BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/KS/VS/2020-21/9032-9034]

1. **Vivekshil Dealers Private Limited**
   (Now known as Hi Print Electromack Private limited)
   [PAN: AAACV9626L]
   Moradabad Dharam Kanta,
   Harthala, Moradabad - 244001,
   Uttar Pradesh

2. **Kailash Industries Limited**
   [PAN: AACCK0247L]
   Opposite Taxi Stand, Rampur Road,
   Moradabad - 244001,
   Uttar Pradesh

3. **Genus Paper & Boards Ltd.**
   (Earlier known as Genus Paper Products Ltd.)
   [PAN AAECG5483A]
   Kanth Road, Village Aghwanpur,
   Moradabad - 244001,
   Uttar Pradesh

In the matter of M/s Genus Prime Infra Limited

FACTS OF THE CASE

1. An Open Offer was made by Mr. Rajendra Kumar Agarwal, Mr. Jitendra Kumar Agarwal and Mr. Amit Agarwal in terms of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SAST Regulations, 2011**") to the shareholders of Genus Prime Infra Ltd (hereinafter

referred to as the "**GPIL**" or **"Company**"), through a public announcement dated July 01, 2014 for acquisition of 36,59,110 shares of the company representing 26% of the paid up capital of the company.

2. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") while examining the aforesaid offer document observed that:

   a) Vivekshil Dealers Pvt Ltd (Now known as Hi Print Electromack Private Limited) and Kailash Industries Ltd, (hereinafter referred to as "**Noticee-1**" and "**Noticee -2**" respectively) being Promoters of GPIL had failed to comply with the provisions of Regulation 8(2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **"SAST Regulations, 1997"**) and Regulations 30(1) and 30(2) SAST Regulations, 2011.

   b) Noticee-1, Noticee-2, Genus Paper and Board Ltd (hereinafter referred to as "**Genus**"/ "**Noticee-3**" and Dr Chandra Kumar Jain, being Promoters of GPIL had failed to comply with the provisions of Regulation 3(2) of the SAST Regulations, 2011

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Prasad Jagdale was appointed as Adjudicating Officer vide an order dated November 13, 2015 under section 15 I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalty) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**"), Section 19 of the SEBI Act, 1992 to inquire into and adjudge under Sections 15A(b) of the SEBI Act, 1992, the violation of Regulation 8(2) of the SAST Regulations, 1997, Regulation

30(1) and Regulation 30(2) of the SAST Regulations, 2011 alleged to have been committed by Noticee-1 and Noticee-2 and also to inquire into and adjudge under Sections 15H(ii) of the SEBI Act, 1992, the violation of Regulation 3(2) of the SAST Regulations, 2011 alleged to have been committed *inter alia* by the said 3 Noticees. Pursuant to the transfer of Shri Prasad Jagdale, Shri Suresh Gupta was appointed as Adjudicating Officer and thereafter, the Adjudication proceedings have been transferred to me vide Order dated May 18, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Common Show Cause Notice (hereinafter referred to as "**SCN**") dated June 08, 2017 was issued to the Noticees under Rule 4(1) of the Adjudication Rules calling upon to show cause as to why an inquiry should not be initiated against them in terms of Rule 4 of Adjudication Rules read with Section 15 I of the SEBI Act, 1992 and why penalty, if any, should not be imposed on them under the provisions of Sections 15A(b) and 15H(ii) of the SEBI Act, 1992.

5. The details in respect of violation/ non-compliance by the Noticees as alleged in the SCN are as given below:-

   a) *It was observed that for quarters ending December 2010 to December 2012, the shareholding of two promoter entities i.e. Noticee-1 & 2 which was equivalent to 0.99% was included in the public category and not in the promoter category. As per the requirements of Regulation 8(2) of the SAST, 1997, the Noticees-1 & 2 being promoters of company were required to make the disclosures regarding the number and percentage of shares or voting rights held by them or with persons acting in concert, in that company 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. The details of the said non-compliance are given in the following table:

Sr No	***Regulation/sub-regulation***	***Relevant Year***	***Due date for compliance***	***Status of compliance***
1	*8(2) of SAST,1997*	*2010-2011*	*29.04.2011*	*Not complied*

b) *In view of the above facts, it is alleged that the actions of Noticees-1 & 2 led to the violation of Regulation 8(2) of SAST Regulations, 1997.*

c) *Further, as per the requirements of Regulations 30(1) and 30(2) of the SAST, 2011, Notoicees-1 & 2 being promoters of company and persons holding more than 25% of shareholding along with persons acting in concert were required to make the disclosures regarding the number and percentage of shares or voting rights held to the company within 7 days from the financial year ending March 31 as well as the record date of the company for the purposes of declaration of dividend. However, it is alleged that the Noticees-1 & 2 had not complied with Regulations 30(1) and 30(2) SAST, 2011 for the financial year 2011-2012, the details of which are given in the following table:*

Sr No	***Regulation/sub-regulation***	***Relevant Year***	***Due date for compliance***	***Status of compliance***
1	*30(1) & 30(2) of SAST,2011*	*2011-2012*	*10.04.2012*	*Not complied*

d) *Further, it was observed that Noticee-1, Noticee-2 and Noticee-3 became promoters of GPIL by way of buying the controlling stake through SPA and*

*open offer in October 2010. The holdings of the Noticees as on August 21,2013 ("**Relevant date"**) was 94,47,731 shares amounting to 67.13% of the total share capital of the GPIL. Further, it was observed that Noticee-1, one of the promoters of GPIL had purchased the shares of GPIL during the period August 22, 2013 to September 23, 2013 (hereinafter referred to as '**Relevant Period'**), the details of which are as tabulated below*

Date of transaction	***Shareholding of Promoters before date of transaction (No. &%)***	***No. of Shares acquired by Vivekshil Dealers Pvt Ltd***	***Shareholding of Promoters after date of transaction (No. & %)***
22.08.2013	*94,47,731 (67.13%)*	*65,000*	*95,12,731(67.60%)*
23.08.2013-17.09.2013	*95,12,731 (67.60%)*	*2,60,500*	*97,73,231(69.44%)*
18.09.2013	*97,73,231 (69.44%)*	*97,400*	*98,70,631(70.10%)*
19.09.2013-20.09.2013	*98,70,631 (70.10%)*	*1,95,900*	*100,66,531(71.52%)*
23.09.2013	*100,66,531 (71.52%)*	*87,000*	*101,53,531(72.14%)*

e) *From the above table, for instance, It was observed that on August 22,2013 the Noticee-1 purchased 65,000 shares and increased the shareholding of the noticees from 94,47,731(67.13%) shares to 95,12,731(67.60%) shares. Thus, during the period August 22, 2013 to September 23,2013 the noticee-1 purchased 7,05,800 shares constituting 5.01% of shareholding of the company within a financial year thereby increasing the shareholding of Noticees from 67.13% to 72.14%.*

f) *Under Regulation 3(2) of the SAST, 2011, no acquirer, together with persons acting in concert with him who holds twenty-five percent or more of the shares or voting rights in a target company can acquire more than five percent of the shareholding of the company within any financial year unless*

the acquirer makes a public announcement of an open offer for acquiring shares. It is observed that Regulation 3(2) was triggered during the aforesaid period of August 22, 2013 to September 23, 2013 as the acquisition of the Noticees was 5.01% during the same financial year of 2013-2014. However, Noticees have failed to make the public announcement for the same.

