BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD-8/KS/AA/AO/2019-20/5626-5632]

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 Maeilanandhan SKM (PAN: ADGPM2933H)**
2. **Ms. Shyamala Sharmili (PAN : AEKPC8493D)**
3. **Ms. S Kumuthavalli (PAN: AETPK1920N)**
4. **Shri Chandrasekar M (PAN: ACWCC2733N)**
5. **Shri SKM Shree Shivkumar (PAN: AJCPS0629L)**
6. **Tamilnadu Industrial Development Corporation Ltd. (PAN: AAACT3409P)**
7. **Shri Sharath Ram SK (PAN: GRJPS4734M)**

In the matter of SKM Egg Products Export (India) Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), while conducting an examination in the scrip of SKM Egg Products Export (India) Ltd. (hereinafter referred to as '**SKM Egg**' or '**Company**'), observed certain non-compliances of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as '**SAST, 1997'**) and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST, 2011**'). It was observed by SEBI that Shri Maeilanandhan SKM (hereinafter referred to as '**Noticee-1'**), Ms. Shyamala Sharmili (hereinafter referred to as '**Noticee-2**'), S Kumuthavalli (hereinafter referred to as '**Noticee-3**'), Shri Chandrasekar M (hereinafter referred to as '**Noticee-4**'), Shri SKM Shree

Shivkumar (hereinafter referred to as '**Noticee-5**'), Tamilnadu Industrial Development Corporation Ltd (hereinafter referred to as '**Noticee-6**') had violated the provisions of Regulations 30(1) and 30(2) of SAST, 2011. SEBI also observed that Noticee-1 to 6 along with Shri Sharath Ram SK (hereinafter referred to as '**Noticee-7**') (hereinafter collectively referred to as '**Noticees**') had violated the provisions of Regulation 11(2) of the SAST, 1997. SEBI further observed that Noticee-5 had violated Regulation 31(2) of the SAST, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

2. Shri Prasad Jagadale was appointed as the Adjudicating Officer, vide communique dated March 01, 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) and Section 15H(ii) of the SEBI Act, the alleged violations committed by the Noticees. Pursuant to the transfer of Shri Prasad Jagadale, Shri Suresh Gupta was appointed as Adjudicating Officer. Thereafter, vide Order dated May 18, 2017, the Adjudication proceedings have been transferred to the undersigned, which was intimated vide communique dated December 04, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice (hereinafter referred to as '**SCN**') dated December 15, 2017 was issued to the Noticees 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 and why penalty, if any, should not be imposed on them under the provisions of Section 15A(b) and Section 15H(ii) of the SEBI Act for the above alleged violations of SAST, 2011. The said SCN was also issued to the company SKM Egg for the alleged violations of Regulations 7(3) & 8(3) of SAST, 1997 & Regulation 13(6) of PIT, 1992. Subsequently, the company SKM Egg had filed a settlement application with SEBI and the adjudication

proceedings against SKM Egg was disposed of, vide settlement order dated February 28, 2019.

4. The details in respect of alleged violation by the Noticees *inter alia* are as given below:

(a) *It was alleged that Noticees 1 to 6 had not complied with Regulations 30(1) and 30(2) SAST, 2011 for various financial years (FY). The details are given in the following table:*

Sr. No.	***Regulation/ sub-regulation***	***FY ending***	***Status of compliance on BSE & NSE***
1	*30(1) & 30(2) of SAST,2011*	*2012*	*Not complied*[1]
2		*2013*	*Not complied*
3		*2014*	*Not complied*

(b) *As per the requirements of Regulations 30(1) and 30(2) of the SAST, 2011, Noticee-1 to Noticee-6 being promoters of company and persons holding more than 25% of shareholding along with persons acting in concert were required to make the disclosures regarding the number and percentage of shares or voting rights held with the company within 7 days from the financial year ending March 31 as well as the record date of the company for the purposes of declaration of dividend.*

(c) *Further, it is observed from the shareholding pattern of company available on NSE website that there was a reduction in the number of shares pledged by the Noticee-5 (a promoter entity) during the quarter ending December 2012, requiring the Noticee-5 to make necessary disclosures in terms of Reg. 31 (2) of SAST, 2011 to stock exchanges.*

(d) *As per Regulation 31(2) read with Regulation 31(3) of the SAST, 2011, Noticee-5 was required to make disclosure with respect to the release of pledge of shares within seven days to the target company as well as to the stock exchanges where the securities of the target company are listed. It was alleged that Noticee-5 had not made the required disclosures and his actions have led to the violation of Regulation 31(2) read with Regulation 31(3) of the SAST, 2011.*

(e) *It was observed that Noticee-1 to Noticee-7 were the promoters of SKM Egg. The share holding pattern of the promoters during the quarter ended March 2009 to September 2011 is as follows:*

[1] *out of the 6 promoter group entities i.e Noticee-6 has made disclosure to BSE under Reg 30(1) & (2) of Takeover Regulations, 2011 for the year ending March 31, 2012 (received by BSE on April 09,2012)*

Sr. No.	M/s SKM Egg Products Exports (India) Limited		
	Quarter ending	% promoter group holding during the quarter ending	Increase/ (Decrease) (%)
1.	Mar 09	62.40	-
2.	Jun 09	62.40	Nil
3.	Sept 09	62.40	Nil
4.	Dec 09	62.40	Nil
5.	Mar 10	**62.52**	**0.12**
6.	Jun 10	61.18	(1.34)
7.	Sept 10	53.26	(7.92)
8.	Dec 10	52.19	(1.07)
9.	Mar 11	52.19	Nil
10.	Jun 11	52.19	Nil
11.	Sept 11	52.19	Nil

(f) *It was alleged that Noticee-5 purchased the shares of SKM during the period December 2009 to March 2010 as tabulated below:*

Holding of Noticee-5 before acquisition (No. & %)	Date of transaction	No. of Shares acquired by Noticee-6 (No. & %)	Holding of Noticee-5 after acquisition (No. & %)	Cumulative holding - promoter group	
				Pre-acquisition	post-acquisition
1,12,42,492 (42.70)	Jan 04, 2010	32,800 (0.12)	1,12,75,292 (42.82)	62.40%	62.52%

(g) *From the above table, it is observed that, on January 04, 2010, Noticee-5 purchased 32,800 shares and this increased the shareholding of the noticee-5 from 1,12,42,492 (42.70%) shares to 1,12,75,292 (42.82%) shares. Thus, the shareholding of the Promoters increased from 62.40% to 62.52%.*

(h) *Under Regulation 11(2) of the SAST, 1997, no acquirer, together with persons acting in concert with him who holds fifty-five percent or more but less than seventy five percent of the shares or voting rights in a target company can acquire any additional shares unless the acquirer makes a public announcement of an open offer for acquiring shares. It is observed that the Regulation 11(2) of SAST, 1997 was triggered on the aforesaid date of January 04, 2010 as the Noticee-*

5 had acquired 32,800 shares. However, Noticees-1 to Noticee-7 have failed to make the public announcement for the same and violated the provisions of Regulation 11(2) of SAST, 1997.

5. The SCN issued to the Noticees was sent via Registered Post Acknowledgement Due ('RPAD') and was duly delivered. In response to the SCN, Noticee-6 vide its letter dated January 09, 2018 made its submissions in the said matter. The key submissions made are as given below:

(i) "TIDCO is also a Public Financial Institution notified under Section 4A of the Companies Act, 1956 and under section 2(72) of the Companies Act, 2013.

(ii) Further, the Board of Directors of TIDCO are nominated by Government of Tamil Nadu and they are Senior IAS Officers. The Board of Directors of TIDCO comprise of Chairman & Managing Director in the cadre of Principal Secretary to Government and the Directors viz., Principal Secretary to Government(Industries Department), Additional Chief Secretary to Government(Finance Department), Additional Chief Secretary to Government(Highways Department), Executive Director and a retired IAS officer as Independent Director.

