**WTM/RKA/CFD-DCR/27 - 28/2016**

**BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA**

**ORDER**

**UNDER SECTIONS 11 AND 11B OF THE SEBI ACT, 1992 AND REGULATIONS 44 AND 45 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 READ WITH REGULATIONS 32 AND 35 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.**

**IN RESPECT OF BAADER BANK AKTIENGESELLSCHAFT AND GULF INVESTMENT SERVICES HOLDING CO. (S.A.O.G)**

**IN THE MATTER OF ACQUISITION OF SHARES OF PARSOLI CORPORATION LIMITED.**

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1. Parsoli Corporation Limited (hereinafter referred to as "the target company") is a company having its registered office at 3, Ground Floor, Oracle Point, Guru Nanak Road, Bandra - West, Mumbai - 400050. The shares of the target company are listed on the Bombay Stock Exchange ("BSE").

2. On April 20, 2006, the target company made a preferential allotment of its equity shares to Baader Bank Aktiengesellschaft (formerly known as Baader Wertpapierhandelsbank AG; hereinafter referred to as "Baader Bank") in the following manner:
   (a). 10,00,139 fully paid-up equity shares of the face value of ₹10/- each for cash at the price ₹26/- per share;
   (b). 3,50,000 fully paid-up equity shares of the face value of ₹10/- each at the price of ₹26/- per share, for consideration other than cash basis.

3. Pursuant to the preferential allotment on April 20, 2006, Baader Bank acquired 9.08% of the share capital of the target company.

4. On July 24, 2006, the target company made preferential allotment of its equity shares *inter alia* to Baader Bank and Gulf Investment Services Holding Co. (S.A.O.G) (hereinafter referred to as "GIS") in the following manner:
   (a). Baader Bank was allotted 53,54,861 fully paid-up equity shares of the face value of ₹10/- each at the price of ₹22/- per share.

(b). GIS was allotted 53, 84,980 fully paid-up equity shares of the face value of ₹10/- each at the price ₹22/- per share.

5. Thus, pursuant to preferential allotment on July 24, 2006, the shareholding of Baader Bank in the target company had increased from 9.08% to 24.09% and the shareholding of GIS had increased from NIL to 20% sahres in the target company. As the said increase in shareholdings of Baader Bank and GIS was individually beyond 15% of the share capital of the target company, these independent acquisitions by them had triggered their obligation to make separate public announcements under regulation 10 of the Takeover Regulations, 1997, which reads as under:-

> *"No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations."*

6. As per regulation 14(1) of the Takeover Regulations, 1997, the public announcement, referred to in regulation 10 or regulation 11, shall be made not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein. Thus, in terms of regulation 10 read with regulation 14(1) of the Takeover Regulations, 1997, Baader Bank and GIS were required to make separate public announcements of open offer for acquiring shares of the target company within 4 working days from July 24, 2006.

7. On April 16, 2009, Baader Bank and GIS *suo motu* filed separate consent applications seeking settlement of failure to make disclosures under the Takeover Regulations, 1997 and SEBI (Prohibition of Insider Trading) Regulations,1992(the PIT Regulations) regarding their acquisitions in the target company, during the period 2006-2009. Vide the said consent applications, Baader Bank and GIS had also sought settlement of their failure to make an open offer under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the "Takeover Regulations, 1997"), in 2006, pursuant to the aforesaid acquisition of 24.09% and 20% shareholdings, respectively in the target company. Subsequently, vide their letters dated January 25, 2010, Baader Bank and GIS revised the aforesaid consent applications and sought settlement of only the non-compliances of the disclosure requirements under the Takeover Regulations, 1997 and the PIT Regulations. Vide common consent order dated April 15, 2010, the non-compliances the disclosure requirements under the Takeover Regulations and the PIT Regulations were settled.

8. Since Baader Bank and GIS (hereinafter collectively referred to as 'the noticees' or individually by

their respective names) had not made the requisite under regulation 10 read with regulation 14(1) of the Takeover Regulations, 1997, SEBI issued separate show cause notices (SCNs) dated December 14, 2010 to Baader Bank and GIS calling upon them to show cause as to why suitable directions under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and regulation 44 read with 45(6) of the Takeover Regulations, 1997 should not be issued against them.

