

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/DPS/ 338-379/2018]

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:

- | | |
|--|---|
| 1. Suchitra Dhanani (PAN – ACTPD1159Q) | 22. Rohini S Udar (PAN-ABUPU9156E) |
| 2. Excellent Estate Developers Pvt Ltd (PAN-AAACE4152G) | 23. Shirin H Memon |
| 3. Bharat Equity Services Ltd (PAN-AAACB7732M) | 24. Ismail Hazi Abdulla Memon |
| 4. Liberty Construction & Leasing Pvt Ltd (PAN-AAACL3233H) | 25. Munawar Garbadawala (PAN-ABLPG0578R) |
| 5. Habibunisha Dhanani (PAN-ACTPD3112B) | 26. Shyamlal Bhaskar Pandit |
| 6. Kayum Dhanani (PAN-ABWPD8293M) | 27. Noormohmad Vohra |
| 7. Gulshan I Memon (PAN- ACPVD662G) | 28. Rekha R. Pandit |
| 8. Shamim Dhanani (PAN- AWFPS9591P) | 29. Aries Hotels Pvt Ltd (PAN- AABCA6743N) |
| 9. Shaji Nair | 30. Aalishan Computer System Pvt Ltd |
| 10. Subhash Pandit (PAN- AAZPP2160K) | 31. Rabia Razak Dhanani |
| 11. Abbas A. Shaikh (PAN-AGGPS2273K) | 32. Pradeep B Menon |
| 12. Abdul Razak Dhanani (PAN –ABWPD8290J) | 33. Nasim R. Dhanani (PAN-AQFPD5293R) |
| 13. Sadika Md I Memon (PAN- BKAPS4142Q) | 34. Suchitra S Udar (PAN – ACTPD1159Q) |
| 14. Mansoor I Memon (PAN- ARCPM9798A) | 35. Mohmed Md Ismail Memon |
| 15. Jamila S Dhanani (PAN – ACTPD1159Q) | 36. Navin R. Dhanani |
| 16. Havabai D Dhanani | 37. Sidika Md Ismail Memon (PAN-BKAPS4142Q) |
| 17. Anisha Dhanani (PAN- ACTPD3111C) | 38. Ahilya Hotels Ltd (PAN-AAECA6511D) |
| 18. Rajesh C. Modi | 39. Bipasha Dhanani (PAN-ABAPB0715C) |
| 19. Akitabonu Md Ismail Memon | 40. Shamim Sheikh (PAN- AWFPS9591P) |
| 20. Akshay S. Udar | 41. Rabiabai Dhanani |
| 21. Uday Dhanani | 42. Nasim Desai (PAN-AQFPD5293R) |

In the matter of M/s Sayaji Hotels Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has initiated adjudicating proceeding against the promoters of Sayaji Hotels Limited ("**Target Company**") namely, Suchitra Dhanani, (**the Noticee No. 1 / Suchitra**), Excellent Estate Developers Pvt Ltd, (**the Noticee No. 2 / Excellent**), Bharat Equity Services Ltd, (**the Noticee No. 3 / Bharat**), Liberty Construction & Leasing Pvt Ltd, (**the Noticee No. 4 / Liberty**), Habibunisha Dhanani, (**the Noticee No. 5 / Habibunisha**), Kayum Dhanani, (**the Noticee No. 6 / Kayum**), Gulshan I Memon, (**the Noticee No. 7 / Gulshan**), Shamim Dhanani, (**the Noticee No. 8 / Shamim**), Shaji Nair, (**the Noticee No. 9 / Shaji**), Subhash Pandit, (**the Noticee No. 10 / Subhash**), Abbas A. Shaikh, (**the Noticee No. 11 / Abbas**), Abdul Razak Dhanani, (**the Noticee No. 12 / Abdul**), Sadika Md I Memon, (**the Noticee No. 13 / Sadika**), Mansoor I Memon, (**the Noticee No. 14 / Mansoor**), Jamila S Dhanani, (**the Noticee No. 15 / Jamila**), Havabai D Dhanani, (**the Noticee No. 16 / Havabai**), Anisha Dhanani, (**the Noticee No. 17 / Anisha**), Rajesh C. Modi, (**the Noticee No. 18 / Rajesh**), Akitabanu Md Ismail Memon, (**the Noticee No. 19 / Akitabanu**), Akshay S. Udar, (**the Noticee No. 20 / Akshay**), Uday Dhanani, (**the Noticee No. 21 / Uday**), Rohini S Udar, (**the Noticee No. 22 / Rohini**), Shirin H Memon, (**the Noticee No. 23 / Shirin**), Ismail Hazi Abdulla Memon, (**the Noticee No. 24 / Ismail**), Munawar Garbadawala, (**the Noticee No. 25 / Munawar**), Shyamlal Bhaskar Pandit, (**the Noticee No. 26 / Shyamlal**), Noormohmad Vohra, (**the Noticee No. 27 / Noormohmad**), Rekha R. Pandit, (**the Noticee No. 28 / Rekha**), Aries Hotels Pvt Ltd, (**the Noticee No. 29 / Aries**), Aalishan Computer System Pvt Ltd, (**the Noticee No. 30 / Aalishan**), Rabia Razak Dhanani, (**the Noticee No. 31 / Rabia**), Pradeep B Menon, (**the Noticee No. 32 / Pradeep**), Nasim R. Dhanani, (**the Noticee No. 33 / Nasim R**), Suchitra S Udar, (**the Noticee No. 34 / Suchitra S**), Mohmed Md Ismail Memon, (**the Noticee No. 35 / Mohmed**), Navin R. Dhanani, (**the Noticee No. 36 / Navin**), Sidika Md Ismail Memon, (**the Noticee No. 37 / Sidika**), Ahilya Hotels Ltd, (**the Noticee No. 38 / Ahilya**), Bipasha Dhanani, (**the Noticee No. 39 / Bipasha**), Shamim Sheikh, (**the Noticee No. 40 / Shamim Sheikh**), Rabiabai Dhanani, (**Noticee No. 41 / Rabiabai**) and

Nasim Desai, (**the Noticee No. 42 / Nasim**). All the Noticees collectively referred as '**Noticees / Promoters**'. Adjudication proceedings have been initiated against Noticee No. 1 for the alleged violations of regulations 7(1A), 11(1) and 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (**SAST Regulations, 1997**) read with regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**SAST Regulations, 2011**) and also for the violations of regulation 13(3) of SEBI(Prohibition of Insider Trading) Regulations, 1992 (**PIT Regulations, 1992**) read with regulation 12 of SEBI(Prohibition of Insider Trading) Regulations, 2015 (**PIT Regulations, 2015**). Noticees No. 2 to 28 for the alleged violations of regulations 7(1A), 11(1) and 11(2) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011, Noticees No. 29 to 37 for the alleged violations of regulations 7(1A) and 11(2) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011 and Noticees No. 38 to 42 for the alleged violations of regulations 7(1A) and 11(1) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer under section 15I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') vide order dated April 25, 2016, to inquire into and adjudge under section 15A(b) and 15H(ii) of the SEBI Act for aforesaid alleged violations against the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2017/272/1 dated January 4, 2017 (hereinafter referred to as "**SCN**") was served upon the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty

be not imposed under section 15A(b) and 15H(ii) of the SEBI Act for the aforesaid alleged violation of SAST Regulations and PIT Regulations.

