

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO-40-51/2015]

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

Shri Amul Sumatichandra Mehta (PAN: AAHPM0112E), **Shri Yugesh Sumatichandra Mehta** (PAN: AFFPM5967A), **Shri Akul Yugesh Mehta** (PAN: ALEPM3353K), **Ms. Jayendra Yugesh Mehta** (PAN: AAGPM3471M), **Ms. Mrudula Amul Mehta** (PAN: AAFPM7346A), **Ms. Maitri Amul Mehta** (PAN: ACPPM8715K), **Ms. Rachna Amul Mehta** (PAN: AFFPM9255H), **Ms. Sunali Yugesh Mehta** (PAN: AHEPM4649L), **M/s. Senator Investment Private Limited** (PAN: AAEC3302A), **M/s. Touristor Investments Pvt. Ltd.** (PAN: AABCT1257G), **M/s. Yug Investment Pvt. Ltd.** (PAN: AAACY0239J) and **M/s. Amul Sumatichandra Mehta-HUF** (PAN: AAAHA5202N)

In the matter of

M/s. Safari Industries (India) Limited

BACKGROUND

1. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as '**SAT**') in Appeal No. 77 of 2014 vide Order dated October 01, 2014, while setting aside the adjudication order dated January 29, 2014 and restoring to the file of the Adjudicating Officer for passing fresh order on merits and in accordance with law after giving personal hearing to the appellants viz. Shri Amul Sumatichandra Mehta, Shri Yugesh Sumatichandra Mehta, Shri Akul Yugesh Mehta, Ms. Jayendra Yugesh Mehta, Ms. Mrudula Amul Mehta, Ms. Maitri Amul Mehta, Ms. Rachna Amul Mehta, Ms. Sunali Yugesh Mehta, M/s. Senator Investment Private Limited, M/s. Touristor Investments Pvt. Ltd., M/s. Yug Investment Pvt. Ltd. and M/s. Amul Sumatichandra Mehta-HUF, *inter alia* stated that the fresh order on merits be passed as expeditiously as possible and preferably within four months from the date of the said Order. Further, the Hon'ble SAT vide Order dated January 29, 2015 in the Miscellaneous

Application No. 51 of 2015 moved by SEBI allowed two months extension of time for passing the final Order.

FACTS OF THE CASE IN BRIEF

2. Shri Amul Sumatichandra Mehta, Shri Yugesh Sumatichandra Mehta, Shri Akul Yugesh Mehta, Ms. Jayendra Yugesh Mehta, Ms. Mrudula Amul Mehta, Ms. Maitri Amul Mehta, Ms. Rachna Amul Mehta, Ms. Sunali Yugesh Mehta, M/s. Senator Investment Private Limited, M/s. Touristor Investments Pvt. Ltd., M/s. Yug Investment Pvt. Ltd. and M/s. Amul Sumatichandra Mehta-HUF (hereinafter referred to as the '**Noticees/ Promoters**') are the promoters of M/s. Safari Industries (India) Limited (hereinafter referred to as '**The Company**'), is a company incorporated under the Companies Act. A letter of offer under regulations 10 and 12 of the Takeover Regulation was made by Mr. Sudhir Jatia as the Acquirer and Ms. Neeti Jatia as the Person Acting in Concert (hereinafter referred to as '**PAC**') to acquire 5,98,000 fully paid up equity share of Rs. 10/- each at Rs. 170/- per share (representing 20% of the total issued and subscribed equity share capital and 20% of the voting right) of the company. The public announcement of the same was made on September 09, 2011. The equity shares of the company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**'). On perusal of the letter of offer, SEBI observed that Noticees in the past had not complied with Regulation 8(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations**') within the due date during the year 2006. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), were initiated against the Noticees under Section 15A (b) of SEBI Act to inquire into and adjudicate the alleged violation of the provision of Regulation 8(2) of the Takeover Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer on September 02, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Rules**') to inquire into and adjudge under Section 15A (b) of the SEBI Act for the alleged violation of Regulation 8(2) of Takeover Regulations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice (hereinafter referred to as “SCN”) Ref. No. EAD-6/AK/VS/29262/2013, EAD-6/AK/VS/29265/2013, EAD-6/AK/VS/29270/2013, EAD-6/AK/VS/29275/2013, EAD-6/AK/VS/29277/2013, EAD-6/AK/VS/29279/2013, EAD-6/AK/VS/29282/2013, EAD-6/AK/VS/29287/2013, EAD-6/AK/VS/29289/2013, EAD-6/AK/VS/29290/2013, EAD-6/AK/VS/29291/2013 and EAD-6/AK/VS/29292/2013 dated November 18, 2013 were issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations.
5. The Noticees vide letter dated November 25, 2013 sought extension of 30 days time to reply to the SCN. Vide email dated November 26, 2013, the Noticees were advised to submit their reply to the SCN by December 16, 2013. Shri Amul Mehta submitted reply dated December 16, 2013 to the SCN on behalf of himself and other Noticees *inter alia* admitting to the alleged charges. Vide the aforesaid reply, the Noticees have *inter alia* stated as follows:
 - 5.1 *That for the financial year ending March 31, 2006, the Noticees had made the disclosure in terms of Regulation 8(2) of the Takeover Regulations on April 28, 2006 against due date of April 21, 2006 (i.e. a delay of 7 days);*
 - 5.2 *That the delay was inadvertent, unintentional and of a technical or minor nature. It did not cause any harm to any of the shareholders of the company or public at large as the information necessary to be available in the public domain i.e. the Stock Exchange, was available pursuant to the quarterly filing by the company under clause 35 of the Listing Agreement;*
 - 5.3 *That none of the Noticees have made any disproportionate gain or unfair advantage as a result of delay in compliance with the Takeover Regulations.*
6. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticees were granted an opportunity of hearing on January 08, 2014 vide notice dated December 10, 2013 and

