally, the promoters or any person having control over the company will be required to disclose his holding to the company. The company will also be required to disclose the details of persons in control of the management and their shareholdings to all the stock exchanges immediately after the notification of the revised Regulations. Such information should be maintained in a separate register in the prescribed format and should be available for inspection.*** *Now that change in control would also trigger of a public offer, the latter requirement will provide supplemental evidence of change of control."*

35. The Annual disclosures to be made by a promoter to the company under Regulation 8(2) of the Takeover Regulations, 1997 and by the company to the stock exchange under Regulation 8(3) of the Takeover Regulations, 1997 were framed after taking into consideration the aforesaid recommendations of the Committee. I note that the Committee report explicitly refers to *'the promoters'*, though the language of the regulation 8(2) reads as *'A promoterorevery person having control over a company shall, within 21 days from the financial year ending March 31 …….'*. It is pertinent to mention here that there may also arise situations where promoters may not act in concert with one another.Thus taking all of the same into consideration, I conclude that the intent of the legislature was that each promoter was required to make disclosure of his holding to the company, and based on the same, the company was required to disclose the holding of the promoters to the stock exchanges. I, thus, conclude that the Noticees, as individual promoters of the company at the relevant point of time, were each *inter alia* required to disclose their holding to the company within 21 days from the financial year ending March 31 and the delay in filing under Regulation 8(1) and/ or 8(2) of the Takeover Regulations, 1997 is as established at para 32 above.

36. In this context, I would also like to rely on the observation made by the ***Hon'ble Supreme Court of India in K. P. Verghese Vs. Income Tax Officer, Ernakulam & another (1981) 3 SCC 173*** while dealing with interpretation on statutory provisions:

"*The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect*

instrument for the expression of human thought and as pointed by Lord Denning, it would be idle to expect every statutory provision to be drafted with devine prescience and perfect clarity. We can do no better than to repeat the famous words of Judge Learned Hand when he said:

..."it is true that the words used, in another literal sense, are the primary and ordinarily less reliable source of interpreting and meaning of any writing; be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning"

37. Now the next issue for consideration is whether the Promoter Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khataufailed to comply with provision of Regulation 11(2) read with regulation 14(1) of SEBI Takeover Regulations.The details of the transactions are as provided below:

Financial Year	Name of the promoter/ promoter group entity	Shares acquired	Non Compliance	Individual holding (in terms of shares and %)		Collective holding (in terms of %) (Promoter group)	
				Pre-Acquisition	Post-Acquisition	Pre-Acquisition	Post-Acquisition
1997-98	Mr. Rohan Khatau along with the PACs - 1	27,525 (11.05%)	Regulation 11(2) read with 14 of the Takeover Regulations, 1997	0	27,525 (11.05%)	99.95	99.95
2003-04	Alk Holding Pvt. Ltd. along with the PACs-2	40,000 (16.06%)		46,400 (18.63%)	59,900 (24.06%)	89.99	89.99
	Brinan InvestmentPvt. Ltd. along with the PACs-3			49,100 (19.72%)	61,600 (24.74%)		
	Jayalaxmi Holdings Pvt. Ltd. along with the PACs-4.			42,150 (16.93%)	56,150 (22.55%)		

PACs 1 - M/s. Alk Holding Pvt Ltd., M/s. Brinan Investments Pvt Ltd., M/s. Jayalaxmi Holdings Pvt Ltd, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau
PACs 2 - M/s. Brinan Investments Pvt Ltd., M/s. Jayalaxmi Holdings Pvt Ltd., Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau;

PACs 3 - M/s. Alk Holding Pvt Ltd., M/s. Jayalaxmi Holdings Pvt Ltd., Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau
PACs 4 - M/s. Alk Holding Pvt Ltd., M/s. Brinan Investments Pvt Ltd., Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau

38. It was alleged that the Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau have *inter alia* failed to comply with provision of Regulation 11(2) read with regulation 14(1) of SEBI Takeover Regulations, 1997 4 (four) times i.e., once in the year 1997-98 and thrice during the year 2003-04 by acquiring shares of the company during the said years.

