BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AO/SBM/PP/EAD-3/359/2018]

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

In respect of:

W. Reiners Verwaltungs GmbH, Germany

In the matter of:

Integra Engineering India Limited
(Earlier known as Schlafhorst Engineering (India) Limited)
Regd office: Chandrapura Village,
Taluka Halol, District Panchmahals,
Outside Vadodara, Gujarat

FACTS OF THE CASE

1. A letter of offer dated January 4, 2011 was filed by Integra Holdings AG to acquire upto 38,79,040 fully paid up equity shares of face value of Rs. 10/- each representing 20% of the issued and paid up share capital of Schlafhorst Engineering (India) Limited (hereinafter referred to as ('**SEIL'** / ' **the company'**) for cash at a price of Rs. 9.65 per equity share. The public announcement for the same was made on October 22, 2010. The Company is listed on the Bombay Stock Exchange (**BSE**).

2. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), upon examination of the aforementioned letter of offer observed that W.

Reiners Verwaltungs GmbH, Germany (hereinafter referred to as '**the Noticee**'/ '**WRV**') had failed to comply with various provisions of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations 1997'**) during the years 2000, 2001 and 2002 (hereinafter referred to as **'relevant period'**).

3. It was observed that Noticee, who was the promoter of the company during the relevant period, had allegedly failed to make the necessary disclosures to the Company within the stipulated time period for the financial years ended March 31, 2000 and March 31, 2001, in terms of the requirements specified under Regulations 8(1) and 8(2) of the SAST Regulations, 1997. Further, it was alleged that Noticee who was holding 51% shareholding of the company during the relevant period had acquired further shares of the company on September 19, 2002, which resulted in Noticee acquiring shares aggregating to more than 2% of the total share capital of the company. Therefore, Noticee was required to make the necessary disclosures under Regulation 7(1A) read with Regulation 7(2) of the SAST Regulations, 1997**.** It is alleged that Noticee has failed to make the necessary disclosures to the company and BSE within the stipulated time period in terms of Regulation 7(1A) read with Regulation 7(2) of the SAST Regulations, 1997**.** In view of the above, adjudication proceedings were initiated against the Noticee under the provisions of section 15 A (b) of the SEBI Act, 1992 (hereinafter referred to as **'SEBI Act'**).

APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Anita Kenkare was appointed as the Adjudicating Officer vide order dated June 09, 2016 under Section 15-I of the SEBI Act read with Rule 3 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire into and adjudge under the provisions of section 15A (b) of the SEBI Act, the alleged non-compliance w.r.t the

aforementioned provisions of law by the Noticee. Subsequently, upon the transfer of Ms. Anita Kenkare, I have been appointed as the Adjudicating Officer in the matter, vide an order dated October 04, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notice ref. EAD-6/AK/VRP/4658/2014 dated February 11, 2014 (hereinafter referred to as **'SCN')** was issued to the Noticee under the provisions of Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and penalty, if any, be not imposed under section 15A (b) of the SEBI Act for the alleged violations committed by the Noticee, as specified in the SCN. It was alleged in the SCN that the Noticee had failed to make the necessary disclosures prescribed under Regulations 8(1) and 8(2) of the SAST Regulations, 1997 during the FYs ended March 31, 2000 and March 31, 2001 and also under Regulation 7(1A) r/w 7(2) of the SAST Regulations, 1997 w.r.t its acquisition of shares of the company on September 19, 2002.

6. Vide letter dated January 14, 2016, Noticee submitted its reply to the SCN. Briefly, the submissions made by the Noticee are as under:

(a) Alleged violation of Regulation 8(1) and 8(2) for the financial year ended March 31, 2000-

(i) WRV, being a promoter of the Company and having shareholding of more than fifteen per cent in the year 2000 was required to disclose to the Company within 21 days from the financial year ending March 31,2000, the number and percentage of shares or voting rights held by him in that Company;