the said notice was duly acknowledged by the Noticees. Accordingly, Shri Ramakant Kini, Shri Supreme Waskar and Shri Pradumnya Patil from M/s Sterling Associates (hereinafter referred to as 'ARs'), appeared on behalf of the Noticees and reiterated the submissions made vide reply dated December 16, 2013. During the hearing, the ARs submitted that Shri Amul Mehta was the main holder and other promoters were his relatives as joint holders, hence only Shri Amul Mehta may be considered as responsible for making the disclosures. ARs were advised to submit copies of the disclosures made by the Noticees under Clause 35 of the Listing Agreement to the Exchange for the quarters ended December 2005 and March 2006 along with the acknowledged receipts of the Bombay Stock Exchange Ltd. (BSE) and copy of the report filed with the company under Regulation 8(2) of Takeover Regulations on April 28, 2006. ARs were further advised to inform any past non-compliance by the Noticees concerned with respect to Takeover and/ or Insider Trading Regulations as well as action taken by SEBI, if any, against the Noticees in the past. ARs undertook to provide the aforesaid documents/ information by January 15, 2014.

7. Vide letter dated January 15, 2014, Noticees submitted the following documents:

- 7.1 *Copy of the Shareholding Pattern of the company for the quarter ended December 31, 2005 pursuant to clause 35 of the Listing Agreement filed with BSE vide company's letter dated January 13, 2006 and acknowledged by BSE on January 19, 2006;*
- 7.2 *Copy of the Shareholding Pattern Summary form for free-float indices as on March 31, 2006, copy of the Controlling/ Strategic Holders form and copy of the form disclosing the holdings of 1% & above filed by the company with BSE vide letter dated April 26, 2006 and acknowledged by BSE on May 02, 2006; and*
- 7.3 *Report under Regulation 8(2) of the Takeover Regulations filed with the company on April 28, 2006. The date of filing of report by the Noticees with the company is April 28, 2006. It was, however, noted that the same has been initialed as on the same date, but, without the receiving official's name or the company's seal of receiving the documents.*

8. Subsequent to the Hon'ble SAT Order dated October 01, 2014 setting aside the Adjudication Order dated January 29, 2014 passed in the matter and restoring to the file of the Adjudicating Officer for passing fresh order on merits and in accordance with law after giving personal hearing, an opportunity for personal hearing was granted to the Noticees on February 23, 2015 vide hearing

Notice dated February 04, 2015. On the scheduled date, the ARs of the Noticees appeared on behalf of the Noticees and filed written submissions dated February 19, 2015 from Noticee Shri Amul Mehta and reiterated the submissions made therein. The ARs submitted that the company had made the disclosure under Regulation 8(3) of the Takeover Regulations within the prescribed time i.e. on April 17, 2006, however, the disclosures under Regulation 8(2) of the Takeover Regulations were received by the company from the promoters only on April 28, 2006. The ARs further submitted that the obligation under Regulation 8(2) of the Takeover Regulations applies to 'a promoter' and for the delay under Regulation 8(2) in the matter only Shri Amul Mehta should be considered liable.

