BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/MKG/AO/215/2018-19]

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. **Shri Ghanshyam Das Kankani (PAN: AFLPK2586B)**
2. **Shri Avinash Kankani (PAN: AILPK8921H)**
3. **Shri Abhay Baheti (PAN: ADEPB2646N)**
4. **MS. Madhu Lata Kankani (PAN: AFLPK2585C)**
5. **Shri Umesh Kankani (PAN: AKMPK8942R)**
6. **Sparton Leasing and Finance Ltd. (PAN: AAACS3597F)**
7. **Dwarika Investments Pvt. Ltd. (PAN: AAACD9731A)**
8. **Koraput Investments Pvt. Ltd. (PAN: AABCK2228A)**
9. **Western India Cements Ltd. (PAN: AAACW2577K)**

In the matter of Tirrihannah Company Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an examination in the matter of Tirrihannah Company Limited (hereinafter referred to as 'TCL/Company/Target Company'). The shares of TCL were listed in the Calcutta Stock Exchange Limited (hereinafter referred to as 'CSE'). SEBI observed certain non-compliances of SEBI (Substantial Acquisition

of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations') by promoters of TCL.

2. While examining the disclosure related violations in TCL it is observed that Mr. Ghanshyam Das Kankani and his associates (along with Late Ms. Lakshmi Baheti) have acquired 3,68,740 shares (26.42%) of the Target Company on November 07, 2007 by entering into Share Purchase Agreement (hereinafter referred to as "SPA") with erstwhile promoters of TCL. Further, Mr. Ghanshyam Das Kankani and his associates (along with Late Ms. Lakshmi Baheti) also took over 4 companies i.e. Sparton Leasing and Finance Ltd., Dwarika Investments Pvt. Ltd., Koraput Investments Pvt. Ltd. and Western India Cements Ltd. which were already holding 6,20,324 (44.44%) shares of the Target Company by way of agreements dated November 7, 2007. Pursuant to the above acquisitions, the Promoter Group of the Target Company comprised (i) Shri Ghanshyam Das Kankani (ii) Shri Avinash Kankani (iii) Shri Abhay Baheti (iv) Ms. Madhu Lata Kankani (v) Shri Umesh Kankani (vi) Sparton Leasing and Finance Ltd. (vii) Dwarika Investments Pvt. Ltd. (viii) Koraput Investments Pvt. Ltd. (ix) Western India Cements Ltd. (hereinafter referred to as Noticee Nos. 1 to 9 respectively or by their name or collectively referred to as Noticees) and Late Ms. Lakshmi Baheti. Further, total Promoter shareholding reached 9,89,064 shares (70.86% of total share capital of TCL). Since, the Noticees (along with Late Ms. Lakshmi Baheti) have collectively acquired more than 15% shares they were required to make disclosures in terms of Regulation 7(1) read with Regulation 7(2) of SAST Regulations. However, no disclosure was made by the Noticees (along with Late Ms. Lakshmi Baheti) in terms of Regulation 7(1) read with Regulation 7(2) of SAST Regulations to the TCL and CSE where the shares of TCL were listed.

3. Further, the Noticee 2 and 5 on September 15, 2009 together acquired 1,32,760 (9.51%) shares of TCL pursuant to this acquisitions, the shareholding of the promoter group increased from 9,89,064 shares (70.86%) to 11,21,824 shares

(80.37%) i.e. acquisition of more than 2%, which required the promoter group to make disclosures in terms of Regulation 7(1A) of SAST Regulations, to the company and to the stock exchange, for the aforesaid acquisitions. However, it is observed that no disclosure was made by the Noticees (along with Late Ms. Lakshmi Baheti) in terms of Regulation 7(1) and 7(1A) read with Regulation 7(2) of SAST Regulations to TCL and to CSE where the shares of TCL were listed.

4. Further, Regulation 22(16) of SAST Regulations stipulates that any acquirer who in pursuance of an agreement, acquires shares which along with his existing holding, if any, increases his shareholding beyond 15 per cent, then such agreement for sale of shares shall contain a clause to the effect that in case of non-compliance of any provisions of this Regulation, the agreement for such sale shall not be acted upon by the seller or the acquirer. It is observed that SPA which was entered into by the Noticees 1 to 5 (along with Late Ms. Lakshmi Baheti), dated November 07, 2007 does not contain the abovementioned clause. In view of the same, SEBI initiated adjudicating proceedings against the Noticees (along with Late Ms. Lakshmi Baheti).

