BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AO/SG-VS/EAD/ 65 /2017]

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

In respect of
Tak Machinery & Leasing Limited
(Now Known as "Mangal Credit and Fincorp Limited" - PAN No. - AAACT4015F)
1701/1702, 17th Floor, A Wing,
Lotus Corporate Park,
Western Express Highway,
Goregoan (East), Mumbai – 400 063

FACTS OF THE CASE

1. An open offer was made by E-Ally Consulting (India) Private Limited and Shree Jaisal Electronics & Industries Limited (hereinafter collectively referred to as 'Acquirers') to the shareholders of Tak Machinery & Leasing Limited (hereinafter referred to as 'Noticee'/'TMLL'), Target Company listed at BSE Limited (BSE) and Ahmedabad Stock Exchange (ASE), through a public announcement dated February 17, 2011 for acquisition of 1,40,810 fully paid-up equity shares of Rs. 10 each, representing 20% of share capital of TMLL, at a price of Rs. 234 per fully paid up equity share, payable in cash.

2. Upon perusal of the aforesaid open offer by a department (hereinafter referred to as 'CFD') of Securities and Exchange Board of India (hereinafter referred to as 'SEBI'), it was alleged that the Noticee had made the disclosures required as per Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred as 'SAST Regulations, 1997') as against the due date of compliance with a delay. Therefore, it was alleged that the Noticee had failed to comply with the provisions of Regulation 8(3) of SAST Regulations,

1997 in the years 2002, 2003 and 2005 to 2011. The details of the alleged delay by the Noticee are as follows:

Regulation	Due date of compliance	Actual date of compliance	Delay if any (in no. of days)
8(3)	30.04.2002	10.09.2008	2325
8(3)	30.04.2003	10.09.2008	1960
8(3)	30.04.2005	08.09.2005	131
8(3)	30.04.2006	06.11.2006	190
8(3)	30.04.2007	31.05.2007	31
8(3)	30.04.2008	26.05.2008	26
8(3)	30.04.2009	23.06.2009	54
8(3)	21.10.2010	27.07.2010	88
8(3)	21.10.2011	17.05.2011	17

3. Thus, it was alleged that the Noticee had violated the provisions of Regulation 8(3) of SAST Regulations, 1997 in the years 2002, 2003 and 2005 to 2011.

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Piyoosh Gupta was appointed as Adjudicating Officer (hereinafter referred to as 'AO') vide order dated June 27, 2013 under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'AO Rules') to inquire into and adjudge under section 15A (b) of the SEBI Act.

5. Consequent upon transfer of Shri Piyoosh Gupta, Shri Jayanta Jash was appointed as AO vide order dated November 08, 2013. Pursuant to the transfer of Shri Jayanta Jash (hereinafter referred to as 'previous AO'), the undersigned has been appointed as AO vide order dated June 22, 2015 to inquire and adjudge the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. A Show Cause Notice (hereinafter referred to as 'SCN') was issued to the Noticee on February 05, 2014 by the previous AO under rule 4 of the AO Rules calling upon it to show cause as to why an inquiry should not be held and penalty be not imposed under section 15A (b) of the SEBI Act for the alleged violations referred

at paras 2 & 3 above. The SCN was sent to the Noticee at *"308, Maker Bhavan No.III, 21, Marine Lines, Above Balwas Restaurant, Mumbai - 400 020"*. Proof of delivery at the said address is on record. It is noted that no reply was received with respect to the said SCN.

7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the AO Rules, the Noticee was granted an opportunity of personal hearing by the previous AO on September 10, 2014, vide notice of hearing dated September 01, 2014 at SEBI, Head Office, Mumbai. The said Notice of hearing dated September 01, 2014 along with a copy of SCN dated February 05, 2014, with an advise to submit reply to the SCN, was sent to the Noticee at the changed registered office of the Noticee at *"1701/1702, 17th Floor, A Wing, Lotus Corporate Park, Western Express Highway, Goregoan (East) 400 063"*, which was delivered to the Noticee through hand delivery. Proof of delivery is on record.

8. Mr. Vijay Tiwari, Authorized Representative (AR) appeared on behalf of the Noticee for hearing on September 10, 2014 in the matter. At the time of hearing, the previous AO explained the purpose of the hearing and the charges/offences leveled against the Noticee. During the hearing, the AR stated as under:

   "I request to postpone the hearing for 15 days, since Noticee have received the SCN attached with the Notice of hearing dated September 01, 2014, due to change in registered office from "308, Maker Bhavan No.II, 21, Marine Lines, Above Balwas Restaurant, Mumbai - 400 020" to "1701/1702, 17th Floor, A Wing, Lotus Corporate Park, Western Express Highway, Goregoan (East) 400063. The reply in the matter will be submitted within 15 days from the date of this hearing or at the time of next hearing."