9. Vide written submissions dated February 19, 2015, the Noticee Shri Amul Mehta on his own behalf and on behalf of the other Noticees has *inter alia* submitted as follows:

- 9.1 *That at the relevant time, the Company was a small cap company with a paid-up capital of 26 lakh equity shares of Rs.10/- each. The market capitalization of the Company at the relevant time was approx. Rs. 7.3 crore only. Scrip of the Company was illiquid scrip. Average daily traded volume on BSE during the relevant period i.e. April 21, 2006 to April 28, 2006, was merely approx. 1,350 shares;*
- 9.2 *That as per Regulation 8 (2) of the Takeover Regulations, a promoter or every person having control over the company is required to make the disclosure to the company every year about the number of shares and percentage of voting rights held by him and person acting in concert with him in that company within 21 days from the financial year ending March 31;*
- 9.3 *That at the relevant time, Noticees were part of the promoters/ promoter group of the company and there was no obligation on the promoters to make any disclosure to this effect with the stock exchange;*
- 9.4 *That as per Regulation 8(3) of the Takeover Regulations, every listed company is under an obligation to disclose to the concerned stock exchange, the promoter shareholding held by them in the company within thirty days from the financial year ending;*

- 9.5 That in the instant case, the company had filed the necessary disclosures under Regulation 8(3) to the Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE') on April 17, 2006. A copy of the disclosure dated April 11, 2006 made by the company under Regulation 8(3) of the Takeover Regulations and received by BSE on April 17, 2006 together with its acknowledgement was provided;
- 9.6 That further for the financial year ending March 31, 2006, the Noticees had made the disclosure in terms of Regulation 8(2) of the Takeover Regulations on April 28, 2006 against the due date of April 21, 2006 (i.e. a delay of 7 days);
- 9.7 That Annual disclosure about holding of equity shares in the company is required to be made by a promoter to that company under regulation 8(2) and there is no obligation to make disclosure to the stock exchange under regulation 8(2) of the Takeover Regulations, and the disclosure by the promoter to the company is only in the form of an internal communication between the company and a promoter, as such, delay in making disclosure to the company has no impact on the trading of the company's securities at the stock exchange. The disclosure under Regulation 8(3) was made by the company within stipulated period i.e. on April 11, 2006, which was duly acknowledged by BSE on April 17, 2006, hence, material compliance of the regulatory requirement to protect the interest of investors in the securities market was complied, as the requisite information for relevant period was available in public domain;
- 9.8 That the Noticees came to know about such compliance under Regulation 8(3) by the company after the passing of the adjudication order dated January 29, 2014 when they made enquiries with the company and requested it to provide the requisite information in this regard;
- 9.9 That there was no change in the shareholding of the Noticees with respect to the period in question, and the information was available on the record of the company and the stock exchanges in view of the disclosure made by the company with BSE under clause 35 of the Listing Agreement, as also disclosures made by the company under Regulation 8(3), thus, the investors were not deprived of the requisite information about shareholding of the Noticees during the period April 21, 2006 (due date of filing

disclosure under Regulation 8(2)) to April 28, 2006 (actual date of disclosure). Further that investors in the securities market were entitled to the said information by April 30, 2006 i.e. the due date of filing of disclosures under Regulation 8(3) by the company, however, in the extant case, the disclosure under Regulation 8(3) was made by the company on April 11, 2006 itself i.e. much before the due date. Hence, information about the Noticees shareholding was available in public domain during the period from April 21, 2006 to April 28, 2006;

- 9.10 That since disclosure under Regulation 8(2) is not required to be made to the stock exchange, but, is required to be made only to the company, hence, it has no direct relationship with the investors in the securities market;*
- 9.11 That no prejudice can be caused to the investors on account of delayed/ non-filing of disclosure under Regulation 8(2) by a promoter with the company, so long as requisite disclosure under Regulation 8(3) is made by the company with the stock exchange;*
- 9.12 That the default was one time default and not recurring default and the Noticees have clean track record and have never been charged for committing breach of SEBI Regulations in the past;*
- 9.13 That as per the plain interpretation of the language of regulation 8(2) of Takeover Regulations and intent of the legislature during the relevant period in question, disclosure obligation would suffice if 'a promoter' makes disclosure of the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that Company to the company. Further the industry practice for disclosure under regulation 8(2) of Takeover Regulations was that a promoter files disclosure under regulation 8(2) of Takeover Regulations of the number and percentage of shares or voting rights held by him and by persons acting in concert with him. In the present case it is Mr. Amul Mehta, being a promoter who allegedly delayed in filing the disclosure for relevant period in question and only he is responsible for the alleged technical breach of regulation 8(2) of Takeover Regulations. The other Noticees were holding nominal shares at the relevant time;*

