

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. AK/AO-135 to 182/2014]**

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

In respect of

**Mr. Natwarlal L Kanani (ADNPK4872E), Mr. Mayur N Kanani (AJFPK0765N), Mr. Kishorekumar Paun (ACTPP6428J), Mr. Vaju N Keshwala (BKSPK5468D), Ms. Asha N Kanani (ACYPK5067D), Mr. Mansukh Lal Laji Kanani (Deceased), Ms. Kirti Ben Paun (ADJPP9385R), Ms. Leena Paun (AEEPP0693L), Mr. Dinesh Bhai Paun (AEEPP7200H), Mr. Harish Bhai Paun (AEEPP7172E), Mr. Piyush Paun (ADJPP9387P), Mr. Chirag N Kanani (AJZPK0661M), Ms. Devkunvarben Paun (Deceased), Mr. Bhavesh Paun (ADDPP7269C), Mr. Rajul Paun (ADDPP7271N), Ms. Lalita Ben Paun (ADJPP9384Q), Mr. Milap Paun (ADJPP9388C), Mr. Rakesh K Paun (ADDPP7268D), Mr. Natwarlal Paun (AEEPP7171H), Mr. Nikunj Paun (AGPPP6195E), Mr. Mukund T Kotecha, Mr. Vinod G Kotecha, Mr. Anil T Kotecha, Mr. Manubhai T Kotecha, Mr. Tulshidas Vallabhadas Kotecha (Deceased), Ms. Radhaben Kotecha (Deceased), Mr. Anil C Thakrar, Mr. Jayendra G Kotecha (Deceased), Ms. Kantaben Kakubhai Thakrar (AAWPT3533D), Mr. Vipul Sureshbhai Kotecha, Mr. Uttambhai Kotecha (ADEPK4451E), Ms. Sudha H Thakrar (ABAPT0930H), Mr. Nalin Rasiklal Kanani (ACYPK5068N), Mr. Jitendra L Kanani (ADWPK6930G), Ms. Indumati Ben Paun (ADDPP7256R), Ms. Jayshri Ben Paun (AJYPP0617K), Ms. Pennaben Paun (ADJPP9382), Mr. Bharat Bhai Paun (AEEPP7170G), Mr. Harjivan Narandas Thakrar (AEFPD4245K), Mr. Devbhai Chagan Keshwala, Mr. Vajshibhai Chagan Keshwala, M/s. Kant Finance Private Limited (AABCK6817H), Ms. Vibha D Dattani, Mr. Bijal Natha Odedra, Mr. Rana Khimji Khunti, Mr. Rajen Rana Khunti, Mr. Bhima S Maher and Ms. Bharati Keshwala.**

In the matter of

M/s. Essen Supplements India Ltd. (now known as Square Four Projects India Ltd)

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**FACTS OF THE CASE**

1. An Offer document (letter of Offer) was filed with Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') by Mr. Ganesh Kumar Singhania and Ms. Anita Singhania (the Acquirers) to acquire 20.00% of the expanded subscribed equity share capital and 20.12% of the expanded voting share capital

of M/s. Essen Supplements India Ltd. (now known as Square Four Projects India Ltd.) (hereinafter referred to as **'the Company'**) at a price of Rs. 10/- per fully paid-up equity shares and Rs. 5/- per partly paid-up equity shares payable in cash. The public announcement for the same was made on October 20, 2010 and the shares of the company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as **'BSE'**), Ahmedabad Stock Exchange Ltd. (hereinafter referred to as **'ASE'**) and The Hyderabad Stock Exchange Ltd. (hereinafter referred to as **'HSE'**).

2. On perusal of the letter of offer (hereinafter referred to as **"LOO"**), SEBI observed that the erstwhile promoters of the company viz. Mr. Natwarlal L Kanani, Mr. Mayur N Kanani, Mr. Kishorekumar Paun, Mr. Vaju N Keshwala, Ms. Asha N Kanani, Mr. Mansukh Lal Laji Kanani, Ms. Kirti Ben Paun, Ms. Leena Paun, Mr. Dinesh Bhai Paun, Mr. Harish Bhai Paun, Mr. Piyush Paun, Mr. Chirag N Kanani, Ms. Devkunvarben Paun, Mr. Bhavesh Paun, Mr. Rajul Paun, Ms. Lalita Ben Paun, Mr. Milap Paun, Mr. Rakesh K Paun, Mr. Natwarlal Paun, Mr. Nikunj Paun, Mr. Mukund T Kotecha, Mr. Vinod G Kotecha, Mr. Anil T Kotecha, Mr. Manubhai T Kotecha, Mr. Tulshidas Vallabhdas Kotecha, Ms. Radhaben Kotecha, Mr. Anil C Thakrar, Mr. Jayendra G Kotecha, Ms. Kantaben Kakubhai Thakrar, Mr. Vipul Sureshbhai Kotecha, Mr. Uttambhai Kotecha, Ms. Sudha H Thakrar, Mr. Nalin Rasiklal Kanani, Mr. Jitendra L Kanani, Ms. Indumati Ben Paun, Ms. Jayshri Ben Paun, Ms. Pennaben Paun, Mr. Bharat Bhai Paun, Mr. Harjivan Narandas Thakrar, Mr. Devbhai Chagan Keshwala, Mr. Vajshibhai Chagan Keshwala, M/s. Kant Finance Private Limited, Ms. Vibha D Dattani, Mr. Bijal Natha Odedra, Mr. Rana Khimji Khunti, Mr. Rajen Rana Khunti, Mr. Bhima S Maher, Ms. Bharati Keshwala (hereinafter referred to as **'the Noticees/the erstwhile promoters'**) had failed to comply with provision of regulation 7(1A) read with 7(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations'**) during the years 2004 and/ or 2007, as applicable.