4. The core allegations levelled against the Noticees in the SCN, are mentioned hereunder;
5. SEBI had received the draft letter of offer filed by Raoof R. Dhanani (“Acquirer”) and Noticee No. 17 (“PAC”) to acquire 26% equity shares of the Target Company. During examination of the said draft letter of offer, SEBI observed certain non-compliances with regard to the SAST Regulations, 1997 (SAST Regulations, 2011) and PIT Regulations.
6. It was alleged that the Noticees / Promoters of the Target Company did not comply with the provisions of SAST Regulations, 1997, upon acquisition / sale of shares. The details of acquisition / sale of shares by the Noticee(s) are shown in table below:-

Name of the Acquirer	Period of Acquisition / Sale	Promoters’ Shareholding		Regulation applicable but not complied
		Before	After	
Late Sajid Dhanani	April - June 2005	45,09,578 (57.37%)	45,40,536 (57.77%)	11(2)
1. Late Sajid Dhanani 2. Noticee No. 1 3. Noticee No. 17 4. Noticee No. 29 5. Noticee No. 30	July - September 2005	45,40,536 (57.77%)	33,35,098 (42.43%)	7(1A)
1. Late Sajid Dhanani 2. Noticee No. 38	January - March 2006	31,90,552 (40.59%)	43,88,102 (51.11%)	7(1A) and 11(1)

7. Such details of the promoter group shareholding for the Quarters starting from March 31, 2005 till March 31, 2006 was provided as **Annexure – 2** along with the SCN.
8. Further, it was also alleged that the Noticee No. 1 had not disclosed about the change (i.e. her holding has come down from 7.63% to 2.54%) in its shareholding to the target

company and hence, allegedly had violated regulation 13(3) of PIT Regulations. The details of which are given below:-

	Quater ended June 30, 2005	Quater ended September 30, 2005	Disclosures required under PIT	Compliance Status
Noticee No. 1	600000 (7.63)	200000 (2.54)	13(3)	Not Complied

9. In view of the above, it was alleged that the Noticees had violated the provisions of SAST Regulations and PIT Regulations as mentioned in below table:-

Noticees	Provisions of alleged Violations
Noticee No. 1	Regulation 13(3) of PIT Regulations
Noticee No. 1 to 28	Regulation 7(1A), 11(1) and 11(2) SAST Regulations, 1997
Noticee No. 29 to 37	Regulation 7(1A) and 11(2) SAST Regulations, 1997
Noticee No. 38 to 42	Regulation 7(1A) and 11(1) SAST Regulations, 1997

10. The aforesaid alleged provisions are reproduced as under;

SAST Regulations, 1997

Acquisition of 5 per cent and more shares or voting rights of a company.

7(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) 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.

Consolidation of holdings.

11.(1) 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, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

(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:

Provided that no acquirer shall acquire shares or voting rights, through market purchases and preferential allotment pursuant to a resolution passed under section 81 of the Companies Act, 1956 or any other applicable law, which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise more than fifty five per cent of the voting rights in the company:

Provided further that if the acquirer has acquired shares or voting rights through such market purchases or preferential allotment beyond fifty five per cent of the voting rights in the company, he shall forthwith disinvest the shares acquired in excess of fifty five per cent and shall be liable for action under these Regulations and the Act.

Explanation.—In case of acquisition through preferential allotment the limit of fifty five per cent voting rights as provided under sub-regulation (ii) shall be reckoned with reference to the increased share capital pursuant to such preferential allotment.

PIT Regulations

Continual disclosure.

13(3) *Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if*

there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

11. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under section 15A(b) and 15H(ii) of the SEBI Act, which reads as follows:

Penalty for failure to furnish information, return, etc.

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

(a) *.....*

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

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,—*

(i) *.....*

(ii) *make a public announcement to acquire shares at a minimum price; or*

12. In response to the SCN, the Noticee No. 1 vide letter dated January 20, 2017 and March 20, 2017, asked for extension of time to file her reply and on behalf of other Noticees as well. Noticee No. 38 vide letter dated May 2, 2017 filed reply on behalf of all the Noticees and submitted that it is representing all the Noticees in relation to the instant proceedings.

13. The key submissions/ reply of the Noticees vide reply dated May 2, 2017 towards the SCN are being reproduced below:-

- a) *We are the largest shareholder of Sayaji Hotels Limited among the Noticees and majority of the Noticees are from the promoter group, we are representing all the Noticees in relation to the proceedings arising out of the captioned Notice.*
- b) *In respect of acquisitions and sales made during the period of April, 2005 to March, 2006 (collectively, the "Transactions"), at paragraphs 4 to 7 of the Notice, following violations*

have been alleged, and it is alleged the Noticees are liable for monetary penalty under Section 15A(b) and 15 H(ii) of the SEBI Act, as the case may be:

- i) **Allegation 1:** the alleged violation of Regulation 11(2) of the 1997 Takeover Regulations by Late Sajid Dhanani during the Relevant Period 1 (as defined below) for acquiring 0.40% equity share capital of the Company without making a public announcement to acquire shares or voting rights in the Company.*
 - ii) **Allegation 2:** the alleged violation of Regulation 7(1A) of the 1997 Takeover Regulations by Late Sajid Dhanani, Noticee 1, Noticee 17, Noticee 29, and Noticee 30, for not disclosing the sale of equity shares of the Company during the Relevant Period 2 (as defined below) to the Company and Stock Exchanges.*
 - iii) **Allegation 3:** the alleged violation of Regulations 7(1A) and 11(1) of the 1997 Takeover Regulations by Late Sajid Dhanani and Noticee 38, each acquiring more than 5% of the equity share capital of the Company without making a public announcement and disclosing the acquisition in accordance with the 1997 Takeover Regulations during the Relevant Period 3 (as defined below).*
 - iv) **Allegation 4:** alleged violation of Regulation 13(3) of the 1992 PIT Regulations by Noticee 1 for not disclosing the change in her shareholding in the Company during the Relevant Period 2 (as defined below) to the Company.*
-
- c) Relevant facts pertaining to the acquisitions and sales during the April, 2005 -March, 2006*
 - d) The equity shares of the Company were listed on BSE Limited ("BSE"), Vadodara Stock Exchange ("VSE"), Ahmedabad Stock Exchange Limited ("ASE"), Madhya Pradesh Stock Exchange ("MPSE") and under the permitted category on National Stock Exchange of India Limited ("NSE" together with BSE, VSE, ASE and MPSE referred to as the "Stock Exchanges"). Since the time of listing of the equity shares of the Company on the Stock Exchanges, the promoter group of the Company has (a) held a substantial portion of the issued and outstanding equity shares in the Company, and (b) been in "control" (as such term is defined under Regulation 2(1)(e) the SEBI (Substantial Acquisitions of Shares and Takeovers) Regulations, 2011) of the Company.*
 - e) As of March 31, 2005, the shareholding of the promoters in the Company was 57.37% of the equity share capital of the Company. During the period between April, 2005 - June, 2005 (the "Relevant Period 1"), Late Sajid Dhanani acquired 33, 108 shares and the promoter's shareholding changed to 57.77% of the equity share capital of the Company.*
 - f) Further, during the period between July, 2005 - September, 2005 (the "Relevant Period 2"), Late Mr. Sajid Dhanani, Noticee 1, Noticee 17, Noticee 29 and Noticee 30, sold equity shares of the Company such that the promoter's shareholding changed from 57.77% to 42.43% of the equity share capital of the Company.*
 - g) Additionally, during the Relevant Period 2, shareholding of Noticee 1 (on an individual basis) had changed from 7.63% to 2.54%.*
 - h) Further, during the period of January, 2006 - March, 2006 (the "Relevant Period 3"), there was further acquisitions of 6,00,000 and 7,25,000 equity shares by Late Sajid Dhanani and Noticee 38, respectively, changing the promoter's shareholding from 40.59% to 51.11 % of the equity share capital of the Company.*

- i) ***Allegation 1:*** the alleged violation of Regulation 11(2) of the 1997 Takeover Regulations by Late Mr. Sajid Dhanani during the Relevant Period 1 for acquiring 0.40% equity share capital of the Company without making a public announcement to acquire shares or voting rights in the Company.

Noticees were not 'Persons Acting in Concert'

- j) We understand that, in relation to Allegation 1 the Notice has been issued to Noticees 1 to 37 for being classified as "persons acting in concert". We humbly submit that Noticees 1 to 37 were not persons acting in concert with Late Mr. Sajid Dhanani. We further submit that given that Late Mr. Sajid Dhanani has passed away, there exists no cause of action against the Noticees in the instant case.