6. From the record, I note that the SCN issued by way of SPAD was duly delivered on the Noticees-1 & 3. However, the SCN issued to Noticee-2 returned undelivered. In view of the same, the SCN was sent to Noticee-2 at its new address and the receipt of the same of the same was acknowledged vide its reply to the SCN dated July 28, 2017 received on July 31, 2017. Further, the Noticee-3 vide its letter dated June 19, 2017 sought additional time of 3 weeks to submit its reply. However, no further reply was received from the said Noticee-3 as well as Noticee-1. Considering the facts and circumstances of the case, opining that an inquiry should be held in the matter, the Noticees-1 and 3 were granted an opportunity before the undersigned on July 20, 2017 vide Notice dated July 4, 2017. Vide the said Notice, the Noticee-1 and 3 were also granted another opportunity till July 14, 2017 to submit their reply to the SCN. While no reply was received from the Noticee-1, the Noticee-3 vide its letter dated July 17, 2017 submitted its reply *inter alia* stating as under:

"…

5. With regard to the allegation that we had failed to make public announcement under Regulation 3 (2) of SAST 2011, consequent to the acquisition of 5.01 % shares of the Company by Vivekshil Dealers Private Limited during 22.08.2012 to 22.09.2012 it is submitted that the alleged violation of provision of Regulation 3 (2) of SAST 2011 was inadvertent and not actuated by any sinister intent or oblique motive.

6. With regard to the observations regarding imposition of monetary penalty in the Notice, it is submitted that in the facts of this case no penalty be imposed and a lenient view be taken. While considering our submissions, following factors be also taken into consideration:

(i) That the alleged violation is at the highest a technical, procedural and venial breach.

(ii) That the alleged violation is not deliberate and intentional and in contumacious disregard of provisions of law.

(iii) That the alleged violations have not caused any loss to any investor and have also not adversely affected the shareholders of the Company or the securities market in any manner. Further, it may be noted that there are no shareholder/investor complaints in this regard.

(iv) That as result of alleged violation, we have not made any gain or gained any unfair advantage. The same has not been even alleged. Further, the allegations do not relate to fraud /unfair trade market practices/ market manipulation/ insider trading etc.

(v) That, it is assured that we will continue to scrupulously abide by the provisions of the SEBI Regulations.

7. In the facts and circumstances, any imposition of penalty on us would be unjustified and unwarranted. In view of the foregoing submissions, it is humbly prayed that the Notice be discharged and no penalty be imposed."

7. Further, Mr. Vinay Chauhan along with Advocate Mr. KC Jacob, Authorized Representatives (**AR**) of Noticee-3 appeared on July 20, 2017 for the personal hearing. During the hearing, the Authorized Representatives reiterated the submission dated July 17, 2017 and sought additional time of 7 days to submit further reply/written submissions. The same was acceded and the hearing proceedings were concluded. However, the Noticee-1 failed to appear for the hearing. In view of the same, another opportunity of hearing was granted on August 07, 2017 vide Notice of hearing dated July 28, 2017 to Noticee-1 and 2

In reply, the Noticees-1 and 2 vide their identical replies dated July 28, 2017 *inter alia* submitted as under:

"….

Yearly Disclosure under 8(2) of SAST Regulations, 1997

With regard to alleged non-disclosure regarding the yearly disclosure for the Financial Year 2010-11 under Regulation 8(2) of SAST Regulations, 1997, it is submitted that inadvertently, we had missed making the disclosure regarding the same to the Company. However, we had vide our letter dated July 04, 2017 have filed the required disclosure under Regulation 8(2) with the Company. Thus the alleged lapse has been cured, albeit belatedly.

Yearly Disclosure under 30(1) and 30 (2) of SAST Regulations, 2011

With regard to alleged non-disclosure regarding the yearly disclosure for the *Financial Year 2011-12 under Regulations 30(1) and 30 (2) of SAST Regulations, 2011, it is submitted that inadvertently, we had missed making the disclosure regarding the same to the Stock Exchange. However, we had vide our letter dated 2017 have filed the required disclosure under Regulations 30(1) and 30 (2) of SAST Regulations, 2011 with the stock exchange. Thus the alleged lapse has been cured, albeit belatedly.*

With regard to the allegation that I had failed to make public announcement under Regulation 3 (2) of SAST 2011, consequent to the acquisition of 5.01 % shares of the Company during 22.08.2012 to 22.09.2012 it is submitted that the alleged violation of provision of Regulation 3 (2) of SAST 2011 was inadvertent and not actuated by any sinister intent or oblique motive."

8. Further, on the request of the Noticees-1 & 2, the hearing scheduled on August 07 was advanced and the hearing was conducted on August 04, 2017. Mr. Vinay Chauhan along with Advocate Mr. K C Jacob, ARs of Noticee-1 & 2 appeared for the hearing and reiterated the submissions made vide the reply dated July 28, 2017 on behalf of the said Noticees. The hearing proceedings were concluded

therewith. In the meanwhile, vide their email dated August 01, 2017, the AR of the Noticees vide email dated August 01, 2017 submitted the acknowledgment copies of the settlement application filed by the Noticees in the matter. In view of the same, the confirmation was sought from the concerned Department of SEBI. On confirmation of registration of the Settlement applications of the Noticees by the department, the matter was kept in abeyance till the conclusion of the settlement process.

9. Subsequently, vide Email dated August 14, 2020, the concerned department of SEBI informed that the settlement applications filed by the Noticees had been rejected. In view of the same, vide Notice dated August 20, 2020, the Noticees were granted another opportunity of hearing on September 04, 2020 in the interest of natural justice. In reply, the Noticees vide their common letter dated August 13, 2020 reiterating their earlier submissions further *inter alia* stating as under:

"Our submissions and elucidations in relation to the adjudication proceedings:

11. It is submitted that the settlement for the matter at hand suffer from the doctrine of laches. We would like to point out that a legal right or claim will not be enforced or allowed if a long delay in asserting the right or claim has prejudiced the adverse party. There has been a substantial delay in bringing the action in terms of the violations. In this regard, we crave to rely on the order dated 27.08.2013 of the Hon'ble Securities Appellate Tribunal in Appeal No. 114 of 2012 between HB Stockholdings Limited Versus Securities and Exchange Board of India wherein it was observed as under:

"Allowing matters to go on and on for years together by the Respondent serves no purpose, rather it risks loss of evidence such as important documents which may get destroyed while the issue gathers dust Such systemic failures occur to the disadvantage of all parties concerned and lead to consequences such as genuine violators being allowed to function normally in the capital market for years together, whereas I some situations the reputation of innocent entities gets

tarnished as they wait for the wheels of justice to turn a bit faster than the pace at which they seem to be going"

We further rely on the order dated 07.09.2012 in Appeal no. 19 of 2012 passed by the Hon'ble Securities Appellate Tribunal in the case of Khandwala Securities Vs. SEBI where the Ld. Bench observed as under:

"This Tribunal has held in several cases including Subhkam Securities Private Limited, vs. Securities and Exchange Board of India decided on July 25, 2012 Appeal no. 73 of 2012, Aditi Dalai us. Securities and Exchange Board of India decided on November 28, 2011 Appeal no.143 of 2011 that proceedings under the Securities and Exchange Board of India Act require finalization within a reasonable period of time. Delay defeats justice and the very purpose for which proceedings are initiated."

…..