(iii) Further, TIDCO and SKM Animal Feeds and Foods (India) Limited, have executed a Promoters Agreement on 05.09.1994 in which TIDCO has agreed to contribute up to 11% of the paid up equity capital of M/s. SKM Egg Products Export (India) Limited (hereinafter referred to as SEPEIL), and SKM Animal Feeds and Foods India Limited and their Associates (hereinafter referred to as "'private promoters") have agreed to contribute 40% of the total paid up capital of SEPEIL. Based on this agreement, TIDCO holds 19,95,800 equity shares of Rs.10/- each and it constitutes 7.58% of the equity capital of SEPEIL.

(iv) Further, as per the agreement, TIDCO is entitled to nominate one director on the Board of SEPEIL and the day to day management of the affairs of the company vests with the Managing Director or Chief Executive Officer nominated by SKM Animal Feeds and Foods (India) Limited. The role of the nominee director of TIDCO is to attend the Board Meeting of the company and protect the interest of TIDCO.

(v) Further, as per the agreement, the private promoters along with its associates and nominees shall not, without the prior written consent of TIDCO, increase or reduce directly or indirectly their respective holdings in the issued and subscribed equity capital of SEPEIL. However, TIDCO has not received any proposal from the private promoters for the inter se transfer of shares, purchase and sale of shares as mentioned in the show cause notice and such TIDCO is not aware of the share transaction.

(vi) Further, we submit that TIDCO is promoter of SEPEIL. However, there is no change in the number of equity shares held by TIDCO in SEPEIL since October 1998. Further, the shares are held in Dematerialised form since October 2005…

(vii) *Further, with reference to violation of Regulations 30(1) and Regulations 30(2) of the SAST 2011 alleged to have been committed by TIDCO, the disclosure made by TIDCO vide letter dated 2.4.2012, 1.4.2013 and 1.4.2014 to National Stock Exchange of India Limited, Bombay Stock Exchange of India Limited. Coimbatore Stock Exchange Limited and Madras Stock Exchange Limited, are given at Annex-7 to 9. Further, we submit that as per the agreement, any increase or decrease in the holding with the private promoters requires prior consent of TIDCO. However, the private promoters have not sought prior approval of TIDCO for the transactions mentioned in the show cause notice. Though TIDCO is a promoter, TIDCO is not to be treated as a person acting in concert along with the private promoters. The role of TIDCO is only to promote Industries in the State of Tamil Nadu by participating in the equity capital of Joint Venture (JV) Companies and to disinvest the equity participation after a period as per the Joint Venture Agreement. The objective of TIDCO is not to acquire shares and takeover of Companies acting in concert with private promoters. Further, there is no change in the number of shares held by TIDCO in SEPEIL since 1998 and any transfer/sale by TIDCO are governed by the provisions of the agreement dated 5.9.1994. We are not a party to the alleged transactions.*

(viii) *The main charge against TIDCO is that it has not filed the declarations under Regulations 30(1) and Regulations 30(2) of the SAST 2011. However, we have given proof to show that we have complied with this provision and have submitted our disclosures on time.*

(ix) *As regards the allegation of "persons acting in concert", as already mentioned, TIDCO is managed by Government of Tamil Nadu and it had no intention to join with Private Parties and act in concert with private promoters on the transactions mentioned in the show cause notice.*

(x) *Under these circumstances, TIDCO being a wholly owned Government of Tamil Nadu Enterprise and a Public Financial Institution, we request you to kindly exclude us as persons acting in concert under the SAST Regulations 2011 with respect to SEPEIL, Further, we request you to exclude our name from the show cause notice issued in the reference cited and also to drop further proceedings against TIDCO.*

6. In the interest of natural justice, Noticee-6 was provided with an opportunity of personal hearing on January 18, 2018 vide hearing Notice dated January 10, 2018. However, Noticee-6 did not attend the scheduled personal hearing. In the meanwhile, an authorised signatory on behalf Noticee-1 to 5 and Noticee-7 submitted that Noticees-1 to 5 and Noticee-7 would be applying for the settlement mechanism. Noticee-6 vide its letter dated April 17, 2018 made its

additional submissions in the matter. Thereafter, the concerned department of SEBI vide office note dated May 17, 2019 informed that the settlement Application of Noticee1-5 and Noticee-7 was rejected and advised to proceed further in the matter. Vide hearing Notice dated June 03, 2019, the Noticees were granted an opportunity of personal hearing on June 18, 2019. However, the Noticees sought adjournment of personal hearing due to non-availability of advocate. Acceding to the request, Noticees were granted a final opportunity of personal hearing on July 09, 2019. In the meanwhile, Noticee-1-5 and Noticee-7 vide their letters dated June 25, 2019 submitted their reply to the SCN. During the hearing, Mr. Anil Shah, Advocate, Juris Matrix Partners LLP appeared on behalf of Noticees and reiterated the submissions made by Noticees-1-5 and Noticee-7 in their letters dated June 25, 2019 and Noticee-6 in its letter dated January 09, 2018; April 17, 2018 and June 26, 2019.

7. The common submissions made by the Noticees, vide their replies dated June 25, 2019 and June 26, 2019, are as given below:

   (i) I most humbly submit that I was not required to file disclosures for the financial years ending 2012, 2013 and 2014 under Regulation 30(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, (hereinafter referred to as SAST Regulations, 2011 as explained hereinafter.

   (ii) I state that I continued to hold same number of shares of SKM during the financial years ending 2012, 2013 and 2014. I further state that, at no point of time, either, individually or as person acting in concert with someone else, did I hold shares or voting rights, entitling me to exercise twenty-five per cent or more of the voting rights in SKM.

   (iii) I submit that a person acting in concert under Regulation 2 (l)(q)(l) of SAST Regulations, 2011 is defined as under:

   "Persons, who for a common objective or purpose of acquisition of shares or voting rights in, or exercising control over the target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operated by acquiring of shares or voting rights in, the target company or exercise control over the target company."

   (iv) I deny that I am a person acting in concert, as wrongly alleged, who had for a common objective or purpose of acquisition of shares or voting rights in, or exercising control

over the company SKM, pursuant to an agreement or understanding formal or informal, directly or indirectly co-operated by acquiring of shares or voting rights in the company SKM or exercise control over the company SKM.

(v) *I further submit that under Regulation 2 (l)(q)(2) of SAST Regulations, 2011 a person is deemed to be acting in concert as under:*

"Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,

(i) ……..

(iv) promoters and members of the promoter group;.."

(vi) *I further submit that Regulation 2(l)(q](2) of SAST Regulations, 2011 is a deeming provision, defining a person acting in concert, which only come in to effect unless the contrary is proved. I most humbly submit that I was never a person acting in concert as I was neither aware of nor involved in nor influenced any dealings in the share of SKM of other promoters of the company SKM, including acquiring of shares or voting rights in the company SKM for exercising control or otherwise by such other promoters. I, therefore, deny that I have violated Regulation 30(1} of SAST, 2011.*

(vii) *Without prejudice to the above, I most humbly submit that disclosures under Regulation 30(1) and 30(2) of SAST Regulations, 2011 regarding the aggregate shareholding and voting right held by other promoters and myself were duly filed on 05.02.2018, i.e. during the pendency of settlement application, with respect to financial years ending 31.03.2012, 31.03.2013 and 31.03.2014. Please find enclosed copy of mail dated 05.02.2018 to BSE and NSE as Annexure A and copy of disclosures under Regulation 30(1) and 30(2) of SAST Regulations, 2011 with respect to financial years ending 31.03.2012, 31.03.2013 and 31.03.2014 as Annexure Al, A2 and A3, respectively. It is most humbly submitted that the alleged lapse, if any, was inadvertent and not in defiance of law.*

(viii) *As noted in the foot note on page 7 of the SCN, one of the promoters, Tamil Nadu Industrial Development Corporation Ltd., (hereinafter referred to as TIDCO) had made disclosure under Regulation 30(1) and 30(2) of SAST Regulations, 2011 for year ending March 31, 2012 (received by BSE on 09.02.2012)..*

(ix) *I have been further informed that similarly for financial year ending 2013 and 2014, TIDCO had filed disclosures on 01.04.2013 and 1.04.2014 respectively under Regulation 30(1) and 30(2) of SAST Regulations, 2011.*

(x) *It may be appreciated that disclosures under Regulation 30(1) and 30(2) of SAST Regulations, 2011 with respect to percentage of shares or voting rights held by promoters including myself, for year ending March 31, 2012, March 31, 2013 and*

March 31, 2014 are duly reflected on BSE website. Please find enclosed copy of the screen shots of website of BSE reflecting said disclosure as Annexure B1, B2 and B3 respectively.