- k) It may be noted that the report issued by the Justice Bhagwati Committee dated January 18, 1997 provided the bright line test for PACs under the 1997 Takeover Regulations:

"to be acting in concert with an acquirer, persons must fulfil certain "bright line" tests. They must have commonality of objectives and a community of interests which could be acquisition of shares or voting rights beyond the threshold limit, or gaining control over the company and their act of acquiring the shares or voting rights in a company must serve this common objective. Implicit in the concerted action of these persons must be an element of cooperation. And as has been observed, this cooperation could be extended in several ways, directly or indirectly, or through an agreement - formal or informal" (emphasis supplied).

- l) Regulation 2(2) of the 1997 Takeover Regulations sets out categories of persons who shall be deemed to be persons acting in concert with other persons within the same category along with the caveat of "unless the contrary is established" and is consequently a rebuttable presumption.
- m) This position is consistent with SEBI's view in the SEBI order issued in the matter of acquisition of shares of S.A.L. Steel Limited by SAL Care Private Limited 1 and the informal guidance issued by SEBI in response to queries raised by MIS Massachusetts Mutual Life Insurance Company, where SEBI confirmed the position that the construct of deemed PACs as laid out in the 2011 Takeover Regulations as well as the 1997 Takeover Regulations, respectively, is a rebuttable presumption and the same can be rebutted on the basis of facts of each case/acquisition.
- n) SEBI in its order dated May 8, 2014 in the matter of Tailwinds Limited, Mr. Naresh Goyal, Ms. Anita Naresh Goyal and Etihad Airways PJSC, observed in relation to the definition of PAC under the 2011 Takeover Regulations held the following:
"It is settled position that the concept of PAC under Takeover Regulation is 'acquisition' specific and has to be determined on factual situations taking into account the commonality of objectives of the parties. Community of interest. etc. It is the conduct of the party rather than his status that decides the identity. It is also settled position that the applicability of Takeover Regulations needs to be objectively considered and not only on mere technicalities. Further, for the purposes of the Takeover Regulations, 2011 unless there is common shared

objective for acquiring shares/voting rights/control over the target company between two person, they cannot be termed as PACs" (emphasis supplied)

- o) *Further, the Securities Appellate Tribunal ("SAT"), in the matter of Alliance Capital Mutual Fund and Ors. v. SEBI, while emphasising on the requirement of a common objective for substantial acquisition of shares or voting rights or of gaining control over a listed Indian company in order for persons to be PACs, observed the following:*

"What is important is that they should have a common objective and that objective should be to acquire a substantial stake or control in the target company. Persons may acquire shares in a company with the object of making an investment to earn profits or they may acquire shares to have a substantial stake or control in that company. If the object is not to acquire a substantial stake or control. They would not be persons acting in concert with each other." (emphasis supplied)

- p) *Further, the Supreme Court in Daiichi Sankyo Company Ltd. v. Jayaram Chigurupati and Ors., while dealing with whether Daiichi and Ranbaxy were persons acting in concert on account of being a holding company and a subsidiary company held:*

"Two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of the substantial acquisition of shares of a target company they would not comprise 'persons acting in concert'...There can be no "persons acting in concert" unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares etc. of the target company. For, dehors the element of the shared common objective or purpose the idea of "person acting in concert" is as meaningless as criminal conspiracy without any agreement to commit a criminal offence. The idea of "persons acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition of substantial acquisition of shares etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sin qua non for the relationship of "persons acting in concert" to come into being" (emphasis supplied)

- q) *In this regard, it is submitted that Late Mr. Sajid Dhanani, while acquiring 0.40% equity share capital of the Company, acted alone and not jointly with others as PACs. The Noticees in question (Noticees 1 to 37) were in the following category of persons:(a) relatives of Late Mr. Sajid Dhanani, (b) current or previous employees of the Company, or (c) companies in which Late Mr. Sajid Dhanani was a shareholder. It is relevant to note that as of the date Noticees 24, 27, and 35 are deceased and Noticee 30 has been wound up.*

- r) *We submit that though there may be a presumption the promoter group entities, and relatives are PAC, but the said presumption, as elaborated in paragraphs L to N above, is rebuttable. Accordingly, during the Relevant Period I, there existed no commonality of objectives, community of interest for acquisition of shares or voting rights in the Company between Late Mr. Sajid Dhanani and the Noticees in question, extended, directly or indirectly, or through an agreement formal or informal. No evidence, in this regard has been adduced or relied upon in the Notice. The acquisition, was solely carried out by Late Mr. Sajid Dhanani, on an individual basis acting alone without any involvement pursuant to a common interest from the Noticees I to 37.*
- s) *We humbly submit that Noticees I to 37 were not persons acting in concert with Late Mr. Sajid Dhanani and there no course of action against the Noticees in question. We therefore humbly submit in the absence of the Notice relying on any cogent basis to substantiate the allegation made against the Noticees, the Notice itself is baseless and liable to be set aside.*

Spirit of Regulation 11(2) of the 1997 Takeover Regulations.

- t) *Even if it is assumed, though not admitted, that the Noticees were persons acting in concert with Mr. Sajid Dhanani, we submit that the Noticees have not violated the spirit of Regulation 11(2) of the 1997 Takeover Regulations.*
- u) *The proviso to Regulation 11(2) of the 1997 Takeover Regulations which permitted acquirers holding between 55% and 75% of the shares of a listed company to consolidate their shareholding through acquisitions of up to 5% of the target company's shareholding was inserted pursuant to the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008 (the "2008 Amendment"), which came into force on October 30, 2008. The SEBI Board Memorandum dated October 27, 2008 in relation to the 2008 Amendment (a copy of which is enclosed hereto as Annexure 2) indicates that the 2008 Amendment was enacted for the following reasons: (a) acquirers holding more than 51% were already in control of the target and consolidation of shareholding by them would not give them any additional benefit in terms of control; and (b) permitting acquirers holding more than 55% to consolidate their shareholding by acquiring shares from the market effectively provided an exit opportunity to the public shareholders through the market.*
- v) *Accordingly, the proviso to Regulation 11(2) of the 1997 Takeover Regulations was introduced permitting shareholders holding more than 55% of the shares of a listed company to consolidate their shareholding up to 5% if such acquisitions were: "(i) ...open market purchases in the normal segment of the stock exchanges but not through bulk deal/ block deal/negotiated deal/ preferential allotment..." The restriction that such creeping acquisitions should be only through open market transactions and not through negotiated transactions was introduced to ensure that all public shareholders have an equal opportunity to exit from a listed company (if they choose to do so) by selling their shares on the market to promoters making such creeping acquisitions.*