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned was appointed as the Adjudicating Officer vide Order dated August 08, 2013 under Section 15-I of SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') to inquire into and adjudge under Section 15A(b) of the Securities And Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), the alleged violations of Takeover Regulations.

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

4. A common Show Cause Notice No. EAD-6/AK/VRP/30723/2013/1 to EAD-6/AK/VRP/30723/2013/48 dated November 29, 2013 (hereinafter referred to as '**SCNs**') were issued to the Noticees under Rule 4(1) of Rules communicating the alleged violation of Takeover Regulations as detailed below:

Name of the Acquirer	Date of Transaction	Due date of compliance	Purchase	Shareholding of the Acquirers (in %)		Total Promoters Shareholding (in %)		Status
				Pre-acquisition	Post-acquisition	Pre-acquisition	Post-acquisition	
Noticees	31.03.2004	02.04.2004	2,98,704 (reclassification)	18.50	28.11	18.50	28.11	Not complied

It was further alleged in the said SCNs that the following two Noticees viz. Mr. Mayur N Kanani and Mr. Natwarlal L. Kanani, in addition to the aforesaid, had also failed to comply with provision of regulation 7(1A) read with 7(2) of Takeover Regulations during the year 2007, details of which are as given below:

Name of the Acquirer	Date of Transaction	Due date of compliance	Purchase	Shareholding of the acquirer (in %)		Total Promoters Shareholding in %		Status
				Pre-acquisition	Post-acquisition	Pre-acquisition	Post-acquisition	
Mr. Mayur Kanani & Mr. Natwar Lal L. Kanani	15.02.2007	17.02.2007	1,29,200 (Off-Mkt) *	26.66	30.82	26.66	30.82	Not complied
Mr. Mayur Kanani	30.06.2007	02.07.2007	96,800 (Off-Mkt) **	30.82	33.93	30.82	33.93	Not complied

*\* During the year 2006-07, Mr. Mayur N Kanani & Mr Natwarlal L Kanani had acquired 62,500 Equity Shares at a price of Rs. 2.43 per share & 66,700 Equity Shares at a price of Rs. 15/- per share respectively from non-promoter shareholders in off market transactions for which no compliance was made by them.*

*\*\*During the year 2007-08, Mr. Mayur N Kanani had acquired 96,800 equity shares of the Company at a price of Rs. 15/- per share from non-promoter shareholder in Off-market transaction for which no compliance was made by him.*

5. The Noticees were called upon to show cause as to why an inquiry should not be initiated against them and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations. Subsequent to the same, one of the Noticees viz. Mr. Natwarlal L Kanani vide email dated December 14, 2013 acknowledged receipt of the SCN by him and the other Noticees/ erstwhile promoters. Further, since the matter pertained to the period 2004 and 2007, he requested time to revert with the details on behalf of all the Noticees.

6. Subsequent to the same, the Noticees viz. Mr. Natwarlal L. Kanani and Mr. Mayur N. Kanani vide letter dated January 09, 2014 submitted that they were in the process of consolidating the shareholding details of the promoter group and the same will be provided at the earliest. It was also stated therein that they were erstwhile directors of the company and they had resigned from the Board of the company with effect from February 18, 2010 and after resigning from the Board of the Company they ceased to be associated with the company. It was *inter alia* further submitted that intimations for the transactions mentioned in the SCNs were given to the company as required under Regulation 7(1A) and Regulation 7(2) of the Takeover Regulations, as such, they were under the impression that the same intimations and disclosures were made to the stock Exchanges by the person so authorized at the company, hence, they failed to look further in the matter. It was also submitted that since they were totally disconnected with the company for a long time, they were making their best efforts to collect the supporting documents. A passing reference to considering the settlement process through consent order was also made.
7. On January 22, 2014, the Noticees viz. Mr. Natwarlal L. Kanani and Mr. Chirag N Kanani along with Mr. S. Radha Krishna, Company Secretary and Mr. Venkata Ramana Rajavou, Company Secretary, Authorized Representatives (hereinafter collectively referred to as '**ARs**') came and requested the undersigned to conduct the hearing on behalf of the Noticees viz. Mr. Natwarlal L Kanani, Mr. Mayur N. Kanani and Mr. Chirag N. Kanani, since they happened to be in Mumbai. Earlier vide email dated January 17, 2014 received from the Noticee Mr. Natwarlal L. Kanani, it was communicated that the aforesaid persons would be appearing for hearing on January 22, 2014. Considering the old age of Mr. Natwarlal L Kanani, the request of the Noticees viz. Mr. Natwarlal L Kanani, Mr. Mayur N. Kanani and Mr. Chirag N. Kanani to conduct their hearing on the said date was acceded to on submission of the Authority Letters. During the hearing, the ARs vide letter dated January 22, 2014 submitted reply to the SCN on behalf of the Noticees viz. Mr.