(xi) I submit that since the said information was in public domain, and thus there was no disadvantage caused to the public, I therefore pray that no adverse inference against me may be drawn there from.

(xii) I submit that the aforesaid filings are sufficient compliance of Regulation 30(1) and 30(2) of SAST Regulations, 2011 as the purpose of disseminating information to public through disclosures on stock exchange was adequately met by filing of disclosure by any one promoter.

(xiii) I crave leave to rely on judgment passed on 20.10.2015 by Hon'ble Securities Appellate Tribunal in Appeal No. 199 of 2014 between Inland Printers Limited vs SEBI more specifically on para 22 at page 38 which reads as under:

"It is true that the language used in that regulation 8(2) of the Takeover Regulations, 1997 differs from the language used in regulation 30(2) of the Takeover Regulations, 2011. However, under both the regulations the basic object is to ensure that at the end of every financial year, the investors in the Target Company are informed about the number and percentage of shares or voting rights held by the promoter/promoter group and the object is not to make it mandatory for every promoter in the promoter group to make individual yearly disclosure even if that promoter neither held nor holds any shares of the Target Company."

(xiv) I pray that in the light of the ratio enumerated in the aforesaid judgment, uploading of the aforesaid disclosures on the official website of the exchange, be kindly deemed as adequate compliance and charges against me be viewed leniently….

(xv) I deny that I have violated Regulation 11(2) of Takeover Regulations, 1997 as PAC along with the acquirer Mr. SKM Shree Shivkumar.

(xvi) At the time of alleged violation, Mr. SKM Shree Shivkumar was holding 42.70% shares or voting rights in SKM which did not attract making of open offer under Regulation 11(2) of Takeover Regulations, 1997.

(xvii) I submit that your good self has wrongly considered me as Person Acting in Concert (hereinafter referred to as person acting in concert / PAC) for the acquisition on 04.01.2010 by way of purchase of 32,800 shares by Mr. SKM Shree Shivkumar.

(xviii) I submit that I am not person acting in concert along with Mr. SKM Shree Shivkumar or any other promoter, who for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the company SKM, pursuant to an agreement or understanding (formal or informal), directly or indirectly

co-operated by acquiring or agreeing to acquire shares or voting rights in the company SKM or control over the company SKM.

(xix) *I submit that I could never fall under the definition of person acting in concert as per the provision of Regulation 2 (1)(e)(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, (hereinafter referred to as the Takeover Regulations, 1997) for the purpose of acquisitions made by Mr. SKM Shree Shivkumar as wrongly observed vide SCN more particularly vide para 20 and 21 on page 09 and 10 thereof. I most humbly state that the SCN has failed to bring out any common intention on my part to acquire shares of the company SKM along with the acquisition of shares by Mr. SKM Shree Shivkumar.*

(xx) *I crave leave to rely upon order dated 08.03.2018 passed by the Ld. WTM, SEBI in the matter of Exelon Infrastructure Limited wherein the charges against the Noticees were dropped for want of sufficient evidence on record to prove existence of common intention to acquire shares between the acquirer and PAC of the target company*

(xxi) *I, further submit that under Regulation 2 (1) (e)(2) of Takeover Regulations, 1997 a person acting in concert is defined as under:*

"Without prejudice to the generality of this definition, the following persons will be deemedto be persons acting in concert with other persons in the same category, unless the contrary is established,

(i) …..

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to un sub clause (i) of clause (2) and their associates.

Note: for the purpose of this clause "Associate" means

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956(1 of 1956);."

(xxii) *I further submit that Regulation 2(1)(e)(2) of Takeover Regulations, 1997 is a deeming provision, which only comes in to effect unless the contrary is proved. I most humbly submit that I was never a person acting in concert as I was neither aware of nor involved in nor influenced dealings of other promoters of the company SKM, including acquiring of shares or voting rights in the company SKM for exercising control or otherwise by such other promoters.*

(xxiii) *I submit that I cannot be held responsible for the alleged act and omission or commission of another promoter, unless my contribution to the violation or involvement in the alleged acquisition by another promoter is proved beyond doubt. Thus, I say that*

I cannot be held to be person acting in concert for acquisition of shares by another promoter.

(xxiv) *I most humbly submit that there is not a whisper in the SCN of my knowledge or involvement in the alleged acquisition by another promoter. Thus the said allegation, based on erroneous assumption of my knowledge about the alleged acquisition and bereft of evidence, ought to be dropped as against me.*

(xxv) *I submit that, though I am a promoter of SKM, I was neither aware nor involved with the acquisition of shares made by Mr. SKM Shree Shivkumar and it is settled law that liability cannot be fastened on me as a matter of course and that judicial jurisprudence is of paramount importance.*

(xxvi) *I crave to rely on the order dated 09.03.2016 passed by Ld. WTM, SEBI in the matter of acquisition of shares of Koffee Break Pictures Ltd. wherein it has been observed that a 'promoter' may not be deemed to be in concert unless an active co-operation between that person and another is shown or established. The relevant paragraphs of the said order has been reproduced herein under for ready reference:*

"16. Another contention of the noticees is that the 'promoters' cannot always be 'acquirer' or 'persons acting in concert' under the Takeover Regulations, 1997 and that they were not holding controlling stake in the target company. They have further contended that they never acted in concert with Mr. Apurva Shah and with each other. Hence, their acquisition did not trigger Regulation 10. In this regard, I note that the position has been settled by the Hon'ble SAT in various judgments such as Modipon Ltd v. SEBI & others, (decided on July 31, 2001), Naagraj Ganeshmal Jain v P.Sairam (2001) 33 SCL 295; by the Hon'ble Bombay High Court in K. K. Modi Vs SAT (2002) 35 SCL 230 (BOM.) and the Hon'ble Supreme Court in the case of Technip SA (2005)5SCC 465. In the context of the applicability of the Regulations 10, 11 or 12 of the Takeover Regulations, 1997 it has been settled that in each and every case a 'promoter' simpliciter need not be an 'acquirer' or 'person acting in concert' automatically. For the purposes of these regulations, it is not necessary that the one promoter shall always be deemed to be a 'person acting in concert' with regard to acquisition of another.

In the matter of Kishore Rajaram Chhabria V SEBI, the Hon'ble SAT, in its order dated August 1, 2003, held that if persons charged with acting in concert, do not fall within the inclusive definition under Regulation 2(l)(e) (1), their mere positions, would not be the basis for establishing acting in concert. That is to say, a 'promoter' may not be deemed to be in concert unless an active co-operation between that person and another is shown or established.