APPOINTMENT OF ADJUDICATING OFFICER

5. Shri Suresh Gupta was appointed as the Adjudicating Officer, vide communiqué dated December 15, 2016, under Section 15-I of the 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'**) to inquire and adjudge under Section 15A(b) of the SEBI Act for the alleged violations committed by the Noticees (along with Late Ms. Lakshmi Baheti) and under 15HB of the SEBI Act for the alleged violations committed by the Noticees 1 to 5 (along with Late Ms. Lakshmi Baheti). Pursuant to the superannuation of Shri Suresh Gupta, undersigned has been appointed as the

Adjudicating Officer by the Competent Authority vide appointment order dated April 26, 2018 in the instant matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A common Show Cause Notice (hereinafter referred to as 'SCN') dated July 18, 2018 was issued to the Noticees (along with Late Ms. Lakshmi Baheti) under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticees (along with Late Ms. Lakshmi Baheti) and penalty, if any, be not imposed on them in terms of provisions of Section 15A(b) of the SEBI Act for the alleged violations of Regulation 7(1) and Regulation 7(1A) read with Regulation 7(2) of the SAST Regulations. Further, in the aforesaid SCN the Noticees 1 to 5 (along with Late Ms. Lakshmi Baheti) were also show caused as to why an inquiry should not be initiated and penalty, if any, be not imposed on them in terms of provisions of Section 15HB of the SEBI Act for the alleged violations of Regulation 22(16) of the SAST Regulations.

7. The Noticee 5, vide its letter dated August 02, 2018 submitted a common reply to the SCN on behalf of all the Noticees. The Noticees in the said letter *inter alia* submitted that:

"….

i. *We are in receipt of your Show Cause notice dated 18.07.2018 being no. SEBI/EAD/KS/MKG/20221/2018 wherein you have called upon us to Show Cause as to why an enquiry should not be held against us. Sir, we at the very outset would like to submit that we have already made a public announcement to the shareholders of Tirrihannah Company Limited in terms of the order dated 08.02.2018 passed by Smt. Madhabi Puri Buch for the same violation cited in your order dated 18.07.2018. However, we would still like to submit that the facts of the case and the corrective actions taken thereafter:-*

ii. *Facts of the case: -*

a) *SEBI received a complaint from one Mr. Vivek Bajoria alleging violations of Securities and Exchange Board of India (Substantial Acquisition of Shares and SASTs) Regulations, 1997 (SAST Regulations, 1997) in respect of our Company Tirrihannah Company Limited.*

b) *Based on the examination of the matters, SEBI had issued a Show Cause notice dated 07.02.2017 citing the non-compliances of SEBI (SAST) Regulations, 2011.*

c) *In reply to the above SCN, we replied vide letter dated 12.04.2017, a copy whereof is enclosed for your reference. You are requested to treat the contents of the said reply dated*

12.04.2017 a part of the reply to the show cause under reply as our detailed submission is made therein.

d) *After considering our submission, the adjudicating officer exercised his powers U/s 11, 11B read with Section 19 of SEBI Act, 1992 and Regulation 44 and 45 of the SAST Regulations, 1997 read with Regulations 32 and 35 of the SAST Regulations, 2011. Hence, an order was issued on 08.02.2018 directing us severally or jointly to make a public announcement to acquire the shares of Tirrihannah Company Limited in accordance with the provisions of the SAST Regulations, 1997 read with the corresponding provisions of the SAST Regulations, 2011 within a time period of 45 days from the date of order.*

e) *In compliance with the above order we came out with the public announcement and complied with the necessary provisions of SAST Regulations, 1997.*

iii. *Therefore, sir we would now like to bring to your kind self that we have already taken necessary steps for the violations cited in the latest notice on 18.07.2018. We have already come out with an open offer which we feel was not taken into consideration while issuing this notice.*

iv. *We request you to take into account all the corrective measures that has taken place in regard to the earlier order issued on 08.02.2018 and withdraw the current notice dated 18.07.2018.*

v. *Without prejudice or waiver to the aforesaid and relying upon the same I say as follows*

a) *Time was of essence in acquiring the shares of the Tea Estate as the lean period was approaching.*

b) *The present management were ignorant about the provisions of SEBI as none of them had any experience about managing a public limited company.*

c) *The Tea Estate was on the verge of closure as the liabilities stood over 21 crores in 2007 and the assets of the Tea Estate were worth between Rs.5-6 crores. The entire transaction was worth between Rs.6 to Rs.7 lacs as the shares were of a nominal value of 0.50 paise.*

d) *The noticees have not made any unfair gain or made undue advantage from the transaction.*

e) *No other shareholder of the company has made any complaint or has been prejudiced.*

f) *No loss has been caused to any investor group or shareholder as the value of the share was in the negative.*

g) *The violation was not repeated by the noticees.*

h) *The Bajoria's after taking benefit from the agreement file a suit before the Hon'ble High Court at Calcutta being C.S. No. 115 of 2010 which is still pending.*

vi. *The instant reply is being sent on behalf of all the addresses to show cause notice and I have been authorised by them.*

…."