14. It is also pertinent to bring into the kind attention of your good office that in the matter of Price Waterhouse Coopers Pvt. Ltd. v. Commissioner of Income Tax, Kolkata-I, (2012) 11 SCC 316, the Hon'ble Supreme Court has opined that:"...It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the Assessee is not justified. We are satisfied that the Assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars."

Our matter is on the similar lines to that of the case cited herein above. Also, the bona fide and technical inadvertence in the present case, had no bearing on disclosure practices of Noticee Companies in any manner whatsoever.

…..

18. We humbly submit to your good office that on perusal of the various sub-sections of Section 15 would indicate without any doubt that the penalties by their very name are penal in nature. If the penalties are penal in nature, then there must be an element of proof of wilful default or wilful disobedience of the Regulations. It must be wilful and deliberate defiance of the Regulations. The mere unintended technical violations cannot be a subject matter of adjudication proceedings in cases where there is a technical breach of provisions of the Regulation or where the breach flows from a bonafide belief that the offender is not likely to act in a manner prescribed by the statute. This is also the view taken by the Honorable SAT in Cobat International Capital Corpn. vs. SEBI in reported

2004(51) SCL 307.. Further, no harm or loss has been caused to any retail investors.

19. We would also like to bring to your kind attention on the observation of the Hon'ble Securities Appellate Tribunal in the matter of Ambaji Papers Private Limited & Ors. v. Adjudicating Officer, Securities and Exchange Board of India (Appeal No. 201 of 2013 dated January 15, 2014) wherein, it held, "To this extent, the appellants, though inadvertently and without any intention, have defaulted in complying with the regulations regarding disclosures in question in our considered view and in the facts and circumstances of the present cases. The infraction, although venial in nature, is an infraction nonetheless. This Tribunal has held time and again that the penalty levied on any wrong-doer ought to be commensurate with the gravity of the deviation effected." This observations has been accepted by SEBI Adjudication Officer Shri Maninder Cheema in the matter of M/s Royal India Corporation Limited dated August 31, 2018 (ADJUDICATION ORDER NO. MC/DPS/ 8 /2018) while levying penalty in the said order, noted that "I note that no quantifiable figures are available on record to assess disproportionate gain made or loss caused to investors by the aforesaid violation. From the material available on record, repetitive nature of default by the Noticee could also not be ascertained."

……"

10. Further, the Noticees vide their email dated August 18, 2020 submitted interim replies stating as under:

…..

Noticee Companies have maintained an impeccable clean record in terms of compliance with the provisions of the SEBI Act and Regulations made thereunder, and there is no notice has ever been ever passed against them by any regulatory authority including SEBI, except in the present matters. Noticee Companies have always acted honestly, bonafide and made all the necessary disclosures. It is submitted that any action against Noticee Companies would result in destroying their reputation. Noticee Companies assures that it will continue to abide by the provisions of the SEBI Act and Regulations made thereunder along with other applicable laws.

*We humbly submit to your esteemed office that Noticee Companies are facing liquidity distress in the current market due to the challenging environment created by novel coronavirus (**"COVID-19"**). We are already facing the challenging environment due to the outbreak of COVID-19 and its consequential countrywide lockdown, shutting down of the commercial, industrial and retail activities. It would be really impenetrable for the Noticee Companies to survive the disruption caused by COVID-19. On account of the ensuing lockdown and pandemic COVID-19, our business has been forced to cease operations due to the liquidity bridge and failure to deploy monies for working capital requirements.*

….

*Further the violations made were absolutely technical, inadvertent and procedural in nature and have not impacted interest of any stakeholders of the Company in any manner whatsoever. In fact, the violations have no gravity and had no impact on the investors of the Company in any manner whatsoever.**That on becoming aware of the violations, Noticee Companies immediately took corrective actions to rectify the same and avoid their recurrence in future**.*

Excessive amount of penalty would be detrimental, harsh and prejudicial on the Noticee Companies and may lead to loss of image, goodwill, clients, empanelment and business and may lead to shutdown of business on account of loss of customers and empanelment as well which may prove harmful for the stakeholders, employees and worker of the Noticee Companies and their families. …..

Our matter is on the similar lines to that of the order cited herein above. Also, the bona fide and technical inadvertence in the present case, had no bearing on disclosure practices of Noticee Companies in any manner whatsoever. Moreover, the material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticee Companies, the loss suffered by the investors as a result of the non-compliance committed by the Noticee Companies and repetitive nature of the default. Moreover, the

judgements passed by Hon'ble Courts/ Hon'ble SAT for levying penalty are as follows:

1. *Case of Reliance Industries Ltd. V. SEBI (SAT Appeal No. 39/2002)*

   The company failed to make relevant disclosure in time under Regulation 7(1) of SAST Regulations, and Hon'ble SAT observed that "The High Court in Cabot's case has pronounced that if a breach was merely technical and unintentional, it does not merit penal consequence. It ultimately depends on the facts of each case."

2. *Akbar BadrudinBadrudinJiwani V. Collector of Customs, Bombay AIR 1990 SC 1579*

   It is noteworthy to mention wherein the Hon'ble Supreme Court had stated that :-Para 61: "We refer in this connection the decision of Merck Spares v. Collector of Central Excise & Customs, New Delhi, 1983 ELT 1261, Shama Engine Valves Ltd.., Bombay v. Collector of Customs, Bombay (1984) 18 ELT 533 and MadhusudhanGordhandas& Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mensrea has to be established".

…..

We understand that Publicannouncement of offer is one of the modes of protecting the interests of theshareholders. In this context it is pertinent tomention here the observations made by the Hon'ble Supreme Court in the matter of Swedish Match Ab Vs. SEBI, 2004 (11) SCC 641 wherein in respectof failure to make public announcement of open offer it was held that: "Public announcement of offer is one of the modes of protecting the interests of the shareholders…Regulation 11 does not brook any other interpretation. If additional shares are acquired entitling an acquirer to exercise more than 5% of the voting rights, the statutory embargo to the effect that the acquirer must make a public announcement to acquire shares in accordance with the Regulation comes into operation."It is pertinent to that in the instant matter, the acquisition of more than 5% i.e 0.1% over & above the creeping acquisition of

5% in a financial year was due to error made in computing the shareholding percentage while computing the shares to be acquired. Moreover, the Noticee Companies stood at 67.60% when the requirement of open offer under Regulation 3(2) got triggered and already near to maximum permissible promoters shareholding. We humbly request you to take a lenient view.

We further bring to your attention the judgement of Hon'ble Supreme Court of India in SEBI VsBhaveshPabari Civil Appeal No(S).11311 of 2013 vide judgement dated February28, 2019, it is noted that the provisions of section 15J has to be properly understood, and not to be mechanically applied and other factors reasonable for the facts of the case are also relevant to takeinto account for adjudging the quantum of penalty. Hon'ble Adjudication Officer Shri Santosh Shukla in the matter of PurshottamInvestofin Limited [Adjudication Order Ref No.: Order/SS/VS/2019-20/5167] relied on SEBI Vs. Pabari (Supra) and concluded that in this case, from the material available onrecord, any quantifiable gain or unfair advantage accrued to the Noticee or the extent of loss sufferedby the investors as a result of the default cannot be computed. However, timely disclosures to the target Company/Stock Exchanges as required under the SAST Regulations, are of significant importance from the point of view of the investors and regulators. I have also taken into accountthe fact that the increase in shareholding of the Noticee is marginal and there is no material or allegation to suggest any market impact. Consequently, imposed a penalty of INR 1,00,000 on the RealstepAgencies Private Limited under Section 15A (b) of the SEBI Act, 1992.