Natwarlal L Kanani, Mr. Mayur N. Kanani and Mr. Chirag N. Kanani. Vide the said reply, it was *inter alia* submitted as under:

- 7.1. That they were the erstwhile promoter shareholders of the company holding in aggregate 18.50% of the total shareholding of the company till March 31, 2004;
- 7.2. That during the year 2003-04, there was a reclassification in the Promoter group category. The company reclassified the promoter group shareholding by inclusion of a few public shareholders names in the promoter category. Due to such reclassification, the promoter group shareholding increased by 2,98,704 equity shares and the percentage shareholding from 18.50% to 28.11% i.e. an increase of 9.61%;
- 7.3. That there was no purchase or acquisition of shares by any of the promoters leading to increase in their individual shareholding. It was the promoter group holding which increased, hence the erstwhile promoters had not filed the necessary information under Regulation 7(1A) and 7(2) of the Takeover Regulations;
- 7.4. That there was no malafide intention or undue benefit in not making such disclosures. It was only due to lack of understanding or interpretation of the provision requiring submission of intimation;
- 7.5. That in the year 2006-07, 62,500 equity shares were acquired at a price of Rs. 2.43 per share and 66,700 Equity shares at a price of Rs. 15/- per share respectively from non promoter shareholders. Further, in the year 2007-08, Mr. Mayur Kanani had acquired 96,800 equity shares at a price of Rs, 15/- per share from the non promoter shareholders in off market transaction. That the acquisition, as such, was made to provide an exit for the non promoter shareholders to offload their shares. As the market price was Insignificant and lower than the face value of the shares, the Shareholders had approached them for exit. Further that there was no direct or indirect undue monetary gain or financial benefit out of such acquisition;

- 7.6. That the non compliance was only due to inadvertence and lack of understanding of provision and there was no malafide intention or undue advantage or monetary benefit out of the transaction.
8. Further the ARs submitted that they would make further submission by February 25, 2014. The Noticee Mr. Natwarlal L. Kanani vide undated letter received on March 12, 2014 on behalf of himself and all the other Noticees *inter alia* submitted as under:
- 8.1. That the company was promoted by them and an Initial Public Offering (IPO) was made in the year 1994 to get the shares listed on the stock exchanges. That there had been no change in the share capital of the company from that date till July 24, 2009. The company was thereafter sold to Mr. Ganesh Kumar Singhania and Ms. Anita Singhania, pursuant to allotment of equity shares on Preferential Basis for 20,00,000 fully paid-up equity shares and Share Purchase Agreement (SPA) for 10,54,588 fully paid-up equity shares both dated July 24, 2009, and that they have had no relationship whatsoever with the company from that date onwards;
- 8.2. With regard to the allegation that they had not made a disclosure under Regulation 7(1A) for the acquisition of 2,98,704 shares, it was submitted that the increase was only due to reclassification of the promoters shareholding. It was submitted that there were some shareholders who were associates of the promoters and were holding shares, however, their names were inadvertently left out from the shareholding pattern filed with the Stock exchange under Clause 35 of the listing agreement and also under the disclosures made under Regulation 8(3) of the Takeover Regulations, hence, the Management, thought it fit to reclassify the promoter group shareholding by inclusion of the name of these shareholders, who were not shown in the promoter category, by including their name in the shareholding pattern. That there was no real increase in the promoter shareholding. Since Regulation 7(1A) requires a

disclosure to be made only when there are additional acquisitions and change in the shareholding by more than 2%, they did not make the necessary disclosure under Regulation 7(1A). However the change in the promoter shareholding due to the inclusion of these entities was reflected in the Shareholding Pattern filed with the stock exchanges for the relevant quarter;

- 8.3. That as regards the allegation that no disclosure was made for the acquisition of 1,29,200 shares by Mr Mayur Kanani and Mr Natwarlal Kanani on February 5, 2007, this pertains to two sets of transactions. Of the total number of shares acquired, 66,700 shares were acquired from Andhra Pradesh Industrial Development Corporation Ltd. (hereinafter referred to as '**APIDC**') at a price of Rs.15/- per share as per a previous agreement with APIDC. Since the company was making continuous losses and going through difficult time, there was no professional help, therefore disclosures were not made under Regulation 7(1A) of the Takeover Regulations, merely due to ignorance, however there was no change in the promoters during this period;
- 8.4. That as regards the allegation that no disclosure was made for the acquisition of 96,800 shares by Mr Mayur Kanani, it has been submitted that this was again an acquisition from APIDC at Rs. 15/- per share, their term lenders, as a condition precedent to the sanction of loan. Again since they did not have any professional help, the disclosures were not made under Regulation 7(1A) of the Takeover Regulations, merely due to ignorance. However, the change was reflected in the shareholding pattern filed by the company for the quarter ended March 31, 2007 and September 31, 2007 with BSE, which shows APIDC as one of shareholders holding more than 1% in the quarter ending March, 2007, while their name does not figure in the quarter ended September 31, 2007;
- 8.5. That the non-disclosures were only due to sheer ignorance of the requirements and not with any malafide intention;