8. As referred in its letter dated August 02, 2018, the Noticees vide letter dated April 12, 2017, to SEBI had *inter alia* made following submissions:

i. *Mr. Vivek Bajoria had made a complaint to SEBI alleging violations of the SEBI (Substantial Acquisition of Shares and Take Over) Regulations by promoters/owners of the Target Company. This fact has been stated in the notice issued by SEBI. It appears that the complaint was received by SEBI on 8th December, 2015.*

ii. *Mr. Ghanshyam Das Kankani took over the management of the company pursuant to a Share Purchase Agreement dated 7th November, 2007 from Mr. Vivek Bajoria and his family members.*

iii. *<u>BRIEF FACTUAL BACKGROUND -</u>*

a) *Tirrihannah Company Ltd. was incorporated on 4Th May, 1908 and the main business of the Company is tea plantation and tea processing. The Company has its tea garden at Terai Region of West Bengal, District Darjeeling. The Company was under the control of Bajoria family since 1950's.*
b) *The Company was owned, controlled and managed by Mr. Vivek Bajoria and his family members and was under their control until November, 2007. This fact has been stated by Mr. Vivek Bajoria in his complaint to SEBI. During this time, the Compaq suffered huge losses and financial liabilities due to mismanagement of Mr. Vivek Bajoria. The day to day management and affairs of the Company were in total disarray including arrest warrants being issued against its promoters and directors, litigations initiated by creditors of the Company and accumulation of statutory defaults and liabilities. In fact, all the shares of Mr. Vivek Bajoria and his family members were pledged with Allahabad Bank for securing the loan given by the bank to Mr. Vivek Bajoria and the company.*
c) *Sometime during the 3rd week of October, 2007, Mr Vivek Bajoria came to the office of Mr. Ghanshvam Das Kankani at 5, Kiran Shankar Roy Road, Kolkata-1 and requested him to take over the control and management of Tirrihannah Company Limited as the garden was on the verge of closure. No person from the Tea Industry was interested in taking over Tirrihannah Co. Ltd as the liability was over Rs.21 crores while the value of the garden was Rs. 5.5 crores approximately in 2006. The value of the shares was practically negative. Allahabad Bank was a major creditor (Rs. 12.5 crores) approximately. Mr Vivek Bajoria stated that various liabilities, summons, warrants, departmental enquiries, proceedings and litigations had been initiated and he was not able to meet the debts, liabilities and demands raised by the various statutory authorities and creditors.*
d) *Under the management of Mr. Vivek Bajoria, Tirrihannah Company Limited was a defaulter in respect of various statutory bodies such as Allahabad Bank, Income Tax, Sales Tax, Provident Fund, Tea Board, Agriculture Income Tax, Gratuity etc.*
e) *By a Board Resolution dated 2nd November.. 2007 Mr. Ghanshyam Das Kankani was inducted as one of the directors of Tirrihannah Company Limited. In pursuance to such sale and transfer of shares, Mr Vivek Bajoria handed over the control and management of Tirrihannah Company Limited along with physical possession of the Tea Estate. Time was of essence as the lean period was approaching in the tea industry (i.e December to February). There were 1300 plus personals directly dependent for their livelihood on the Tea Garden. Non-payment of wages and statutory dues during this period would have caused irreparable damage to the garden.*
f) *Eventually Mr. Ghanshyam Das Kankani agreed to acquire the Company and management and control from Mr. Vivek Bajoria on as is where basis through a Share Purchase Agreements dated 7th November, 2007. The shares were purchased @ .50 paisa per share.*
g) *Because of Mr. Vivek Bajoria's mismanagement, Mr. Kankani and his family members acquired a financially sick unit which was on the verge of closure. The Company was officially assigned as a "Non-Performing Asset" (NPA) by Allahabad Bank.*
h) *After taking over such control and management of Tirrihannah Company Limited, the new management incurred substantial expenses for settling various liabilities standing in the name of Tirrihannah Company Limited.*
i) *Various letters addressed to Mr. Vivek Bajoria inter alia, dated 27th August, 2008 and 19th September, 2008 record rampant illegal activities and statutory defaults which had taken place in the Company under Mr. Vivek Bajoria.*
j) *Due to the ardent hard work and good management of the tea estate by the new management the garden started recuperating.*
k) *Significantly, the new owners who took up the management of the company did not have any previous experience of the tea industry or the various statutory compliances involved in acquiring and managing a company.*
l) *The new owners also took over the responsibility of a debt of approximately Rs.21 crores.*