(ii) Due regard should be given to the fact that WRV is a foreign company, established under the laws of Germany, presently having its registered office at Leverkuser Str. 65, 42897 Remscheid, Germany. The necessary declarations are sent via a courier to the registered office of the Company which is situated at Chandrapura village located on the outskirts of Vadodara district in Gujarat. We say that the necessary

declaration must have been sent by WRV at that point of time, however, the same must have been lost in transit for reasons unknown today;

(b) Alleged delay in compliance with Regulation 8(1) and 8(2) for the financial year ended March 31, 2001-

(i) There may have been an insignificant delay of 9 days in filing the declarations under Regulation 8(1) and 8(2) for the financial year ended March 31, 2001. However, the fact that WRV has in fact completed the signing and filing of the requisite declarations;

(ii) Due regard should be given to the fact that the delay may have occurred due to logistic issues considering the locations of both WRV and the Company, while also giving due regard to the bank holidays and weekends that must have fallen around the due date of compliance i.e. September 21, 2002 which was also a Saturday;

(c) In relation to the alleged non-compliance under regulation 7(1A) read along with regulation 7(2) of the SEBI Takeover Regulations,

- *we say that this regulation was inserted by SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations 2002 with effect from September 9, 2002 and reads under:*
  "Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11 or under second proviso to sub regulation (2) of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company and the stock exchanges where the shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale."

  Prior to this amendment, the provision read as follows:
  "Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall make disclosures of such acquisition as well as the aggregate of his pre and post-acquisition of shareholding and voting rights to the company when such acquisition aggregates to 5% and 10% of the voting rights.'

- *Under the erstwhile provision, any acquirer, who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall make disclosure of such acquisition as well as the aggregate of the pre and post-acquisition of shareholding and voting rights to the company when such acquisition aggregates to 5% and 10% of the voting rights of the company. Subsequently, this provision was amended with effect from September 9, 2002 to the extent that an acquirer has to make disclosure of the purchase or sale of the shares*

or voting rights aggregating to 2% or more to the Company as well as the stock exchange where the shares of the company are listed.

- *In the present case, WRV has acquired 2.78% of the shareholding of the Company as on September 19, 2002, exactly 10 (ten) days after such amendment came into force. We say that since the acquisition of 2.78% of the shareholding of the Company did not trigger a disclosure under the erstwhile provision of the SEBI Takeover Regulations, the disclosure under regulation 7(1A) was not made by WRV or the Company.*
- *WRV being a foreign company, did not have knowledge of the change in the status of law (within a period of 10 days) and was therefore of the belief that on acquisition of 2.78% of the shareholding of the Company on September 19, 2002 being an acquisition which aggregates to less than 5% of the shareholding of the Company, regulation 7(1A) of the SEBI Takeover Regulations would not get triggered.*

(d) At this stage, almost fifteen years after the purported non-compliance of regulation 7(1A) of the SEBI Takeover Regulations, it is essential to look at the implications of the non-compliance to ascertain if the Company is liable to be penalized for the same;

In the case of HB Stockholding Limited v Securities Exchange Board of India, a show cause notice was issued by SEBI for alleged violation of the provisions of regulation 4(a), (b), (c) and (d) of the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 1995 for suspicious dealings in the scrip of HB Stockholdings Limited. In this case, the Securities Appellate Tribunal, Mumbai by its decision dated August 27,2013 had quashed the order of the Adjudicating Officer on the ground of unconscionable and unexplained delay of about 12 (twelve) years in initiating and completing the proceedings. Applying the same principle in the present case. we say that the alleged non-compliance was made almost 15 (fifteen) years ago and to now penalize WRV as well as the Company for the same shall not only be unfair and unreasonable but will not serve the ultimate purpose of the regulation, which is fair dissemination of information to public.