9. The noticees did not file their replies to the SCNs despite extension of time granted to them on their request instead, vide their e-mail dated February 08, 2011 they informed SEBI that they have filed consent applications in relation to the SCNs. The said consent proposal was rejected by SEBI vide letter dated May 06, 2011. Thereafter, vide its letter dated May 13, 2011, SEBI advised the noticees to file their replies to the SCNs. Vide their letters dated June 30, 2011 and July 04, 2011, the noticees submitted their replies to the SCNs.

10. While the matter was pending for hearing before the then Whole Time Member , the noticees filed another consent application dated July 24, 2012 which was returned by SEBI vide letter dated September 05, 2012. The noticees re-submitted their consent applications on September 20, 2012 claiming that their case was a fit case where the requirement to make an open offer would not be beneficial to the shareholders of the target company and, thus, the SCNs may be settled by way of a consent order in terms of the circular dated May 25, 2012. This request was also not entertained and vide e-mail dated June 16, 2014, this consent proposal of the noticees was also rejected. Thereafter the noticees were granted an opportunity of personal hearing before me when Mr. Somasekhar Sundaresan, Advocate, appeared on behalf of the noticees and made submissions. The noticees also filed their post -hearing written submissions in the matter. The replies/submissions of the noticees are *inter alia* as under-

    (a). That they had not deliberately violated the Takeover Regulations, 1997. In June 2006, at the request of the target company, KPMG issued a Memorandum on preferential allotment setting out the requirement that *"Baader Bank and GIS could consider an application under Regulation 4 of the Takeover Code for exemption from making open offer to the public on ground that past acquisition of shares by Baader Bank and GIS, the public shareholding (excluding the share held by Baader Bank and GIS) in the company will be 6.92, which is much below the prescribed minimum levels to be acquired under the Takeover Code".*

    (b). The promoters of the target company wrongly represented to the noticees that the application for exemption mentioned in the aforesaid memorandum was to be made with the BSE. It was also represented by them that the BSE, after seeking appropriate clearances from SEBI, would issue the exemption. The promoters of the target company represented

to the noticees that they would seek and obtain the necessary exemption, as mentioned in the memorandum on preferential allotment, from the BSE.

(c). The noticees, being foreign investors who were not accustomed to Indian requirements at the relevant time, had no reason to suspect any wrongdoing on part of the promoters and therefore, relied upon the representation made by the promoters of the target company in good faith.

(d). In November 2007, the promoters of the target company advised the noticees that they have received intimation from BSE that the shares issued to them cannot be listed for various reasons including not making an open offer in compliance with the regulations.

(e). The promoters of the target company, vide their email dated November 13, 2007 *inter alia* informed the noticees that *"....we are now asking the Bombay Stock Exchange and SEBI to exempt Gulf Investment Services Co. S.A.O.G and Baader Bank from the Takeover Code ….."*. On the advice of the promoters, the noticees addressed a letter dated December 1, 2007 to the BSE seeking exemption from the requirement of making the open offer.

(f). It is, therefore, apparent that the noticees were fraudulently induced by the promoters into wrongly believing that the exemption from the open offer was to be procured from the BSE. The promoters had represented to the noticees that they would be undertaking the necessary steps in this regard and the noticees did not have any reasons to disbelieve the promoters at that time.

(g). In June 2008, the shares of the target company issued to the noticees were listed on the BSE. The noticees believed that the shares were listed pursuant to necessary exemptions having been granted by BSE after obtaining necessary exemptions from SEBI. The noticees did not have any legal representation and were not well versed with Indian legal requirements and as such relied upon the assurances of the promoters.

(h). Until November 2008 when the noticees were, for the first time, informed by their Indian legal counsel that the exemption under the Takeover Regulations ought to have been obtained from SEBI directly by the noticees, they continued to be under the wrongful impression that the BSE has already granted them the exemption from open offer after obtaining internal approval from SEBI.