In the matter of Finalysis Credit & Guarantee Company Limited (Adjudication Order No. EAD/SR/SM/AO/100-102/2018-19 dated February 26, 2019), Hon'ble Adjudication Officer Smt. SangeetaRathod found that the material available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors due to such failure on the part of the Noticees. Further, material available on record does not show that the said failure is repetitive. Consequently, levied a consolidated penalty of INR 2,00,000 on the 3 acquirers who failed to make disclosure.

In the instant case, it would be also appropriate to rely upon the observations of Hon'ble SAT in its order dated September 14, 2010, in the matter of Ushdev Trade Limited v. SEBI, Appeal no. 106 of 2010, wherein it observed that"…….we are satisfied that even though the appellant violated the provisions of Regulation 10 of the takeover code, this violation, in the circumstances of the case, has not prejudiced or jeopardized the interest of the shareholders of the target company and cannot be said to be serious enough calling for an exorbitant penalty as imposed by the adjudicating officer. This is not a case where a non-promoter has acquired asubstantial chunk of shares in the target company changing its shareholding pattern and has gone away without making a public announcement. The acquisition by the appellant is within the promoter group which has not led to any change in the control of the target company nor has its management changed.

Relying on the above judgement, Hon'ble Adjudication Officer ShriJeevanSonparote, in the matter of Svaraj Trading and Agencies Limited (ADJUDICATION ORDER NO. JS/DJ/33-43/2017), concluded that the very fact that the Noticees have failed to make open offer when they were required to do so under provisions of SAST Regulations, 2011, warrants that penalty shall be imposed for such violation, however, further taking into consideration the facts and circumstance of the case and mitigating factors as mentioned above, a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice. Consequently, a consolidated penalty of INR 15,00,000 was imposed on the 12 Noticees. Furthermore, the Noticees appealed the said order in Hon'ble Securities and Appellate Tribunal and SAT observed and held that "In our view, the AO has not considered the fact that the appellants made the disclosures though belatedly after five days as required by Regulation 29 of the SAST Regulations. Thus, it was a technical breach and, therefore, in our view instead of imposing a penalty of Rs. 15 lacs, a penalty of Rs. 5 lacs would have been just and sufficient."

It is also pertinent to bring into the kind attention of your good office that in the matter of Swarnajyothi Agrotech& Power Limited (Adjudication Order No. EAD/KS/VB/AO/101-102/2017-18 dated March 15, 2018), Hon'ble General Manager & Adjudication Officer Shri K Saravanan concluded that "In view of the charges as established, the facts and circumstances of the case, the

quantum of penalty would depend on the factors referred in Section 15J of the SEBI Act stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further, no monetary loss to investors has been brought on record and it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticees. I also note from the documents available on record that the violations reported are not of repetitive nature." Consequently, the Hon'ble Adjudication Officer levied a penalty of INR 25,00,000 for violation of Regulation 3(1) and Regulation 3(2) of SAST 2011, Regulation 7(1) read with Regulation 7(2) of SAST Regulations, 1997, Regulation 29(1)Regulation 29(2) read with Regulation 29(3) and Regulation 29(4) of the SAST, 2011.

In the matter of ShriRakeshRamniklalSheth (Adjudication Order No. IVD-ID-8/GCL/AO/DRK/MD/EAD-3/287/53/2011), the noticee hasacquired 17.7% shares of GCL without making a public announcement asrequired under Regulation 10 of SAST Regulations. Hon'ble Chief General Manager & Adjudication Officer Shri. D. Ravi Kumar concluded that

"21. With regard to the above factors to be considered while determining the quantum of penalty, it is observed that the investigation report has not quantified the profit / loss for the nature of violations committed by the noticee.

22. Having considered the facts and circumstances of the case and after taking into account the factors under section 15J of the SEBI Act, 1992, I hereby impose a penalty of ` 25,00,000 (Rupees Twenty Five Lakhs only) on the noticee under Section 15 H of the Securities and Exchange Board of India Act, 1992, which is appropriate in the facts and circumstances of the case."

In the matter of Tirrihannah Company Limited (Adjudication Order No. EAD/KS/MKG/AO/215/2018-19 dated December 19, 2018), it was observed that the Noticees failed to comply with Regulations 7(1) read with7(2) and Regulation 22(16) of SAST Regulations, 1997. Hon'ble General Manager & Adjudication Officer Shri K Saravanan observed that the material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the non-compliance committed by the Noticees and consequently imposed a penalty of INR 6,50,000 on Noticees for the violation.

….

We humbly submit that the matters pertaining to violation of Regulation 3(2) of the SAST 2011 is pertaining to financial year 2013-14, which is 6 years old; when the alleged violation took place Noticee Companies were in control of the Company as they were holding majority shares in the Company, thus Noticee Companies would not been benefited by acquisition of additional 0.01% shares in the Company. It is erroneously concluded that Noticee Companies had intentionally made acquisitions to gain unfair advantage over the Company or its shareholders. Further the non-submission of requisite disclosures under SAST 2011 not intentionally done and the same has been rectified by belated submission of the same.

…..

We hereby submit that the matters are 6 years old which impacted the ability of Noticee Companies to reproduce and present facts effectively in the said matter, referring to the doctrine of Laches, any action or proceeding against them would be unjust. Noticee Companies inspite of matters suffering from laches is cooperating and providing all the material information / details to the extent possible and want to settle in order to buy peace. We humbly submits that the said matter is many years old and at present Noticee Companies are not holding any share in the Company, but still cooperating and want to settle the matter in order to buy peace with the regulator, therefore a liberal view should be taken while re-examining the said allegation and deciding the penalty, if any.

…..

It is further submitted that the personnel under whose negligence the impugned non-compliances took place had been removed from the group and Mr. Subodh Garg, CFO of the Group has been appointed to oversee the compliances made under the applicable laws and corrective measures for the shortcomings in filings made by the group companies, if any.

11. Further, vide another email dated September 02, 2020, the Noticees reiterating their earlier submissions further *inter alia* stated as under:

Genus Prime Infra Limited ("Company") was initially promoted by Dr. C.K. Jain, Ms.Mridula Jain, Ms.Arushi Jain, Ms.Aditi Jain, Ms.Anubha Jain and Gulshan Holdings Private Limited. GPBL entered into a Share Purchase Agreement (SPA) with the existing promoters of the Company and simultaneously came with an open offer to acquire shares of the Company from the public in October, 2010. GPBL acquired 80,28,826 (57.05%) equity shares of the Company pursuant to the SPA and open offer. At the time of aforesaid acquisition, both KIL and HEPL were holding shares in the Company and became part of Promoter Group of the Company.

At the time of aforesaid acquisition, both KIL and HEPL were holding shares in the Company and became part of Promoter Group of the Company. The shareholding details of KIL and HEPL at the time of said Open Offer are given below for your reference and records:

Sl. No.	*Name of the Shareholder*	*No. of Shares*	*% Shareholding*
1.	*KIL*	*7,500*	*0.05*
2.	*HEPL*	*1,31,672*	*0.096*

As on March 31, 2012, the shareholding pattern of promoter & promoter group is given below for your reference and records:

Sl. No.	*Name of the Shareholder*	*No. of Shares*	*% Shareholding*
1.	*KIL*	*7,500*	*0.05*
2.	*HEPL*	*1,31,672*	*0.096*
3.	*GPBL*	*80,28,826*	*57.05*
4.	*Dr. C. K. Jain*	*19,65,300*	*13.96*

Dr. C. K. Jain who was also holding directorship in the Company, post his resignation from the directorship position started liquidating his shareholding and the same culminated to nil by September 24, 2013.