iv. *CONDUCT OF MR. VIVEK BAJORIA-*

a) *Mr. Vivek Bajoria was, according to his own complaint, the owner of and the major shareholder of the company till 2007. During his tenure the Company accumulated outstanding statutory liabilities including that of provident fund, bank loans, auctioneers payments, labour dues, electricity bills, Agricultural Income Tax which ran to several crores of rupees.*
b) *It was due to the acts of commission/omission of Vivek Bajoria and his family members that prevented us from complying with the SEBI regulations. Time was of essence to keep the garden running failing which there would have been permanent damage to the crops as well as factory as substantial funds were required to keep the garden and factory running.*
c) *Vivek Bajoria and his family members were responsible for the escalation of debts and financial burden of the company. After having realised that there was no other way to run the garden which was on the verge of closure, Vivek Bajoria and his family members sold the shares in violation of the SEBI laws and rules and regulations and was a party to the agreement. Bajoria was running the tea garden since the past 25 years until 2007 decades and was aware of the consequences of the breach of the SEBI laws. However, in order to save himself and his family members from penal action apart from financial liabilities. Bajoria and their family members sold the shares.*
d) *Mr. Vivek Bajoria at all material times was fully aware of and/or had knowledge of the requisite statutory obligations and compliances which had to be fulfilled by the Company at the relevant point of time. In fact, on several occasions Mr. Vivek Bajoria had assured Mr. Kankani and his family members that he would advise them of the statutory requirements which were to be complied with. Mr. Kankani solely depended on Mr. Vivek Bajoria for such advice and guidelines. Mr. Vivek Bajoria, however, failed to honour his obligations to the company and advise Mr. Kankani all the necessary steps to be taken pursuant to the acquisition.*
e) *Mr. Vivek Bajoria and his family members and companies controlled and managed by him were the sellers of the shares of the company Tirrihannah Company Limited in the several agreements dated 7th November, 2007 and was instrumental in completing the formalities involved therein. Although he was fully aware of the statutory implications including the requirements under SEBI and its connected Regulations, no steps were taken by Mr. Vivek Bajoria to comply with such requirements or ensure that Mr. Kankani and his family members (being the purchasers under the agreement) complied with the same. Mr. Vivek Bajoria was under a duty and an obligation to ensure that the Company which he had managed for 25 years and is now sold to Mr. Kankani, did not face any additional burden because statutory defaults.*
f) *Significantly, in 2010 Mr. Vivek Bajoria and his family members filed a suit in the Hon'ble High Court at Calcutta being C.S. No. 115 of 2010, inter alia, for delivery of shares of the Company from the present owners. The said suit is wholly malafide since Mr. Vivek Bajoria sought to cancel the agreement for sale of shares of the Company to the present owners (Mr. Kankani and his family members) on grounds which had no factual or legal basis. The present owners have filed pleadings and are contesting the suit and the said suit is pending as on date. Mr. Bajoria failed to get interim order as desired by him in his favour and had even failed to pursue the suit for the last several years.*
g) *In course of hearing of the matter, the Hon'ble High Court at Calcutta reprimanded the Bajorias for their conduct and opined that they cannot take advantage of their own wrong after benefitting from the agreement when the garden started doing.*

v. *<u>COMPLAINT FILED BY MR. VIVEK BAJORIA BEFORE SEBI</u>*

It is also significant that Mr. Bajoria filed the complaint before SEBI in December. 2015, eight years after the Share Purchase Agreements and after having taken full benefit of the transactions for sale of shares in the Company. The complaint contains factual misstatements and deliberately fails to disclose the correct and relevant facts. Mr. Vivek Bajoria has deliberately and with malafide intention failed to state that he was fully involved in the day to day operations of the Company even after the transaction in November, 2007 and was hence equally responsible for the alleged violation of SEBI Rules and Regulations.

It is obvious that the complaint filed by Mr. Bajoria is for the sole purpose of harassing the present owners and has been made with an entirely oblique motive. It is pertinent to mention that no other shareholder has raised any grievance against the new management.