- w) *We respectfully submit that as the provisions of the 2008 Amendment were to supplement the 1997 Takeover Regulations and explanatory in nature, they operated retrospectively. The Supreme Court in S.S. Grewal v. State of Punjab and others (AIR 1994 SC 1232) has held that: "... it is a principle of statutory construction that a statute which is explanatory or clarificatory of the earlier enactment is usually held to be retrospective ...", and applied such principle in the context of a delegated legislation. The rationale for this principle of statutory construction was explained by the Supreme Court in Commissioner of Income Tax, Bombay v. M/s Podar Cement Private Limited (AIR 1997 SC 2523) in the following words: "...If a new Act is 'to explain' an earlier Act, it would be without object unless construed retrospective. An explanatory Act is generally passed to supply an obvious omission or to clear up doubts as to the meaning of the previous Act. It is well settled that if a statute is curative or merely declaratory of the previous law, retrospective operation is generally intended..." Citing the Supreme Court ruling in S.S. Grewal, the High Court of Himachal Pradesh held in Narain Singh v. State of Himachal Pradesh (2000 (3) Shim LC 103) that: "...insofar as the retrospective operation of statute law is concerned, explanatory or clarificatory statute or statutory rules or orders are to be read as part of the main statute/rules/orders and, as such, would operate retrospectively..."*
- x) *We understand that the transaction undertaken by Mr. Sajid Dhanani was for a 0.40% equity stake in the Company. Pursuant to the transaction, there was no change in control or management of the Company.*
- y) *In light of the retrospective operation of the 2008 Amendment, we humbly submit that the Transactions by Late Mr. Sajid Dhanani in the Relevant Period I did not breach the spirit of the proviso to Regulation 11(2) of the 1997 Takeover Regulations.*
- z) *It is further submitted that the acquisition of the equity shares during the Relevant Period I was an inadvertent action undertaken by Late Mr. Sajid Dhanani, and without the intention to violate any applicable law. With a view to rectify this inadvertent acquisition of equity shares, Late Mr. Sajid Dhanani divested his stake in the Company from 20.84% to 17.03% in order to bring the promoter shareholding below 55% in the immediate next quarter. At no time was Late Mr. Sajid Dhanani or Noticees I to 37 intending to be in non-compliance with applicable laws and regulations with respect to the acquisition of the equity shares. Accordingly, we humbly submit that the Noticees should not be liable to pay any monetary penalty under Section 15H(ii) of the Act.*
- aa) *We also request the Hon'ble Adjudicating Officer to note that Regulation 27 of the 1997 Takeover Regulations and Regulation 23 of the 2011 Takeover Regulations make a specific provision for withdrawal of an open offer, in the event an acquirer, being a natural person, dies. Given that, Late Mr. Sajid Dhanani has passed away, if any obligation existed in relation to an open offer for the acquisition made by Late Mr. Sajid Dhanani, the same stands withdrawn owing to his death.*

bb) It may also be noted, that even if the Hon'ble Adjudicating Officer were to decide that there was a breach of Regulation 11(2) of the 1997 Takeover Regulations, we submit that the parameters set out in Part IV should be taken into consideration by the Hon'ble Adjudicating Officer.

Allegation 2: *the alleged violation of Regulation 7(1A) of the 1997 Takeover Regulations by Late Sajid Dhanani Noticee 1, Noticee 17 and Noticee 29, for not disclosing the sale of equity shares of the Company during the Relevant Period 2 to the Company and Stock Exchanges.*

cc) To the best of the knowledge of the Allegation 2 Noticees', the Allegation 2 Noticees, were in compliance with Regulation 7(1A) of the 1997 Takeover Regulations in respect of the sale of equity shares during the Relevant Period 2 and had made the necessary disclosure and filings with the Stock Exchanges and the Company.

dd) Given that the Transactions took place more than 12 years ago, the concerned Noticees do not appear to have copies of the disclosures that would have been made in due course by said Noticees. In this regard it is relevant to note the following:

ee) Given that these communications were being made by fax, it would not be possible for the Allegation 2 Noticees to demonstrate or maintain records of such fax transmission which would have been done over 12 years ago

ff) In addition to the above, it may be relevant to note that Section 128(5) of the Companies Act, 2013 sets out that the books of accounts of a company and records need to be maintained for a period of eight financial years only. Given the importance of such documents to a company, it is worthwhile to note that the regulators and legislators have set out an eight years cut-off period. In this context, it would be harsh to penalize a company (the concerned Noticees) for not maintaining records of a fax that would have been sent across in the ordinary course by the Noticees;

gg) We would like to further submit that SEBI have not provided any substantiation or confirmation that the filing under Regulation 7(1A) of the 2011 Takeover Regulations was not made by the Allegation 2 Noticees. In this regard, it is relevant to note that the Supreme Court of India has observed that in the case of Nand kishor Prasad vs. State of Bihar¹³ that: "The minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take place of proof even in domestic enquiries."

In the matter of Sterlite v. SEBI¹⁴, the Hon'ble SAT has observed as follows:

"Evidence merely probabalising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of market manipulation. When such a serious offence is investigated and the charge is established, the

fall out of the same is multifarious. Mere conjunctures and surmises are not adequate to hold person guilty of such a serious offence."

- hh) At no point in time, the Allegation 2 Noticees intended to violate any provision of the 1997 Takeover Regulations and the same may have been a procedural irregularity, if at all.*
- ii) Based on the above, we submit that the allegations against the Noticees have not been established (leave alone established beyond reasonable doubt) and consequently, all allegations in the Notice should be set aside*
- jj) It may also be noted, that even if the Hon'ble Adjudicating Officer were to decide that there was a breach of Regulation 7(1A) of the 1997 Takeover Regulations, we submit that the parameters set out in Part IV should be taken into consideration by the Hon'ble Adjudicating Officer.*
- kk) **Allegation 3:** the alleged violation of Regulations 7(1A) and 11(I) of the 1997 Takeover Regulations by Late Sajid Dhanani and Noticee 38, each acquiring more than 5% of the equity share capital of the Company without making a public announcement and disclosing the acquisition in accordance with the 1997 Takeover Regulations during the Relevant Period 3.*
- ll) It is submitted that Late Mr. Sajid Dhanani, Noticee 38 and Noticees 39 to 42 were not "persons acting in concert" under Regulation 2(1)(e) of the 1997 Takeover Regulations. As set out in paragraphs 13 to 19 above, in order to prove a PAC, it is necessary to demonstrate that there was commonality of objectives, or community of interest for acquisition of shares or voting rights in the Company extended, directly or indirectly, or through an agreement formal or informal. No evidence, in this regard has been adduced or relied upon in the Notice.*
- mm) We humbly submit that Noticees 39 to 42 were not persons acting in concert with Late Mr. Sajid Dhanani and I or Noticee 38 and there exists no course of action against the Noticees in question on account of Late Mr. Sajid Dhanani's or Noticee 38's acquisition during the Relevant Period 3.*
- nn) We further submit the acquisitions undertaken by Noticee 38 were independent of Late Sajid Dhanani. We further submit that at no point Noticee 38 had any intention to breach Regulation 11(2) of the 1997 Takeover Regulations. Further, it is submitted that Noticee 38 acquired 7,50,000 equity shares through a preferential allotment undertaken by the Company. The Company being a listed company, the allotment and subsequent listing was of the equity shares allotted to Noticee 38 was done in accordance with the SEBI (Disclosure and Investor Protection) Guidelines, 2000 on the Stock Exchanges. The listing was approved by BSE vide its letter dated August 22, 2006, enclosed herewith as Annexure 3. If there would*

have been a non-compliance of the 1997 Takeover Regulations, the Stock Exchanges would have highlighted the same to the Company and/or Noticee 38.

oo) It may also be noted, that even if the Hon'ble Adjudicating Officer were to decide that there was a breach of Regulations 11(1) and 7(l A) of the 1997 Takeover Regulations, we submit that the parameters set out in Part IV should be taken into consideration by the Hon'ble Adjudicating Officer.

*pp) **Allegation 4:** violation of Regulation 13(3) of the 1992 PIT Regulations by Noticee I by not disclosing the change in her shareholding in the Company during the Relevant Period 2 to the Company.*

qq) To the best of the knowledge of the Noticee I, Noticee I, was in compliance with Regulation 13(3) of the 1992 PIT Regulations in respect of the sale of equity shares during the Relevant Period 2 and had made the necessary disclosure and filings with the Stock Exchanges and the Company.

rr) Given that the Transactions took place more than 12 years ago, the Noticee I does not appear to have copies of the disclosures that would have been made in due course by said Noticees. In this regard it is relevant to note the following:

ss) Given that these communications were being made by fax, it would not be possible for Noticee I to demonstrate or maintain records of such fax transmission which would have been done over 12 years ago;

tt) Given the importance of such documents in relation to a company, it is worthwhile to note that the regulators and legislators have set out an eight years cut-off period even for a company to maintain documents. In this context, it would be harsh to penalize an individual (the concerned Noticee) for not maintaining records of a fax that would have been sent across in the ordinary course by the Noticee;

uu) We would like to further submit that SEBI have not provided any substantiation or confirmation that the filing under Regulation 13(3) of the 1992 PIT Regulations was not made by Noticee I. In this regard, it is relevant to note that the Supreme Court of India has observed that in the case of Nandkishor Prasad vs. State of Bihar 13 that:

"The minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guilt of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take place of proof even in domestic enquiries."