(i). Due to these blatant misrepresentations of the promoters, the noticees could not make disclosures during the period 2006-2009 as required under the Takeover Regulations and the PIT Regulations. Further, upon realization of these shortcomings on their part in relation to the Indian legal requirements, the noticees immediately voluntarily brought the same to SEBI's notice. Upon advice of their Indian Legal Counsel, on April 19, 2009, the noticees alongwith OCS *suo motu* filed a composite consent application with SEBI in relation to the contraventions of failure to make open offer and the requisite disclosures.

(j). Subsequently, as advised by SEBI, the noticees alongwith OCS filed a revised consent application dated January 25, 2010 for settlement of only the non-compliances of disclosures and the same was settled vide the consent order dated April 15, 2010.

(k). The noticees had not deliberately breached the Takeover Regulations, 1997 on account of the following factors:-

(i) From the various correspondences, it is clear that the promoters of the target company fraudulently prevented the noticees from making the open offer. Failure of noticees to make the open offer is thus solely due to the misrepresentations of the promoters.

(ii) The noticees were incorrectly induced by the promoters into wrongly believing that the exemption from the open offer was to be procured from BSE. The promoters had represented to the noticees that they would be undertaking the necessary steps in this regard. The noticees did not have any reasons to disbelieve the promoters at that time.

(iii) The fact that the shares were listed by BSE (after the BSE initially declined to list them on account of open offer not being made) further led the noticees to believe that the exemption was procured by the promoters of the target company.

(iv) The noticees did not have any legal representation and were not well versed with Indian legal requirement and thus relied upon the assurances of the promoters of the target company.

(v) In light of the above, it would be most incorrect and unjust to consider the facts in relation to the open offer required to be made by without appreciation of the fraud perpetrated by the promoters. Therefore, to further penalize the noticees would indeed be a travesty and failure of justice.

(vi) Further, upon realization of the shortcoming on their part in relation to the Indian legal requirements, the noticees immediately voluntarily brought the same to SEBI's notice. Such bona fide acts of the noticees ought to be appreciated and a reasonable approach ought to be taken in this regard.

(l). Pursuant to investigations conducted by SEBI, vide its order dated July 27, 2010, SEBI had:-

(i) restrained the target company and its promoters namely, Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala from buying, selling or dealing in the securities market in any manner whatsoever or accessing the securities market directly or indirectly for a period of seven years (except for complying with the directions in the said order );

(ii) directed the promoters of the target company, namely, Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala to make public offer through a merchant banker to acquire shares of the target company from public shareholders by paying them the value

determined by the valuer in the manner prescribed in regulation 23 of the SEBI (Delisting of Equity Shares) Regulations, 2009 (Delisting Regulations) and acquire the shares offered in response to the public offer, within three months of the date of the said order;

(iii) directed the BSE Ltd. to compulsorily delist shares of the target company if the public shareholding reduced below the minimum level in view of the aforesaid purchase;

(iv) restrained the target company, Mr. Zafar Yunus Sareshwala and Mr. Uves Yunus Sareshwala from holding the position of director in any listed company for a period of seven years from the date of the said order.

(m). The Hon'ble SAT, vide its order dated January 12, 2011 upheld the aforesaid SEBI order and confirmed the fraud that the promoters of the target company had been playing upon the shareholders of the target company. After getting the matter remanded by the Hon'ble Supreme Court of India, Hon'ble SAT again rejected the appeal of the promoters vide its order dated August 12, 2011. The appeal against this order of Hon'ble SAT was rejected by Hon'ble Supreme Court vide its order dated December 02, 2011.

(n). Despite the direction to the promoters of the target company to make their offer to acquire shares from public shareholders under the Delisting Regulations within 90 days, there has been no offer made by them till date. In view of the decision of Hon'ble Supreme Court the target company had to be delisted under the Delisting Regulations. Accordingly, a public announcement to acquire shares under the Takeover Regulations cannot be made for the target company which is to be delisted in view of the order of Hon'ble Supreme Court. There has been no consequential enforcement and implementation of the Hon'ble Supreme Court's order by SEBI. This gives rise to grounds of contempt proceedings that may be initiated by any shareholder of the target company.

(o). The noticees ought not be directed to make the open offer on account of following factors:-

(i) It is likely that the public shareholders of the target company since the year 2006 would have altered. Particularly if the promoters of the target company are able to tender their shares in such offer, they would be profiting from their own wrong doing. In this regard, reference may be made to the order of Hon'ble Supreme Court in the matter of *Clariant International Ltd vs SEBI (2204) 8 SCC 524*.