….

The disclosure lapses under R 8(2) of SAST 1997 by KIL & HEPL were due to oversight and inadvertent mistake were made in the era of previous takeover law which has lesser amount of penalty prescribed in SEBI Act, 1992 contrary to the present penalty prescribed in SEBI Act, 1992. In the matter of Narayan Distributors Pvt. Ltd (A. O. NO: ACR/10/2005 dated January 12, 2005),and Fundamental Finvest (P) Ltd. (Adjudication Order No.: ACR/ 6 /2005 dated January 11, 2005), Hon'ble Adjudication Officer imposed a penalty of INR 60,000 for violation of Regulation 6(3) & 8(2) of SAST 1997. We would like to further submit that as per the "doctrine of stare decisis" is applicable in the matter at hand, an adjudication authority is obligated to follow the historical cases/orders when making ruling on a similar case matter. The application of this doctrine ensures that there is uniformity and certainty in the law. Thus, we humbly pray for a lenient view in line with judicial precedents of Hon'ble SEBI & SAT while levying any penalty against the Noticee Companies for the alleged violation of Regulation 8(2) of SAST 1997 & Regulation 3(2) of SAST 2011. This doctrine is applicable in India and is in interest of public policy. Furthermore, the operation of the doctrine of precedent is based on Stare Decisis meaning that stand by the previous decision.

……

In criminal law, when determining the question of guilt or innocence, the question of "mensrea," or whether a person had a "guilty mind" is critical. Similarly, in civil litigation as in the instant case, a party's state of mind should be a deciding factor as to the question of liability and damages.

…..

Further the penalty, if any to be proposed by SEBI must commensurate with the gravity of the violation and that any penalty disproportionate to the gravity of the violation would defeat the purpose and intent of SEBI Act, 1992. We also rely upon the order dated February 02, 2017 of Hon'ble Whole Time Member ("WTM"), SEBI in the matter of Refex Industries Limited (formerly known as Refex Refrigerants Limited), wherein WTM did not issue any directions against the promoter and director and inter alia held that: "13….

• …..

• *that the violation is un-intentional and not for consolidation;*

• *that the violation is technical and venial in nature;*

• *……"*

….

Noticee Companies have maintained an impeccable clean record in terms of compliance with the provisions of the SEBI Act and regulations. Any penalty if levied on basis of allegations would be harsh and prejudicial on the Noticee Companies and may lead to loss of image, goodwill and business. We humbly submit that the Noticee Companies have not made any disproportionate gain or unfair advantage in this matter. Neither the acquisition made by the Noticee Companies caused loss to an investor or group of investors. The Hon'ble Apex Court in the case of Ex-Naik Sardar Singh vs. Union of India (1991) 3 SCC 212) inter alia held that:

" the penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would he violative of Article 14 of the Constitution."

Further in the matter of RatijitThaknr vs. Union of India (AIR 1987 SC 2386) it was held that:

"The Sentence has to suit the offence and the offender. It should not he vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review would ensure that even on an aspect which is, otherwise, within the exclusive province of Court Martial, if the decision of the Court even as to sentence is an outrageous defiance of logic then the sentence would not be immune from correction. Irrationality and perversity are recognized ground of judicial review. The penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the Constitution. The point to note and emphasis is that all powers have legal limits."

In regard to the preceding paras, the judgment of the Hon'ble Securities Appellate Tribunal in the case of Piramal Industries Limited and Ors. v. SEBI, Appeal No. 466, 467 of 2016, is important to be seen, where it has herein held that: "We were also told that till date there has not been any violation of SEBI Laws. The imposition of penalty, even though meager will leave an indelible mark and leave a blot on their spotless image. Such blot may not be in the interest of the securities market especially in the international market." The Noticee Companies are a part of the securities market and its existence is required for the healthy growth of the securities market.

…….

Subsequent to the introduction of SAST 2011, the Noticee Companies have made regular disclosure of number and percentage of shares held by them in the Company within 7 working days from end of each financial year i.e. 2013 & 2014 as required under Regulation 30(1) of SAST 2011. Further, as confirmed by the Merchant Banker (Mefcom Capital Market Limited) vide its letter dated October 14, 2014 that the non-disclosure by KIL & HEPL under Regulation 8(1) & 8(2) was due to oversight and not intentional. As confirmed by the Merchant Banker in its letter dated October 14, 2014, that KIL & HEPL complied with Regulation 30(1) and Regulation 30(2) of SAST 2011 in letter and spirit. A status of compliance with the provisions of Chapter V of the SAST 2011 as mentioned by Merchant Banker in its letter dated October 14, 2014 is reproduced below for your reference and records:

KIL

Sl. No.	*Regulation / Sub Regulation*	*Due Date for compliance as mentioned in the Regulations*	*Actual Date of Compliance*	*Delays, if any (No. of Days)*	*Status of Compliance with Takeover Regulations*	*Remarks*

1	2	3	4	5	6	7
1.	30(1) & 30(2)	10-04-2012	06-04-2012	-	Complied	-
2.	30(1) & 30(2)	08-04-2013	08-04-2013	-	Complied	-
3.	30(1) & 30(2)	07-04-2014	07-04-2014	-	Complied	-

HEPL

Sl. No.	Regulation / Sub Regulation	Due Date for compliance as mentioned in the Regulations	Actual Date of Compliance	Delays, if any (No. of Days)	Status of Compliance with Takeover Regulations	Remarks
1	2	3	4	5	6	7
1.	30(1) & 30(2)	10-04-2012	06-04-2012	-	Complied	-
2.	30(1) & 30(2)	08-04-2013	08-04-2013	-	Complied	-
3.	30(1) & 30(2)	07-04-2014	07-04-2014	-	Complied	-

A copy of the aforesaid letter sent by the Merchant Banker to SEBI is enclosed herewith and marked as "Annexure B" for your reference and records. Thus, as confirmed by the Merchant Banker KIL and HEPL duly complied with Regulation 30(1) and 30(2) as and when it became due. Moreover, the non-compliance made in Regulation 8(2) was merely due to oversight and not intentionally as confirmed by the Merchant Banker.

…..

Further, as confirmed by the Merchant Banker (Mefcom Capital Market Limited) vide its letter dated October 14, 2014 that the non-disclosure by KIL & HEPL under Regulation 8(1) & 8(2) was due to oversight and not intentional. As confirmed by the Merchant Banker in its letter dated October 14, 2014, that KIL & HEPL complied with Regulation 30(1) and Regulation 30(2) of SAST 2011 in letter and spirit. A status of compliance with the provisions of Chapter V of the SAST 2011 as mentioned by Merchant Banker in its letter dated October 14, 2014 is reproduced below for your reference and records:

KIL

Sl. No.	*Regulation / Sub Regulation*	*Due Date for compliance as mentioned in the Regulations*	*Actual Date of Compliance*	*Delays, if any (No. of Days)*	*Status of Compliance with Takeover Regulations*	*Remarks*
1	*2*	*3*	*4*	*5*	*6*	*7*
1.	*30(1) & 30(2)*	*10-04-2012*	*06-04-2012*	*-*	*Complied*	*-*
2.	*30(1) & 30(2)*	*08-04-2013*	*08-04-2013*	*-*	*Complied*	*-*
3.	*30(1) & 30(2)*	*07-04-2014*	*07-04-2014*	*-*	*Complied*	*-*

HEPL

Sl. No.	*Regulation / Sub Regulation*	*Due Date for compliance as mentioned*	*Actual Date of Compliance*	*Delays, if any (No. of Days)*	*Status of Compliance with Takeover*	*Remarks*

		in the Regulations			Regulations	
1	2	3	4	5	6	7
1.	30(1) & 30(2)	10-04-2012	06-04-2012	-	Complied	-
2.	30(1) & 30(2)	08-04-2013	08-04-2013	-	Complied	-
3.	30(1) & 30(2)	07-04-2014	07-04-2014	-	Complied	-

Thus, as confirmed by the Merchant Banker KIL and HEPL duly complied with Regulation 30(1) and 30(2) as and when it became due. Moreover, the non-compliance made in Regulation 8(2) was merely due to oversight and not intentionally as confirmed by the Merchant Banker.