- 9.14 *That the action to hold each Noticee severally liable for the same violation under Regulation 8(2) of the Takeover Regulation is harsh and inconsistent with the earlier decision taken by SEBI/ SAT in similar cases;*
- 9.15 *That in several other cases the adjudicating officers of SEBI have imposed consolidated penalty on all the defaulters in relation to defaults pertaining to disclosures under Takeover Regulations. Also that the amount of penalty is unreasonably high and not commensurate with the technical violation;*
- 9.16 *That in the matter of Shri Anil Kumar Sharda, wherein for the violation of regulation 8(2) of the Takeover Regulations in relation to M/s. Jaihind Synthetics Ltd., vide Adjudication Order dated November 27, 2009, Adjudicating Officer held one person liable for violation of regulation 8(2) of the Takeover Regulations, wherein there was also change in the shareholding of Mr. Anil Kumar Sharda during the relevant period and imposed penalty of Rs. 15,000/-.*

CONSIDERATION OF ISSUES

10. I have carefully perused the written submissions of the Noticees, the submission made at the personal hearings and the documents available on record. It is observed that the allegation against the Noticees is that they had failed to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006 within the stipulated time.
11. The issues that, therefore, arise for consideration in the present case are:
- 11.1 Whether the promoter Noticees were required to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006?
- 11.2 If so, whether the promoter Noticees have violated the provision of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006?
- 11.3 Does the violation, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?
- 11.4 If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

12. Before moving forward, it is pertinent to refer to the provisions of Regulation 8(2) of Takeover Regulations, which reads as under:

Regulation 8 (1) & (2) of Takeover Regulation:

Continual disclosures.

8. (2) *A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.*

13. The first issue for consideration is whether the promoter Noticees were required to make the relevant disclosure under the provisions of Regulations 8(2) of the Takeover Regulations for the financial year ended March 31, 2006. I find from the Shareholding Pattern of the Promoter group as available on BSE's website that the Noticees were the promoters of the company at the relevant point of time. The Noticees, I find, in their submissions have also admitted that they were a part of the promoters/ promoter group of the company. Further, I find that as per Regulation 8(2) of the Takeover Regulations, a promoter or every person having control over a company is required within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.

14. I note here that the Noticees in their submissions have *inter alia* stated that as per the plain interpretation of the language of Regulation 8(2) of the Takeover Regulations and intent of the legislature during the relevant period in question, disclosure obligation would suffice if 'a promoter' makes disclosure of the number and percentage of shares or voting rights held by him and by persons acting in concert with him in that Company to the company. The ARs during the personal hearing on behalf of the promoter Noticees have also submitted that the obligation under Regulation 8(2) of the Takeover Regulations applies to 'a promoter', and, for the delay under Regulation 8(2) in the matter, only Shri Amul Mehta should be considered liable. Earlier during the hearing on January 08, 2013 too, I find that the ARs had submitted that Shri Amul Mehta was the

main holder and other promoters were his relatives as joint holders, hence only Shri Amul Mehta may be considered as responsible for making the disclosures.

15. Before examining the merits of the argument brought out by the Noticees as above, it is pertinent to note here that the Takeover Regulations were first framed in the year 1994 as SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994. Pursuant to the recommendations of the Committee chaired by Justice Shri P.N. Bhagwati, the Takeover Regulations were further reframed as SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997. Amendments were made to the Takeover Regulations reframed in 1997 from time to time to fine-tune it further.
16. I further note that as at the relevant point of time i.e. in 2006, Regulation 8(2) and 8(3) of the Takeover Regulations stood as reframed vide SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and there were no further amendments made to the same. Further, since SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 were reframed after taking into consideration the recommendations of the Committee chaired by Justice Shri P.N. Bhagwati, in order to understand the intent of the legislature, I consider it appropriate to refer to the recommendation of the Committee with regard to disclosure requirements. I note that Para 5 of the Justice P.N. Bhagwati Committee Report on Takeovers dated January 18, 1997 deals with 'Disclosures of shareholding and control in a listed company'. Para 5.2, in particular, reads as follows:

*"5.2 It may be mentioned that the existing provisions required disclosure by any person to the stock exchanges and the company. For operational ease, and to reduce the duplication of paper work, he would now be required to disclose his holding only to the company and the company in turn would be required to annually report the holdings of the persons to the stock exchanges. **Additionally, the promoters or any person having control over the company will be required to disclose his holding to the company. The company will also be required to disclose the details of persons in control of the management and their shareholdings to all the stock exchanges immediately after the notification of the revised Regulations. Such information should be maintained in a separate register in the prescribed format and should be available for inspection.** Now that change in control would also trigger of a public offer, the latter requirement will provide supplemental evidence of change of control."*