(ii) Orders passed by SEBI and SAT established that the promoters have surreptitiously transferred shareholding of many shareholders of the target company in the names of themselves, family members, acquaintances and friends. Thus, it cannot be ascertained how much shareholding of the target company is in the name of the promoters, family members, acquaintances and friends.

(iii) In these circumstances, if an open offer is directed to be given by the noticees, such an open offer would enable the promoters and associates to dispose off their shareholding in the target company. The restriction of SEBI order is only on two of the promoters and thus other associates are free to dispose their shareholding.

(iv) Direction to make an open offer would only benefit the promoters and their associates and not the public shareholders of the target company.

(v) The primary purpose of the SEBI order dated July 27, 2010 is to ensure that the shareholders of the target company are provided an exit option and that the promoters are kept out of the capital market. Requiring the noticees to make the open offer would defeat the very purpose of the said SEBI order.

(vi) Because of any such open offer by the noticees, the public shareholding of the target company would not fall below the requisite percentage required for continuous listing and there would be no requirement on the promoters to delist the shares of the target company.

(vii) SEBI order already directed an open offer to be made by the promoters. Any open offer by any other party would lead to administrative and operational anomalies. It is possible that such concurring open offers would lead to confusion and disarray amongst the shareholders of the target company, which would not be in their interest. Therefore, the noticees ought not to be directed to make an open offer.

(viii) On the other hand, promoters have already been directed to acquire the shares from public shareholders of the target company, so the interest of the shareholders of the target company is already protected by the SEBI order. If the noticees are directed to make an open offer, the same would not in any manner improve the situation for the shareholders of the target company.

(p). Without prejudice to the above, the noticees had suffered substantial monetary losses due to the aforesaid investment made in the target company. Till date, the noticees have invested more than ₹40 crores into the target company. Their current shareholding of more than 40% held in the target company is practically worthless. Substantial monetary expenses have also been incurred in these proceedings including the legal fees and consent proceedings. Thus, expenses have had been incurred by the noticees for no fault of and solely because of the incorrect conduct of the promoters of the target company. Even if SEBI directs for making open offer, the promoters should not be entitled to tender their shares in response to the offer. This will be fair and equitable and consistent with SEBI's stance of not allowing the promoters to deal in securities.

(q). The best course of action would be to settle these proceedings with some equitable relief and

payment of a sum of amount that SEBI considers commensurate with the facts and circumstances of the case, in a consent order with the noticees.

(r). Apart from the instances cited by the Hon'ble SAT, there are other instances of similar misappropriations by the promoters of the target company. The suit filed by Mr. Habibullah Akudi is indicative of such other instances. The Hon'ble Bombay High Court has taken a *prima facie* view in the said suit that there is indication of such misappropriation by the promoters.

(s). The noticees are not in a position to investigate how many other shareholders of the target company are non-genuine and how many benami or front entities of the promoters would be holding shares of the target company in the guise of public shareholders.

(t). Further, the credibility of Pinnacle Shares Registry Private Limited ("Pinnacle"), the Registrar and Transfer Agent of the target company has been called in question. SEBI has also proceeded against Pinnacle for dereliction of its duties as a RTA. In his pleading before the Hon'ble Bombay High Court, Mr. Habibullah Akudi has averred that Pinnacle is an entity controlled by the target company and consequently by the promoters of the target company.

(u). Mr. Habibullah Akudi was a related party to the promoters till they fell apart. Mr. Habibullah Akudi's shareholding in the target company was shown as that of an associate. Mr. Habibullah Akudi was therefore apparently privy to the information on Pinnacle. Therefore, if Mr. Habibullah Akudi has stated that Pinnacle was indirectly owned by the promoters of the target company and was manipulated by them to alter the shareholding pattern of the target company, this becomes a strong reason to question the accuracy of shareholding pattern of the target company, in addition to the findings of SEBI/SAT.