vi. *EARLIER CORRESPONDENCE AND COMPLIANCE BY THE NOTICEES-*

a) *It is solely due to the efforts and hard work of Mr. Kankani and his family members that despite the seemingly insurmountable difficulties, the Company substantially regained its financial stability and could settle most of its statutory and other obligations including bank loans.*

b) *Pursuant to the complaint made by Mr. Vivek Bajoria SEBI issued a communication to the Company on 15th February. 2016 alleging violation of SEBI SAST Regulations. In the said communication, the Company was asked to furnish information pertaining to details of compliance done by the promoter group of the Company during 2007-2010 and various other details as would appear from the said communication.*

c) *The Company through its Managing Director, Mr. Ghanshyam Das Kankani duly replied to the above notice by a letter dated 17th April, 2016, dealing with the issues raised in SEBFs communication of 15th February, 2016. The present owners /promoters stated all relevant facts in the reply and admitted that they did not have the requisite experience at the time of acquiring the Company and was taking over the management of any company for the first time and are ready to provide any additional information which may be required by the Board.*

vii. *SAVING THE COMPANY AND THE LIVELIHOOD OF WORKERS-*

The new management settled the dues of Allahabad Bank under OTS for a sum of Rs. 5.35 crores and a no dues certificate was issued by the Bank in 2009. The bank released the pledged shares, as referred to under para 6 of the show cause notice dated 7th February, 2017 held by it in 2009 of Tirrihannah Company Limited in favour of the new management in terms of the agreements dated 7th November, 2007. Due to the continuous efforts and work put in by the present owners, the future of 1455 personals directly engaged in the garden including their family members and their continuing employment has been ensured.

9. In the interest of natural justice, an opportunity of hearing was provided to the Noticees on August 20, 2018 vide hearing notice dated August 07, 2018. The Noticee 5 vide email dated August 08, 2018 requested on behalf of all the Noticees to reschedule the date of hearing to August 27, 2018. The request was acceded to and the authorised representatives of the Noticees (hereinafter referred to as 'AR') i.e. the Noticee 2 attended the hearing on scheduled date and time. AR agreed to make additional submissions by August 31, 2018. The Noticee 5 vide email dated August 30, 2018 made additional submissions and *inter alia* submitted as under-

i. *The last trading in respect of the shares of Tirrihannah Company Limited in the Calcutta Stock Exchange was in the year 1997. It is also significant to mention that Tirrihannah*

Company Limited was suspended from the Calcutta Stock Exchange. In this regard a copy of the print out obtained from the website of the Calcutta Stock Exchange is enclosed herewith. We have written several letters to the Calcutta Stock Exchange with regard to the trading of shares of Tirrihannah Company Limited but have not received any reply from them.

ii. *The Sellers i.e. Mr. Vivek Bajoria and his family members had not complied with the provisions of listing with the Calcutta Stock Exchange and as such the company was suspended.*

iii. *With reference to the contents in paragraph 4 of the show cause notice, it is stated that the acquisition of shares (9.51%) on September 15, 2009 was the part of the same transaction in terms of the agreement dated 7thNovember, 2007 and the same is mentioned in the said agreement. The shares were pledged with Allahabad Bank whose dues were over Rs. 12 crores and the same was settled for Rs. 5.35 crores in 2009 and the payment was also made for which the shares were transferred.*

iv. *By letter dated 28th June, 2010 the Calcutta Stock Exchange was informed the facts under the Amnesty Scheme. In this regard the copy of the letter is enclosed herewith.*

v. *The noticees have complied with the direction passed by SEBI on February 8, 2018 and made a public offer. In this regard a certificate issued by Gretex Corporate Services Private Limited. It is pertinent to mention that only **400 shares** worth Rs.1200/- have been received out of **637375 shares** in the open market.*

vi. *It is respectfully submitted that no unfair trade practices or gains have been done or made by the noticees and no person or any investor of Tirrihannah Company Limited has suffered adversely due to the breach of relevant provisions.*

CONSIDERATION OF ISSUES AND FINDINGS

10. I have perused the written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

    (a) Whether the Noticees have violated the provisions of Regulation 7(1) & 7(1A) read with Regulation 7(2) of the SAST Regulations and the Noticees 1 to 5 have violated Regulation 22(16) SAST Regulations.

    (b) Does the violation, if any, attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act?

    (c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, which read as under:

SAST Regulations:

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

7. (1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(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.

(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.

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, with post acquisition shareholding or voting rights not exceeding fifty five per cent., in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

11. (2) No acquirer, who together with persons acting in concert with him holds, 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, shall acquire either by himself or through or with

persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-Regulation shall apply as if for the words and figures 'seventy-five per cent (75%)', the words and figures 'ninety per cent (90%)' were substituted.

Provided further that such acquirer may, notwithstanding the acquisition made under Regulation 10 or sub-Regulation (1) of Regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).

…

General Obligation of the acquirer

22. (16) If the acquirer, in pursuance of an agreement, acquires shares which along with his existing holding, if any, increases his shareholding beyond [15] per cent, then such agreement for sale of shares shall contain a clause to the effect that in case of non-compliance of any provisions of this Regulation, the agreement for such sale shall not be acted upon by the seller or the acquirer.