17. The Annual disclosures to be made by a promoter to the company under Regulation 8(2) of the Takeover Regulations and by the company to the stock exchange under Regulation 8(3) of the Takeover Regulations were framed after taking into consideration the aforesaid recommendations of the Committee. In this context, I find that the **Hon'ble Supreme Court of India in K. P. Verghese Vs. Income Tax Officer, Ernakulam & another (1981) 3 SCC 173** observed as under while dealing with interpretation on statutory provisions:

"The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed by Lord Denning, it would be idle to expect every statutory provision to be drafted with divine prescience and perfect clarity. We can do no better than to repeat the famous words of Judge Learned Hand when he said:

... "it is true that the words used, in another literal sense, are the primary and ordinarily less reliable source of interpreting and meaning of any writing; be it a statute, a contract or anything else. But it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning"

18. I note that the Committee report explicitly refers to 'the promoters' and hence Regulation 8(2) of the Takeover Regulations cannot be interpreted to the effect that disclosure obligation would suffice if 'a promoter' makes disclosure of the number and percentage of shares or voting rights held by him and by persons acting in concert with him in that Company to the company, hence, for the delay under Regulation 8(2) in the matter, only Shri Amul Mehta should be considered liable. There may also arise situations where promoters may not act in concert with one another. From all of the above, I conclude that the intent of the legislature was that each promoter was required to make disclosure of his holding to the company, and, based on the same, the company was required to disclose the holding of the promoters to the stock exchanges. Hence, the argument put forth as above by the Noticees does not appear to be correct. Besides, I note that the ARs have submitted that Shri Amul Mehta was the main holder and other promoters were his relatives as joint holders, hence only Shri Amul Mehta may be considered as responsible for making the disclosures. However,

though the other Noticees may be the relatives of Shri Amul Mehta, the fact remains that they were *the individual promoters* of the company. I, thus, conclude that the Noticees, as individual promoters of the company at the relevant point of time, were each *inter alia* required to disclose their holding to the company within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend.

19. The next issue for consideration is whether the Noticees have violated the provisions of Regulations 8(2) of the Takeover Regulations for the financial year ended March 31, 2006. I note that the SCN alleged that the disclosure under Regulation 8(2) of the Takeover Regulation were made by the Noticees to the company only on April 28, 2006, details of which are as given below:

S.No.	Entity	Violation of Regulation	Due date for compliance	Actual date of compliance	Delay (Days)
1	Amul Sumatichandra Mehta	8(2)	21.04.2006	28.04.2006	7
2	Yugesh Sumatichandra Mehta	8(2)	21.04.2006	28.04.2006	7
3	Akul Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
4	Jayendra Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
5	Mrudula Amul Mehta	8(2)	21.04.2006	28.04.2006	7
6	Maitri Amul Mehta	8(2)	21.04.2006	28.04.2006	7
7	Rachna Amul Mehta	8(2)	21.04.2006	28.04.2006	7
8	Sunali Yugesh Mehta	8(2)	21.04.2006	28.04.2006	7
9	Senatory Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
10	Touristor Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
11	Yug Investments Pvt. Ltd.	8(2)	21.04.2006	28.04.2006	7
12	A S Mehta HUF	8(2)	21.04.2006	28.04.2006	7

20. From the table given above, it is observed that for the financial year 2006, the due date for compliance by the promoter Noticees as per the Takeover Regulations was April 21, 2006. I note that the Noticee Shri Amul Mehta vide reply dated December 16, 2013 to the SCN on behalf of himself and on behalf of the other Noticees has *inter alia* admitted that the Noticees for the financial year ending March 31, 2006, had made the disclosure in terms of Regulation 8(2) of the Takeover Regulations on April 28, 2006, against the due date of April 21, 2006 (i.e. with a delay of 7 days). Thus, I note that the Noticees have specifically admitted the delay of 7 days in making the disclosures under Regulation 8(2) of the Takeover Regulations for the financial year ending March 31, 2006. Thus, I find that the Noticees have admitted the violation of Regulation 8(2) of the Takeover Regulations for the financial year ended March 31, 2006.