17. In the above context, the following observations of the Hon'ble SAT in Nagraj Ganeshmal Jain's (2001) 33 SCL295 (SAT) are relevant to mention:

“On a perusal of the definition of the expression 'acquirer' extracted above it is clear that any person who acquires or agrees to acquire shares or voting rights/control of the target company is an acquirer. The expression “any person" is of wide amplitude. A person becomes an acquirer by virtue of his action- who acquires or agrees to acquire shares etc. etc., Therefore it is difficult to agree with the Appellants contention that a promoter can never be an acquirer. A promoter could be considered as an acquirer or not would depend on the question as to whether he is a person who acquires or agrees to acquire shares etc. Identification is thus action related.”

19. In this regard, the following observations of the Hon'ble SAT in the said Modipon's case (upheld by the Hon'ble Bombay High Court in appeal of K. K. Modi Vs SAT (2002) 35 SCL 230 (BOM.) are also relevant to mention:-

"It may be noted that the promoter as such need not be an acquirer automatically. Any person, shareholder including the promoter will become an acquirer or a person acting in concert with the acquirer only if he falls within the definition of these expressions provided in Regulation 2(b) and 2(e).

It is the conduct of the party that decides the identity. A dormant promoter or a promoter simplicitor who neither acquires nor agrees to acquire shares or voting rights or control over the target company is not an acquirer and his shareholding in the target company cannot be considered as the shareholding of the acquirer warranting exclusion from the public shareholding. Similarly if the characteristics of a person acting in concert stated in the definition are found missing in the case of a person, it may not be proper to consider him as a person acting in concert with the acquirer."

20. I further note that Hon'ble Supreme Court in the matter of Daiichi Sankyo Company Ltd. vs. Jayaram Chigurupate and Others (2010) 7 SCC 449 has finally held that two or more persons may join hands together with the shared common objective or purpose of any kind but so long as the common object and purpose is not of substantial acquisition of shares of a target company they would not comprise "persons acting in concert". In that case, Hon'ble Supreme Court has held that:

".. There can be no "persons acting in concert" unless there is a shared common objective or purpose between two or more persons of substantial acquisition of shares etc. of the target company…… The idea of "persons acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons

leading to the shared common objective for purpose of acquisition of substantial acquisition of shares etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sin qua non for the relationship of "persons acting in con cert" to come into being."

(xxvii) I deny that there is a shared common objective or purpose between the acquirer, namely SKM Shree Shivkumar and myself for substantial acquisition of shares of SKM. In the light of my above submissions, I state that unless there is a shared common objective or purpose between the acquirer, namely SKM Shree Shivkumar and myself for substantial acquisition of shares etc. of the target company I cannot be held to have violated Regulation 11(2} of the Takeover Regulations, 1997.

(xxviii) I submit that your good self has wrongly considered all other promoters as Persons Acting in Concert with Mr. SKM Shree Shivkumar (hereinafter referred to as persons acting in concert /PAC) for the acquisition on 04.01.2010 by way of purchase of 32,800 shares by HIM.

(xxix) I understand that no other promoter was a person acting in concert with Mr. SKM Shree Shivkumar, who for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the company SKM, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operated by acquiring or agreeing to acquire shares or voting rights in the company SKM or control over the company SKM.

(xxx) I most humbly state that the SCN has failed to bring out any common intention between other promoters (including me) and Mr. SKM Shree Shivkumar to acquire shares or voting rights in the company SKM or control over the company SKM.

(xxxi) It may be appreciated that way back in the year 2007, certain disputes and differences arouse between Mr. Chandrasekar M. and Mr. SKM Shree Shivkumar. During the course of arbitration proceedings with respect to distribution of the assets and liabilities, a family settlement was drawn and the said proceedings stood settled vide Arbitration Awards for Partition dated 24.10.2007 and 06.06.2008. Please find enclosed as Annexure C and Annexure D copies of the said Arbitration Awards for partition dated 24.10.2007 and 06.06.2008, respectively.

(xxxii) I invite your attention to clause 25, 30 and 35 of the afore mentioned Arbitration Awards which is reproduced herein under for ready reference:

"(25) Dr. Chandrasekar has also agreed that he will relinquish his directorship in M/s SKM Egg Products Export (India) Limited and he will not have any right or whatsoever in M/s SKM Egg Products Export (India) Limited except rights vested to the ordinary shareholder in respect of the equity shares held by him in his individual capacity.

(30) Shri S.K.M. Shree Shivkumar has agreed that by extinguishing his rights in the company M/s. SKM Animal Feeds and Foods (India) Limited from the effective date, he will no longer have any right, title, interest and/or claim etc. in that company. Similarly Dr. M. Chandrasekar has agreed that by extinguishing his rights in M/s. SKM Egg Products Exports (India) Limited and M/s. SKM Siddha and Ayurvedic Medicines India Private Limited, from the effective date, he will no longer have any right as a ordinary shareholder regarding his personal share holdings in M/ s. SKM Egg Products Exports (India) Limited retained by him after the effective date.

(35) It is also agreed by both the parties that from the effective date, any claim, liability or benefit accruing to Shri S.K.M. Shree Shivkumar and the companies M/s. SKM Egg Products Exports (India) Limited and M/s. SKM Siddha and Ayurvedic Medicines India Private Limited will be of that party alone, and in no way Dr. M. Chandrasekar will be responsible for the same after the effective date. It is also agreed by all the parties that from the effective date, any claim, liability or benefit accruing to Dr. M. Chandasekar and M/s. SKM Animal Feeds and Foods (India) Limited will be of that party alone, and in no way Shri S.K.M. Shree Shivkumar will be responsible for the same after the effective date."

(xxxiii) Pursuant there to Mr. Chandrasekar M. has resigned as Director of SKM on 29.04.2009. Please find enclosed as Annexure E copy of Form 32 for resignation as Director. He has also been declassified as promoter w.e.f 16.10.2017 (NSE) and 30.10.2017 (BSE). Please find enclosed as Annexure F.

(xxxiv) Similarly, Mrs. C. Shyamala Sharmili has been part of promoter group only by virtue of being immediate relative (wife) of Mr. M Chandrasekar.

(xxxv) The Arbitration Awards for Partition, resignation as Director and declassification as promoter clearly indicate that Mr. Chandrasekar M. and Mrs. C. Shyamala Sharmili were not PAC and had no interest in acquisition of shares or voting rights of the company, SKM. They were not in control of the management and affairs of the company SKM. It is submitted that needless to say that assuming Mr. Chandrasekar M. and Mrs. C. Shyamala Sharmili were interested in acquisition of shares or voting rights of the company, they would never have agreed to disassociate themselves from the company, SKM.

(xxxvi) I state that unlike Regulation 2(l)(k)(2) of SAST Regulations 2011, 'promoter' was not covered under definition of PAC under Regulation 2(l)(e)(2) of Takeover Regulations, 1997.

(xxxvii) I state that Tamilnadu Industrial Development Corporation Ltd. (TIDCO) was never a PAC.

(xxxviii) I state that TIDCO is a wholly Government of Tamil Nadu owned Enterprise engaged in the business of promoting industries in the state of Tamil Nadu by participating in equity capital of joint venture companies. The object of TIDCO has been inter alia described in the Memorandum of Association of the company, TIDCO. It is apparent that TIDCO is a state level financial institution, hand holding start ups by equity participation and as such could never have interest in acquisition of shares or voting rights of the company, SKM or any other company in which they participate in equity. It is further submitted that it is a Public Financial Institution notified under Section 4A of the Companies Act, 1956 and corresponding Sections 2(72) of the Companies Act, 2013.

(xxxix)Needless to add is the fact that the Board of Directors of the company TIDCO is nominated by Government of Tamil Nadu. Its Board of Directors consists of senior IAS officers in the rank of Principal Secretary to Government, Additional Chief Secretary to Government, etc.