9. The previous AO acceded to the request of the Noticee and fixed the subsequent date of hearing on September 26, 2014 at 3:00 p.m. A copy of the 'Order sheet (Adjudication Proceedings)' recorded during the hearing was provided to AR against acknowledgement.

10. Mr. Vijay Tiwari, Authorized Representative (AR) appeared before previous AO on behalf of the Noticee for hearing on September 26, 2014 in the matter. At the

time of hearing, previous AO explained the purpose of the hearing and the charges/offences leveled against the Noticee. During the hearing, the AR stated as under:

"……

- *Noticee vide letter dated September 24, 2014 submit the reply to the SCN in the matter.*
- *Noticee has decided to file settlement proceeding under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. The settlement application may be filed by October 13, 2014. The same would be intimated to the AO on or before the above date…"*

11. Noticee vide its letter dated September 24, 2014 submitted its reply to the SCN which *inter alia* stated as under:

"….

3. *With respect to the allegations contained in the Notices, please note that by way of public announcement dated February 17, 2011, an open offer was made for the acquisition of 1,40,810 Equity Shares, representing 20% of the equity share capital of the Company, at a price of INR 243 per Equity shares.*

   The letter of offer dated July 11, 2011 ("LoF") disclosed that there were certain delays in making the disclosures which were to be made by the Company under Regulation 8(3) of the Erstwhile SAST Regulations by April 30 of the relevant year.

4. *With respect to the allegation of non-compliance by the company with Regulation 8(3) of the Erstwhile SAST Regulation, we wish to state that the delayed disclosures were entirely inadvertent and on account of oversight. However, these lapses in compliance were subsequently regularized by way of the consequent disclosures on a suo moto basis by each of the company in accordance with Regulation 8(3) of the Erstwhile SAST Regulations.*

5. *As stated in paragraph no. 3 above, please note that the aforesaid delays in compliance were disclosed in the LOF with bona fide intent and there was no intention of withholding the disclosure of any non-compliance or delays in compliance with the provisions of the Erstwhile SAST Regulations.*

   The fact of such delays in compliance with the provisions of the Erstwhile SAST Regulations and the consequent disclosures of such delays in compliance in the LoF were disclosed to the concerned representatives at Securities and Exchange Board of India ("SEBI") and the delayed compliance along with the disclosure of the same in the LoF and to the concerned representatives at SEBI were intended to regularize these inadvertent delays

in compliance by the company with the provisions of the Erstwhile SAST Regulations.

6. *To reiterate, the above delays in compliance with the provisions of the Erstwhile SAST Regulations by the company are completely inadvertent and have not caused any loss to any investor or shareholder of the company. Furthermore, these delays in compliance have not been committed with any mala fide intent on the part of the company nor have they resulted in any disproportionate gain or unfair advantage to the company, any investor or shareholder of the company or to the general public at large.*

7. *It is submitted that the Notices ought not to be enforced against the company in the present case, since;*
    a. *We have suo moto regularized the delays in compliance with Regulation 8(3) of the Erstwhile SAST Regulations;*
    b. *We are currently in the process of taking the necessary steps to file an application under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 for settlement of the aforesaid defaults under Regulation 8(3) of the Erstwhile SAST Regulations.*

8. *Based on the above, we submit that the Notices and any and all inquiries and/or proceedings emanating therefrom are liable to be dropped, upon filing by us of a settlement application under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014.*
9. *We submit that unless specifically admitted herein, no statement, allegation, submission or contention contained in the Notices is or should be deemed to have been admitted by the Company for want of a specific denial or otherwise.*

….”

12. I note that no communication with respect to filing of the settlement application by the Noticee under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014 for which Noticee had claimed to have taken steps is on record.

13. Pursuant to the appointment of the undersigned, in the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the AO Rules, the Noticee was granted an opportunity of personal hearing on September 29, 2015, vide notice of hearing dated September 08, 2015 at SEBI, Head Office, Mumbai. The AR appeared on behalf of the Noticee for hearing in the matter. During the

hearing, AO explained the charges/offences leveled against the Noticee. At the time of hearing, the AR stated as under:

".....We request for 7 day time from the date of hearing i.e. today to make additional written submissions in the matter...."

14. The AO acceded the request of AR and allowed time till October 06, 2015 to submit additional written submissions in the matter.

15. Mindspright Legal, authorized representative of the Noticee (hereinafter referred as 'Mindspright') vide its letter dated December 08, 2014 received in SEBI on December 10, 2015 made submissions on behalf of the Noticee in the matter. It is noted that Mindspright, further, vide its letter dated December 17, 2015 submitted that*".....due to inadvertent clerical error on our part the date of the reply to the abovementioned Notice was mentioned as December 08, 2014 which should have been December 08, 2015..."* Vide the said letter, Mindspright also submitted 'the authority letter' and 'certified true copy of the board resolution' from the Noticee with respect to its appointment to represent the Noticee in the matter.

16. In view of the above, the submissions made by Mindspright vide its letter dated December 08, 2014 is read as submissions made vide its letter December 08, 2015. The said submission received in SEBI on December 10, 2015 reads as under:

"...