21. I further find that vide written submissions dated February 19, 2015, the Noticee Shri Amul Mehta on his own behalf and on behalf of the other Noticees, has *inter alia* stated that the action to hold each Noticee severally liable for the same violation under Regulation 8(2) of the Takeover Regulation, is harsh and inconsistent with the earlier decisions taken by SEBI/ SAT in similar cases. It has been further submitted therein that in several other cases the adjudicating officers of SEBI have imposed consolidated penalty on all the defaulters in relation to defaults pertaining to disclosures under the Takeover Regulations. I note here that the Noticees have not brought out any specific instances, other than the ***Adjudicating Order dated November 27, 2009 in the case of Shri Anil Kumar Sharda, in the matter of M/s. Jaihind Synthetics Ltd. (hereinafter referred to as 'JSL')***. The Noticees, I find, have stated here that in the said case, the Adjudicating Officer held one person liable for violation of Regulation 8(2) of the Takeover Regulation.
22. On perusal of the said Order, I note that adjudication proceedings were initiated only against Shri Anil Kumar Sharda, the erstwhile promoter of JSL for not filing the details of his shareholding to JSL within 21 days of financial year ending on March 31, 2005, and, considering all the facts and circumstances of the said case, the Adjudicating Officer had imposed a penalty of Rs. 15,000/- on Shri Anil Kumar Sharda vide Order dated November 27, 2009. It was not as if Shri Anil Kumar Sharda was held liable for violation by the entire promoter group as brought out by the Noticees. Thus, I note here too that the inference drawn by the Noticees is flawed. I further note that vide Order dated January 31, 2014, ***the Adjudicating Officer in the matter of M/s. Hindustan Unilever Ltd.*** had also levied penalty on individual promoters for violation of Regulation 8(2) of the Takeover Regulations. In fact, contrary to what has been submitted by the Noticees, I find that ***the Hon'ble SAT vide Order dated June 13, 2014 in the matter of M/s. Mafatlal Finance Company Limited (hereinafter referred to as 'MFCL')***, has upheld individual penalty of Rs. 10 lacs levied by the Adjudicating Officer, by two separate Orders dated March 24, 2014, on each of the two promoters of MFCL for violation of Regulation 8(1) and 8(2) of the Takeover Regulations for the years from 1998 to 2008.
23. Thus, from all of the above, I conclude that it is established without doubt that each of the Noticees, being *the promoters* of the company, were required to comply with Regulation 8(2) of the Takeover Regulations and admittedly the Noticees have filed the same with delay of 7 days for the year 2006,

thereby the Noticees have violated the provisions of Regulation 8(2) of the Takeover Regulations for the year 2006.

24. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..."*. Further in the matter of *Ranjan Varghese v. SEBI* (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow."*

25. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore 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.

26. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of 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.*

27. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations is investor protection.
28. As per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. I, however, note that the ***Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014)*** has observed that:
- “Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure.”*
- In view of the same, the argument put forth by the Noticees that the delay did not cause any harm to any of the shareholders of the company or public at large is not relevant for the given case.

29. In the matter, I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** had observed that:

"... Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."

In view of the same, the argument put forth by the Noticees that none of the Noticees have made any disproportionate gain or unfair advantage as a result of delay in compliance with the Takeover Regulations is also not relevant for the given case.

30. I further note that the Noticees have stated that no action has been taken or proceedings initiated against the Noticee in the past, for any offence with respect to Takeover Regulations or Insider Trading Regulations, except for the present adjudication proceeding contemplated under the subject notice. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's shares on BSE, where the shares were listed, during the relevant period; and c) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations.

31. From the shareholding pattern for the quarter ended December 31, 2005, I note that the paid up capital of the company was Rs. 2,60,00,000 comprising of 26,00,000 equity shares of Rs. 10/- each, of which 7,50,140 shares of Rs. 10/- each representing 28.85% of the paid-up capital was held by the promoter Noticees. I further note that 13,73,683 shares representing 52.83% of the total paid-up capital of the company was held by the Promoter Group and 12,26,317 shares representing 47.16% of total paid-up capital of the company was held by the Institutional Investors, Indian Public and NRIs/ OCBs. The market capitalization of the company was approx. Rs. 7.3 crore. I note that the average daily traded volume during April 21, 2006 to April 28, 2006 on BSE, where the equity shares of the company were listed, was approx. 1,350 shares and that the promoter Noticees have each violated Regulation 8(2) of the Takeover Regulations on one occasion in 2006.