(e) We say that the non-compliance, if any, by WRV under regulations 8(1) and 8(2) of the SEBI Takeover Regulations for financial year ending March 2000 was purely due to inadvertence without any deliberate intention to violate the letter and spirit of law

(f) We wish to bring to the notice of the Adjudicating Officer that for the financial year ending March 2001, WRV has made requisite disclosures under regulations 8(1) and 8(2), albeit a negligible delay of 9 (nine) days. This is clearly indicative of the fact that WRV had no malafide intention to hide or

suppress any information from the general public and that such non-compliance for the year ending March 2000 was merely technical in nature and due to transit or postal delay

(g) We say that the delay under these regulations has not caused any harm to the interest of the public shareholders of the Company or the public at large as the information necessary to be made available in the public domain was already made available pursuant to the quarterly filing by the Company under Clause 35 of the Listing Agreement

(h) The Adjudicating Officer must take into consideration the fact that this delay was a onetime delay and not a recurring one and apart from this, the Company and WRV has a clean track record and has never committed any deliberate breach of any regulations issued by SEBI in the past

(i) At present, WRV neither holds any direct or indirect shareholding in the Company nor has any say in the day to day management and affairs of the Company having relinquished its control in the Company pursuant to the open offer process completed in 2010. We also say that, the Company has been carrying on its business under the name of 'Integra Engineering India Limited' as opposed to 'Schlafhorst Engineering (India) Limited, thus, carrying on its business under a completely new identity and held by a new set of promoters.

7. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, Noticee was granted an opportunity of personal hearing on January 22, 2016. Ms. Purti Minawala and Ms. Poornima Balasubramanian (of M/s Crawford Bayley) appeared as Authorized Representatives (**ARs**) on behalf of the Noticee and reiterated the submissions made by the Noticee vide its letter dated January 14, 2016. During the course of hearing, the ARs mentioned that Noticee would be filing a settlement application in the matter in terms of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. Subsequently, Noticee also filed a consent application, which was later on rejected by the High Powered Advisory Committee in its meeting held on July 05, 2017 with a recommendation that the matter may not be settled on the proposed settlement terms offered by the Noticee.

8. Pursuant to my appointment as AO, vide letter dated January 16, 2018, Noticee was advised to make additional submissions, if any, in the matter. Vide e-mail dated February 28, 2018, Noticee made additional submissions and also requested for another opportunity of personal hearing in the matter. Thereafter, Noticee was provided with another opportunity of personal hearing on April 3, 2018. During the course of the hearing, Ms. Purti Minawala, Ms. Poornima Balasubramanian and Mr. Kunal Mehta (of M/s Crawford Bayley) appeared as Authorized Representatives (ARs) on behalf of the Noticee and reiterated the earlier submissions made by the Noticee vide its letters dated January 14, 2016 and February 27, 2018.

9. Subsequent to the hearing, Noticee also made additional submissions vide its letter dated April 12, 2018 and, *inter alia*, mentioned that :-

   (a) The shareholding of the Noticee increased by 2.78% pursuant to the conversion of 9% cumulative convertible preference shares held by the Noticee in the company. Subsequent to this conversion, the total shareholding of the Noticee increased from 51% to 53.78% in the company. In view of the same, the acquisition of 2.78% in the company was not an 'open market purchase' or 'acquisition' was merely due to conversion of the cumulative convertible shares ("CCPS") held by the Noticee in the company.

   (b) A period of 8 years has lapsed since the Noticee ceased to be a promoter of the company and almost 18 years have lapsed since the alleged non-compliance of Regulation 7 (1A). In the given situation, the benefit of doubt must be given to the delinquent Noticee that the said disclosure was made in due course. The SCN has also failed to discuss the impact of such alleged non-compliance especially when the fact that the Noticee held that the CCPS was an information that would have been sufficiently available in public domain including but not limited to the terms of its conversion.

Therefore, the purported alleged non-disclosure is obviously not a wilful suppression with any malicious motive to deceive any public shareholders.