…..

We would like to pray for a lenient view in the matter of disclosure lapses under R 8(2) of SAST 1997 by KIL & HEPL due to oversight and inadvertent mistake were made in the era of previous takeover law which has lesser amount of penalty prescribed in SEBI Act, 1992 contrary to the present penalty prescribed in SEBI Act, 1992. In the matter of Narayan Distributors Pvt. Ltd (Supra), and Fundamental Finvest (P) Ltd. (Supra)Hon'ble Adjudication Officer imposed a penalty of INR 60,000 for violation of Regulation 6(3) & 8(2) of SAST 1997. Thus, in light of these SEBI Orders, we humbly pray to your good office to levy a penalty of lesser amount, if any to be levied.

We would like to further submit that as per the "doctrine of stare decisis" is applicable in the matter at hand, an adjudication authority is obligated to follow the historical cases/orders when making ruling on a similar case matter. The application of this doctrine ensures that there is uniformity and certainty in the law. Thus, we humbly pray for a lenient view in line with judicial precedents of Hon'ble SEBI & SAT while levying any penalty against the Noticee Companies

for the alleged violation of Regulation 8(2) of SAST 1997 & Regulation 3(2) of SAST 2011. This doctrine is applicable in India and is in interest of public policy. Furthermore, the operation of the doctrine of precedent is based on Stare Decisis meaning that stand by the previous decision.

Even though the Noticee Companies inadvertently violated the provisions of Regulation 3(2) of the SAST, 2011, this violation, in the circumstances of the case, has not prejudiced or jeopardized the interest of the shareholders of the Company and cannot be said to be serious enough calling for an exorbitant penalty. This is not a case where a non-promoter has acquired a substantial chunk of shares in the Company changing its shareholding pattern and has gone away without making a public announcement. The acquisition by the Noticee Companies is within the promoter group which has not led to any change in the control of the target company nor has its management changed. The similar observation was made by Hon'ble SAT in the matter ofUshdev Trade Limited v. SEBI (Supra) and Hon'ble Adjudication Officer has considered the same in the matter of Svaraj Trading and Agencies Limited (Supra)while levying penalty of INR 15 Lacs for violation of Regulation 3(2) of SAST 2011. However, on appeal Hon'ble SAT further reduced the penalty to INR 5 Lacs for such violation. Thus, in light of the above judicial precedents as per the doctrine of Stare Decisis& doctrine of precedents as stated above, we humbly pray for lenient view while levying a penalty on the Noticee Companies.

12. Further on the final opportunity of hearing granted on September, 04, 2020, the Authorised representative of the Noticees, Mr. Sumit Kochar appeared through teleconference from the Northern Regional Office, SEBI and reiterated the submissions made vide the replies dated July 17, 2017 by Noticee-1 and 2, reply dated July 28, 2017 by Noticee-3, Common reply August 13, 2020, August 18, 2020 and September 02, 2020.

CONSIDERATION OF ISSUES AND FINDINGS

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

a) ***Whether the Noticees-1 & 2 violated the provisions of Regulation 8(2)* of SAST Regulations, 1997, Regulation 30(1) & 30(2) of the SAST Regulations, 2011?**

b) ***Whether the Noticees violated the provisions of Regulation 3(2) of the SAST Regulations, 2011 by not making a public announcement of an open offer?***

c) ***Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15A(b)and 15H(ii) of the SEBI Act, 1992?***

d) ***If yes, what should be the quantum of penalty?***

14. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 1997 and SAST Regulations, 2011 which read as under:-

SAST Regulations,1997

" 8. Continual disclosure.

(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"

SAST Regulations, 2011

Continual disclosures.

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

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

Substantial acquisition of shares or voting rights.

3(2) No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations

15. The Noticees have raised objection stating that there has been inordinate delay and latches in the instant proceedings against them. At the outset, I note that there is no provision in the SEBI Act, 1992 which lays down any limitation period for initiating any action under the Act. For ascertaining whether there is any delay in the matter, the date when the violation came to the notice of SEBI would be the relevant point and not the date of violation. In the instant case, it is noted that the alleged violations came to the notice of SEBI during the examination of letter of offer filed by certain acquirers of GPIL on July, 2014. Thereafter, completing the detailed examination of the matter, the SCN was issued in June 2017.

Further, the matter was also kept in abeyance as the Settlement proceedings as applied by the Noticee was being carried out. Therefore, I note that there is no inordinate delay in dealing with the matter.

16. Now, the first issue for consideration before me is whether the Noticees-1 and 2 being promoters of company during the relevant period, required to make the Annual disclosures under Regulation 8(2) of SAST Regulations, 1997 and failed to do the same. It is alleged that the shareholding of the said Noticees, which was equivalent to 0.99% was included in the Public category for the financial year 2010-11 while they belonged to the Promoter category. In this regard, I find it pertinent to refer to the letter dated October 14, 2014 by Mefcom Capitals Private Limited (hereinafter referred to as '**MEFCOM**'), Merchant Banker to the Open offer for acquisition of 26% equity share capital of GPIL by Mr. Rajendra Kumar Agarwal, Mr. Jitendra Kumar Agarwal and Mr. Amit Agarwal. Vide the said letter in reply to observation on draft letter of offer by SEBI, MEFCOM has *inter alia* stated, "*The Company has informed us that M/s Vivekshil Dealers Private Limited and M/s Kailash Industries Limited were wrongly being included in the Public Category in the quarterly reports sent to the stock exchange during 2011 and 2012 for compliance of Clause 35 of the Listing Agreement. On noticing the error, the company made the necessary rectification and included M/s Vivekshil Dealers Private Limited and M/s Kailash Industries Limited in the Promoter & Promoter group category as on February, 2013 which reflected in the subsequent quarterly report sent to Stock Exchange on March, 2013 onwards*". In view of the said observation by the Merchant Banker, SEBI sought the details of quarterly shareholding of the Noticee-1 and 2 in GPIL since the time the said Noticees bought the shares of GPIL. In reply to the same, MEFCOM vide its reply dated

October 30, 2014 submitted the summary of shareholding of GPIL as reported in two different disclosures to BSE under Clasue 35 of the Listing Agreement and under Regulation 29(2) of SAST Regulations, 2011. On perusal of the same, while I note that the shareholding of Noticees-1 and 2 are shown under Public Shareholding in both the disclosures, I also note that it is an admitted fact before me that the Noticees became promoters of GPIL by way of buying the controlling stake through SPA and open offer in October 2020. Therefore, in terms of Regulation 8(2) of the SAST Regulations, 1997, Noticees-1 & 2 being the promoters as noted above, were obligated to make the necessary disclosures to the company within 21 days from the end of the Financial year 2010-11 i.e. by April 21, 2011. However, I note that the Noticees-1 and 2 vide their replies dated July 28, 2017 have admitted that they had missed filing the said disclosures to the company and had filed the requisite disclosures under Regulation 8(2) belatedly on July 04, 2017 i.e with a delay of more than 6 years. It is the submissions of the Noticees that such failure to make disclosures within specified time was an oversight and inadvertent on their part and that no loss was caused to any investors.