In the matter of Sterlite v. SEBI (October 22, 2001), the Hon'ble SAT has observed as follows: "Evidence merely probabalising and endeavouring to prove the fact on the basis of preponderance of probability is not sufficient to establish such a serious offence of market

manipulation. When such a serious offence is investigated and the charge is established, the fall out of the same is multifarious. Mere conjunctures and surmises are not adequate to hold a person guilty of such a serious offence."

At no point in time, Noticee 1 intended to violate any provision of the 1997 PIT Regulations and the same may have been a procedural irregularity, if at all.

vv) Based on the above, we submit that the allegations against the relevant Noticees have not been established (leave alone established beyond reasonable doubt) and consequently, all allegations in the Notice should be set aside. It may also be noted, that even if the Hon'ble Adjudicating Officer were to decide that there was a breach of Regulation 13(3) of the 1992 PIT Regulations, we submit that the parameters set out in Part IV should be taken into consideration by the Hon'ble Adjudicating Officer.

14. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F(a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

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

15. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to all the Noticees on October 4, 2017 vide notice dated September 8, 2017. Noticee No. 38 (Ahilya) vide letter dated September 26, 2017 submitted, it has been authorised by 29 Noticees (i.e. Noticee Nos. 1 to 15, 17, 19 to 20, 22, 25, 29, 31,

33 to 34, 37 and 39 to 42), vide a letter dated 10.09.2017 ("Ahilya Authorisation Letter"), to represent them before the SEBI and do all such acts, deeds, matters and things as may be deemed necessary by Ahilya, in pursuance of the same. Noticee No. 38 also informed that 8 Noticees (i.e. Noticee Nos. 18, 21, 23, 26 to 28, 32 and 36) are non-traceable and have consequently not provided such authorisation to Ahilya, while 2 Noticees (i.e. Noticee Nos. 16 and 35) have passed away and provided the death certificates along with Ahilya Authorisation Letter. Noticee No. 38 also informed that Noticee No. 30 is a corporate entity and has been struck off from the register of companies and a copy of the master data from the MCA website was provided as an evidence. Further, it is also submitted that Noticee Nos. 1 & 34 are the same person, Noticee Nos. 8 & 40 are the same person, Noticee Nos. 33 & 42 are the same person, Noticee Nos. 24 & 35 are the same person, Noticee Nos. 31 & 41 are the same person and Noticee Nos. 13 & 37 are the same person.

16. Hearing on October 4, 2017 was attended by the authorized representative (AR) of the Noticee(s). AR reiterated as submitted in reply dated May 2, 2017 and submitted that they will be submitting within a week the proofs in their support that some of the Noticees are same person. The Noticee(s) vide email dated October 10, 2017 submitted the following:-

- A. It submitted the identity documents for certain promoters whose names have been repeated due to spelling error or change in marital status and such common persons as under :-
 - a) Noticee No. 1 (Suchitra Dhanani), Noticee No. 34 (Suchitra Udar) and Noticee No. 15 (Jamila S. Dhanani) are all the same individual and there has been a change in the names due to marriage and provided the documentary evidence.
 - b) Noticee No. 8 (Shamim Dhanani) and Noticee No. 40 (Shamim Sheikh) are the same individual and there has been a change in the name due to marriage and provided the documentary evidence.

- c) Noticee No. 33 (Nasim R. Dhanani) and Noticee No. 42 (Nasim Desai) are the same individual and there has been a change in the name due to marriage and provided the documentary evidence.
- d) Noticee No. 24 (Ismail Hazi Abdulla Memon) and Noticee No. 35 (Mohmed MD Ismail Memon) are same individuals. The father's name 'Abdulla Hazi' is present in the attached passport. The Noticee No. 24 / 35 is deceased as per available records.
- e) Noticee No. 13 (Sadika MD I Memon) and Noticee No. 37 (Sidika MD Ismail Memon) are the same individual and it is merely a spelling error in typing.
- f) Noticee No. 41 (Rabiabai Dhanani) and Noticee No. 31 (Rabia Razak Dhanani) are the same individual and there has been a change in the name due to marriage. The name 'Rabiabai' is used in her PAN card, and her husband's first name 'Razak' is used in her passport and provided the documentary evidence.

17.I have carefully perused the written submissions of the Noticees and the identity documents provided by the Noticee No. 38 (Ahilya) vide its reply dated May 2, 2017, September 26, 2017 and email dated October 10, 2017 and it is noted as under:-

- (a) Copy of Passport of Noticee No. 1(Suchitra Dhanani), copy of PAN card of Noticee No. 15(Jamila S. Dhanani) and copy of Passport of Noticee No. 34(Suchitra Udar). On perusal of the same I note that the Noticee No. 1, 15 and 34, father name and date of birth in all the three documents are same. Therefore it is clear that Noticee No. 1, 15 and 34 are same individual.
- (b) Copy of Aadhar Card of Noticee No. 8 (Shamim Dhanani) and Marriage Certificate of Noticee No. 8 with Salim Sheikh and copy of PAN card of Noticee No. 40 (Shamim Sheikh). On perusal of the same I note that the Noticee No. 8 and 40, father name in all the documents are same. Therefore it is clear that Noticee No. 8 and 40 are same individual.
- (c) Copy of Marriage Certificate of Noticee No. 33 with Sujit Rameshchandra Desai and copy of PAN Card and Passport of Noticee No. 42 (Nasim Desai). On perusal of the same I note that Noticee No. 33 and 42, father name in all the documents are same. Therefore it is clear that Noticee No. 33 and 42 are same individual.

- (d) Copy of passport of Noticee No. 24 (Ismail Hazi Abdulla Memon) and copy of death certificate of Noticee No. 35 (Mohmed MD Ismail Memon). On perusal of the same I note that Noticee No. 24 and 35, father name in all the documents are same. Therefore it is clear that Noticee No. 24 and 35 are same individual.
- (e) In case of Noticee No. 13 (Sadika MD I Memon) and Noticee No. 37 (Sidika MD Ismail Memon) are the same individual and it is merely a spelling error in typing due to which the name has been repeated. Therefore it is clear that Noticee No. 13 and 37 are same individual.
- (f) Copy of PAN Card of Noticee No. 41 (Rabiabai Dhanani) and copy of Passport and Voter ID of Noticee No. 31 (Rabia Razak Dhanani). On perusal of the documents, I note that Noticee No. 31 and 41, Husband name and Date of Birth in all the documents are same. Therefore it is clear that Noticee No. 31 and 41 are same individual.
- (g) Further, I also note that Noticee No. 38 vide reply dated May 2, 2017 submitted that Noticee No. 24, 27 and 35 are deceased and vide letter dated September 26, 2017 had submitted the death certificates of Noticee No. 16 and 35. I note from above that Noticee No. 24 and 35 are also same individual. On perusal of the death certificates I note that Noticee No. 16 (Havabai D Dhanani) passed away on August 23, 2003, and Noticee No. 35 (Mohmed MD Ismail Memon) passed away on March 16, 2009. As the Noticee No. 38 had not provided the death certificate of Noticee No. 27, therefore, Noticee No. 38 (Ahilya) was asked to provide the documentary evidence. Noticee No. 38 vide email dated March 20, 2018, informed that *they have erroneously shown the Noticee no. 27 as deceased, however, that said Noticee was not traceable and requested to refer the authority letter submitted by the Ahilya Hotels Ltd. "Ahilya" at the time of personal hearing in which it corrected the mistake and mentioned that the Noticee no. 27 is not traceable.* Here, I note that In the matter of Padmalaya Telefilms Ltd. (November 2, 2006), the Hon'ble WTM, SEBI inter-alia held that "...Since the proceedings were initiated against the personal acts of omission of

a person who is no more alive to face the penalty, the proceedings against him are liable to be abated”. Further, in *Girijandini vs. Bijendra Narain* (AIR 1967 SC 2110), the Hon’ble Supreme Court, inter-alia observed that in case of personal action, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.