(c) *Owing to inability to obtain any information pertaining to events which transpired over a decade ago, our client decided to pursue settlement of the present matter in accordance with the provisions of the SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 and filed a settlement application with SEBI on February 12, 2016. SEBI vide its letter dated February 17, 2016 bearing reference February 17, 2016 directed the Noticee to make full and true disclosures in respect of the alleged defaults with the stock exchanges where the shares of the company are listed and provide proof of the said disclosures (acknowledgment from the target company and from the said stock exchanges). The duly acknowledged disclosures filed with BSE and the company are submitted with the letter.*

(d) *The SCN was issued by SEBI after a lapse of almost 15 years since the disclosures were required to be filed in 2000 and the SCN reached to the Noticee only in December 2015. Even if the SCN was issued pursuant to the filing of the Letter of Offer, there is still a delay of almost 4 years in issuance of the SCN. In view of the same, we say that the proceedings are liable to be quashed on the ground of a long and unexplained delay of almost 15 years in initiating the adjudication proceedings.*

(e) *Noticee enjoys an impeccable repute globally and also carried out its operations in India for almost 2 decades during which there have been no allegations of non-compliance with any laws of India besides the frivolous non-compliances which are presently under discussion. Further, the SCN fails to lay down the impact of grave harm if any that the alleged non-compliance have had on the market or the public shareholders of the company.*

(f) The AO has entirely relied upon the statements made by the merchant bankers in the Letter of Offer regarding the status of the disclosures made by our client without making any attempts to find any supporting documentary evidence available either with SEBI or any of the interested parties, our client has been compelled to make a feeble attempt to defend its case which has definitely caused prejudice to our client.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

10. I have carefully perused the submissions of the Noticee (both oral and written) in the said matter, the facts and circumstances of the case and the material on record. The issues that arise for consideration in the present case are:

a. Whether the Noticee has violated the provisions of Regulations 8(1) & 8(2) of the SAST Regulations, 1997 for the FYs ended March 31, 2000 and March 31, 2001?
b. Whether the Noticee has violated the provisions of Regulations 7 (1A) read with 7(2) of the SAST Regulations, 1997 w.r.t its acquisition of the shares of the company on September 19, 2002?
c. Does the violations, if any, attract monetary penalty under section 15A (b) of the SEBI Act?
d. If so, what would be the monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15 J of the SEBI Act?

11. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 1997 allegedly violated by the Noticee, which reads as under:

SAST Regulations, 1997

Acquisition of 5 per cent and more shares of a company.

7.(1A) *Any acquirer who has acquired shares or voting rights of a company under sub- regulation (1) of regulation 11, [or under second proviso to sub-regulation 2 of regulation 11 shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

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

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

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

Since Regulation 7(1A) above draws reference to Regulation 11 (1) of the SAST Regulations, the relevant extracts of Reg 11 (1) are as follows:

11.(1) *No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.*

Continual Disclosure

8(1) *Every person, including a person mentioned in regulation 6 who holds more than fifteen per cent shares or voting rights in any company, shall, within 21 days from the financial year ending March 31, make yearly disclosures to the Company, in respect of his holdings as on 31st March.*

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.*

FINDING

The issues for examination in this case and the findings thereon are as follows:--

a. Whether the Noticee has violated the provisions of Regulations 8(1) & 8(2) of the SAST Regulations, 1997 for the financial years ended March 31, 2000 and March 31, 2001?

12. As per the material made available, Noticee was the promoter of the Company during the relevant period. In the SCN, it is alleged that Noticee has failed to comply with the provisions of Regulations 8(1) and 8(2) of the SAST Regulations, 1997 for the financial years ended March 31, 2000 and March 31, 2001. In this regard, I note that Regulation 8(1) of the SAST Regulations, 1997 mandates every person holding more than 15% shares or voting rights in a company shall, within 21 days from the financial year ending March 31, make yearly disclosures to the Company, in respect of his holdings as on 31st March. Similarly, Regulation 8(2) of the SAST Regulations, 1997 mandates a promoter or every person having control over a company to disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, to file yearly disclosures to the company, in respect of his holdings as on March 31st to the company within 21 days from the year ending 31st March. Thus, it is very clear that the periodicity of the disclosures mandated under Regulations 8(1) and 8(2) of the SAST Regulations, 1997 is annual and the due date for complying with the disclosure requirements under the above mentioned Regulations is on or before April 21 every year.