- 8.6. That since the transactions mentioned in the show cause notice pertains to Shri Mayur Kanani, Shri Natwarlal Kanani, no action may be taken against the other promoters for the non filing of disclosures under Regulation 7(1A) of the Takeover Regulations.
9. An opportunity of hearing for the Noticees other than Noticees viz. Mr. Natwarlal L Kanani, Mr. Mayur N. Kanani and Mr. Chirag N. Kanani was granted on May 05, 2014. Accordingly, Ms Shailashri Bhaskar, Practicing Company Secretary along with Mr. Natwarlal L. Kanani appeared on behalf of the Noticees, except for the Noticees viz. Mr. Devbhai Changan Keshwala, Ms. Vibha D Dattani and Mr. Vajshibhai Chagan Keshwala.
10. During the course of hearing it was noted that in all there were 48 Erstwhile Promoters/ Noticees who had failed to comply with provision of Regulation 7(1A) read with 7(2) of Takeover Regulations during the year 2004, out of which hearings in respect of the Noticees viz. Mr. Natwarlal L Kanani, Mr. Mayur Kanani and Mr. Chirag Kanani were conducted on January 22, 2014. It was further noted that out of the remaining 45 Noticees, the following 5 Noticees viz. Mr. Mansukh Lal Laji Kanani, Ms. Devkunvarben Paun, Mr. Tulshidas Vallabhadas Kotecha, Ms. Radhaben Kotecha and Mr. Jayendra G Kotecha had passed away. The copies of the death certificate were submitted by Mr. Natwarlal L. Kanani vide undated letter that was received on March 12, 2014 on behalf of himself and the other Noticees. Also that 3 Noticees viz. Noticees Mr. Devbhai Chagan Keshwala, Ms. Vibha D Dattani and Mr. Vajshibhai Chagan Keshwala had not authorized Ms Shailashri Bhaskar, Practicing Company Secretary and/ or Mr. Natwarlal L. Kanani. Thus, leaving a balance of 38 Noticees, who had authorized Mr. Natwarlal L. Kanani and Mr. S. Radha Krishna, Practicing Company Secretary from Hyderabad. At the hearing, however, Mr. Natwarlal L. Kanani appeared along with Ms. Shailashri Bhaskar, Practicing Company Secretary (hereinafter referred to as '**the new ARs**') and provided a copy of no-objection certificate

from Mr. S. Radha Krishna, Practising Company Secretary. In view of the same, it was clarified to the ARs that the hearing shall be proceeded subject to the condition that the authority letters from all the 38 Noticees authorizing Mr. Natwarlal L. Kanani and Ms. Shailashri Bhaskar are submitted to the Adjudicating Officer. Mr. Natwarlal L. Kanani requested for a month's time to produce the fresh authority letters, since some of the entities were staying abroad. While acceding to the said request, it was clarified to the new ARs that in case the authority letters were not submitted within a month's time, the hearing conducted shall become null and void. The new ARs reiterated the submission made vide the undated letter filed by Mr. Natwarlal L. Kanani on behalf of himself and the other Noticees. At the hearing, the details of the re-classification of promoters share holding during the year 2003-04 were *inter alia* sought from the new ARs.

11. The Noticee Mr. Natwarlal L. Kanani vide undated letter received on June 05, 2014 furnished the revised authority letters from the 38 Noticees authorizing Mr. Natwarlal L. Kanani and Ms. Shailashri Bhaskar. Further, in addition to the 38 Noticees, the Noticee Ms. Vibha D Dattani also authorized Mr. Natwarlal L. Kanani and Ms. Shailashri Bhaskar to represent on her behalf in the matter. Thus, only two Noticees viz. Mr. Devbhai Changan Keshwala and Mr. Vajshibhai Chagan Keshwala neither personally appeared for the hearing, nor, authorized any representative on their behalf.
12. Vide the said undated letter received on June 05, 2014, the Noticee Mr. Natwarlal L. Kanani made further submissions, *inter alia*, as follows:
  - 12.1. That though they had sent a letter to Mr. Gautam Singhania, the present Managing Director of the company requesting to provide the documents pertaining to the reclassification of the holdings of certain promoters' from the public to promoters category, they had not received any reply from them till date;