- (h) Noticee No. 38 vide reply dated September 26, 2017 submitted that Noticee No. 30 is a corporate entity which has been struck off from the register of companies and to that effect, provided a copy of the master data from the MCA website as an evidence. I have perused the data as available at MCA website and noted that the status of Noticee No. 30 (Aalishan Computer System Pvt Ltd) is shown as “struck off”. It is relevant here to mention section that the company is considered as “dissolved” upon struck off in terms of section 248 of Companies Act, 2013 (earlier as section 560 of Companies Act, 1956).
- (i) I also note that Noticee No. 38 (Ahilya) filed reply dated May 2, 2017 on behalf of all the Noticees and submitted that it is representing all the Noticees in relation to the proceedings arising out of the SCN. Pursuant to that Noticee No. 38 (Ahilya) vide letter dated September 26, 2017 submitted that it has been authorised by 29 Noticees (i.e. Noticee Nos. 1 to 15, 17, 19 to 20, 22, 25, 29, 31, 33 to 34, 37 and 39 to 42) and provided authorization letter on their behalf. However, during the course of hearing Noticee No. 38 could not produce the authority letter from 8 Noticees (i.e. Noticee Nos. 18, 21, 23, 26 to 28, 32 and 36) with the reason that these 8 Noticees were not traceable. I cannot ignore to mention that all the Noticees are part of the promoter group and the detailed reply had been received from all of them including the aforesaid 8 Noticees; and infact, the hearing Notices were delivered at last known address of the said 8 Noticees at the address - i.e. *C/o. M/s Sayaji Hotels Ltd. H-1, Scheme No. 54, Vijay Nagar, Indore – 425010 (M.P.)*.

18. In view of the above, the adjudication proceedings against Noticee No. 16, 24 and 35 are liable to be abated on account of their death and liable to be abated in respect of Noticee No. 30 on account of being struck off / dissolved. Hence the current proceedings is being proceeded against the Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33, 36, 38 and 39.

CONSIDERATION OF ISSUES AND FINDINGS:-

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

- I. Whether the Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33 and 36 had failed to comply with regulation 11(2) of SAST Regulations, 1997 and Noticee No. 1 to 14, 17 to 23, 25 to 28, 38 and 39 had failed to comply with regulation 11(1) of SAST Regulations, 1997?*
- II. If yes, then, does the violation, on the part of the Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33, 36, 38 and 39 attract monetary penalty under section 15H(ii) of the SEBI Act?*
- III. Whether the Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33, 36, 38 and 39 had failed to comply with regulation 7(1A) of SAST Regulations, 1997?*
- IV. If yes, then, does the violation, on the part of the Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33, 36, 38 and 39 attract monetary penalty under section 15A(b) of the SEBI Act?*
- V. Whether the Noticee No. 1 had failed to comply with regulation 13(3) of PIT Regulations, 1992?*
- VI. If yes, then, does the violation, on the part of the Noticee No. 1 attract monetary penalty under section 15A(b) of the SEBI Act?*
- VII. If yes, then, what would be the monetary penalty that can be imposed upon the Noticee(s)?*

20. I have perused the available records and replies of the Noticee(s) in respect of the allegations alleged in the SCN. From the available records and from the undisputed records of transactions carried out as alleged, it is observed that the promoter group /

Noticee(s) of the Target Company did not comply with the provisions of SAST Regulations, 1997 as mentioned below:-

Name of the Acquirer	Period of Acquisition / Sale	Promoters' group Shareholding		Regulation applicable but not complied
		Before	After	
Late Sajid Dhanani	April - June 2005	45,09,578 (57.37%)	45,40,536 (57.77%)	11(2)
1. Late Sajid Dhanani 2. Noticee No. 1 3. Noticee No. 17 4. Noticee No. 29 5. Noticee No. 30	July - September 2005	45,40,536 (57.77%)	33,35,098 (42.43%)	7(1A)
1. Late Sajid Dhanani 2. Noticee No. 38	January - March 2006	31,90,552 (40.59%)	43,88,102 (51.11%)	7(1A) and 11(1)

21. I further note that Systematics Corporate Services Ltd (Manager to the Offer) vide letter dated July 29, 2013 submitted the details of promoters' group shareholding for the Quarters starting from March 31, 2005 till March 31, 2006 which is available on records as **Annexure – 2** of SCN. In the said Annexure – 2 the Noticees are shown as Promoter Group as per the shareholding filed by the Target Company to BSE and SEBI.

22. In respect of allegations of regulation 11(2) of SAST Regulations, 1997 the Noticees submitted that Late Mr. Sajid Dhanani during the period April 2005 – June 2005 acquired 33,108 shares (0.40% equity share capital of the Company) without making a public announcement to acquire shares or voting rights in the Company. The Noticees submitted that they were not persons acting in concert with Late Mr. Sajid Dhanani and also stated that Late Mr. Sajid Dhanani has passed away and there exists no cause of action against the Noticees in the instant case. It is submitted by the Noticee(s), there existed no commonality of objectives or agreement for acquisition of shares between Late Mr. Sajid Dhanani and with them. The Noticee(s) stated that no evidence, has been adduced or relied upon in the SCN for the alleged acquisition of shares, as the

said transaction was solely carried out by Late Mr. Sajid Dhanani on an individual basis acting alone without any involvement pursuant to a common interest from the Noticees.

23. In respect of the contentions of the Noticees regarding common intention / commonality of objectives. I have taken into account regulation 2(1)(e) of the SAST Regulations 1997, regarding PAC, which is reproduced below :

“2(1)(e) —person acting in concert comprises,—

- (1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.*
- (2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :*
 - i) a company, its holding company, or subsidiary or such company or company under the same management either individually or together with each other;*
 - ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;*
 - iii) directors of companies referred to in sub-clause (i) of clause (2) and their associates;*
 - iv) mutual fund with sponsor or trustee or asset management company;*
 - v) foreign institutional investors with sub-account(s);*
 - vi) merchant bankers with their client(s) as acquirer;*
 - vii) portfolio managers with their client(s) as acquirer;*
 - viii) venture capital funds with sponsors;*
 - ix) banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer:*

Provided that sub-clause (ix) shall not apply to a bank whose sole relationship with the acquirer or with any company, which is a holding company or a subsidiary of the acquirer or with a relative of the acquirer, is by way of providing normal commercial banking services or such activities in connection with the offer such as confirming availability of funds, handling acceptances and other registration work;

- x) any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2 per cent*

of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2 per cent of the paid-up capital of the latter company.”

24. It is noted from Annexure 2 of SCN that Systematics Corporate Services Ltd (Manager to the Offer) vide letter dated July 29, 2013 submitted to SEBI and BSE the details of the promoter shareholding for the Quarters starting from March 31, 2005 till March 31, 2006 which includes the Noticee(s) as Promoter Group. The Noticees have not brought on records any evidence during the present adjudication proceedings to refute that they are not the Promoter Group. Moreover, the Noticee(s) had admitted in their reply that “majority of the Noticee(s) are from Promoter Group”.

25. Also, at this juncture, I would like to refer a judgment of the **Hon’ble Securities Appellate Tribunal (SAT)** in case of **Ram Piari & Ors vs SEBI (Appeal No. 484 of 2015 decided on 20.11.2017)** wherein it was observed as –

Para 23 “it is pertinent to note that the Adjudicating Officer has categorically mentioned in the impugned order that the appellants are part of the promoter group and have all along been making disclosures before the Stock Exchanges and SEBI as common promoter group. The appellants have not brought on record anything either before the Learned Adjudicating Officer or this Tribunal to point out that there were differences among the promoters in acquiring more than 5% shares either by Mr. Bikramjit Ahluwalia or by any other Promoter. Therefore, the contention of the appellant as regards non-meeting of minds in the acquisition of shares in violation of SAST Regulation cannot be countenanced”.