13. From the shareholding details submitted by the company to BSE, I observe that the Noticee's shareholding in the company was 51% during the financial years ended March 31, 2000 and March 31, 2001. In view of the fact that Noticee was holding more than 15% shares or voting rights in the company during the

aforementioned financial years, the Noticee was under an obligation to make the relevant disclosure under Regulation 8(1) of the SAST Regulations, 1997 to the company by April 21, 2000 & April 21, 2001, in respect of the above mentioned financial years i.e FYs ended March 31, 2000 and March 31, 2001. Similarly, as promoter of the company during the relevant period, Noticee was under an obligation to make the necessary disclosures u/r 8(2) of SAST Regulations, 1997 to the company by April 21, 2000 & April 21, 2001 for the FYs ended March 31, 2000 & March 31, 2001. Admittedly, Noticee made the relevant disclosure u/r 8(1) and 8(2) of SAST Regulations for the FY ended March 31, 2001 on April 30, 2001 i.e. with a delay of 9 days. However, Noticee failed to make the disclosures u/r 8(1) & 8(2) of SAST Regulations, 1997 w.r.t the FY ended March 31, 2000. In view of the above observations, I hold that Noticee has violated the provisions of Regulations 8(1) and 8(2) of the SAST Regulations, 1997 as it failed to make the necessary disclosures within the stipulated time period for the financial year ended March 31, 2001 and failed to make the necessary disclosures under the aforementioned Regulations for the FY ended March 31, 2000.

14. As regards the disclosures required to be made by the Noticee for the FY ended March 31, 2000, Noticee has claimed that it had sent the disclosure formats by courier to the company during the relevant period. However, Noticee could not produce any evidence or any other supporting material / documents to substantiate its claim of having dispatched the disclosure documents/ formats to the company by courier. Admittedly, Noticee could not produce any evidence on record, including courier receipts etc to establish the veracity of its claim of having dispatched the disclosure documents u/r 8(1) and 8(2) of SAST Regulations for the FY ended March 31, 2000. Further, the confirmation made in the letter of offer dated January 4, 2011 and the replies submitted by the Noticee during the course of the proceedings, details of which are reproduced below, only accentuates the findings that Noticee has failed to make the necessary disclosures u/r 8 (1) & 8(2) of SAST Regulations, 1997 for the Financial Year ended March 31, 2000. In this

context, the relevant submissions made by the Noticee in response to the SCN and particularly with reference to the disclosures required u/r 8(1) & 8(2) of SAST Regulations, 1997 for the FY ended March 2000 are mentioned as under :-

- *WRV, being a promoter of the Company and having shareholding of more than fifteen per cent in the year 2000 was required to disclose to the Company within 21 days from the financial year ending March 31,2000, the number and percentage of shares or voting rights held by him in that Company;*
- *Due regard should be given to the fact that WRV is a foreign company, established under the laws of Germany, presently having its registered office at Leverkuser Str. 65, 42897 Remscheid, Germany. The necessary declarations are sent via a courier to the registered office of the Company which is situated at Chandrapura village located on the outskirts of Vadodara district in Gujarat. We say that the necessary declaration must have been sent by WRV at that point of time, however, the same must have been lost in transit for reasons unknown today;*
- *we say that the non-compliance, if any, by WRV under regulations 8(1) and 8(2) of the SEBI Takeover Regulations for financial year ending March 2000 was purely due to inadvertence without any deliberate intention to violate the letter and spirit of law*
- *we wish to bring to the notice of the Adjudicating Officer that for financial year ending March 2001, WRV has made requisite disclosures under regulations 8(1) and 8(2), albeit a negligible delay of 9 (nine) days. This is clearly indicative of the fact that WRV had no malafide intention to hide or suppress any information from the general public and that such non-compliance for the year ending March 2000 was merely technical in nature and due to transit or postal delay*

From the above, it is amply clear that Noticee has admitted to the fact that disclosures were not filed by it u/r 8(1) and 8(2) of SAST Regulations, 1997 for the FY ended March 31, 2000. Therefore, I hold that Noticee has violated the provisions of Regulations 8(1) & 8(2) of SAST Regulations, 1997 for having failed to make the necessary disclosures to the company during the FY ended March 31, 2000.

b. Whether the Noticee has violated the provisions of Regulation 7 (1A) read with Regulation 7(2) of the SAST Regulations, 1997 w.r.t its acquisition of shares of the company on September 19, 2002?