4. At the outset, it is submitted that Our Client does not accept or admit anything stated in the captioned Notice except where the same is expressly admitted by Our Client in this reply. Nothing stated therein shall be deemed to be admitted by Our Client merely on account of non-traverse and unless the same is specifically admitted, herein;

...

6. Having stated the facts, Our Client's reply to the Notice, is as follows:

I. THE ACT OF DELAY IN DISCLOSURE IS UNINTENTIONAL AND IMPOSITION OF PENALTY ON SUCH AN ACT WOULD BE UNJUST:

a. It is not disputed that Our Client has delayed in making the relevant disclosures under Regulation 8(3) of Takeover Regulations, 1997 for the years ended March 31, 2002, 2003 and 2005 to 2011

b. *However, it is submitted that Our Client has not intentionally violated the above provision of law to warrant any penalty. Even your goodself has not made any allegation in the captioned Notice, that there was any wilful default on the part of Our Client.*

c. *Our Client had never intended to evade the procedural aspects of the Takeover Regulations. It was simply a bonafide error on the part of Our Client that led to the alleged delay in making the relevant disclosure under the SAST Regulations, 1997.*

d. *Proceeding further, your goodself is also requested to consider the rationale behind making disclosures under the Takeover Regulations. One of the prime objectives of the Takeover Regulations is to ensure that fair and accurate disclosure of all material information is made by persons responsible for making them to various stakeholders to enable them to take informed decision. Taking cue from the same, let us compare the same in the present circumstance and analyse hypothetically whether there would have been any change in the situation if Our Client would have not delayed in making the disclosure. In the present scenario also, Our Client did not accrue any illegal or undue profits nor was a single case of loss to any investor reported due to the alleged delay. Therefore, the objective of the mandating disclosure under the Takeover Regulations is itself defeated.*

e. *It is pertinent that as per the provision of Clause 35 of the Listing agreement requires the company to disclose the details of holdings of the promoters and public shareholders holding more than 1% of the total number of shares for the quarter ended including the quarter ended March 31 for the previous years which aptly covers the requirements of the disclosures as per the provision of Regulation 8(3) the Takeover Regulations.*

f. *It may be pointed out here that while Clause 35 of the Listing Agreement requires a company to disclose holding of shareholders exceeding 1%, Regulation 8(3) of the Takeover Regulations requires disclosure of holding shares/voting rights above 15%. Therefore in essence one disclosure required under Regulation 8(3) is covered under Clause 35. Further, while Regulation 8(3) requires disclosure of holding of promoters, Clause 35 covers disclosure of holding of promoters as well as any persons holding 1 % or more shares in the Company.*

g. *W crave leave to refer and rely upon the supporting documents as and when required during the course of proceedings.*

h. *It can therefore be construed that had Our Client even if would have deliberately delayed in making the disclosures, there would not have been any effect on the share holders of the company, since the same information was made available to the shareholders as the disclosure made under the provision of clause 35 of the Listing Agreement and there was no additional information to be shared with anybody*

i. *It is further submitted that, levying penalty on such inadvertent act would be unjust, wherein Our Client has admitted the alleged default.*

j. *The above facts elucidate that as the necessary information was made available to the shareholders through the disclosure made under the provision of clause 35 of the Listing Agreement, Our Client did not accrue any illegal or undue profits nor was a single case of loss to any investor reported due to the alleged delay.*

k. *Our Client, therefore, reiterates that there was no dishonest intention behind the delay in disclosure under Takeover Regulations and it was never with the view to deny any information to any person entitled to receive the same nor did it cause any harm, damage, injustice or prejudice to the other shareholders of the Company.*

l. *It is not the first instance, wherein such has taken place. There are several case laws on the similar line of facts as that of this case, wherein it can be observed that the corresponding authorities took a liberal approach although the parties committed unintentional error.*

m. *For instance in the case of Reliance Industries Ltd. v SEBI Appeal No. 39/2002, wherein the company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations, then Hon'ble Securities Appellate Tribunal observed the following :-*

Para 11: "We also do not think that the appellant had deliberately suppressed the information with ulterior motive. The appellant can, at best, be held to have made a technical lapse. In such circumstances, the role of a regulator is to rehabilitate and bring to an end litigation, which may not cast a stigma on the appellant, who otherwise, admittedly, has maintained a good track record. 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. In this case, the breach was bona fide and the appellant was under the impression since it had already made a disclosure earlier it was not necessary to make a fresh disclosure once again. This, in our view, is an error of judgment and, at best, an error of understanding the law. Ignorance of law is no excuse but an erroneous interpretation is a mitigating factor especially if such interpretation is honest and bona fide to the knowledge of the appellant. Following the judgment in Cabot International and for the reasons stated herein, we hold that the breach cannot be called as deliberate and the non-disclosure was due to lack of understanding of the law. In that view of the matter, the impugned order is set aside."