Para 34 “It is, thus, pertinent to note that an “Acquirer” defined under Section 2(1)(b) includes a person acting in concert with the acquirer where the acquirer is a promoter and persons acting in concert with him are also promoters. There is a presumption in law that they are all acting in concert with each other unless the contrary is proved and this was what was held by this Tribunal

in its order in Rajesh Toshniwal's case after considering the judgement of the Hon'ble Supreme Court in Daiichi and K. K. Modi's case"

26. In view of the above, I conclude that as the Noticee(s) are the Promoter Group and 'Person acting in concert' / PAC. Therefore in absence of any rebuttal with evidence, it is presumed that the acquisition were made by the Noticee(s) as PAC. Therefore, the contention of the Noticees as regards non-meeting of minds in the acquisition of shares in violation of SAST Regulations cannot be accepted and reliance on report issued by the Justice Bhagwati Committee dated January 18, 1997, SEBI order dated May 8, 2014 in the matter of Tailwinds Limited, Mr. Naresh Goyal, Ms. Anita Naresh Goyal and Etihad Airways PJSC. Securities Appellate Tribunal ("SAT"), in the matter of Alliance Capital Mutual Fund and Ors. vs. SEBI (November 15, 2007), the Supreme Court in Daiichi Sankyo Company Ltd. v. Jayaram Chigurupati and Ors. (AIR 2010 SC 3089) is also not acceptable.

27. Noticees also submitted that, *"the proviso to Regulation 11(2) of the 1997 Takeover Regulations which permitted acquirers holding between 55% and 75% of the shares of a listed company to consolidate their shareholding through acquisitions of up to 5% of the target company's shareholding was inserted pursuant to the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008 (the "2008 Amendment"), which came into force on October 30, 2008". Further the transaction undertaken by Mr. Sajid Dhanani was for a 0.40% equity stake in the Company and there was no change in control or management of the Company. Noticees submitted that in light of the retrospective operation of the 2008 Amendment, the transactions by Late Mr. Sajid Dhanani in the Relevant Period did not breach the spirit of the proviso to Regulation 11(2) of the 1997 Takeover Regulations.* Here I note that the 2008 Amendment, came into force on the date of their publication in the Official Gazette i.e. from October 31, 2008, whereas the cause of action / allegation took place during the period April 2005 – June 2005. Therefore the above said contentions of the Noticees

are not acceptable. Moreover, said contention cannot be accepted as said amendment does not affect the requirement of public announcement as indicated in regulation 11(2) of SAST Regulations, 1997.

28. Here I note that the Noticees being the promoter group their shareholding as of March 31, 2005 was 57.37% of the share capital of the Target company and 33,108 shares (0.40%) equity share capital of the Target Company was acquired resulting into total 57.77% of the share capital of the target company.

29. I note that as per regulation 11(2) of SAST Regulations, 1997, if, an acquirer, who 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 the shares or voting rights in a 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 for the same. Therefore it is clear that if the person / PAC has already acquired 55% or more of the shareholding in the target company then for any further acquisition, they are required to make the public announcement for acquiring any number of shares. However, admittedly no public announcement has been made by the Noticee(s) in the present case.

30. Noticees also submitted that it was an inadvertent action undertaken by Late Sajid Dhanani and without the intention to violate any applicable law and with a view to rectify this inadvertent acquisition of equity shares, Late Mr. Sajid Dhanani divested his stake in the Target Company from 20.84% to 17.03% in order to bring the promoter shareholding below 55% in the immediate next quarter. The aforesaid submission is not acceptable in view of above observation of mandatory public announcement under regulation 11(2) of SAST Regulations, 1997. Therefore, the statutory embargo to the effect that the acquirer must make a public announcement to acquire any additional shares in accordance with the Regulation comes into operation which Noticee(s) / PAC have failed to comply with.

31. With regard to the alleged violation of Regulation 7(1A) and 11(1) of the SAST Regulations, 1997, it is noted from the records that during the period January – March 2006 the promoter group's shareholding had increased from 40.59% to 51.11% i.e. increase of 10.52% of equity share capital of the target company. I note that as per regulation 11(1) of SAST Regulations, 1997, states as, No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 % or more but less than 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, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.
32. Since it is established that the Noticee(s) while holding 40.59% during the period January-March 2006, had acquired additional 10.52% (which is more than 5% limit as specified in SAST Regulations) without making public announcement. Hence, it is concluded that while holding more than 15% but less than 55% of shares / voting rights, any acquisition of more than 5% in a financial year without making public announcement is in violation of regulation 11(1) of SAST Regulations, 1997. Admittedly, in this case the Noticees had acquired 10.52% (which is more than 5% limit) without making public announcement and therefore they have violated 11(1) of SAST Regulations, 1997.
33. Further, regulation 7(1A) of SAST Regulation clearly says that, any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) 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.

34. I have noted available records that the Noticees as a Promoter Group / 'acquirer' in terms of SAST Regulations, while already holding shares under regulation 11(1) of the SAST Regulations, had further acquired more than 2% shares in the target company without making any disclosures to the company / the stock exchange within the stipulated time. Therefore, failure to make the disclosure upon acquisition of more than 2% shares, is in violation of regulation 7(1A) of the SAST Regulations.
35. Noticee(s) submitted that they were not persons acting in concert and there exist no common intention / commonality of objectives, community of interest for acquisition of shares or voting rights in the Company. Further, Noticee(s) submitted that during the period Noticee No. 38 acquired 7,50,000 equity shares through a preferential allotment undertaken by the Company and Listing was approved by BSE without indicating any non-compliance of the SAST Regulations, 1997.
36. The aforesaid submission of the Noticee(s) are not acceptable as it has already been established that the Noticee(s) are the Promoter Group and hence PAC. By virtue of Promoter Group / PAC, they had acquired shares in violation of regulation 7(1A) of SAST Regulations, 1997. At this juncture, I would like to quote the order of the Hon'ble Supreme Court of India in *Swedish Match AB & Anr. Vs SEBI* dated 25.08.2004 wherein it was held that, *"..Indisputably, the purport and object of which a regulation is made must be duly fulfilled. Public announcement is at the base of Regulations 10, 11 and 12. Except in a situation which would bring the case within one or the other 'exception clause', the requirement of complying with the mandatory requirements to make public announcement cannot be dispensed with..."*. Therefore, the statutory embargo to the effect that the acquirer must make a public announcement to acquire any additional shares and disclosures in accordance with the Regulation comes into operation which Noticee(s) / PAC have failed to comply with.

37. With regard to the alleged violation of Regulation 7(1A) of the SAST Regulations, 1997 during the period July – September 2005, it is noted from the available records, the promoter group's shareholding had decreased from 57.77% to 42.43% i.e. decrease of 15.34% of equity share capital of the company. Noticees submitted that to the best of their knowledge, they had complied with Regulation 7(1A) of SAST Regulations, 1997 in respect of the sale of equity shares during the relevant period and had made the necessary disclosure and filings with the Stock Exchanges and the Target Company. They also submitted that the transactions took place more than 12 years ago and disclosures were made by fax. Noticee(s) also submitted that it would not be possible for them to demonstrate or maintain records of such fax transmission which would have been done over 12 years ago and does not have the copies of the disclosures that have been made. Noticee(s) also relied on Section 128(5) of the Companies Act, 2013 sets out that the books of accounts of a company and records need to be maintained for a period of eight financial years only.