32. I further note that the Noticees have submitted that there was no change in the shareholding of the Noticees with respect to the period in question, and the information was available on the record of the company and the stock exchanges in view of the disclosure made by the company with BSE under clause 35 of the Listing Agreement, as also disclosures made by the company under Regulation 8(3), thus, the investors were not deprived of the requisite information about shareholding of the Noticees during the period April 21, 2006 (due date of filing disclosure under Regulation 8(2)) to April 28, 2006 (actual date of disclosure).
33. I note that the Noticees have submitted before me the filing made to BSE under Clause 35 of the Listing Agreement for the quarter ending December 2005 and copy of the Shareholding Pattern Summary form for free-float indices as on March 31, 2006, copy of Controlling/ Strategic Holders form and copy of the form disclosing the holdings of 1% & above filed by the company with BSE as on March 31, 2006. I, however, note from the aforesaid documents produced before me that the shareholding of the Noticees for the quarter ended March 31, 2006 was submitted by the company to BSE vide letter dated April 26, 2006, which was acknowledged by BSE only on May 02, 2006. Thus, I observe that the same was received by BSE much after the delayed filing made by the Noticees to the company on April 28, 2006. Thus, I find that as on April 21, 2006 i.e. the due date for compliance of regulation 8(2) of the Takeover Regulation, the information about the Noticee promoter's holding as on March 31, 2006 was not available in public domain, even as required under clause 35 of the listing agreement. Besides, I note that ***the Hon'ble SAT vide Order dated June 13, 2014 in the matter of M/s. Mafatlal Finance Company Limited (hereinafter referred to as 'MFCL')*** has held that obligation to make disclosure under Regulation 8(1) and 8(2) of the Takeover Regulations, is independent of the obligation to make disclosure under clause 35 of the Listing Agreement, which is on the company.
34. I note here that the Noticees have also provided a copy of the disclosure dated April 11, 2006 filed by the company with BSE, in terms of Regulation 8(3) of the Takeover Regulations as on March 31, 2006. On perusal of the said copy, I note that the Compliance Officer of the company had informed the Exchange that they were sending the details of shareholding obtained under Regulation 8(1) and 8(2) from the acquirers. Further the filing made by the company under Regulation 8(3) mentioned: *"Shareholding/ Voting rights (in number and %) of persons mentioned at (II) as informed to the target company u/r 8(2)".* Further, "(II)" mentioned above referred to *"Promoter(s) or every person*

having control over a company and also persons acting in concert with him". Since the Noticees have admitted to have filed the disclosure under Regulation 8(2) of the Takeover Regulations with delay, it becomes crystal clear that when the company filed the disclosure under Regulation 8(3) of the Takeover Regulations to the stock Exchange, the company did not have the disclosures from the promoter Noticees under Regulation 8(2) of the Takeover Regulations.

35. The intent of Regulation 8(3) of the Takeover Regulations, as seen from the Justice P.N. Bhagwati Committee Report on Takeovers, is that based on disclosures made by the promoters or person(s) having control over the company as on 31st March under Regulation 8(2) of the Takeover Regulations, the company is required to disclose the same to the stock Exchange under Regulation 8(3) of the Takeover Regulations. The disclosure made by the company to the stock exchange under Regulation 8(3) of the Takeover Regulations, without receiving disclosures from the promoters under Regulation 8(2) of the Takeover Regulations, cannot be considered as compliance and such information cannot be relied upon as sacrosanct. The requirement of disclosure of shareholding by promoters or persons having control over the company under the Takeover Regulations is required to be treated seriously and cannot be conducted in a lackadaisical manner, as it can impact heavily on the shareholders and investors while making an informed investment decision. The object underlying the Takeover Regulations is unequivocally to bring more transparency by dissemination of complete and correct information to the public as well as shareholders at large and the said objective cannot be achieved by omitting certain laid down steps in the process. The fact that company had for the financial year ended March 31, 2006 filed the shareholding of the promoters under Regulation 8(3) of the Takeover Regulations, without receiving the disclosures from the promoters under Regulation 8(2), that now stands uncovered, I cannot take cognizance of the filing made by the company under Regulation 8(3) of the Takeover Regulations for the year ended March 31, 2006. Further, as regards the argument put forth by the Noticees that there was no change in the shareholding of the Noticees during the period in question, I note that ***the Hon'ble SAT vide Order dated June 13, 2014 in the matter of M/s. Mafatlal Finance Company Limited (hereinafter referred to as 'MFCL')*** has further held that obligation on the promoters to make disclosure regarding the number and percentage of shares or voting rights is irrespective of there being any change in the shareholding or not.