(v). In these circumstances, there would be no reasonable basis to issue directions to the noticees to make an open offer as a remedial measure under sections 11 and 11B of the SEBI Act. If at all SEBI desires to still inflict a consequence for the non-making of an open offer, it could always refer the matter to adjudication. Apart from having lost entire investment to the fraud perpetrated by the promoters, the noticees are willing to have any proceeds that may arise out of its sale of shares to the promoters in response to the delisting offer to be made in compliance with the apex court's ruling, with the Investor Protection Fund of SEBI so that SEBI too could be satisfied that the noticees do not gain any commercial value or benefit from the unfortunate and defrauded investment in the target company.

11. While the matter was under consideration the target company vide its letter dated November 14, 2014 filed a complaint *inter alia* alleging that Baader Bank had sold a portion of the shares allotted to them via off market route when they were not allowed to participate in the secondary market and hence they were allowed to make wind fall profits on the same without paying any tax which

fact has been ignored by SEBI. With regard to the contentions of the noticees that SEBI has not enforced its order as upheld by the Hon'ble Supreme Court regarding the compliance of Delisting Regulations, the concerned department of SEBI brought on record that SEBI had initiated adjudicating proceedings against the promoters of the target company for non compliance of SEBI order in that regard. With regard to the complaint of the target company the concerned department has now informed that SEBI had already initiated proceedings on the allegations made by the complainant and, therefore, no further action is required thereon. I am of the view that the noticees have been afforded reasonable opportunity of hearing and filing of replies. They have availed them and have made oral as well as written submissions/replies as such no prejudice will be caused if these proceedings are disposed of taking into account the SCNs, replies /submissions of the noticees at this stage. In this regard , I rely upon the judgments of Hon'ble Supreme Court in *Ram Bali vs State of Uttar Pradesh (2004) 10 SCC 589* and *Telstar Travels (P) Ltd. v. Enforcement Directorate, (2013) 9 SCC 549*. Accordingly, I proceed to deal with the instant SCNs.

12. I have carefully considered the SCNs issued to the respective noticees, their replies/ submissions and the relevant material available on record. I note that separate but identical SCNs were issued to the two noticees alleging identical violations on account of the increase in their shareholding pursuant to the preferential allotment on the same date, i.e., July 24, 2006. I also note that both the noticees have adopted almost identical replies/submission in this matter. In view of the commonality in the alleged transactions and other attendant facts and circumstances of this case, I deem it appropriate to deal the SCNs issued to the noticees herein by way of this common order.

13. In the present case, it is an undisputed fact that pursuant to preferential allotment of 53,54,861 equity shares on July 24, 2006, the shareholding of Baader Bank had increased from 9.08% to 24.09%, i.e., an increase beyond 15% of the share capital of the target company. Similarly, pursuant to the preferential allotment of 53,84,980 equity shares on July 24, 2006, the shareholding of GIS had increased from NIL to 20%, i.e., an increase beyond 15% of the share capital of the target company. It is also undisputed that the said increase in shares had triggered the requirement of making a public announcement of an open offer under regulation 10 of the Takeover Regulations, 1997 by the noticees separately and that they failed to do so in terms of regulation 10 read with regulation 14(1) of the Takeover Regulations, 1997 within 4 days from July 24, 2006. Thus, the contravention of the Takeover Regulations, 1997 by the noticees have been established.

14. The contraventions alleged in the SCNs have been admitted by the noticees. However, they have contended that the said violations occurred due to misrepresentations by the promoters of the target company and the reliance of the noticees on the promoters that they would obtain the exemption from open offer requirements from BSE. The allegations made by the noticees related

to the misrepresentations of the promoters of the target company would not be within the scope of this order as the events had taken place between the two parties. It would also be pertinent to mention here that it is expected of an investor to be prudent and diligent while making investments in a securities market. It is noted that the Memorandum issued by KPMG as relied upon by the noticees stated :- *"Baader Bank and GIS could consider an application under Regulation 4 of the Takeover Code for exemption from making open offer....."*. This clearly states the obligation of the noticees under the Takeover Regulations, 1997. Be that as it may, the noticees making such huge investments, as in this case, in an Indian listed company were expected exercise due diligence and follow all applicable laws. Ignorance of applicable laws or misunderstanding, if any, with regard to mandatory public offer obligation can not absolve them. I, therefore, am of the view that the events preceding the acquisitions in question are immaterial to the allegations made in the SCNs.