38. I do not agree with the aforesaid contention of the Noticee(s) on the following grounds;

- i) Section 128(5) of the Companies Act, 2013 as relied by the Noticee is not applicable in the given case as the transaction involved are the independent transaction of the Noticees which requires them to make disclosures / public announcement and for these independent transactions, the plea of keeping records by the company is immaterial. Moreover, section 128(5) of the Companies Act deals with the books of account related to financial statement of the company which is completely different from the independent trades done by the Noticees.
- ii) The Noticees submission that they had made the disclosure to the company / stock exchange by Fax cannot be accepted in absence of any evidence to that effect. Moreover, if the Noticee had made the disclosures to the stock exchanges then they could have produced or could have sought confirmation from the stock

exchange of receipt of such disclosures. However, no such evidence have been collected or produced in these proceedings.

- iii) Therefore, just by sending the said disclosure by fax to stock exchange, Noticee(s) liability is not over. Here I also want to refer a judgement of **Hon'ble SAT** in case of Mega Resources Ltd vs SEBI (Appeal No. 49 of 2001 decided on 19.03.2002) wherein it was observed that,

"Mere dispatch of the information is short of the said requirement. If the requirement was only "to send", on sufficient proof of posting the letter would have in the normal course to some extent met with such a requirement. But Regulation 7(1) requires the acquirer to disclose the aggregate of his holding in the Target Company to the company. Sub regulation (2) prescribes the time limit within which the disclosure is required to be made. Therefore the crucial question is whether the requisite disclosure has been made by the Appellant. For the purpose it is necessary to know what is meant by "disclosure" in the sense in which it is used in the regulation. Disclosure is required to be made to the Target Company. "Disclose to the company" is the clue. "Disclose" according to Websters Encyclopedic Dictionary means - to make known, reveal or uncover to cause to appear, allow to be seen, lay open to view. According to Blacks Law Dictionary "Disclosure" means act of disclosing, revelation, the impartation of that which is secret or not fully understood. Disclose is to expose to review or knowledge anything, which before was secret, hidden or concealed. Thus the requirement is that the information should reach the person to whom it is meant. The obligation does not end by simply posting the information in a letterbox. The fact that the information should reach the target company is also evident from the provisions of regulation 7(2) which casts an obligation on the company to disclose to the concerned stock exchange the shareholding of persons covered under regulation 7(1) within seven days of receipt of the information from the acquirer. In view of the above I am not inclined to view that by posting a letter under certificate of posting, stating the shareholding by itself is sufficient compliance of regulation 7(1). In my view the Appellant has failed to comply with the requirement of regulation 7(1), for the reason that it has failed to make the disclosure of the requisite information to Bombay Dyeing".

39. In view of the above, it is established that Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33 and 36 had failed to comply with regulation 11(2) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011 for the period April – June, 2005, Noticee No. 1 to 14, 17 to 23, 25 to 28, 38 and 39 had failed to comply with regulation 11(1) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011 for the period January – March 2006. Also Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33, 36,

38 and 39 had failed to comply with regulation 7(1A) of SAST Regulations, 1997 read with regulation 35 of SAST Regulations, 2011 for the period July - September, 2005 and January – March, 2006.

40. It was alleged that the Noticee No. 1 had not disclosed to the target company about the change of her holding (viz change from 7.63% to 2.54%) during quarter ended September 2005 and hence, she had violated regulation 13(3) of PIT Regulations. The Noticee No. 1 submitted that to the best of her knowledge she made the necessary disclosure and filings with the Stock Exchanges and the Target Company. She also submitted that the regulators and legislators have set out an eight years cut-off period even for a company to maintain documents and it would be harsh to penalize an individual for not maintaining records of a Fax that would have been sent across in the ordinary course.

41. The aforesaid contention of the Noticee No. 1 are not accepted in view of the observation / analysis made by me at para 38 above which are not produced for sake of brevity. Thus it is established that, Noticee No. 1 failed to comply with regulation 13(3) of PIT Regulations.

42. In view of the aforesaid analysis / observations, the case laws relied upon by the Noticee(s) viz *Judgements of SAT – DSE Financial Services Ltd v SEBI* (Appeal No. 153 of 2012), *Delhi High Court judgement - Sunil Engineering Corporation v Union of India* (117(2005) DLT 525), and *Judgement of the Calcutta High Court - Bata India Ltd v. Special Director, Enforcement Directorate* are not helpful to the Noticee(s). Here I refer to the judgement of the Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) has also 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."*

43. In view of the aforesaid observation and established violations against the Noticee(s), it is a fit case for imposing monetary penalty upon the Noticee(s) under Section 15A(b) and 15H(ii) of the SEBI Act which read as follows:

SEBI Act:

Penalty for failure to furnish information, return, etc.

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

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

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,—*

(i)

(ii) make a public announcement to acquire shares at a minimum price; or

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

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

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

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default."*

45. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticee(s), the specific loss suffered by the investors due to such violations. It has been observed from the material made available on record that the Promoter group / PAC has failed to make public announcement twice, first for acquisition of 0.40% of share capital during the period April 2005 – June 2005 under regulation 11(2) of SAST Regulations, 1997 and second for acquisition of 10.52% of share capital during the period January 2006 – March 2006 under regulation 11(1) of SAST Regulations, 1997. Promoter group / PAC has failed to make disclosure to the stock exchange during the period July 2005 – September 2005 and January 2006 – March 2006 under regulation 7(1A) of SAST Regulations, 1997, when Promoter group had sold / acquired shares. Noticee No. 1 had also failed to disclose about the change in his holding when it shareholding has come down from 7.63% to 2.54% under regulation 13(3) of PIT Regulations. Noticee(s) / PAC being the promoter of a listed company, the Noticee(s) had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose. Noncompliance with disclosure requirements by a Promoter group of the listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.
46. In order to arrive at the monetary penalty in the instant case, I am inclined to compare the fact and circumstance of the instant case with those of Ram Piari (*supra*). After meticulous examination, it is observed that the numbers of shares / percentage acquired in the instant case is more when compared to case of Ram Piari (*supra*). I have noted that the Adjudicating Officer vide an order dated February 25, 2015 had imposed a monetary penalty of ₹ 2 Crores upon 18 entities for the similar violation (i.e. failure to make public announcement etc.) and the said order was upheld in appeal by the Hon'ble SAT on November 20, 2017 i.e. case of *Ram Piari (supra)*. I cannot ignore that incumbency required under the SAST Regulations to make the public announcement which in fact has been upheld by the Hon'ble Supreme Court as well as Hon'ble SAT as discussed above.

47. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that a justifiable penalty needs to be imposed upon the Noticee(s) to meet the ends of justice.

ORDER

48. After taking into consideration all the aforesaid facts and circumstances of the case, the mitigating factors mentioned above, I, hereby impose a penalty

Noticee(s)	Penalty Amount	Violations	Penalty under section of SEBI Act
<i>Noticee No. 1</i>	₹ 5,00,000/- (Rupees Five Lakh only)	<i>Regulation 13(3) of PIT Regulations, 1992.</i>	15A(b) of the SEBI Act
<i>Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33, 36, 38 and 39</i>	₹ 3,00,00,000/- (Rupees Three Crores only). The Noticee(s) shall be liable to pay the penalty jointly and severally.	<i>Regulation 11(1) and 11(2) of SAST Regulations, 1997.</i>	15H(ii) of the SEBI Act
<i>Noticee No. 1 to 14, 17 to 23, 25 to 29, 31 to 33, 36, 38 and 39</i>	₹ 10,00,000/- (Rupees Ten Lakh only) The Noticee(s) shall be liable to pay the penalty jointly and severally.	<i>Regulation 7(1A) of SAST Regulations, 1997.</i>	15A(b) of the SEBI Act

49. The Noticee(s) shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI – Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

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

Beneficiary A/c No.	31465271959
---------------------	-------------

50. The Noticee(s) shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the “Enforcement Department (DRA III) of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID - tad@sebi.gov.in.

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

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

DATE: MARCH 28, 2018

PLACE: MUMBAI

RACHNA ANAND

ADJUDICATING OFFICER