12. It is noted from the submissions of the Noticees that one of the Noticees viz. Smt. Lakshmi Baheti, had died on June 17, 2011. A copy of her death certificate has also been submitted. Considering the same, Adjudication proceedings against Late Ms. Lakshmi Baheti has been abated vide Adjudication order No. EAD-8/KS/MKG/AO/164/2018-19 on August 08, 2018. Therefore, I proceed to deal with the matter in respect of the other Noticees to the SCN.

13. I find that the facts of the case are not in dispute. Further, it is observed that the Noticees 1 to 5 (along with Late Ms. Lakshmi Baheti) have acquired 3,68,740 shares (26.42%) of the Target Company on November 07, 2007 by entering into SPA with erstwhile promoters of TCL viz. Mr. Vivek Bajoria and others. Further, I note from shareholding pattern of the TCL for the quarter ending on December 31, 2007, filed with stock exchange, that the Noticees (along with Late Ms. Lakshmi Baheti) have been shown as part of the promoter group. I also note from email of the Noticee 5 dated December 12, 2018 that he has confirmed that the promoter group companies (i.e. Noticees 6 to 9) are under the control of the promoter group.

14. I observe that the term “acquirer” is defined in SAST Regulations as any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer. I note that Noticees 1 to 5 (along with Late Ms. Lakshmi Baheti) have acquired 26.42% of paid up share capital of TCL on November 07, 2007. I also note that the Noticees 6 to 9 cumulatively held 44.44% of paid up share capital of TCL. Noticees 1 to 5 have admitted vide email dated December 12, 2018, that they acquired control of Noticees 6 to 9 on same day of their acquisition of 26.42% of shares of TCL. Pursuant to the above acquisitions, total shareholding of the acquirers (viz. Noticee 1 to 9) (along with Late Ms. Lakshmi Baheti) in TCL was 9,89,064 shares (70.86%) on November 07, 2007.

15. I note that in terms of regulation 7(1) of SAST Regulations, any acquirer who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed. In the present case, it is an undisputed fact that pursuant to the agreements dated November 07, 2007, the shareholding of the Noticees (along with Late Ms. Lakshmi Baheti) in the target company had increased from 0% to 70.86%. In this regard I note and rely on the observations made by the Hon'ble SAT In the matter of SPS Share Brokers Private Limited Vs. SEBI (Appeal No. 35 of 2013) that:

"…..it is evident that the mandatory requirement of disclosing relevant information at every single stage of the acquisition after the 5% benchmark is crossed, viz., ten percent or fourteen percent or fifty four or seventy four percent, was introduced only w.e.f. September 9, 2002."

Thus, I note that the holdings of the Noticees (along with Late Ms. Lakshmi Baheti) have crossed the threshold of fifty four per cent by their acquisition (direct or indirect), as stipulated in regulation 7(1) of the SAST Regulations. As a result, they were under an obligation to disclose the aggregate of their shareholding or voting rights in the Target Company to the TCL and to CSE in accordance with the timeline as prescribed under Regulation 7(2) of the SAST Regulations, which they have failed to make.

16. On September 15, 2009, The Noticee 2 & 6 (members of the promoter / promoter group) acquired 1,32,760 (9.51%) shares of TCL. As a result, the shareholding of the promoter group increased from 9,89,064 (70.86%) shares to 11,21,824 (80.37%) shares. In terms of regulation 7(1A) of the SAST Regulations, 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. In this regard, I would like to rely on the decision by the Hon'ble SAT in the matter Hon'ble Securities Appellate Tribunal ('SAT') in the matter of *Ravi Mohan & Ors. Vs SEBI (Appeal No. 97 of 2014, date of decision: December 16, 2015)* wherein it was *inter alia* observed that:

Argument of the appellants that they have not acquired shares of the target company under regulation 11(1) and hence regulation 7(1A) is not attracted is without any merit, because, regulation 11(1) does not prescribe any particular mode of acquiring shares but merely refers to acquisition of 15% or more but less than 55% of the shares by an acquirer together with persons acting in concert with him in accordance with the provisions of law. By referring to an 'acquirer' covered under regulation 11(1) in regulation 7(1A), it is made clear that an acquirer covered under regulation 11(1) i.e. an acquirer (either by himself or together with persons acting in concert with him) holding 15% or more but less than 55% shares of the target company when either by himself or together with persons acting in concert with him purchases or sells shares of the target company aggregating 2% or more of the share capital of the target company, then such acquirer shall make disclosure as provided under regulation 7(1A). Fact that the appellants in all these appeals held shares of the target company more than 15% but less than 55% in accordance with law as stipulated under regulation 11(1) is not in dispute. Therefore, appellants holding shares of the target company to the extent specified under regulation 11(1), when sold shares of the target company as persons acting in concert in excess of 2% of the share capital of the target company, were obliged to make disclosure under regulation 7(1A)."