15. The only issue that remains to be determined at this stage is the probable directions *qua* the noticees considering the peculiar facts and circumstances of the instant case. In this context, the following guiding principles propounded by Hon'ble Securities Appellate Tribunal in its order dated September 08, 2011 in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011) is relevant:

> *"It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."*

16. I note that regulation 44 of the Takeover Regulations, 1997 which provides consequences of breach as found in this case gives flexibility to SEBI to enforce regulation 11 by way of several directions including - (a) disinvestment of shares acquired in breach of regulations; (b) transfer of

any proceeds or securities to the investors protection fund; (c) making open offer for acquiring shares of the target company, etc. The guiding principles for the directions as provided in these regulations are the interest of the investors and securities market which are the statutory guiding principles as inbuilt in the SEBI Act, the Takeover Regulations, 1997 and the Takeover Regulations, 2011. Had the noticees made the public announcement within a period of 4 days from July 24, 2006 in accordance with the Takeover Regulations, 1997 and complied with all related activities within the timelines specified therein, all formalities with respect to their public announcement and the open offer would have been completed by October 30, 2006, i.e., 97 days from the date of making the public announcement.

17. In the instant case, Baader Bank had acquired the shares of the target company on two occasions – (a) on April 20, 2006 when pursuant to the preferential allotment it acquired 9.08% of the share capital of the target company at the price of ₹26 per share; and (b) on July 24, 2006 when pursuant to preferential allotment of 53,54,861 equity shares at the price of ₹22 per share the shareholding of Baader Bank had increased from 9.08% to 24.09%. I also note that pursuant to preferential allotment of 53,84,980 equity shares at the price of ₹22 per share on July 24, 2006, the shareholding of GIS had increased from NIL to 20%. It is also relevant to mention that at the relevant time the shares of the target company were frequently traded on the stock exchange. In the facts and circumstances of the present case, I do not find any reason to deviate from the normal rule to make a public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, 1997, and issue any other direction as envisaged in regulation 44. I am also of the view that since the public announcement now would provide a delayed exit opportunity to the shareholders of the target company, the noticees should pay interest on the consideration amount to the shareholders who tender their shares in the open offer and who are eligible for interest as per law.

18. It is noted that vide its order dated July 27, 2010, SEBI had, *inter alia,* directed the promoters of the target company, to make public offer through a merchant banker to acquire shares of the target company from public shareholders by paying them the value determined by the valuer in the manner prescribed in regulation 23 of the Delisting Regulations and acquire the shares offered in response to the public offer, within three months of the date of the said order. The said SEBI order was confirmed by the Hon'ble SAT and thereafter by the Hon'ble Supreme Court. I note that the delisting offer has not been made and SEBI has initiated adjudication proceedings for non-compliance in this regard. In the instant case, the obligation of the noticees had triggered prior to the obligation of the promoters. If the promoters were to be permitted to tender their shares in the public announcement made by the noticees, it may contradict the purpose of SEBI

order dated July 27, 2010 as confirmed by Hon'ble Supreme Court. Thus, in view of the order of Hon'ble Supreme Court confirming SEBI's direction contained in order dated July 27, 2010, the promoters, their associates and family members cannot be allowed to tender their shares in the open offer to be made by the noticees.

19. I, therefore, in exercise of powers conferred upon me under section 19 read with section 11 and 11B of the SEBI Act, 1992 and regulations 44 and 45 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, regulation 32(1)(h) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, hereby issue following directions to the noticees, *viz*; Baader Bank Aktiengesellschaft and Gulf Investment Services Holding Co. (S.A.O.G):

    (a) The noticees shall make a public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, 1997, within a period of 45 days from the date of this order;

    (b) The noticees shall, alongwith the consideration amount, pay interest at the rate of 10% per annum from October 30, 2006 to the date of payment of consideration, to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any.

20. This order shall come into force with immediate effect. A copy of this order shall be served upon the noticees for ensuring compliance with the above directions.

**Sd/-**

**DATE: MARCH 2nd, 2016**
**PLACE: MUMBAI**

**RAJEEV KUMAR AGARWAL**
**WHOLE TIME MEMBER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**