39. I note that as per Regulation 11(2), as it existed at the relevant point of time i.e. during the acquisition made on 1997-98 and 2003-04, an acquirer together with persons acting in concert with him has acquired, in accordance with the provisions of law, 55% or more but less than 75% of shares or voting rights in a company, may acquire either by himself or through person acting in concert with him any additional shares or voting rights, only if he makes a public announcement for the same.I, thus, note that the obligation to make public offer under Regulation 11(2) of the Takeover Regulations, 1997 does not cover a situation where an acquirer, who together with persons acting in concert with him has acquired 75% or more of shares or voting rights of the company.In the present matter, the Noticees as promoters of the company were holding 99.95% of the shareholding in the year 1997-98 and 89.99% of the shareholding in the year 2003-04 at the time of the aforesaid transactions. I, thus, find that the total shareholding of the acquirers together with persons acting in concert was outside the limit prescribed under Regulation 11(2) of Takeover Regulations, 1997. In the matter, I note that in the case of *Eider e-CommerceLtd. Vs SEBI,* a similar question as to whether anacquirer who already holds *more than* 75% of the shares in a company, acquiresfurther shares in that company is required to make a public announcement toacquire such further shares in accordance with the Takeover Regulations, 1997, was before the Hon'ble Securities and Appellate Tribunal (SAT). The ***Hon'ble SAT in the said Order dated August 20, 2008Eider e-CommerceLtd. Vs SEBI*** has held that once an acquirer together with persons acting inconcert with him holds *more than* 75% in a company, then, if he were to acquireadditional shares, there is no requirement in the Takeover Code that he has tomake any public announcement, as Regulation 11 is not attracted in such asituation.Hence, without going into the merits of the matter, I find that the extant case cannot be covered by Regulation 11(2) of the Takeover Regulation, 1997.

40. The Noticees, I find, have referred to various case judgment with respect to the allegation of the failure to make an Open Offer under Regulation 11(2) of the Takeover Regulation, 1997. Since the allegation under Regulation 11(2) of the Takeover Regulations, 1997 stands abated against the promoter Noticees as on fact of the matter, I hence proceed without examining the case laws as submitted by the Noticees in the matter.

41. 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*.

42. 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 for the violation of Regulation 8(1) and/ or 8(2) of the Takeover Regulations, 1997, as applicable, against the Noticees, which reads as under:

15 A(b) of the SEBI Act, 1992 prior to SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)

If any person, who is required under this Act or any rules or regulations made thereunder,--
To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues.

15 A(b) of the SEBI Act, 1992 after SEBI (Amendment) Act, 2002 (w.e.f. 29-10-2002)

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

15.A(b)*If any person, who is required under this Act or any rules or regulations made thereunder,--*
To file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

43. 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:-

Factors to be taken into account by the adjudicating officer

15J. *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.

44. 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.

45. As per Section 15A (b) of the SEBI Act, prior to amendment dated October 29, 2002, the Noticee was liable to a penalty not exceeding Rs. 5,000/- for every day of default during which such default continues for failure to file any return or furnish information, books or documents within the time specified. With effect from October 29, 2002, 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. I also note that the ARs have confirmed that there was no past non-compliance of SEBI Act and Regulations by the Noticees and no action was taken by SEBI in the past against the Noticees.

46. I, however, note that the ***Hon'ble Securities Appellate Tribumal (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 no loss was caused to any investor as a result of the delayed disclosures of the acquisition and that there was no case of any investor grievance in connection with such filings is not relevant for the given case.

47. 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 there is no question of any gain or advantage that has accrued, let alone any disproportionate gain or unfair advantage and that the alleged delay was without any malafide intention is also not relevant for the given case.

48. 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 the company's shares on BSE, where the shares were listed, during the relevant period; and c) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations, 1997.

49. From the shareholding pattern for the quarter ended March 31, 2001 to March 31, 2010 as available on BSE website, I note that the paid up capital of the company was Rs. 24,90,000 comprising of 2,49,000 equity shares of Rs. 10/- each, of which the promoters held 2,48,875 shares representing 99.95% of the paid-up capital in March 2001 which gradually reduced to 1,85,375 shares representing 74.45% in the quarter ending June 2008 and continued as such till 2010. Further,

during the relevant period there were 127 public shareholders. From a perusal of the letter of Offer, I find that the shares of the company were deemed to be infrequently traded under the Takeover Regulations, 1997.

50. I note that the promoter Noticees viz. Alk, Brinan, Jayalaxmi, Mr. Rohan Khatau, Ms. MH Khatau, Mr. PH Khatau and Mr. HA Khatau have violated Regulation 8(2) of the Takeover Regulations, 1997 for 6 consecutive financial years from FY 1997-98 to FY 2002-03, 2 consecutive financial years FY 2004-05 and FY 2005-06 and subsequently again for 2 consecutive financial years FY 2008-09 and FY 2009-2010 (i.e. 10 times). Further, the promoter Noticees viz. Alk, Brinan and Jayalaxmi have also violated Regulation 8(1) of the Takeover Regulations, 1997 for 6 consecutive financial years from FY 1997-98 to FY 2002-03, 2 consecutive financial years FY 2004-05 and FY 2005-06 and subsequently again for 2 consecutive financial years FY 2008-09 and FY 2009-2010 (i.e. 10 times). Promoter Noticee Mr. HA Khatau has violated Regulation 8(1) of the Takeover Regulations for 6 consecutive years i.e. from FY 1997-98 to FY 2002-03. Promoter Noticee Mr. Rohan Khatau has violated Regulation 8(1) of the Takeover Regulations only for 1 year in the year 1997-98.