I note that Regulation 7(1A) of the SAST Regulations is applicable to a transaction if the acquisition is in terms of Regulation 11(1) or under second proviso to Regulation 11(2). I find that Regulation 11(1) is applicable to an acquisition that falls between 15% and 55% of the shares or voting rights of a target company.

I also note that the second provision to Regulation 11(2) deals with a situation when public announcement is not necessary provided the acquisition is done through certain prescribed modes and the post-acquisition holding of the acquirer does not exceed 75% of the share or voting rights of a target company.

Considering the percentage of acquisition of the Noticees (along with Late Ms. Lakshmi Baheti) in the present matter, I find that the Noticees (along with Late Ms. Lakshmi Baheti) have already holding 70.87% of the share capital of the target company, crossing the upper ceiling of 55%, thus not fitting in the holding range as prescribed in Regulation 11(1) of the SAST regulations. Also, I note that the condition of acquisition under second proviso to sub-Regulation (2) of Regulation 11 was introduced in SAST Regulations with effect from November 06, 2009. Since, the impugned transaction took place on September 15, 2009, the condition of acquisition under second proviso to sub-Regulation (2) of Regulation 11 is not applicable to the present proceedings from this point of view also. I also do not find any clause in Regulation 7(1A) that makes the amendment applicable retrospectively. Therefore, second proviso to Regulation 11(2) is also not applicable to the present case as the acquisition is not in accordance with the modes prescribed thereat.

In view of the above, I find the additional acquisition of 9.51% shares of TCL by the Noticee 2 & 6 does not attract the provisions of Regulation 7(1A) warranting imposition of any penalty as the violation has not been established.

17. The Noticees 1 to 5 (along with Late Ms. Lakshmi Baheti) entered into SPA dated November 07, 2007 with erstwhile promoters of the company to acquire 3,68,740 shares (26.42%) of the Target Company. Regulation 22(16) of SAST Regulations stipulates that any acquirer who in pursuance of an agreement, acquires shares which along with his existing holding, if any, increases his shareholding beyond 15 per cent, then such agreement for sale of shares shall contain a clause to the effect that in case of non-compliance of any provisions of this Regulation, the agreement for such sale shall not be acted upon by the seller or the acquirer. Since post acquisition the shareholding of the Noticees 1 to 5 (along with Late Ms. Lakshmi Baheti) reached 26.42% i.e. more than threshold of 15% as prescribed in the Regulation 22(16) of SAST Regulations, therefore the aforesaid clause in accordance with said Regulation should find mention in the SPA. However, on perusal of SPA it is observed that SPA does not contain any such clause.

18. Further, I also note that separate proceedings were initiated by SEBI for the acquisition of 70.87% paid up share capital of TCL on November 07, 2007 and 9.51% shares paid up share capital of TCL on September 15, 2009 by the Noticees (along with Late Ms. Lakshmi Baheti) for acquiring shares without making any announcement of open offer. In this respect SEBI, vide a separate order dated February 08, 2018, held the violation of regulations 10, 11(2) and 12 of the SAST Regulations to be established against the Noticees (along with Late Ms. Lakshmi Baheti). Further, I also observe from the preceding paragraphs that the charges of violation of Regulation 7(1) of SAST Regulations against the Noticees (along with Late Ms. Lakshmi Baheti) are also established. In this regard, I note that Regulation 22(16) of the SAST Regulations casts an obligation on both the sellers and the acquirers not to act upon an agreement for sale in case of non-compliance of any provisions of SAST Regulations. Therefore, in terms of Regulation 22(16) of SAST Regulations, the Noticees (along with Late Ms Lakshmi Baheti) should not have acted upon the SPA as

they were aware that the acquisition of Target Company calls for certain compliance with the SAST Regulations. However, I note from the records that the Noticees (along with Late Ms Lakshmi Baheti) have admittedly acquired 26.42% shares of TCL on November 07, 2007 by acting upon the said agreement without complying with the relevant provisions of the SAST Regulations.