(xl) It is submitted that pursuant to a Promoters Agreement dated 05.09.1994 TIDCO had agreed to contribute up to 11% of the paid up capital of SKM. It is further submitted that TIDCO holds 19,95,800 equity shares of Rs. 10/- each which constitute 7.58% of SKM. TIDCO invested in SKM during the years 1997 and 1998 and that there is no change in share holding of 19,95,800 equity shares since October, 1998.

(xli) Needless to say TIDCO had no common objective or purpose along with Mr. SKM Shree Shivkumar for substantial acquisition of shares or voting rights or gaining control over the company SKM, and thus was never a PAC.

(xlii) I state that accordingly alleged acquisition by Mr. SKM Shree Shivkumar in the year 04.01.2010 never attracted the requirement of making a public announcement to acquire shares in accordance with Regulation 11(2) Takeover Regulations, 1997.

(xliii) I understand that Mr. SKM Shree Shivkumar had purchased 32,800 shares on 04.01.2010 from his friend's father. The said transaction was done to accommodate and to meet medical financial emergency. The said transaction was intimated to the stock exchanges vide letter dated 06.01.2010. Please find annexed letter dated 06.01.2010 to the exchanges as Annexure G.

(xliv) I state that, transaction of this nature wherein some small quantity of shares totaling 0.12% of the equity capital of SKM was purchased, did not trigger open offer.

(xlv) Under the circumstances it is most humbly prayed that the allegation against me be dropped.

(xlvi) Without prejudice to the above contentions, I submit as under:

(xlvii) That the term 'acquirer' has been gravely misinterpreted. It is most respectfully submitted that the term 'acquirer' for the purpose of making public announcement to acquire shares in accordance with the Regulation 11(2) of the Takeover Regulations, has been incorrectly identified.

(xlviii) An acquirer can acquire shares on his own or through or with PACs. However, only the acquirer has to make the public announcement and not the PAC. I therefore most respectfully submit that charges for non compliance with regulation 11 (2) of the Takeover Regulations, 1997 can only be fastened on the acquirer Mr. SKM Shree Shivkumar and not against me as PAC as wrongly alleged.

(xlix) It is pertinent to note that I have been referred to as PAC and not as an acquirer, in the SCN, whereas under Regulation 11(2) of the Takeover Regulations, 1997 the obligation of making the public announcement is of the 'acquirer' and not the PAC.

(l) I most humbly submit that Mr. SKM Shree Shivkumar is the acquirer. The SCN has failed to identify the 'acquirer' for the purpose of making public announcement for open offer and has wrongly sought to include all promoters, including me, as acquirer.

(li) I submit that laying down altogether different legal preposition that PACs are required to make public announcement is clearly in contradiction to the actual interpretation of Regulation 11(2) of the Takeover Regulations 1997.

(lii) I submit that thus the SCN contains material error of misinterpretation of the term 'acquirer' which is apparent from the contents thereof and hence the SCN is misdirected and thus the proceedings against me need to be dropped.

(liii) The transaction in question relates to the purchase of 32,800 shares on 04.01.2010 by Mr. SKM Shree Shivkumar from his friend's father. The said transaction was done to accommodate and to meet the medical financial emergency. The said transaction was intimated by Mr. SKM Shree Shivkumar to the stock exchanges vide letter dated 06.01.2010. Please find annexed letter dated 06.01.2010 to the exchanges as Annexure H.

(liv) I understand from Mr. SKM Shree Shivkumar that he was under genuine belief that transaction of this nature wherein some small quantity of shares (0.12%) was acquired, could never have triggered an open offer or the more so since Mr. SKM Shree Shivkumar was already holding shares in SKM prior to 04.01.2010.

(lv) I most humbly submit that the intention behind formulating Regulations 11 (2) of the Takeover Regulations, 1997 was to provide every investor an opportunity to exit from the company in event of change in control and management of the company. I most

humbly submit that alleged acquisition of increasing shareholding of Mr. SKM Shree Shivkumar by mere 0.12% in the year 2010 did not lead to change in control and management of the company and has not caused any disadvantage to the general public.

(lvi) Mr. SKM Shree Shivkumar still holds shares…

8. Additionally, Noticee-5 has *inter alia* made the following submissions:

"……..

(i) I deny that I have violated Regulation 31(2) read with 31(3) of Takeover Regulations, 2011 as alleged.

(ii) I deny that there is any change in the number of shares pledged by me during the quarter ended December 2012. However, I understand there was a typographical error made by the company while submitting quarterly shareholding pattern to the stock exchanges. The said fact has been clarified vide paragraph 17 of the Settlement Application filed by SKM as well as by me and subsequent correspondence with exchanges.

(iii) I say that I had pledged 1,12,71,752 shares and out of which 78,99,000 shares were released during the month of May, 2013 and 33,72,752 shares were released on 1.04.2016.

(iv) Please find annexed disclosures filed on 04.04.2016 under Regulation 31(2) read with 31(3) of Takeover Regulations, 2011 along with acknowledgement as annexure.

……

(v) I deny that there is a shared common objective or purpose between the other promoters and myself for substantial acquisition of shares of SKM. In the light of my above submissions, I state that unless there is a shared common objective or purpose between other promoters and myself for substantial acquisition of shares etc. of the target company, I cannot be held to have violated Regulation 11 (2) of the Takeover Regulations, 1997, as individually I was holding only 42,70% shares and voting rights of the company SKM.

(vi) I state that accordingly my alleged acquisition in the year 04.01.2010 never attracted the requirement of making a public announcement to acquire shares in accordance with Regulation 11(2) Takeover Regulations, 1997…"

9. Further, Noticee-7 *inter alia* made the following additional submissions:

"… I was a minor at that point of time and was thus, never involved in management of the company. In fact I was a, minor born on 24.03.1997 and studying in class VII at the relevant time and did not participate in the activities of the company SKM….."

CONSIDERATION OF ISSUES AND FINDINGS

10. I have taken into consideration the facts and circumstances of the case and the material available on record and the issues that arise for consideration in the present case are :

    (a) Whether Noticee-1 to Noticee-6 have violated the provisions of Regulation 30(1) and 30(2) [read with Regulation 30(3)] of the SAST, 2011?

    (b) Whether Noticee-5 has violated the provisions of Regulation 31(2) [read with Regulation 31(3)] of the SAST, 2011?

    (c) Whether Noticee-1 to Noticee-7 have violated the provisions of Regulation 11(2) of the SAST, 1997?

    (d) Do the above violations, if any, attract monetary penalty under Section 15A(b) and 15H(ii) of the SEBI Act?

    (e) 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, 2011 and SAST, 1997, which read as under:

SAST, 2011

Continual disclosures.

30 (1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(2) The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

Disclosure of encumbered shares.

31(1) ……..

31(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

31 (3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

SAST, 1997

11.(2) No acquirer, who together with persons acting in concert with him holds, fifty-five percent (55%) or more but less than seventy five percent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in case where the target company had obtained listing of its shares by making an offer of atleast ten percent (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 percent (75%), the words and figures 'ninety per cent (90%) were substituted.

12. Before proceeding further, it would be appropriate to deal with certain preliminary issues raised by the Noticees in their submissions. I note from the reply submitted by Noticee -7 that Noticee-7 was a minor at the relevant time and was never involved in the management of the company. Noticee-7 has also mentioned that he was born on 24.03.1997 and is the son of Noticee-5. I observe from the available records that Noticee-7 is minor, i.e., he was below the age of 18 years at the relevant time.