15. The SCN has alleged that the shareholding of the Noticee in the company increased by 2.78% as on September 19, 2002 pursuant to the conversion of 9% cumulative convertible preference shares, which was held by the Noticee in the company. Subsequent to the aforementioned conversion of preference shares to equity shares on September 19, 2002, Noticee acquired 38,36,619 shares of the company and consequently, the total shareholding of the Noticee in the company increased from 51% to 53.78% as on September 19, 2002. In this regard, I observe that Noticee made the relevant disclosure u/r 7(1A) r/w 7(2) of the SAST Regulations, 1997 only on February 29, 2016 i.e after it had received the SCN in the present proceedings.

16. The Noticee has contended that the acquisition of 2.78% shares in the company was not an 'open market purchase' or 'acquisition' and the increase in shareholding was on account of conversion of the cumulative convertible preference shares ("CCPS") held by it in the company. Further, the Noticee also contended that owing to an amendment made in Regulation 7 of SEBI (SAST) Regulations, 1997 w.e.f September 09, 2002, Noticee was not aware of the disclosure requirements to be made under the provisions of Regulations 7(1A) r/w 7(2) of the SAST Regulations, 1997. Therefore, Noticee mentioned that it could not make the relevant disclosures u/r 7(1A) r/w 7(2) of the SAST Regulations, 1997 within the stipulated time period. In this regard, I observe that Hon'ble SAT through various judgments have consistently observed that these factors are not valid grounds for not complying with the mandatory disclosure obligations prescribed under the SAST Regulations. In this context, I place reliance on the Order passed by Hon'ble SAT in the matter of M/s Akriti Global Traders Ltd. vs SEBI wherein Hon'ble SAT had observed that

"*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under these regulations*." (Emphasis supplied)

The contention of the Noticee that it was not aware of the disclosure requirements prescribed under Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997 also cannot be accepted as '*Ignorantia juris non excusat'*, that is to say, ignorance of law is not an excuse and does not absolve any person from the penalty for the breach of it. Clearly, from the above observations, Noticee has violated the provisions of Regulations 8(1) and 8 (2) of SAST Regulations, 1997 and also Regulation 7(1A) r/w Regulation 7 (2) of SAST Regulations, 1997.

c. Does the non-compliance, if any, attract monetary penalty under Section 15A (b) of the SEBI Act, 1992?

17. From the observations made in the above paragraphs, it is established that Noticee has violated the provisions of Regulations 7(1A) r/w 7(2) of SAST Regulations, 1997 and also Regulations 8(1) & 8(2) of the SAST Regulations, 1997. In this context, I place reliance on the observations of Hon'ble Supreme Court of India in the matter of SEBI vs Shri Ram Mutual Fund {2006} 68 SCL 216 (SC) wherein, Hon'ble SC has held that "*once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of*

violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow".

18. As the violations of the statutory obligation under Regulation 7(1A) r/w Regulation 7(2) of SAST Regulations and Regulations 8(1) & 8(2) of the SAST Regulations, 1997 have been established, I hold that Noticee is liable for monetary penalty under the provisions of section 15 A (b) of the SEBI Act, which reads as under :

> ***Penalty for failure to furnish information, return etc***
> *15 A -If any person, who is required under this Act or any rules or regulations made thereunder-*
> *(a)……..*
> *(b) to file any return or furnish any information, books or other documents within the time specified thereof in the regulations, fails to file return or furnish the same within the time specified thereof in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues*
> *(c)…..……..*

d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of the SEBI Act?

19. While determining the quantum of penalty under section 15A (b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under :

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

While adjudging the 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"*

20. From the material available on record, the amount of disproportionate gain or unfair advantage to the Noticee or loss caused to the investors as a result of the default committed by the Noticee is not quantifiable. Though it may not be possible to ascertain the monetary loss to the investors on account of the default by the Noticee, the details of the shareholding of the Noticee and the timely disclosures thereof, were of significant importance from the point of view of the investors as that would have prompted them to buy or sell shares of the company. The disclosure obligation mandated under the SAST Regulations are critical and important component of the legal regime governing substantial acquisition of shares and takeovers. In the absence of these timely disclosures, the investors will be deprived of the important information at the relevant point of time.