n. *In relation to levying penalty in venial acts the observation of the Hon'ble Supreme Court in Akbar Badrudin Badrudin Jiwani V. Collector of Customs, Bombay AIR 1990 SC 1579 is noteworthy to mention wherein the Hon'ble 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 Madhusudhan Gordhandas & Co. v. Collector of Customs, Bombay, (1987) 29 ELT 904, wherein it has been held that in imposing penalty the requisite mens rea has to be established. It has also been observed in Hindustan Steel Ltd., v State of Orissa, (1970) 1 SCR 753; (AIR 1970 SC 2563) by this Court that:-

"The discretion to impose a penalty must be exercised judicially. A penalty will ordinarily be imposed in cases where the party acts deliberately in defiance of law, or is guilty of contumacious or dishonest conduct, or acts in conscious disregard to its obligation; but not, in cases where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute"."

o. *These above mentioned decisions have recognised the distinction between the ingredients for commission of the offence under SEBI Act (which in certain cases is not required to include any mens rea) and the imposition of penalty which, with or without the requirement of mens rea, requires a "wilful default" or "deliberate defiance". In the present case, therefore, the imposition of penalty, if any event would be unjustified and ought to be set aside for there is an absence of wilful default or deliberate defiance.*

p. *Even the decision of the Hon'ble Supreme Court in Director of Enforcement v. MCTM Corporation Pvt. Ltd. AIR 1996 SC 1100 recognizes this distinction though under the Foreign Exchange Regulation Act 1973 ("FERA") mens rea was not an essential ingredient, it was nevertheless accepted (in Para 7 and 8) that "blameworthy conduct" on the part of the delinquent had to be established before penalty could be imposed. "Blameworthy Conduct" would be established if there was "wilful contravention" of the provisions of FERA, in other words "Wilful default"- the same test prescribed by the Hon'ble Supreme Court in Hindustan Steel v State of Orissa.*

q. *It is submitted by Our Client that the delay in disclosure under the Takeover Regulations was entirely non intentional and non deliberate and thus imposition of penalty on such act would be wrong. Moreover, there was no blameworthy conduct on the part of Our Client which is why the above mentioned case laws most aptly suit the case of Our Client.*

r. *The same is further strengthened by the observations of the Hon'ble Supreme Court in the matter of Hindustan Steel Ltd. v State of Orissa AIR 1970, SC 253 (at para 7) which are stated as follows:-*

   Para 7: "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest; or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

s. *The above mentioned judgement is reiterated in the case of Bajrang Oil Mills vs. Income Tax Officer [2007]295ITR314(Raj) wherein it was held as follows:-*

   Para 55 and 57: "In terms of law laid down by the Supreme Court, the penalty could not be levied for every venial and technical breach of procedural laws. In this connection, it may be apposite to draw attention to decision of Supreme Court in Hindustan Steels Ltd.'s case (supra) where it was laid down that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty when there is a technical or venial breach of the

provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. In our opinion, the aforesaid ratio in Hindustan Steel Ltd. 's case (supra) fully governs the facts of the present case and, therefore, the assessee was entitled to absolution from the liability to penalty under Section 271B for non-compliance of Section 44AB. Failure to comply with the provisions of Section 44AB can be directly related to a bona fide belief by the assessee that he was not liable to get his accounts audited under Section 44AB looking to the different nature of receipts by him from the different activities... In such event the breach remains a technical breach of the procedural requirement. The conduct of the assessee cannot be said to be lacking in bona fide or of gross negligence when he raised issue about the interpretation of a provision which had used multiple expressions, construction of which cannot be said to be self-evident but needed interpretorial (sic-interpretational) exercise. Because ultimately on construction of statute the stand taken by the assessee is found to be wrong; it does not become a case of 'self-evident' interpretation, impinging on conduct of assessee. Even in the absence of provisions like Section 273B, which aptly governs the present case, the ratio of Supreme Court decision in Hindustan Steels Ltd. (supra), keeping in view the object of provisions of mischief it was intended to suppress."

t. *The above extract of the Hon'ble Supreme Court's observation gives Our Client a clear indication that in cases where an individual breaches any law, and such breach results from a bonafide error as is Our Clients present case, the relevant authority need not impose penalty even if it is prescribed to do so.*

u. *Your goodself is requested to judicially consider the facts of our case and is not bound to impose penalty just because the Takeover Regulations the relevant law prescribes so.*

II. *THE FACT OF DELAY IN DISCLOSURE WAS MADE PUBLIC ON OUR OWN ACCORD AND ADMITTANCE:*

a. *It is noteworthy to mention that the fact of Our Clients alleged delay in compliance of the Takeover Regulations was made public on its own accord.*

b. *An open offer was made by E-Ally Consulting (India) Private Limited and Shree Jaisal Electronics & Industries Limited in terms of SAST Regulations, 2011 to the shareholders of TMLL through a public announcement dated February 17, 2011. The documents and contents for this offer document were provided by Our Client.*

c. *It was through the contents of this letter of offer that the alleged delay in compliance was brought to the notice of SEBI. Therefore, it was Our Client, who has admitted the alleged delay in complying with the Takeover Regulations. The same goes on to show Our Client's integrity and establishes that the said delay in disclosure was nothing but an inadvertent and bonafide error.*

d. *Had it not been for Our Client's own admission of the alleged delay in the letter of offer, the said inadvertent mistake would not have been bought to the notice of SEBI.*

e. Please note that, had Our Client been interested in deliberately suppressing any material information by delaying the disclosure under Takeover Regulations, Our Client would not have admitted their default later to the public.