13. In this context, it is relevant to mention the observations made by the Hon'ble Supreme Court of India, in the matter of Ritesh Agarwal and another vs. SEBI and others (2008) INDLAW SC 989, wherein Hon'ble SC inter alia made the following observations:

"A contract must be entered into by a person who can make a promise or make an offer. If he cannot make an offer or in his favour an offer cannot be made, the contract would be void as an agreement which is not enforceable in law would be void. Section 11 of the Indian Contract Act provides that the person who is competent to contract must be of the age of majority. If Ritesh Agarwal and Deepak Agarwal were minors, as would appear from their birth certificates, they could not have entered into contract. We, therefore, are of the opinion that subject to any other or further order which the Board may pass as against Shri Surendra Kumar Agarwal and Smt Rooprekha Agarwal, the impugned directions would not be binding on Ritesh and Deepak Agarwal."

14. I further observe that Hon'ble SAT, in its order dated September 04, 2019, in the matter of Vatsal Agarwal vs SEBI, while referring to abovementioned judgment of Supreme Court of India, had observed the following:

"…it is apparently clear that the minors at the time of occurrence of the event cannot be subject to any penalty under the SEBI Act and the person who committed the violation can only be proceeded against not only on his own behalf but also on behalf of the minors…"

15. Accordingly, I exonerate Noticee-7 viz. Sharath Ram S.K from the allegations levelled against him in the SCN dated December 15, 2017 and proceed against Noticee-5, being father and natural guardian of Noticee-7, for the charges levelled against Noticee-7.

16. Noticee-6 in its replies has submitted that a Promoters Agreement was entered between TIDCO and SKM Animal Feeds and Foods (India) Limited on 05.09.1994 pursuant to which TIDCO held 19,95,800 equity shares constituting

7.58% of the equity capital of SKM Egg. As per the said agreement, TIDCO was entitled to nominate one director on the Board of SKM Egg and the role of the nominee director of TIDCO was to attend the Board Meeting of the company and protect the interest of TIDCO. TIDCO further submitted that as per the agreement, other promoters without the prior written consent of TIDCO, could not increase or reduce directly or indirectly their respective holdings in the issued and subscribed equity capital of SKM Egg. TIDCO submitted that prior approval was not sought for the transactions mentioned in the show cause notice. TIDCO also submitted that though being a promoter, TIDCO was not to be treated as a person acting in concert.

17. Now, it has to be determined whether the Noticees can be considered as a person acting in concert or a person deemed to be acting in concert. As the expression 'person acting in concert' is linked to the term 'acquirer' it is necessary to understand first as to who is an 'acquirer'. According to Regulation 2(1)(b) of the SAST,1997, the term 'acquirer' means:

(b) "acquirer" means 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;..

Therefore, an acquirer essentially has to acquire shares/voting rights/control in a target company.

18. In view of the aforesaid definition of an 'acquirer', the issue of whether the promoters of SKM Egg are acquirers or not would depend on whether they have acquired or agreed to acquire shares in SKM Egg. The acquirer is thus primarily action related, which will define the motive/ intention of the acquirers. In the instant case, there is no dispute as to the acquisition of shares by one of the promoters viz. Noticee-5 who had acquired 32,800 shares increasing the shareholding of Noticees from 62.40% to 62.52%. Thus, Noticee-5 is an acquirer as per law on account of acquisition of shares of SKM Egg.

19. The next term to be understood is “Person Acting in Concert”. In this regard, it is relevant to refer to the definition of PAC as contained in Regulation 2(1)(e) of the SAST,1997 which is reproduced below:-

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

(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal),directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established:

(i) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;

(ii) ……..

(iii) directors of companies referred to in sub-clause(i) of clause (2) and their associates;

……..

Note: For the purposes of this clause `associate' means:

(a) any relative of that person within the meaning of section 6 of the Companies Act, 1956 (1 of 1956); and……”

20. The definition of PAC can be divided into two portions, viz,

a) The first portion contains the basic ingredients that are required to classify one as a PAC.
b) The second portion is a deeming portion to the definition of PAC as contained in the first portion.

21. In the instant case, it is noted from the records that Noticee-6 is a wholly owned enterprise of Government of Tamil Nadu and is a Public Financial Institution engaged in the business of promoting industries in the state of Tamil Nadu by

participating in equity capital of joint venture companies. In light of the first portion of the definition of the term PAC, there is nothing on record to show that Noticee-6 had common objective or purpose along with other Noticees for substantial acquisition of shares or voting rights or gaining control over the company SKM. Further, from the material available on record, I do not find any agreement or understanding for the acquisition of shares in question between the Noticees. I also note that there is nothing on record to show that the Noticee-6 along with other promoters have co-operated with each other for the acquisition of the said shares. Therefore, Noticee-6 cannot be covered under the second portion of the definition of PAC. Thus, I am of the view that Noticee-6 cannot be considered as a PAC.

22. In this regard, I note that Hon'ble Bombay High Court in the case of K. K. Modi vs. Securities Appellate Tribunal [(2003) 113 COM. Cases 148 Bom.] had observed that:

"a co-promoter of the target company, by reason of his being a co-promoter cannot be said to be a person acting in concert with the acquirer who also happens to be one of the promoters of the target company, unless the evidence on record clearly establishes that the promoters share the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company with the acquirer."

23. I note from the second portion of the definition of the PAC as brought out earlier, that certain categories of persons shall be deemed to be persons acting in concert with other persons unless the contrary is established. The definition of the deemed PAC includes directors of company and their associates which means a relative within the meaning of section 6 of the Companies Act, 1956. It is noted from the records that Noticee-5 was the Managing director of SKM Egg at the relevant point of time and Noticees 1-4 are relatives of Noticee-5 within the meaning of section 6 of the Companies Act, 1956. By virtue of these relations, Noticee-1 to Noticee-4 are deemed to be persons acting in concert with Noticee-5 with regard to the acquisition in question, unless contrary is

established. In this respect, Noticee 1-5 in their replies have submitted that certain disputes and differences had arisen between Noticee-4 and Noticee-5 and subsequently, a family settlement with respect to distribution of the assets and liabilities was drawn after two arbitration awards dated 24.10.2007 and 08.06.2008. Noticees 1-5 have also submitted copies of the said arbitration awards. I note from the said arbitration awards that Noticee-4 had *inter alia* agreed to relinquish his directorship in SKM Egg and agreed that he would not have any right or whatsoever in the company SKM Egg except rights vested in an ordinary shareholder in respect of the equity shares held by him in his individual capacity. Noticee 1-5 have also submitted that Noticee-4 had resigned as director of SKM Egg on 29.04.2009 and a copy of form 32 for resignation as director by Noticee-4 has also been submitted. Further, Noticee-4 was also declassified as promoter of SKM Egg with effect from 16.10.2017 on NSE and 30.10.2017 on BSE. It was also submitted that Noticee-2 has been part of promoter group only by virtue of being immediate relative (wife) of Noticee-4. Thus, Noticee 1-5 through uniform and separate replies have argued that Noticee-2 and Noticee-4 were not PAC with the acquirer viz. Noticee-5 and had no interest in acquisition of shares or voting rights of SKM Egg consequent to the arbitration awards for partition, resignation of Noticee-4 as director and declassification as promoter. In view of above submissions, I am inclined to accept that Noticee-4 did not share any common objective or purpose for substantial acquisition of shares or voting rights for gaining control over SKM Egg with Noticee-5. In view of the same, I hold that Noticee-4 was not a PAC for acquisition of 32,800 shares of SKM Egg done by Noticee-5 on 04.01.2010. Further, I note that Noticee-2 is the spouse of Noticee-4 and she is related to the acquirer, i.e., Noticee-5 by virtue of her marriage to Noticee-4. Since, Noticee-4 is not a PAC with Noticee-5 for acquisition of 32,800 shares of SKM Egg, I find Noticee-2 also cannot be held as a PAC, keeping common objective in mind with Noticee-5 for the said acquisition.