- 12.2. That in the meantime, they were able to collect the copies of Certificate of Foreign Inward Remittance which reveal that the erstwhile promoters/ Noticees viz. Mr. Vibha D. Dattani, Mr. Bilal Natha Odedra, Mr. Rana Khimji Khunti, Mr. Rajen Rana Khunti, Mr. Bhima S. Maher, who were NRIs were allotted and holding shares of the company from the year 1994, i.e. before 1997, the year in which the Takeover Regulations were notified. Copies of the said Certificates of Foreign Inward Remittances were enclosed with the said letter. It was further stated that the Annual Report for the year 1995 of M/s. Kant Finance Pvt. Ltd., one of the Noticees, revealed that the Noticee viz. M/s. Kant Finance Pvt. Ltd. held 2,2,5000 shares from the year 1995. The copies of relevant pages of the Annual Report were enclosed with the said letter. Also, a declaration letter from the Noticee viz. Mr. Vaju N. Keshwala, declaring that Noticee viz. Ms. Bharti Keshwala, his daughter in law residing in United Kingdom, had purchased 500 shares of the company from the primary market at the time of the public issue in the year 1994 was enclosed;
- 12.3. It was submitted that since the shares were held by them before the year 1997, and were wrongly classified under the head 'Public', they were only reclassified and there was no further acquisition or increase to their holdings. It was further submitted that almost all of the erstwhile promoters/ Noticees, except M/s. Kant Finance Private Limited were Non-Resident Indians (NRIs) and since Clause 35 format at that point of time did not give the detailed individual break-up of the shareholding of every constituent of the Promoter Group, there was no manner in which these erstwhile promoters/ Noticees would have been aware that there was an error in the classification;
- 12.4. That there were no non-compliances of PIT and Takeover Regulations in the past by the Noticees and that no action has been taken by SEBI in the past against the Noticees;

- 12.5. Further that the shares were under suspension, the company was making huge losses during that time and the non disclosure was only due to sheer oversight, lack of professional help and ignorance and with no malafide intention.

### **CONSIDERATION OF ISSUES AND FINDINGS**

13. I have carefully perused the written submissions wherever submitted by the Noticees, the facts put forth during the hearing and the documents available on record. The issues that arise for consideration in the present case are:
- 13.1. Whether the Noticees, being part of the erstwhile promoter group, were required to disclose the change in their shareholding pursuant to the reclassification done on March 31, 2004 to the company and to the stock exchange under Regulation 7(1A) read 7(2) of the Takeover Regulations?
- 13.2. Whether the Noticees viz. Mr. Natwarlal L. Kanani and Mr. Mayur N Kanani, in addition to the aforesaid disclosures required to be made in the year 2004, were also required to disclose to the company and to the stock exchange as required under Regulation 7(1A) read with 7(2) of the Takeover Regulations, the change in their shareholding due to acquisition of 1,29,200 shares made through off market transaction on February 15, 2007?
- 13.3. Whether the Noticee viz. Mayur N Kanani, in addition to the aforesaid disclosures required to be made in the year 2004, was required to disclose to the company and to the stock exchange as required under Regulation 7(1A) read with 7(2) of the Takeover Regulations, the change in his shareholding due to acquisition of 96,800 shares through off market transaction on June 30, 2007?
- 13.4. If so, whether Noticees had violated the provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations, as applicable?

- 13.5. Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15A (b) of SEBI Act?
- 13.6. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

## **FINDINGS**

14. Before moving forward, it will be appropriate to refer to the relevant provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations, which reads as under:

***Regulation 7 (1A) & (2) of Takeover Regulation, 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 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.*

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

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

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

15. I now proceed with the alleged violations of Takeover Regulations. In the instant case, I find that the allegation against the 48 Noticees/ the erstwhile promoters group is that they had not disclosed to the Company and to the Stock Exchanges their acquisitions/ reclassification of the shares of the company done in March 2004, as required under Regulation 7(1A) read with 7(2) of the Takeover

Regulations. I note that for establishing violation of Regulation 7(1A), an acquirer should have acquired shares or voting rights in a company under Regulation 11(1) of the Takeover Regulations. As per Regulation 11(1), as it existed at the relevant point of time, an acquirer together with persons acting in concert with him should hold more than 15%, but, less than 55% of shares or voting rights in a company. Thereafter the acquirers, being within the prescribed limit of shareholding of 15% to 55%, are required to disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company and to 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. In the present matter, during March 2004, the total promoter group held 18.50% before the alleged reclassification. Further, due to such reclassification, the promoter group shareholding increased by 2,98,704 equity shares and the percentage shareholding from 18.50% to 28.11% i.e. an increase of 9.61%. The same has been confirmed by the Noticees in their reply. Besides, I note that the Noticees were admittedly a part of the erstwhile promoter group. I further note that the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated 01.06.2012 in the matter Mr. Rajesh Toshniwal Vs. SEBI and Others has observed that:

*".....It is the basic principle of corporate law that promoter group is a homogenous class. It is the normal practice to club the entire promoter group into one class unless otherwise proved by the acquirer....."*

Therefore, since the change in the aggregate shareholding of the promoter group, due to such re-classification, being more than 2%, the 48 Noticees who were admittedly a part of the promoter group, were required to disclose the change in the shareholding to the company and to the stock exchange within two days from the date of acquisitions/ reclassification as required under Regulation 7(1A) read with 7(2) of the Takeover Regulations.