17. In this regard, I refer to the observations of Hon'ble SAT in Ensen Holdings Ltd. Vs SEBI decided on 13.06.2014 which is as follows "...*Second argument of the appellant to the effect that there was no disproportionate gain or unfair advantage derived by the appellants or loss caused to the investors as a result of failure on part of the appellant to make disclosures and hence penalty ought not to have been levied is also without any merit because obligation to make disclosure under Regulation 8(1) and 8(2) of SAST Regulations, 1997 is not restricted to cases where there is disproportionate gain or unfair advantage and where loss*

is caused to the investors as a result of failure to make disclosures. In other words, irrespective of disproportionate gain or unfair advantage derived or any loss caused to the investors, obligation to make disclosures under Regulation 8(1) and 8(2) of SAST Regulations, 1997 have to be complied with. No doubt, that these factors are required to be taken into consideration while determining the quantum of penalty."

18. Therefore, I do not find merit in the submissions of the Noticee and accordingly I hold that Noticees-1 and 2 have violated the provisions of Regulation 8(2) of the SAST Regulations, 1997 as they admittedly made delayed disclosures to the company.

19. Further, as noted from the records, it is not in dispute that the Noticees-1 to 3 being part of the promoter group formed PAC and the admission of the fact is emerging from their submissions before me. Also on perusal of the summary of shareholding of GPIL submitted by MEFCOM vide its letter dated October 30, 2014, it is noted that the Noticees-1 & 2 together with person acting in concert held aforesaid shares of GPIL entitling them to exercise twenty five percent or more of the voting rights in GPIL. In view of the same, I note that the Noticee-1 and 2 were required to make disclosures of their aggregate shareholding and voting rights as of March 31, 2012 in terms of Regulation 30(1) of SAST Regulations, 2011.

20. Further, in terms of Regulation 30(2) of SAST Regulations, 2011, the obligation to disclose their aggregate shareholding and voting rights as on the end of a Financial year is cast upon the Promoters along with PAC. In this regard, it is as an admitted fact by the Noticees-1 and 3 vide their submissions before me, they along with the Noticee-3 were the Promoters of GPIL as on the thirty first day of

March, 2012. In view of the same, they were required to make disclosures in terms of Regulation 30(2) of SAST Regulations, 2011. In this context, referring to the provisions of Regulations 30(3) of SAST Regulations, 2011, I note that the disclosures under aforesaid Regulations 30(1) and 30(2) were mandatorily to be filed by the Noticee-1 and 2 within 7 working days from the end of each financial year i.e. before April 12, 2012. However, it is noted from the email of BSE dated December 04, 2014 that no disclosures under Regulation 30(1) and 30(2) were filed by the Noticees-1 and 2 for the financial year 2012-13. Further, both the Noticees have submitted before me that they inadvertently had failed to make the said disclosures and had filed it on July 24, 2017. i.e with a delay of more than 5 years.

21. With respect to the aforesaid delayed disclosures filed by the Noticee, it has been submitted that the delay was an unintentional lapse and not deliberate on their part and that it did not cause loss to any investors. In this regard, I refer to the observation of Hon'ble SAT in the case of Mrs. Komal Nahata vs. SEBI (Appeal No. 5 of 2014 decided on January 27, 2014) *"…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.* " Therefore the contention of the Noticee that no loss or harm is caused to any investor due to their default is not tenable.

22. Further, with respect to the submission of the Noticee that the said non-disclosure was unintentional and that no gain was made by her on account of the default, I note the following observation made by Hon’ble Securities Appellate

Tribunal (SAT) in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014 decided on September 30, 2014):

"… *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.."*

23. In the light of the submissions by the Noticees, I also find it relevant to refer to the observations made by Hon'ble SAT in the following matters

<u>E-Ally Consulting (India) Pvt. Ltd. & Ors. Vs SEBI (Appeal No 203 of 2014 dated August 15, 2014):</u>

"…. We see no merit in the above contentions. Obligations to make disclosures under regulations 30 (1) and 30 (2) read with regulation 30 (3) of SAST Regulations, 2011 is mandatory and is independent of the obligation to make the disclosures under the listing agreement. Similarly, fact that proper advise was not there or that the delay was unintentional/without any fraudulent intention or there is no complaint from investors does not absolve appellants from their obligation to make the disclosures under the SAST Regulations, 2011"

<u>Virendrakumar Jayantilal Patel Vs SEBI (appeal no.299 of 2014 and Order dated October 14, 2014):</u>

"…….. 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"

24. In view of the foregoing, I conclude that the Noticees-1 and 2 have violated the provisions of Regulations 30(1) and 30(2) of SAST Regulations, 2011.

25. In view of the above, I further conclude that the Noticees-1 and 2 are liable for monetary penalty under section 15A (b) of the SEBI Act, 1992 for the violation of Regulation 8(2) of SAST 1997 and Regulation 30(1) and 30(2) of SAST Regulations, 2011. The text of the said provisions is as follows:

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,-*

(a) …..

*(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty *[which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees];*

***Substituted for "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014 w.e.f. September 08, 2014.*

26. Now I proceed to the issue to determine whether all the 3 Noticees in the instant case have violated the provisions of Regulation 3(2) of SAST Regulations, 2011. As observed above, the Noticees-1 to 3 became promoters of GPIL by way of buying the controlling stake through SPA and open offer in October 2010, the fact which is not in dispute in the instant case. As per the allegations set out in the SCN, I note that Noticees herein along with Dr. C K Jain formed part of the Promoter group of GPIL and as on August 21,2013(Relevant date) held

94,47,731 shares amounting to 67.13% of the total share capital of the GPIL and that the Noticee-1 purchased 7,05,800 shares constituting 5.01% of GPIL during the period August 22,2013 to September 23,2013 as noted at para 5 (d) above. Based on the same, it was alleged that the Noticee-2 & 3 along with Dr. C K Jain were persons acting in concert (PAC) with the acquirer Noticee-1 by virtue of being promoters of GPIL and they were required to make a public announcement of an open offer in terms of Regulation 3(2) of the SAST Regulations, 2011. In this regard, I find it relevant to note Adjudication Order no. EAD/KS/VB/AO/02/2017-18 dated August 21, 2017, whereby considering that primarily the intention, action and relationship of a person to determine whether a person is acting in concert with the acquirer, it has been concluded that Dr. C K Jain did not act in concert with the Acquirer (Noticee-1 herein) for a common objective of acquiring the shares of GPIL, despite forming part of the same promoter/promoter group during the relevant period. Therefore, the issue that survives for consideration before me is whether Noticees-2 & 3 along with the acquirer Noticee-1 forming PAC were liable to make public announcement of open offer in terms of Regulation 3(2) of SAST Regulations, 2011. As already noted above, the Noticees herein have admittedly been the Promoters of GPIL on acquisition of shares through SPA and open offer in 2010. Further, on perusal of the summary of shareholding of GPIL submitted by MEFCOM vide its letter dated October 30, 2014, it is noted that the shareholding of the Noticees and Dr. C K Jain stood as under:

Quarter ending	**Shareholder**	**Shareholding**	
		Number of Shares	**Percentage**
June 2013	Dr. C K Jain	10,11,850	7.19

	Vivekshil Dealers Pvt. Ltd	10,88,107	7.73
	Kailash Industries Limited	7,500	0.05
	Genus Paper Products Limited	80,28,826	57.05
September 2013	Dr. C K Jain	0	0
	Vivekshil Dealers Pvt. Ltd	21,48,177	15.26
	Kailash Industries Limited	7,500	0.05
	Genus Paper Products Limited	80,28,826	57.05

27. It is evident from the above that the Noticees being PACs held more than 25% of shareholding in GPIL during the period relevant to the instant allegation against them. Further, on perusal of the letter dated September 30, 2014 by MEFCOM, I note that Noticee-1 purchased 7,05,800 shares constituting 5.01% of GPIL during the period August 22,2013 to September 23,2013, the act which again is not disputed by the Noticees. However, it is the contention of the Noticees before me that their intention was to acquire the shares below 5% so as to avoid triggering open offer requirement and an inadvertent mistake of calculations on their part while placing the orders led to the acquisition of shares in excess of 5%. I find that the said submissions of Noticees are not acceptable as the act of acquisition of shares in such substantial volume and failing to make open offer cannot be viewed leniently so as to warrant any benefit of doubt on the basis of lack of intention to acquire substantial shares. I note that one of the objectives of the Takeover Regulation is to safeguard the interest of shareholders in the instances of takeovers and in that regard the obligation to make an open offer to the shareholders desiring to exit, is vested upon the intended acquirers. It provides for an orderly framework within which the process of substantial

acquisition and takeovers could be conducted in a fair and transparent manner to the advantage of all the stakeholders. The failure to make an open offer by the Noticees cannot be justified in the facts and circumstances of the instant case. Furthermore, in this context it is noteworthy to mention that Dr. C K Jain had sold the shares and exited from the GPIL during the aforementioned period of acquisition, I note that the Noticees have continued to hold the shares of GPIL even at the end of June 2014 quarter as per the letter of MEFCOM dated October 30, 2014.

28. I note that under Regulation 3(2) of the SAST Regulations, 2011, no acquirer, together with persons acting in concert with him who holds twenty-five percent or more of the shares or voting rights in a target company can acquire more than five percent of the shareholding of the company within any financial year unless the acquirer makes a public announcement of an open offer for acquiring shares. It is evident from the admitted facts of the case that the Noticee-1 acting in concert with Noticee-2 and 3 was holding more than 25% of voting rights of GPIL and purchased 7,05,800 shares constituting 5.01% of GPIL during the period August 22,2013 to September 23,2013 itself triggering the requirement to make public announcement as stipulated under Regulation 3(2) of the SAST Regulations, 2011 which was admittedly not made by the Noticees.

29. In this regard, I find it relevant to refer to the observation of Hon'ble SAT in the matter of Ranjan Varghese Vs. SEBI (Appeal No.177 of 2009 and Order dated April 08, 2010) which stated - "*The fact that the appellants acting in concert with each other had made the acquisitions which triggered the Takeover Code, it was incumbent upon them to make a public announcement which, admittedly, they have failed to do so. This failure has seriously prejudiced the public*

investors/shareholders of the company who have been deprived of their valuable right to exit by offering their shares to the acquirer. We cannot lose sight of the fact that one of the primary objects of the Takeover Code is to allow the public shareholders an exit route when the target company is either taken over by an acquirer or an acquirer makes a substantial acquisition therein."

30. While dealing with the objectives of the takeover Regulations, Hon'ble SAT, in its order dated November 15, 2006 in the case of Milan Mahendra Securities Pvt. Ltd. vs. SEBI, , had observed that "*the Regulations were framed on the basis of the input provided by a committee headed by Justice P. N. Bhagwati which had recommended that substantial acquisition of shares and takeovers should operate principally to ensure fair and equal treatment to all shareholders in relation to substantial acquisition of shares and takeovers. The object of the Regulations is to give equal treatment and opportunity to all the shareholders and protect their interests. To translate these principles into reality measures have to be taken by the Board to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required....."*

31. In view of the foregoing, I conclude that the Noticees have violated the provisions of Regulations 3(2) of SAST Regulations, 2011.

32. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of Chairman, SEBI Vs. Shriram Mutual Fund {[2006]5 SCC 361} – where the Hon'ble Supreme Court of India 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….."*

33. I have considered other contentions raised by the Noticees in their reply and find no merit in them in the context of the facts and circumstances of the matter in hand. As the violations of the statutory obligation by the Noticees under Regulation 3(2) of SAST Regulations stand established, the Noticees are liable for monetary penalty under Section 15H(ii) of the SEBI Act, 1992 which inter alia reads as follows:

SEBI Act, 1992

Penalty for non-disclosure of acquisition of shares and take-overs

15H. If any person, who is required under this Act or any rules or Regulations made thereunder, fails to-

(ii) make a public announcement to acquire shares at a minimum price; he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher

34. While determining the quantum of monetary penalty, it is important to consider the factors stipulated in Section 15 J of the SEBI Act, 1992, which reads as under :

SEBI Act, 1992

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 a group of investors as a result of the default ;
c) the repetitive nature of the default

35. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15J of the SEBI Act, 1992 stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further, no monetary loss to investors has been brought on record and it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticees. I also note from the documents available on record that the violations reported are not of repetitive nature.

ORDER

36. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose monetary penalties as shown in the table below:

Sr. No.	Name of Noticee(s)	Regulation(s) Violated	Penal Provision(s)	Penalty
1	Vivekshil Dealers Private Limited (Now known as Hi Print Electromack Private limited)	Regulation 8(2) of SAST Regulations, 1997	Section 15A(b) of the SEBI Act, 1992.	Rs.1,00,000/- (Rupees One Lakh Only)
2	Kailash Industries Limited	Regulation 8(2) of SAST Regulations, 1997	Section 15A(b) of the SEBI Act, 1992.	Rs.1,00,000/- (Rupees One Lakh Only)
3	a) Vivekshil Dealers Private Limited (Now known as Hi Print Electromack Private limited), b) b) Kailash Industries Limited	Regulation 30(1) and 30(2) of SAST Regulations, 2011	Section 15A(b) of the SEBI Act, 1992.	Rs.2,00,000/- (Rupees Two Lakh Only) (payable jointly and severally)

4	a) Vivekshil Dealers Private Limited, b) Kailash Industries Limited c) Genus Paper & Boards Ltd. (Also known as Genus Paper Products Ltd.)	Regulation 3(2) of SAST Regulations, 2011	Section 15H (ii) of the SEBI Act, 1992	Rs.10,00,000/- (Rupees Ten Lakh Only) (payable jointly and severally)
	Total			Rs.14,00,000/- (Rupees Fourteen Lakh Only)

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

37. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.inon the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO ->PAY NOW. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

38. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department of SEBI. The Noticees shall provide the following details while forwarding DD/payment information:

a) Name and PAN of the entity (Noticee)

b) Name of the case / matter

c) Purpose of Payment –Payment of penalty under AO proceedings

d) Bank Name and Account Number

e) Transaction Number

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

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

Place: Mumbai **K SARAVANAN**

Date: September 15, 2020 **ADJUDICATING OFFICER**