24. Considering the above, I find that Noticee-5 along with Noticee-1 and Noticee-3 are the acquirers of 0.12% of the share capital of SKM Egg, i.e., 32,800 shares of SKM Egg. Noticee-1 and Noticee-3, respectively being father and wife of Noticee-5, have not established that they were not PACs other than by mainly saying so. Since it is primarily the intention, action and relationship of a person that determine whether a person is acting in concert with the acquirer until contrary is established, it can be concluded in the present matter that Noticee-1 and Noticee-3, who formed part of the same family during the relevant period, were persons acting in concert with the acquirer viz. Noticee-5 for a common objective of acquiring shares of SKM Egg.

25. Now I proceed to deal with the issues under consideration. The first issue for consideration is whether Noticees 1-6 have violated the provisions of Regulation 30(1) and 30(2) [read with Regulation 30(3)] of the SAST, 2011. I note that there is a common format for filing disclosures under Regulation 30(1) and Regulation 30(2) of SAST, 2011. Further, it is stated in the said format that in case of promoter(s) making disclosure under Regulation 30(2), no additional disclosure under Regulation 30(1) is required. I also note that Noticees 1-6 were the promoters of the company SKM Egg for financial year ending 2012, 2013 and 2014. Under the provisions of Regulation 30(2) of SAST, 2011, the promoters of a company are mandated to disclose their shareholding as on March 31 to the stock exchanges and the company. In view of the same, Noticees 1-6 were required to make disclosures mandated under Regulations 30(2) [read with Regulation 30(3)] of SAST, 2011, in respect of aggregate shareholding and voting rights as of March 31 in SKM Egg, within seven working days from the end of financial year to every stock exchange where the shares of SKM Egg are listed; and (b) to SKM Egg at its registered office. It was alleged in the SCN that Noticees 1-6 failed to make the requisite disclosures mandated under Regulations 30(1) and 30(2) of SAST, 2011 for the financial year ending 2012,

2013 and 2014, except that Noticee-6 had made disclosure for FY-2012 to BSE, as tabled below:

Sr. No.	Regulation / sub-regulation	FY ending	Status of compliance on BSE & NSE
1	30(1) & 30(2) of SAST, 2011	2012	Not complied[2]
2		2013	Not complied
3		2014	Not complied

26. In this regard, I note that Noticee-6 in its reply has submitted that it had made the relevant disclosures under Regulations 30(1) and 30(2) of SAST, 2011 to National Stock Exchange of India Limited, Bombay Stock Exchange of India Limited, Coimbatore Stock Exchange Limited and Madras Stock Exchange Limited for the financial years ending 2012, 2013 and 2014 vide letters dated 2.4.2012, 1.4.2013 and 1.4.2014 respectively. On perusal of the said letters, I find that Noticee-6, while addressing the letters to respective stock exchange has submitted disclosures under Regulations 30(1) and 30(2) of SAST, 2011 for shareholdings held in various companies including SKM Egg, by quoting its holding in the said companies.

27. In order to verify the claim of disclosures made by the Noticee-6, an email dated September 25, 2019 was sent to BSE and NSE forwarding the reply of the Noticee-6 to confirm whether Noticee-6 had made the relevant disclosures under Regulation 30(1) and 30(2) of SAST, 2011. BSE, vide its email dated September 30, 2019, had submitted that it had received the disclosures under Regulation 30(1) and 30(2) of SAST, 2011 from TIDCO the financial years ending 2012, 2013 and 2014. BSE also submitted that at the time of recording the disclosures in 2013 and 2014, it was inadvertently not recorded against some of the companies. However, NSE has stated, vide its e-mail dated October 24, 2019, that it has not received the said disclosures from Noticee-6. Further,

[2] *out of the 6 promoter group entities, Noticee-6 has made disclosure to BSE under Reg 30(1) & (2) of Takeover Regulations, 2011 for year ending March 31, 2012 (received by BSE on April 09,2012)*

Noticee–6 has also submitted copies of letters acknowledged by SKM Egg, whereby it had made the relevant disclosures under Regulation 30(1) and 30(2) of SAST, 2011 to SKM Egg. In view of the same, I find that the disclosures under Regulation 30(1) and 30(2) of SAST, 2011 for financial years ending 2012, 2013 and 2014, which were made by Noticee-6, were received by SKM Egg and BSE, but not by NSE. Although, the disclosure made by Noticee-6 was not received by NSE, I am of the view that the violation committed by the Noticee is devoid of any malafied intention as the Noticee had made relevant disclosures under Regulation 30(1) and 30(2) of SAST, 2011 to SKM Egg and BSE. In view of the above, I am inclined to take a lenient view and consider it not a fit case for imposition of monetary penalty on Noticee-6.

28. I note that Noticees 1-5 in their replies have submitted that the disclosures under Regulation 30(1) read with Regulation 30(2) of SAST, 2011 was made on February 05, 2018, i.e. during the pendency of settlement application, with respect to financial years ending 2012, 2013 and 2014. As noted in pre-pages, Noticees 1-5 were the promoters of SKM Egg during the relevant time and thus, they had the obligation under Regulation 30(2) of SAST, 2011 to disclose their shareholding as on March 31 to the stock exchanges and the company. If the promoters make disclosure under Regulation 30(2) of the SAST, 2011, they are not required to make a separate disclosure under Regulation 30(1) of SAST, 2011. Therefore, it can be said that the delayed disclosures made by Noticees 1-5 on February 05, 2018 have been made under Regulation 30(2) of SAST, 2011. I observe that the due date of disclosure under Regulation 30(2) was April 10, 2012; April 10, 2013 and April 10, 2014 respectively for financial years ending 2012, 2013 and 2014. Therefore, I find that Noticees 1-5 have admitted that the disclosures under Regulation 30(2) of SAST, 2011 were filed belatedly to stock exchanges. It is also on record that said disclosures were made to stock exchanges on February 05, 2018 as a condition precedent for filing settlement application with SEBI. In this context, I would like to rely on observation of

Hon'ble SAT in Premchand Shah and Others V. SEBI dated February 21, 2011, wherein it was held that - *"…..When a law prescribes a manner in which a thing is to be done, it must be done only in that manner…….Non-disclosure of information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take informed decision while making investments….."*

29. Noticee 1-5 have further submitted that since Noticee-6 has already made the disclosures under Regulation 30(1) and 30(2) of SAST, 2011, it was sufficient compliance as the purpose of disseminating information to public through disclosures on stock exchange was adequately met by filing of disclosure by any one promoter. In this respect, I note that Hon'ble SAT in the matter of Gopalakrishnan Raman & others Vs. SEBI (Appeal no, 281 of 2014, date of decision – 20.11.2015) has observed that – *"…. the obligation to make yearly disclosures under regulation 8(2) and regulation 30(2) of the Takeover Regulations framed by SEBI in the year 1997 & 2011 respectively is on the promoter/ promoter group. If the promoters of a listed company are individual promoters then the obligation is on individual promoters and in case there is a 'promoter group' then the promoter group is required to make yearly disclosure…."* In the instant matter, I note from available records that the disclosure has been made by Noticee-6. As established elsewhere in this order, Noticee-6 is one of the promoters of the company and following the view of the Hon'ble SAT in the above cited case, disclosure by Noticee-6 should be considered to be a good compliance of the Regulations. However, I note from records that the disclosures were made by Noticee-6 only with respect to its shareholding, thus, not fully satisfying the purpose of such disclosures that the entire shareholding of promoters should be disclosed to the investors. Therefore, it cannot be said that the information about the shareholding of Noticees 1-5 was disseminated to public by way of the disclosure made by Noticee-6. In view of the same, I find that the said submission of Noticees 1-5 is not acceptable.