16. Similarly, the Noticees viz. Mr. Natwarlal L Kanani and Mr. Mayur N Kanani, in addition to the above were also required to disclose the change in their shareholding to the company and to the stock exchange within two days from the date of acquisition as required under Regulation 7(1A) read with 7(2) of the Takeover Regulations due to the acquisitions made by them in 2007.
17. As per the documents available on record, I find that a letter dated February 14, 2007 was sent by the erstwhile promoter Noticee Mr. Natwarlal L. Kanani to the Vice-Chairman and Managing Director of APIDC, putting on record the meeting held on February 14, 2007 between APIDC and Mr. Natwarlal L. Kanani, wherein it was decided to disinvest 1,63,500 equity shares held by APIDC in the company at Rs. 15/- per share amounting to Rs. 24,52,500/-. I further note from the said letter that it was agreed to pay the purchase consideration of Rs. 24,52,500/- as per the following schedule:
- Rs. 10 lacs within 10 days from the date of communication of the approval;
  - Rs. 5 lacs by April 30, 2007;
  - Rs. 5 lacs by May 31, 2007; and
  - Rs. 4,52,500/- by June 30, 2007.

It is further noted that payment of Rs. 10,00,500/- towards buy back of 66,700 shares of the company held by APIDC was made only on March 26, 2007, payment of Rs. 4,99,500/- towards buy back of 33,300 shares on April 28, 2007, payment of Rs. 4,99,500/- towards buy back of 33,300 shares on May 29, 2007 and payment of Rs. 4,53,000/- towards 30,200 shares on June 28, 2007. It is further observed from the copy of the transfer deed provided that 66,700 shares were to be transferred in the name of the erstwhile promoter Noticee Mr. Natwarlal L. Kanani and 96,800 shares in the name of the erstwhile promoter Noticee Mr. Mayur N. Kanani. However, it is noted that there is no date on the transfer deed. It is further noted from the contents of APIDC's letter dated September 05, 2007 that vide the said letter, APIDC transferred the share certificates for a total of 1,63,500 equity shares along with two duly filled in and

signed share transfer forms, for transferring 66,700 shares in favour of the erstwhile promoter Noticee Mr. Natwarlal L. Kanani and 96,800 shares in favour of the erstwhile promoter Noticee Mr. Mayur N. Kanani.

18. Thus, it is noted from the above that 66,700 shares were transferred by APIDC to the erstwhile promoter Noticee Mr. Natwarlal L. Kanani, which comprised 2.14% of the paid-up capital of the company. In addition to the same, 62,500 equity shares, comprising 2.01% of the paid-up capital of the company were acquired at a price of Rs. 2.43 per share in off-market by the erstwhile promoter Noticees viz. Mr. Natwarlal L. Kanani and Mr. Mayur N. Kanani. Thus, I note that Regulation 7(1A) read with Regulation 7(2) was triggered twice, one on acquisition of 66,700 shares by Mr. Natwarlal L. Kanani and again on acquisition of 62,500 shares by the erstwhile promoter Noticees viz. Mr. Natwarlal L. Kanani and Mr. Mayur N. Kanani. However, I note that the erstwhile promoter Noticees viz. Mr. Natwarlal L. Kanani and Mr. Mayur N. Kanani failed to make disclosure as required under Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations.
19. Also in addition to all of the above, the erstwhile promoter Noticee Mr. Mayur N. Kanani, was also required to disclose the change in his shareholding to the company and to the stock exchange within two days from the date of acquisition, as required under Regulation 7(1A) read with 7(2) of the Takeover Regulations, due to his acquiring 96,800 shares comprising 3.11% of the paid-up capital of the company from APIDC at Rs. 15/- per share through off-market transactions. However, I note that the erstwhile promoter Noticee Mr. Mayur N. Kanani failed to make disclosure as required under Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations even in respect of the said acquisition.