III. OUR CLIENT DID NOT ACCRUE ANY ILLEGAL PROFITS BY THE DELAY IN DISCLOSURE - NO REPORT OF ANY LOSS FROM ANY INVESTOR OWING TO SUCH NON DISCLOSURE:

a. Before proceeding any further, your goodself is also requested to take note of the fact that there has been no instance provided or shown wherein any individual had faced any loss or had suffered any detrimental consequences owing to Our Clients delay in disclosure under regulations 8(3) read with SAST Regulations, 1997.

b. Moreover, your goodself shall also have to consider whether Our Client had accrued any profits on account of such delay in disclosure. In this regard, it is submitted that had Our Client been interested in intentionally suppressing any information and procrastinating a disclosure, they would have actually gone on to accrue certain profits or would have made certain benefits or gains as a result of suppression of such information which they did not in reality. Your goodself has also not illustrated any such instances in the Notice.

c. Our Client did not accrue any sort of benefit or gain by delaying the relevant disclosure under regulations 8(3) of SAST Regulations, 1997. This also establishes the fact that Our Clients case lacks the pertinent motive to deliberately avoid disclosure and dispose shares of the Company.

d. The above instances bring Our Client to the conclusion that the delay in disclosure is only a technical breach and no undue gain or undue advantage was taken either by or any of the persons whose shareholdings were supposed to be disclosed under the provisions of regulation 8(3) of the SAST Regulations, 1997 and it has not caused any undue loss to the investors as well. Therefore, imposition of any such penalty on account of such delay in disclosure is not called for.

e. Kindly note that, had Our Client been really interested in suppressing any valuable information he would not have made the disclosures eventually.

f. Even your goodself have not alleged that Our Client had "acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation." On the contrary, as the disposal was reported to the stock exchanges and thereby the transparency requirement was fully met with as per the disclosures made under the provision of clause 35 of the Listing Agreement, it is difficult to reasonably conclude that Our Client had deliberately held back reporting under regulation 8(3). There is no reason to disbelieve, in the absence of clinching evidence to show otherwise, Our Client's version that failure was a genuine lapse, as is evident from its conduct of filing the disclosure suo moto. Belated reporting has neither resulted in any gain to Our Client nor caused any loss to anybody.

g. Therefore, it can necessarily be construed that Our Client did not possess any ulterior motive or game plan to delay the requisite disclosure under Regulation 8(3) of the Takeover Regulations.

IV. THE AUTHORITY NEEDS TO JUSTIFY THAT THE FACTS OF THE PRESENT CASE SATISFIES IMPOSITION OF PENALTY UNDER SECTION 15 A(b):

a. *In addition to the above, your goodself shall also have to justify the imposition of penalty on Our Client's delay in disclosure contemplating the stipulations provided under the Sections 15 I, 15A(b) and 15 J of the SEBI Act, respectively.*

b. *For the purpose of a better understanding of all the above mentioned provisions of SEBI Act, Our Client would like to rely upon the Order of Hon'ble Securities Appellate Tribunal in the case of Kensigton Investment Ltd. Vs. SEBI AND Brentfield Holdings Ltd. Vs. The Chairman, Adjudicating Officer, SEBI Appeal Nos. 27, 28, 30 and 31/2002 wherein it was held that:-*

Para 57: "On a perusal of section 151 it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" are of considerable significance, especially in view of the guidelines provided by the legislature in section 15J. "The Adjudicating Officer shall have due regard to the factors" stated in the section is a direction and not an option. It is not incumbent on the part of the Adjudicating Officer, even if it is established that the person has failed to comply with the provisions of any of the sections specified in sub section (1) of section 15I, to impose penalty. It is left to the discretion of the Adjudicating Officer, depending on the facts and circumstances of each case."

Para 62 and 63: 62. "In this context it is also relevant to know the significance of the expression "shall be liable to a penalty" appearing in the section 15A. The Supreme Court in Superintendent & Remembrancer of Legal Affairs to Govt. of West Bengal (supra) held that the expression "shall be liable to a penalty" occurring in many statutes has been held as not conveying the sense of an absolute obligation or penalty but merely importing a possibility of such obligation or penalty".