36. I further find that the Noticees have *inter alia* stated that Annual disclosure about holding of equity shares in the company is required to be made by a promoter to that company under regulation 8(2), and that such disclosure by the promoter to the company is only in the form of an internal communication between the company and a promoter, as such, delay in making disclosure to the company has no impact on the trading of the company's securities at the stock exchange. I find it necessary to mention here that disclosure required to be made by the promoter to the company under Regulation 8(2) of the Takeover Regulations, is a requirement under the Takeover Regulations, and, not merely some routine internal communication between the promoters and the company. It is only based on the disclosure under Regulation 8(2), made by the promoters to the company within the stipulated time period, can the company make the disclosure to the stock exchange under Regulation 8(3) within the stipulated time period. Further, any compliance under a statutory requirement cannot be treated on par with routine internal communication, as penalties for non-compliance under the statute would become applicable. Besides, compliance to the time period specified under the Takeover Regulations gains significance from the fact that availability of sufficient time to shareholders for making informed decision was considered as one of the principles by the Bhagwati Committee, while making recommendations in the Committee Report on Takeovers.
37. I find that the Noticees made a delayed disclosure to the company. The delay in the instant case is by seven (7) days on one occasion for the financial year ended March 31, 2006 with regards to making the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations to the company. The Noticees have submitted that no prejudice can be caused to the investors on account of delayed/ non-filing of disclosure under Regulation 8(2) by a promoter with the company, so long as requisite disclosure under Regulation 8(3) is made by the company with the stock exchange. However, it has now been discovered that the filing made by the company to the stock exchange was void ab initio.
38. I further note that the Noticees have referred to the fact that the Adjudication Officer in the matter of Mr. Anil Kumar Sharda had imposed a penalty of Rs. 15,000/- in the said matter. In this regard, it is also noted that the **Adjudicating Officer in the matter of M/s. Mafatlal Finance Company Limited (MFCL)** has levied individual a penalty of Rs. 10 lacs **by two separate Orders dated March 24, 2014** on each of the two promoters of MFCL, for violation of Regulation 8(1) and 8(2) of the Takeover

Regulations for the years from 1998 to 2008, and the same has been upheld by the Hon'ble SAT. Besides, I note that the **Hon'ble SAT vide Order dated February 18, 2015 in the matter of M/s. Count N Denier (India) Ltd.** has also upheld the penalty of Rs. 2 lacs imposed on the promoter Shri Anil Agarwal wherein there was a delay of 5 days in respect of Annual disclosure required to be made by the promoter under Regulation 30(2) read with 30 (3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 for the year ended March 31, 2012. Thus, I note that penalty would vary and depend on the facts and circumstances of each case.

39. Even assuming that lower penalty has been imposed based on the facts and circumstances of a case, it does not automatically imply that same lower penalty need to be imposed in the extant case. The determination of penalty in the extant case would depend upon the facts and circumstances of the extant case. In the matter, I would like to refer to the **Order of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Hybrid Financial Services Limited Vs. SEBI (Appeal No.119 of 2014 and Order dated June 12, 2014)**, wherein SAT had observed as follows:

"..... argument that penalty imposed on appellant is excessive compared to penalty imposed in the case of M/s. Kamalakshi Finance Corporation Ltd. (supra) and Gupta Carpet International Ltd. is also without any merit, because, firstly, nothing is brought on record to show that facts in that case are similar to the facts in the present case. Secondly, assuming that excessive relief is granted by SEBI in some cases, it does not mean that in all other cases similar reliefs should be granted especially when the Regulations prescribe stringent action for non compliance of disclosure provisions which are mandatory....."

40. I further find that the Noticees have *inter alia* claimed that the violation committed by them were inadvertent, unintentional and of a technical or minor nature. Any transaction which requires compliance of the Takeover Regulations, if not complied, is always a serious matter, and cannot be considered a mere 'technical' violation, even if the transaction is otherwise in compliance. In the given case, I find that the violation has been committed by the promoters of the Company. As promoters of the listed company, the Noticees had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose. Delayed compliance with disclosure requirements by promoters undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

41. After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 2,00,000/- (Rupees Two lacs only)** under Section 15 A(b) on each of the Noticees viz. Shri Amul Sumatichandra Mehta, Shri Yugesh Sumatichandra Mehta, Shri Akul Yugesh Mehta, Ms. Jayendra Yugesh Mehta, Ms. Mrudula Amul Mehta, Ms. Maitri Amul Mehta, Ms. Rachna Amul Mehta, Ms. Sunali Yugesh Mehta, M/s. Senator Investment Private Limited, M/s. Touristor Investments Pvt. Ltd., M/s. Yug Investment Pvt. Ltd. and M/s. Amul Sumatichandra Mehta-HUF (**a total of Rs. 24,00,000/- on the Noticees**) which will be commensurate with the violations committed by the Noticees.
42. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.
43. In terms of rule 6 of the Rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **March 27, 2015**

Place: **Mumbai**

Anita Kenkare
Adjudicating Officer