20. I find that the erstwhile promoter Noticee Mr. Mansukh Lal Laji Kanani had passed away on July 27, 1994, the erstwhile promoter Noticee Ms. Devkunvarben Paun had passed away on November 26, 2012, the erstwhile promoter Noticee Mr. Tulshidas Vallabhdas Kotecha had passed away in July 28, 2000, the erstwhile promoter Noticee Ms. Radhaben Kotecha had passed away in February 16, 2014 and the erstwhile promoter Noticee Mr. Jayendra G Kotecha had passed away on June 5, 2013. The copies of the death certificate in respect of the said Noticees were provided with the replies for perusal and records. Hence, the matter in respect of the 5 Noticees viz. late Mr. Mansukh Lal Laji Kanani, late Ms. Devkunvarben Paun, late Mr. Tulshidas Vallabhdas Kotecha, late Ms. Radhaben Kotecha and late Mr. Jayendra G Kotecha, initiated vide SCN dated November 29, 2013, cannot be proceeded with as the Noticees have passed away and, thus, the matter has become infructuous. Hence, the adjudication proceeding cannot be proceeded with against the aforesaid five (5) Noticees.
21. In respect of the Noticees viz., Devbhai Chagan Keshwala and Vajshibhai Chagan Keshwala, the SCNs were sent at the companies address; however, no reply was received from them. Thereafter, in the interest of principles of Natural Justice, an opportunity of hearing was also provided to the said Noticees on May 05, 2014 vide hearing notice dated April 10, 2014. However, the Noticees viz. Mr. Devbhai Chagan Keshwala and Mr. Vajshibhai Chagan Keshwala neither personally appeared for the hearing, nor, authorized any representative on their behalf. For the reasons mentioned above, I observe that the Noticees viz. Mr. Devbhai Chagan Keshwala and Mr. Vajshibhai Chagan Keshwala were provided with an opportunity to submit their reply/ to be heard, however, they failed to submit the reply/ appear for hearing. Hence, I am constrained to proceed with the matter in respect of the 2 Noticees viz. Mr. Devbhai Chagan Keshwala and Mr. Vajshibhai Chagan Keshwala ex-parte, taking into account the admissions made by the Noticee Mr. Natwarlal L. Kanani and material available on record.

22. I find that the erstwhile promoter Noticees vide their replies received on March 12, 2014 and June 05, 2014 *inter alia* have specifically admitted the alleged violation of Regulation 7(1A) read with 7(2) of the Takeover Regulations due to acquisition/ reclassification of their shareholding during March 2004, February 2007 and June 2007, as applicable. The erstwhile promoter Noticees, I find, have *inter alia* stated that the non-disclosure on their part was only due to inadvertence and lack of understanding of the provisions of the Takeover Regulations since they did not have any professional help, as the company was making continuous losses and going through difficult time, and that they did not have any malafide intention. Thus, it is established without doubt that the erstwhile promoter Noticees had violated the provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations due to acquisition/ reclassification of shares during 2004 and/ or 2007, as applicable.
23. 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."*
24. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:
- 15A. Penalty for failure to furnish information, return, etc.-**  
*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];*

25. While determining the quantum of monetary penalty under Section 15A(b), I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

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

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

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

26. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. The main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of the Takeover regulations is investor protection.

27. As per Section 15A(b) of the SEBI Act, the Noticees are liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee.
28. 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 the Exchanges during the relevant period; (c) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations; and (d) the percentage holding that was acquired by the Noticee promoters, as applicable, for which the Noticee promoters failed to comply with provision of regulation 7(1A) read with 7(2) of Takeover Regulations in 2004 and/ or 2007, as applicable.
29. From the BSE website, I note that the paid-up capital of the company was 31,08,900 equity share of Rs 10/- each aggregating Rs. 3,10,89,000/-. Further, as per the BSE website, there was no trading in the shares of the company during the relevant period. Out of the remaining 43 erstwhile promoter Noticees (excluding the 5 erstwhile promoter Noticees who had passed away), 41 Noticees (other than the Noticees viz. Mr. Natwarlal L. Kanani and Mr. Mayur N Kanani) had violated the provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations on one (1) occasion due to reclassification of the promoter group category in 2004, by which the promoter group holding increased by

9.61%. Further, as discussed in the earlier part of the Order, it is noted that the erstwhile promoter Noticees viz. Mr. Natwarlal L. Kanani and Mr. Mayur N Kanani have both violated the provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations on three (3) occasions each (one each in 2004 and twice in 2007). It is noted that Mr. Natwarlal L. Kanani and Mr. Mayur N Kanani were a part of the promoter group in March 2004, when the promoter group due to re-classification acquired 9.61%, however, failed to make the necessary disclosure under the provisions of Regulation 7(1A) read with 7(2) of the Takeover Regulations. In addition to the non-disclosure pursuant to reclassification of the promoter group in 2004, the erstwhile promoter Noticee Mr. Natwarlal L. Kanani did not disclose under Regulation 7(1A) read with 7(2) of the Takeover Regulations in 2007 on two occasions viz. 66,700 shares acquired from APIDC comprising 2.14% of the paid-up capital of the company and 62,500 shares comprising 2.01% of the paid-up capital of the company, jointly acquired with the other erstwhile promoter Noticee Mr. Mayur N. Kanani, from non-promoters through off-market. Similarly, in addition to the non-disclosure pursuant to reclassification of the promoter group in 2004, the erstwhile promoter Noticee Mr. Mayur N. Kanani did not disclose under Regulation 7(1A) read with 7(2) of the Takeover Regulations in 2007 on two occasions viz. 96,800 shares acquired from APIDC comprising 3.11% of the paid-up capital of the company and 62,500 shares comprising 2.01% of the paid-up capital of the company, jointly acquired with the other erstwhile promoter Noticee Mr. Natwarlal L. Kanani, from non-promoters through off-market.