63. "As already stated above, in terms of section 15I whether penalty should be imposed for failure to perform the statutory obligation is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section 15J. It is not that the penalty is attracted per se the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment."

Para 66: "There is nothing on record to show that the Appellants acted deliberately in defiance of law, or guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligations. Taking into consideration, the relevant facts, the legal provision and the principles laid down by the Hon'ble Supreme Court in Hindustan Steel, MCTM Corporation and Jiwani's case I am of the view that imposition of penalty on the Appellants in appeal Nos.27/2002, 28/2002 and 30/2002 is not justified and accordingly I set aside the orders passed by the Respondent against the Appellants in the said appeals."

c. *The above mentioned case law clearly stipulates that the relevant authority has to justify the imposition of penalty covering the realm of the factors provided under Section 15] of the SEBI Act and therefore no authority can just unilaterally impose penalty on the delinquent. Moreover, a case of levying penalty can only arise in a*

situation wherein the delinquent has deliberately acted in defiance of law which Our Client did not, in the present case.

d. *Before arriving at the conclusion, Our Client would also need to examine the factors mentioned under Section 15 J which needs to be considered by your goodself also, while taking a decision in imposing penalty against Our Client.*

...

f. *With regard to Clause (a):- "the amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default": it is submitted that the findings do not lead to any conclusion that there has been disproportionate gain or unfair advantage to Our Client by the said disposal of shares without making the relevant disclosure. Your goodself has also not pointed out any averment specifying such gain or unfair advantage allegedly gained by Our Client. Hence, it is submitted that there is no amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the default by Our Client.*

g. *With regard to Clause (b);- "the amount of loss caused to an investor or group of investors as a result of the default" : it is submitted that there are no investor complaints filed at any Stock Exchange or with SEBI in respect of Our Client's disposal of shares and delayed disclosure. It is also submitted that your goodself has not shown any loss caused to other investors as a result of Our Client's default. In absence of such direct information the allegation of causing loss to other investors is also not applicable. Therefore, it is submitted that there is no amount of loss caused to an investor or group of investors as result of Our Client's delay in disclosure of the said transaction.*

h. *With regard to Clause (c):- "the repetitive nature of the default." it is submitted that this is for the first time any proceedings have been initiated against Our Client in the entire securities market. As a matter of fact Our Client has an impressive track record except the matter under consideration.*

i. *In lieu of the above factors of Section 15 J, your goodself is requested to take a liberal approach and employ utmost prudence in levying any penalty against Our Client, if he decides so.*

j. *In addition to the above factors, your goodself is also requested to consider the following case laws while levying penalty, if any, against Our Client. Firstly, the case of Bhagat Ram v. State of Himachal Pradesh (1983)IILLJ1SC inter alia stating:*

Para 5: "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 Article 14 of the Constitution"

k. *Secondly the case of Ran jit Thakur vs. Union of India (AIR 1987 SC 2386) wherein the Hon'ble Supreme Court had held that :-*

Para 9: "But the Sentence has to suit the offence and the offender. It should not be 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.

l. The principle propounded hereinabove is equally applicable in the present case. As a result, your goodself is humbly requested to take into account the fact that whatever penalty, if any is imposed upon Our Client, should be commensurate with our degree of default.

7. <u>SUMMARY OF OUR OVERALL SUBMISSIONS:</u>

In furtherance to the above and in light of all the arguments advanced and case laws referred, a summary of our over all submissions to the entire Notice is as follows:

a. *The delay in disclosure was an inadvertent error and had no ulterior motive or intention behind the same;*

b. *Our Client's act of delay in disclosure was not the result of any pre mediated plan or scheme to evade the nuances of law or a scheme to keep the other share holders/investors in the dark;*

c. *The said error was rectified by Our Client and it duly made the appropriate disclosures to the Stock Exchange.*

d. *Our Client had neither accrued any illegal or undue profits nor caused loss to any investor owing to its delay in disclosures as per the provisions of regulation 8(3) of the Takeover Regulations;*

e. *Our Client would not have himself admitted the default of not complying with the Takeover Regulations, had he been interested in deliberately suppressing material information or had any ulterior motive behind such delay in disclosure;*

f. *In absence of any wilful default or deliberate defiance as is presented in the above case laws and submissions, penalty is ought not to be imposed on Our Client for the delay in disclosure under Takeover Regulations;*

g. *As discussed in the above paras, your goodself is not obligated to impose penalty on Our Client just because the law warrants so. Your goodself needs to prudently consider the factors in the above mentioned relevant case laws in arriving at a meaningful conclusion;*

h. *Therefore, it is submitted that Our Client's delay in disclosure under Takeover Regulations was a bonafide error in lieu of which Our Client should not be subjected to any harsh or unwarranted penalty by your goodself.*

The submissions made herein are based on the documents and data as provide to Our Client with the Notice. However during the course of proceeding, on

introduction of any new evidence or record, Our Client reserves his to make rectification/modification in figures and data pertaining to submissions made herein, if required based on availability of detailed and accurate figures and data, at a later stage.