19. The Noticees in their submissions, have not disputed the allegations of violation of the provisions of SAST Regulations but stated that in November, 2007 when they had entered into agreements for the purchase of shares of TCL, they were ignorant about their obligations under the SAST Regulations, 1997. They also submitted that they had purchased the shares of TCL from Mr. Vivek Bajoria and others, who did not inform them about the requirement of ensuring compliance with SEBI laws. Further, they became aware of the requirements under SAST Regulations in the year 2010 when Mr. Vivek Bajoria and others filed a case against them in High Court of Calcutta. In this regard, I note that it is an established principle of law that ignorance of law is no excuse. In the instant case, the Noticees (along with Late Ms. Lakshmi Baheti) at the time of acquiring the shares of TCL were well aware that they were acquiring a listed company. Thus, before any such acquisition, they ought to have done the requisite due diligence including that pertaining to the laws applicable to such acquisition. The Noticees (along with Late Ms. Lakshmi Baheti) themselves were under an obligation to comply with the applicable provisions of law including the SAST regulations. 1997, and therefore, the argument that the sellers did not inform them about the requirements of SEBI laws, is devoid of any merit.

20. The Noticees have submitted that no other shareholder of the company has made any complaint or has been prejudiced and no loss has been caused to any investor group or shareholder as the value of the share was in the negative. In this context, I observe that Hon'ble SAT has consistently held that the

obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance with the mandatory obligation. In the matter of E-Ally Consulting (India) Pvt. Ltd. & Ors. Vs SEBI (Appeal No 203 of 2014, Hon'ble SAT had observed that: "*We see no merit in the above contentions. Obligations to make disclosures under Regulation 30 (1) and 30 (2) read with Regulation 30 (3) of SAST Regulations, 2011 is mandatory and is independent of the obligation to make the disclosures under the listing agreement. Similarly, fact that proper advise was not there or that the delay was unintentional/ without any fraudulent intention or there is no complaint from investors does not absolve appellants from their obligation to make the disclosures under SAST Regulations, 2011."* Similarly, the Hon'ble SAT in the matter of Komal Nahata Vs. SEBI (Appeal No. 5 of 2014 decided on January 27, 2014) has observed that: "*Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for noncompliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.*" In view of the same, the contention of the Noticees that no other shareholder of the company has made any complaint or has been prejudiced and no loss has been caused to any investor group or shareholder is not acceptable.

21. The Noticees in their reply has also stated that Noticees have not made any unfair gain or made undue advantage from the transaction and the violation was not repeated by the Noticees. In this reference, I would like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014*)*, wherein it was held that *".. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage*

has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures."

22. In view of the above, I find that the violations of Regulation 7(1) read with Regulation 7(2) of the SAST Regulations is established against the Noticees. I also find that the violations of Regulation 22(16) of the SAST Regulations is established against the Noticees 1 to 5. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} held that " *In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

23. In view of the same, I am convinced that it is a fit case to impose monetary penalty on the Noticees under the provisions of Section 15A(b) and Noticees 1 to 5 under the provisions of Section 15HB of the SEBI Act, which reads as under:

Penalty for failure to furnish information, return, etc.

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

…

(b) to file any return or furnish any information, books or other documents within the time specified 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 such failure continues or one crore rupees, whichever is less:

…

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the Regulations made or directions issued by the Board there under for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

24. While determining the quantum of penalty under Section 15A(b) and Section 15HB of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

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

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

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

25. The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the non-compliance committed by the Noticees.

ORDER

26. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose monetary penalties, payable jointly or severally, as shown in the table below:

Name of Noticees	**Regulation Violated**	**Penal Provisions**	**Penalty (Amount in Rupees)**
1. Mr. Ghanshyam Das Kankani 2. Mr. Avinash Kankani 3. Mr. Abhay Baheti 4. Ms. Madhu Lata Kankani 5. Mr. Umesh kankani, 6. Sparton Leasing and Finance Ltd. 7. Dwarika Investment Pvt. Ltd. 8. Koraput Investments Pvt. Ltd. 9. Western India Cements Ltd.	Regulations 7(1) read with 7(2) of SAST Regulations	Section 15A(b) of SEBI Act	4,00,000/- (Four Lakh only)
1. Mr. Ghanshyam Das Kankani 2. Mr. Avinash Kankani 3. Mr. Abhay Baheti 4. Ms. Madhu Lata Kankani 5. Mr. Umesh kankani	Regulations 22(16) of SAST Regulations	Section 15HB of SEBI Act	2,50,000/- (Two Lakh Fifty Thousand only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

27. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

28. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA III), Securities and

Exchange Board of India, SEBI Bhavan, Plot No. C –7 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051."

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

29. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Mr. Ghanshyam Das Kankani, Mr. Avinash Kankani, Mr. Abhay Baheti, Ms. Madhu Lata Kankani, Mr. Umesh kankani, Sparton Leasing and Finance Ltd., Dwarika Investment Pvt. Ltd., Koraput Investments Pvt. Ltd., Western India Cements Ltd. and also to the Securities and Exchange Board of India.

Date: December 19, 2018 **K SARAVANAN**

Place: Mumbai **GENERAL MANAGER & ADJUDICATING OFFICER**