51. I further note that the Noticees have submitted that the shareholding of the Noticees with respect to the period in question was available on record in view of the disclosure made by the company with BSE under clause 35 of the Listing Agreement.In the matter, I would like to referto the ***Order of the Hon'ble Securities Appellate Tribunal (SAT) dated June 13, 2014 in the matter of M/s. Mafatlal Finance Company Limited (hereinafter referred to as 'MFCL'),*** wherein the Hon'ble SAT 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.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

52. After taking into consideration all the facts and circumstances of the case, I impose the following penalty against the Promoter Noticees under the provisions of Section 15A(b) of the SEBI Act for the violation of Regulation 8(1) and/ or 8(2) of the Takeover Regulations, 1997, as applicable:

Sr. No.	Promoter Noticee	Regulation violated	Penalty Amount
1	**M/s. Jayalakshmi Holdings Pvt. Ltd. (Amalgamated to M/s. Great View Properties Pvt. Ltd.)**	Regulation 8(1) of the Takeover Regulations, 1997 Regulation 8(2) of the Takeover Regulation 1997	**Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only)**
2	**M/s. Brinan Investments Pvt. Ltd. (Amalgamated to M/s Great View Properties Pvt. Ltd.)**	Regulation 8(1) of the Takeover Regulations, 1997 Regulation 8(2) of the Takeover Regulation 1997	**Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only)**
3	**M/s. Alk Holding Pvt. Ltd. (Amalgamated to M/s. Great View Properties Pvt. Ltd.)**	Regulation 8(1) of the Takeover Regulations, 1997 Regulation 8(2) of the Takeover Regulations, 1997	**Rs. 7,50,000/- (Rupees Seven Lakh Fifty Thousand only)**
4	**Mr. Rohan Khatau**	Regulation 8(1) of the Takeover Regulations, 1997 Regulation 8(2) of the Takeover Regulations, 1997	**Rs. 5,25,000/- (Rupees Five Lakh Twenty Five Thousand only)**
5	**Mr. HA Khatau**	Regulation 8(1) of the Takeover Regulations, 1997 Regulation 8(2) of the Takeover Regulations, 1997	**Rs. 6,50,000/- (Rupees Six Lakh Fifty Thousand only)**
6	**Mr. PH Khatau**	Regulation 8(2) of the Takeover Regulations, 1997	**Rs. 5,00,000/- (Rupees Five Lakh only)**
7	**Mr. MH Khatau**	Regulation 8(2) of the Takeover Regulation 1997	**Rs. 5,00,000/- (Rupees Five Lakh only)**

53. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the promoter Noticees.

54. Further,thecharge of violation of Regulation 8(1) of the Takeover Regulations, 1997 against the promoter Noticees viz. Ms. MH Khatau and Mr. PH Khatau is dropped. The promoter Noticee viz. Mr. Rohan Khatau stands absolved of theallegation of violation of Regulation 8(1) of the Takeover Regulations, 1997 for the entire period of allegation, except for 1997-98. The violation of Regulation

8(1) of the Takeover Regulations, 1997 against the promoter Noticee viz. Mr. HA Khatau does not stand established for the years 2003-04, 2004-05, 2005-06, 2008-09 and 2009-10. With respect to the allegation of non-disclosure under Regulation 8(1) and 8(2) of the Takeover Regulation, 1997 for the year 2003-04,all the Noticees are given benefit of doubt in the matter.

55. Further considering the facts and circumstances of the case as discussed at para 39 of the Order, I, however, do not find the instant matter fit for imposition of penalty under Section 15H(ii) of SEBI Act for violation of Regulation 11(2) read with 14(1) of the Takeover Regulations, 1997 against the promoter Noticees viz. M/s. Jayalaxmi Holdings Pvt. Ltd., M/s. Brinan Investments Pvt. Ltd., M/s. Alk Holding Pvt. Ltd. (amalgamated to M/s. Great View Properties Pvt. Ltd.),Mr. Rohan Khatau, Mr. MH Khatau, Mr. PH Khatau and Mr. HA Khatau.

56. The Noticees shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

57. 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: September 22, 2015 **Anita Kenkare**

Place: Mumbai **Adjudicating Officer**