17. Vide a letter dated May 26, 2017, the Noticee was provided with an opportunity to make additional submissions, if any, so as to reach by June 12, 2017. The proof of delivery of the said letter is on record. However, no reply has been submitted by the Noticee in response to the same.

CONSIDERATION OF ISSUES AND FINDINGS

18. After perusal of the material available on record, I have the following issues for consideration, viz.,
    I. Whether the Noticee has violated the provisions of Regulation 8(3) of SAST Regulations, 1997 for the years 2002, 2003 and 2005 to 2011?
    II. Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act ?
    III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

19. Before I proceed, I note with respect to the allegation pertaining to the years 2010 and 2011 that the alleged 'Actual date of compliance' precedes the alleged 'Due date of compliance'. Hence, allegation for these 2 years does not merit consideration.

20. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee, I record my findings hereunder.

ISSUE I: Whether the Noticee has violated the provisions of Regulation 8(3) of SAST Regulations, 1997* for the years 2002, 2003 and 2005 to 2011*?

21. The provisions of Regulation 8(3) of SAST Regulations, 1997 read as under:

Regulation 8(3)

Every company whose shares are listed on a stock exchange, shall within 30 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, make yearly disclosures to all the stock exchanges on which the shares of the company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub-regulation (1) and also holdings of promoters or person(s) having control over the company as on 31st March.

22. Before proceeding further, considering the facts and circumstance of the matter, it is pertinent to refer to Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 which reads as under:

SAST Regulations, 2011

Repeal and Savings.

35*. (1) The Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stand repealed from the date on which these regulations come into force.*

(2) Notwithstanding such repeal,—

(a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed;

(c) any open offer for which a public announcement has been made under the repealed regulations shall be required to be continued and completed under the repealed regulations.

(3) After the repeal of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

23. In view of the aforesaid provisions, I proceed for consideration of the instant issue.

24. After taking into account observations made at para 19 above, I note that the Noticee is alleged to have made delayed disclosures with respect to Regulation 8(3) of SAST Regulations, 1997 for the years for the years 2002, 2003 and 2005 to 2009.

25. The submissions of the Noticee with respect to the said allegations are duly noted. I note that the Noticee in its said submissions did not dispute the alleged delay in disclosure and has admitted to the same as *bonafide* error. However, the Noticee has *inter alia* submitted that such delay in disclosures was inadvertent, unintentional, technical and on account of oversight. The Noticee has submitted that the same was not a deliberate or wilful default and was made public by it on its own accord. It has also claimed to have subsequently regularized the lapses in compliances by way of *suo moto* disclosures.

26. I note that the Noticee in support of its contention has cited the Order of Hon'ble SAT in the matter of Reliance Industries Ltd vs. SEBI (decided on August 31, 2004) referring to the same as related to "*..company failed to make relevant disclosure in time under Regulation 7(1) of Takeover Regulations".* In this regard, I note the observations made by the Hon'ble SAT in the matter of Inland Printers Limited vs. SEBI (Appeal No. 199 of 2014 decided on October 20, 2015) that *".. Various alternative contentions raised by the appellant for the delay in making disclosure under Regulations 8(3) as also various mitigating factors pointed out on behalf of*

the appellant do not exonerate the appellant from the obligation to make disclosures under Regulation 8(3), because obligation under Regulation 8(3) is mandatory and the company failing to discharge that obligation is statutorily liable to pay penalty under section 15A(b) of SEBI Act…" Therefore I note that the aforesaid submission of the Noticee cannot be accepted.

27. The Noticee further submitted that it neither accrued any illegal or undue profits nor caused loss to any investor owing to its delay in disclosures as per the provisions of Regulation 8(3) of SAST Regulations, 1997.

28. In this regard, it is pertinent to note the observation of Hon'ble Securities Appellate Tribunal (hereinafter referred to as '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*. "

29. Further, the Noticee vide its letter received on December 10, 2015 has also submitted as under:

"…

e. It is pertinent that as per the provision of Clause 35 of the Listing agreement requires the company to disclose the details of holdings of the promoters and public shareholders holding more than 1% of the total number of shares for the quarter ended including the quarter ended March 31 for the previous years which aptly covers the requirements of the disclosures as per the provision of Regulation 8(3) the Takeover Regulations.

f. It may be pointed out here that while Clause 35 of the Listing Agreement requires a company to disclose holding of shareholders exceeding 1%, Regulation 8(3) of the Takeover Regulations requires disclosure of holding shares/voting rights above 15%. Therefore in essence one disclosure required under Regulation 8(3) is covered under Clause 35. Further, while Regulation 8(3) requires disclosure of holding of promoters, Clause 35 covers disclosure of holding of promoters as well as any persons holding 1 % or more shares in the Company.