30. Though the Noticees have claimed that the change in the promoter shareholding due to reclassification/ acquisitions were reflected in the Shareholding Pattern filed with the stock exchanges for the relevant quarter, I note that the disclosures under Regulation 7(1A) read with 7(2) of the Takeover Regulations are required to be made within two days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights, as the case may

be. The Noticees being the promoters of a listed company had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose so that the investors could take a decision whether to buy, sell, or hold the shares of the company. Non-compliance with the disclosure requirements by the Noticee promoters undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

### **ORDER**

31. After taking into consideration all the facts and circumstances of the case and material on records, I find that the matter against the following five (5) Noticees, viz. Late Mr. Mansukh Lal Laji Kanani, Late Ms. Devkunvarben Paun, Late Mr. Tulshidas Vallabhdas Kotecha, Late Ms. Radhaben Kotecha and Late Mr. Jayendra G Kotecha initiated vide SCN Ref: No. EAD-6/AK/VRP/30723/2013/6, EAD-6/AK/VRP/30723/2013/13, EAD-6/AK/VRP/30723/2013/25, EAD-6/AK/VRP/30723/2013/26, and EAD-6/AK/VRP/30723/2013/28 all dated November 29, 2013 cannot be proceeded with as the Noticees have passed away and, thus, the matter has become infructuous. Hence, considering the facts and circumstances of the case, I do not find the instant matter fit for imposition of penalty on the Noticees viz. Late Mr. Mansukh Lal Laji Kanani, Late Ms. Devkunvarben Paun, Late Mr. Tulshidas Vallabhdas Kotecha, Late Ms. Radhaben Kotecha and Late Mr. Jayendra G Kotecha in terms of Section 15A (b) of SEBI Act and dispose of the proceeding accordingly;
32. After excluding these five (5) Noticees who have passed away, on the remaining 43 Noticees viz. **Mr. Natwarlal L Kanani, Mr. Mayur N Kanani, Mr. Kishorekumar Paun, Mr. Vaju N Keshwala, Ms. Asha N Kanani, Ms. Kirti Ben Paun, Ms. Leena Paun, Mr. Dinesh Bhai Paun, Mr. Harish Bhai Paun, Mr. Piyush Paun, Mr. Chirag N Kanani, Mr. Bhavesh Paun, Mr. Rajul Paun, Ms. Lalita Ben Paun, Mr. Milap Paun, Mr. Rakesh K Paun, Mr. Natwarlal Paun, Mr. Nikunj Paun, Mr. Mukund T**

Kotecha, Mr. Vinod G Kotecha, Mr. Anil T Kotecha, Mr. Manubhai T Kotecha, Mr. Anil C Thakrar, Ms. Kantaben Kakubhai Thakrar, Mr. Vipul Sureshbhai Kotecha, Mr. Uttambhai Kotecha, Ms. Sudha H Thakrar, Mr. Nalin Rasiklal Kanani, Mr. Jitendra L Kanani, Ms. Indumati Ben Paun, Ms. Jayshri Ben Paun, Ms. Pennaben Paun, Mr. Bharat Bhai Paun, Mr. Harjivan Narandas Thakrar, Mr. Devbhai Chagan Keshwala, Mr. Vajshibhai Chagan Keshwala, M/s. Kant Finance Private Limited, Ms. Vibha D Dattani, Mr. Bijal Natha Odedra, Mr. Rana Khimji Khunti, Mr. Rajen Rana Khunti, Mr. Bhima S Maher and Ms. Bharati Keshwala, I impose a penalty of **Rs. 8,00,000/- (Rupees Eight Lakhs only)** under Section 15 A(b) of the SEBI Act, which will be commensurate with the violations committed by the Noticees for the acquisition/ reclassification done in 2004. The Noticees shall be **jointly and severally liable** to pay the said monetary penalty;

33. I further impose a penalty of **Rs.5,00,000/- (Rupees Five Lakhs only)** on the Noticees viz. **Mr. Natwarlal L Kanani and Mr. Mayur N Kanani** under Section 15 A(b) of the SEBI Act, which will be commensurate with the violations committed by them for the joint acquisition made by them in 2007. The Noticees viz. Mr. Natwarlal L Kanani and Mr. Mayur N Kanani shall be **jointly and severally liable** to pay the said monetary penalty;
34. I further also impose a penalty of **Rs.3,00,000/- (Rupees Three Lakhs only)** on the Noticee viz. **Mr. Natwarlal L Kanani** under Section 15 A(b) of the SEBI Act, which will be commensurate with the violations committed by him for the individual acquisition made by him in 2007.
35. I also impose a penalty of **Rs.3,00,000/- (Rupees Three Lakhs only)** on the Noticee viz. **Mr. Mayur N Kanani** under Section 15 A(b) of the SEBI Act, which will be commensurate with the violations committed by him for the individual acquisition made by him in 2007.

36. The Noticees shall pay the said amount of penalty amounts, as applicable, 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 Mr. V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
37. 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: August 27, 2014**

**Place: Mumbai**

**Anita Kenkare**

**Adjudicating Officer**