21. The contentions of the Noticee that the non-disclosures were unintentional, a technical breach of the provisions of law, no harm has been caused to the public shareholders due to non-disclosure etc are without any merit and cannot be accepted. In this context, I would like to place reliance on the judgment of Hon'ble SAT in the matter of M/s Virendrakumar Jayantilal Patel vs SEBI (Appeal no. 299 of 2014 and Order dated October 14, 2014), wherein, Hon'ble SAT had observed that "…….. *obligation to make the disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not*

complying with the mandatory obligation. Similarly, argument that the failure to make the disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make the disclosures" (Emphasis supplied).

22. Further, in the matter of Mrs. Komal Nahata vs. SEBI [Appeal No. 05/2014) and decided on 27.01.2014, it is worthwhile to note that Hon'ble SAT at para 12 of its judgment held 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"*.

23. In the matter of Ranjan Varghese vs. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed "*Once it is established that the mandatory provisions of Takeover Code was violated, the penalty must follow."*

24. The Noticee has also contended that the alleged non-compliance w.r.t the provisions of Regulations 7(1A) r/w 7 (2) of SAST Regulations was made almost 15 years ago and to now penalize it for the same shall not only be unfair and unreasonable but will not serve the ultimate purpose of the regulation, which is fair dissemination of information to the public. In this regard, Noticee also cited the judgment of Hon'ble SAT in the matter of M/s HB Stockholding Limited vs SEBI (Appeal no. 114 of 2012 decided on 27.08.2013). I have perused the said judgment and found the same is not relevant in the facts and circumstances of the instant case in as much as the said judgment does not

deal with Regulation 7(1A) and 7(2) of SAST Regulations. Further, I also observe that there is no statutory bar for adjudicating the matter beyond a particular date in the SAST Regulations, 1997. In this context, I place reliance on the Order passed by Hon'ble SAT in the matter of Mr Ravi Mohan and Ors vs SEBI (Appeal no. 97 of 2014 and Order dated December 16, 2015) wherein Hon'ble SAT has observed that *" Based on decision of this Tribunal in the case of HB Stockholdings Ltd vs SEBI (Appeal no 114 of 2012 decided on 27.08.2013), it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there is no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that adjudication order is passed after a lapse of several years from the date of issuing the notice. In the Takeover Regulations, 1997 there is no time limit prescribed either for issuing show cause notice or for adjudicating the show cause notice. Therefore, argument of the appellants that in view of the delay in issuing the show cause notice the impugned order must be quashed cannot be accepted*……."

ORDER

25. After taking into consideration all the facts and circumstances of the case, material on record and the submissions of the Noticee, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose consolidated penalty on the Noticee as under:

Name of the Noticee	Violations committed	Penal provision	Penalty
W. Reiners Verwaltungs GmbH, Germany	Regulation 7(1A) r/w 7(2) of SAST Regulations, 1997 and violation of Regulations 8(1) and 8(2) of the SAST Regulations, 1997 read with Regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011	Section 15 A (b) of SEBI Act, 1992	Rs. 4,00,000/- (Rupees Four lakh only)

I am of the view that the said penalty is commensurate with the default committed by the Noticee.

26. The Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account , the details of which are given below-

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

27. The Noticee shall forward the said Demand Draft or the details/ confirmation of penalty so paid through e-payment (in the format given in the table below) to "The Division Chief, Enforcement Department (**EFD DRA-III**), Securities and Exchange Board of India, SEBI Bhavan, Plot No C-4A,"G" Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051" .

1. Case Name:	
2. Name of the Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

28. In terms of Rule 6 of the Adjudication rules, copies of this order are sent to the Noticee and also to the Securities and Exchange Board of India.

PLACE: MUMBAI **SURESH B MENON**

DATE: MAY 16, 2018 **ADJUDICATING OFFICER**