30. I also note that Noticees 1-5 have submitted that percentage of shares or voting rights held by promoters as required by Regulation 30(1) and 30(2) of SAST, 2011 financial years ending 2012, 2013 and 2014 are duly reflected on BSE website and since the said information was in public domain there was no disadvantage caused to the public. I note that in the matter of E-Ally Consulting (India) Pvt. Ltd. & Ors. Vs SEBI (Appeal No 203 of 2014 decided on August 06, 2014), wherein similar contentions were raised by the appellant in the case relating to violation of Regulation 30(1) and 30(2) of the SAST, 2011, 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*."

31. I observe that Noticees 1-5 have also cited the observations of Hon'ble SAT in the matter of Inland Printers Limited vs. SEBI (Appeal No. 199 of 2014 and order dated 20.10.2015). I note that the facts and circumstances of the case in the said matter are completely different from the instant case.

32. In view of the foregoing, I am of the opinion that Noticees 1-5 have made delayed disclosures under Regulation 30(2) [read with Regulation 30(3)] of SAST, 2011 to the stock exchanges for the financial years ending 2012, 2013 & 2014 and therefore, have violated the provisions of Regulation 30(2) [read with Regulation 30(3)] of SAST, 2011.

33. The next issue for consideration is whether Noticee-5 failed to make the relevant disclosures to SKM Egg under Regulation 31(2) read with Regulation 31(3) of the SAST, 2011 to the stock exchange and company. It was alleged in the SCN that there was a reduction in the number of shares pledged by the Noticee-5, as

observed from shareholding pattern of the company during the quarter ending December 2012. As per Regulation 31(2) read with Regulation 31(3) of the SAST, 2011, Noticee-5 was required to make disclosure with respect to the release of pledge of shares within seven days to the target company as well as to the stock exchanges where the securities of the target company are listed. In this respect, I note that Noticee-5 in his letter dated June 25, 2019 has stated that there was no change in the number of shares pledged by him during the quarter ended December 2012 and that there was a typographical error made by the company while submitting quarterly shareholding pattern to the stock exchanges and that the said fact has been clarified in the settlement application filed by SKG Egg as well as Noticee-5 and subsequent correspondence with the exchanges. I further note that Noticee-5 has submitted that the he had pledged 1,12,71,752 shares out of which 78,99,000 shares were released during the month of May, 2013 and 33,72,752 shares were released on April 01,2016. In this respect, vide email dated November 19, 2019, Noticee-5 has submitted shareholding patter for Q2, Q3 and Q4 of financial year 2012-2013 for the company, as provided by its RTA wherein the pledged shares are marked as 1,12,71,752 shares in each of the said three quarters. Further, NSDL confirmation for release of partly pledged shares to the extent of 78,99,000 shares in May 2013 and a copy of disclosure under Regulation 31(2) read with Regulation 31(3) of SAST, 2011 filed on April 04, 2016 for the release of partly pledged shares to the extent of 33,72,752 shares has also been submitted vide the said email dated November 19, 2019. From the perusal of the said documents, I am inclined to accept the submission of the Noticee-5 that there was no change in the number of shares pledged by Noticee-5 during the quarter December 2012. In view of the above, I note that, in case of no change in the number of shares pledged by Noticee-5 during the quarter December 2012, which is the allegation in the present proceedings, there was no requirement of disclosure by Noticee-5 under Regulation 31(2) read with Regulation 31(3) of the SAST, 2011 to the stock exchange and company for the said quarter. In view

of the above, I conclude that the allegation of violation of Regulation 31(2) read with Regulation 31(3) of the SAST, 2011 for the quarter ended December 2012 is not established against Noticee-5.

34. The next issue for consideration is whether the Noticees by not making a public announcement of an open offer had violated the provisions of Regulation 11(2) of the SAST, 1997. I find from the material made available before me that the Noticee-5 on January 04, 2010 purchased 32,800 shares, which increased the shareholding of the Noticee-5 from 1,12,42,492 (42.70%) shares to 1,12,75,292 (42.82%) shares:

Holding of Noticee-5 before acquisition (No. & %)	Date of transaction	No. of Shares acquired by Noticee-5	Holding of Noticee-5 after acquisition (No. & %)	Cumulative holding - promoter group	
				Pre-acquisition	post-acquisition
1,12,42,492	Jan 04,2010	32,800 (0.12)	1,12,75,292	62.40%	62.52%

35. It was alleged in the SCN that, pursuant to such acquisition of shares, the shareholding of Noticees increased from 62.40% to 62.52% and Noticees were required to make public announcement for open offer under Regulation 11(2) of SAST, 1997. In this respect, it was established elsewhere in this order that Noticee-2, Noticee–4 and Noticee-6 were not persons acting in concert with Noticee-5. In view of the same, the shareholding of Noticee-2, Noticee–4 and Noticee-6 are to be excluded for the purpose computing the shareholding of acquirer along with persons acting in concert. Noticee-5 in his reply dated June 25, 2019 had submitted that he purchased 32,800 shares on January 04, 2010 from his friend's father and said transaction was done to meet a medical financial emergency. After excluding the total shareholding of Noticee-2, Noticee–4 and Noticee-6, i.e., 8.97%, the shareholding of Noticee-1, Noticee-3 and Noticee-5, prior to the acquisition by Noticee-5, was 53.43% and the shareholding of Noticee-1, Noticee-3 and Noticee-5, pursuant to the acquisition by Noticee -5, increased to 53.55%.

36. In terms of Regulation 11(2) of SAST, 2011, an acquirer together with PAC, who holds 55% or more but less than 75% shares or voting rights in such target company can acquire any additional shares or voting rights therein only by way of an open offer by making a public announcement in accordance with the SAST, 1997. In the instant case, the total shareholding of Noticee-1, Noticee-3 and Noticee-5, prior to the acquisition by Noticee-5, was 53.43% and which subsequently increased to 53.55% pursuant to the said acquisition. Thus, it is clear from above that Regulation 11(2) of SAST, 2011 cannot be applicable since the shareholding of acquirer together with PAC is below the threshold of 55%, even after the said acquisition by Noticee-5. In view of the above, I conclude that the allegation of violation of Regulation 11(2) of the SAST, 1997 is not established against the Noticees.

37. I have considered other contentions raised by the Noticees in their reply and find no merit in them in the context of the facts and circumstances of the matter in hand. As noted earlier, the violations of the statutory obligation by the Noticees 1-5 under Regulation 30(2) of SAST, 2011 have been established. At this juncture, it is noteworthy to quote the observations of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shriram Mutual Fund [2006] 68 SCL 216(SC) 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 that - *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow"*. In view of the above, I hold that the Noticees 1-5 are liable for monetary penalty under section 15A(b) 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 which such failure continues or one crore rupees, whichever is less;…

38. While determining the quantum of penalty under Section 15A(b) 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.

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.

39. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15J of the SEBI Act as stated above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees 1-5. Further, no monetary loss to investors have been brought on record and it may not be possible to ascertain the exact monetary loss, if any,

to the investors on account of default by the Noticees 1-5. I also note from the documents available on record that Noticee 1-5 have made the said delayed disclosures in respect of three financial years .

ORDER

40. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also 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 impose the following monetary penalty on the below mentioned entities under Section 15A(b) of the SEBI Act for the violation of Regulation 30(2) of SAST, 2011:

Name of the Noticee	**Penalty**
Shri Maeilanandhan SKM	Rs. 2,00,000 (Rupees Two Lakh only) (Payable jointly and severally)
Ms. Shyamala Sharmili	
Ms. S Kumuthavalli	
Shri Chandrasekar M	
Shri SKM Shree Shivkumar	

41. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticees 1-5. The said Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW.

42. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

43. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Date: November 20, 2019
Place: Mumbai

K SARAVANAN
CHIEF GENERAL MANAGER & ADJUDICATING OFFICER