…"

30. In view of the above submission of the Noticee I note the following observation made by Hon'ble SAT in the matter of Premchand Shah and Others V. SEBI (Appeal no. 108 of 2010 decided on February 21, 2011):

"..... When law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all."

31. Further I note that the Noticee contended that "*the delay in disclosure under the Takeover Regulations was entirely non intentional and non deliberate and thus imposition of penalty on such act would be wrong"* and that "in *imposing penalty the requisite mens rea has to be established*" . In this regard, it has also cited the Judgments of Hon'ble Supreme Court in various matters viz. Akbar Badrudin Badrudin Jiwani vs. Collector of Customs,Bombay [AIR 1990 SC 1579], Director of Enforcement vs. MCTM Corporation Pvt. Ltd. [AIR 1996 SC 1100] and Hindustan Steel Ltd. vs. State of Orissa [AIR 1970 SC 253].

32. In this regard, while also observing that the aforesaid Judgments of Hon'ble Supreme Court are on matters other than SEBI Act, I note that Hon'ble Supreme Court with respect to the SEBI Act has observed in the matter of Chairman, SEBI v.. Shriram Mutual Fund {[2006] 5 SCC 361} that:

"*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not. We also further held that unless the language of the statute indicates the need to establish the presence of mens rea, it is wholly unnecessary to ascertain whether such a violation was intentional or not. On a careful perusal of Section 15(D)(b) and Section 15-E of the Act, there is nothing which requires that mens rea must be proved before penalty can be imposed under these provisions. Hence once the contravention is established then the penalty is to follow."*

33. Further in the facts and circumstances of the case, I also note the following observations made by Hon'ble SAT in the matter of Virtual Global Education Limited vs. SEBI (Appeal No. 21 of 2015 decided on October 20, 2015):

> *"……during the interregnum the Takeover Regulations, 1997 has been replaced by Takeover Regulations, 2011 wherein obligation of the company to make disclosures to the stock exchanges in respect of its shareholding as on 31st March of every financial year has been dispensed with and that obligation has been cast on the promoters and persons having control over the company. In these circumstances, we deem it proper that the appellant deserves some reduction in penalty."*

34. In view of the observations made at foregoing paragraphs and admitted delay in compliance, I conclude that the Noticee has violated the provisions of Regulation 8(3) of SAST Regulations, 1997 for the years 2002, 2003 and 2005 to 2009.

ISSUE II: Whether the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act ?

35. I note that the first violations had happened in the year 2002 when the Noticee had failed to make the required disclosure by 30.04.2002. The provisions of Section 15A(b) of the SEBI Act (as it existed then) read as under:

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

36. Subsequently, the SEBI Act was amended by the SEBI (Amendment) Act, 2002 w.e.f. October 29, 2002 and the provisions of Section 15A(b) of the SEBI Act after the amendment, read as under:

> ***"Penalty for failure to furnish information, return, etc.***
> ***15A.*** *If any person, who is required under this Act or any rules or regulations made thereunder,—*
> *(a).....*
> *(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;"*

37. From the conclusion arrived at para 34 above, it is further concluded that the Noticee is liable for monetary penalty under Section 15A (b) of the SEBI Act.

Issue III. If so, what quantum of monetary penalty should be imposed on the Noticee?

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

SEBI Act

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

39. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors as a result of the Noticee's failures. From the documents available on record, it is noted that no prior default is on record.

40. In view of the abovementioned conclusion and after considering the factors under Section 15J of the SEBI Act, I hereby impose a penalty of ₹ 3,20,000/- (Rupees Three Lakh Twenty Thousand only) on the Noticee under Section 15A (b) of the Securities and Exchange Board of India Act, 1992 for the violation of Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, which is appropriate in the facts and circumstances of the case.

ORDER

41. 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 by Adjudicating Officer) Rules, 1995, I hereby impose a consolidated penalty of ₹ 3,20,000/- (Rupees Three Lakh Twenty Thousand only) on Tak Machinery & Leasing Limited in terms of the provisions of Section 15A(b) of the Securities and Exchange Board of India Act, 1992 for the violation of Regulation 8(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 by it.

42. Tak Machinery & Leasing Limited shall remit / pay the said amount of penalty within 45 days of receipt of this order either through e-payment facility into Bank Account, the details of which are given below:

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

or by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai.

43. Tak Machinery & Leasing Limited shall forward the following details / confirmation of penalty so paid to the Chief General Manager, Enforcement Department, SEBI Mumbai :

1. Case Name :	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7.Payment is made for:	Penalty

44. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy each of this order is being sent to Tak Machinery & Leasing Limited (now known as Mangal Credit and Fincorp Limited) at 1701/1702, 17th Floor, A Wing, Lotus Corporate Park, Western Express Highway, Goregoan (East), Mumbai – 400 063 and also to the Securities and Exchange Board of India, Mumbai.

Place: MUMBAI **SURESH GUPTA**
Date: SEPTEMBER 12, 2017 **ADJUDICATING OFFICER**