BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AK/AO-59-69/2015]

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

In respect of

M/s. ISG Traders Ltd. (Pan No. AABCI1355C), **M/s Boydell Media Private Ltd** (Merged with M/s. ISG Traders Ltd. with effect from April 01, 2011 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated February 01, 2013 (Pan No. AABCI1355C), **M/s. Skylark Rubber Product Ltd.** and **M/s. Pallmal Edusystems & Medicare Services** (Merged with ISG Traders Ltd. with effect from April 01, 2008 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated September 11, 2009) (Pan No. AABCI1355C), **M/s Sewand Investments Private Ltd.** (Pan No. AAECS6996E), **M/s Kavita Marketing Private Ltd.** (Pan No. AACK2103P), **M/s Orchard Holdings Private Ltd.** (Pan No. AAACO4307K), **Late Ms. Indu Goenka (Deceased)** (Pan No. ADCPG6069L), **Mr.Shrivardhan Goenka** (PAN No. AECPG9331C)**, M/s. NRC Ltd.** (Pan No. AAACN1616J) and **M/s. Stone India Ltd.** (Pan No. AAECS4155K)

In the matter of

M/s. Andhra Cement Limited

FACTS OF THE CASE

1. An offer document (letter of offer) was filed by M/s. Jaypee Development Corporation Ltd to acquire upto 7,63,15,328 shares of face value of Rs. 10/- each representing 26% of the expanded paid up equity share capital of M/s. Andhra Cement Limited (hereinafter referred to as **'the Company/ ACL'**) at a price of Rs.12/- per fully paid up equity share payable in cash. The public announcement for the same was made on November 15, 2011 and the shares of the company

were listed on Bombay Stock Exchange Ltd. **(**hereinafter referred to as '**BSE**'**)** and National Stock Exchange of India Ltd. **(**hereinafter referred to as **'NSE'**).

2. On perusal of the letter of offer **(hereinafter referred to as 'LOO'**), Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) observed that M/s Boydell Media Private Ltd. (hereinafter referred to as **'Boydell'**), M/s. ISG Traders Ltd. (hereinafter referred to as **'ISG'**), M/s. Sewand Investments Private Ltd. (hereinafter referred to as **'Sewand'**), M/s. Kavita Marketing Private Ltd. (hereinafter referred to as **'Kavita'**), M/s. Orchard Holdings Private Ltd. (hereinafter referred to as '**Orchard'**), late Ms. Indu Goenka and Mr. Shrivardhan Goenka, the Promoters of the Company (hereinafter collectively referred to as the **'Promoter Noticees'**) in the past had violated/ not complied with Regulation 8(1) and 8(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as '**Takeover Regulations, 1997'**) during the years 2001 to 2003, Regulation 31(2) read with 31(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter referred to as '**Takeover Regulations, 2011'**) during the year 2011. Further, one of the Promoter Noticee viz. ISG in addition to violation/non-compliance with Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 and Regulation 31(2) read with 31(3) of Takeover Regulation, 2011, was also observed to have violated/not complied with Regulation 11(2) read with Regulation 14(1) of Takeover Regulation, 1997 during the year 2009.

3. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations 1997 and/ or Takeover Regulations 2011, as applicable, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) were initiated against the Promoter Noticees under Section 15A(b) and/ or Section 15H(ii) of SEBI Act, as applicable, to inquire into and adjudicate the alleged violation of the provision of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable.

APPOINTMENT OF ADJUDICATING OFFICER

4. Ms. Barnali Mukherjee was appointed as Adjudicating Officer on June 27, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties

by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'SEBI Rules'**) to inquire into and adjudge the alleged violations committed by the Promoter Noticees.

5. Consequent upon transfer of Ms. Barnali Mukherjee, I was appointed as the Adjudicating Officer vide order dated August 08, 2013, under Section 15-I of the SEBI Act read with rule 3 of SEBI Rules to inquire into and adjudge under Section 15A(b) and/ or 15H(ii) of the SEBI Act, as applicable, for the alleged violations committed by the Promoter Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

6. Show Cause Notices (hereinafter referred to as **'SCNs'**) Ref. No. EAD6/AK/VRP/27274/2013, EAD6/AK/VRP/27279/2013, EAD6/AK/VRP/27286/2013, EAD6/AK/VRP/27294/2013, EAD6/AK/VRP/27276/2013, EAD6/AK/VRP/27283/2013 and EAD6/AK/VRP/29473/2013 dated October 24, 2013 were issued to the Promoter Noticees under rule 4(1) of SEBI Rules communicating the alleged violations of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable. The Promoter Noticees were also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15A (b) and/ or Section 15H (ii) of the SEBI Act, as applicable, for the alleged violations committed by them. The copies of the status of compliance reports received from the Manager to the Offer were also sent along with the respective SCNs.

7. The details of violations committed by the Promoter Noticees as provided by the Manager to the Offer in the status of compliance document submitted to SEBI at the time of open offer and incorporated in the SCN are shown in the tabular form below:

7.1. The details in respect of violation/non-compliance of regulation 8(1) and 8(2) of Takeover Regulations, 1997 by the Promoter Noticees:

Regulations	Due date of compliance	Status
8(1) & 8(2)	21.04.2001	Not complied
8(1) & 8(2)	21.04.2002	Not complied
8(1) & 8(2)	21.04.2003	Not complied

7.2. The details in respect of violation/non-compliance of Regulation 31(2) read with 31(3) of Takeover Regulations, 2011 by the Promoter Noticees:

Regulation	Due date of compliance	Status
31(2) read with 31(3)	25.11.2011	Not complied
31(2) read with 31(3)	05.12.2011	Not complied
31(2) read with 31(3)	07.12.2011	Not complied

7.3. The details in respect of violation of Regulation 11(2) read with Regulation 14(1) of Takeover Regulations,1997 by one of the promoter Noticee viz. ISG, in addition to violation of regulations 8(1) & 8(2) of Takeover Regulations, 1997 and Regulation 31(2) read with 31(3) of Takeover Regulation, 2011 is as given below:

Acquirer	Regulation	Date of acquisition	No. of shares bought	Total Promoter Shareholding	
				Pre-acquisition	Post-acquisition
ISG	11(2) r/w. 14(1)	Quarter ended March 2009	7,46,000 (0.56%)	9,59.81,706 (72.43%)	9,67,27,706 (72.99%)
ISG	11(2) r/w. 14(1)	Quarter ended June 2009	3,24,000 (0.24%)	9,67,27,706 (72.99%)	9,70,51,706 (73.23%)

8. Vide letter dated November 04, 2013, ISG *inter alia* informed that Bodell had merged with ISG vide Order of the Hon'ble High Court at Calcutta dated February 01, 2013. Further vide individual letters dated November 04, 2013, the promoter Noticees informed that they had appointed the firm M/s. Corporate Professionals, Advisors & Advocates, as their counsel and advisor for the matter.

9. Subsequently vide letter dated November 08, 2013, M/s. Corporate Professionals (hereinafter referred to as the Authorised Representative **'AR'** of the Promoter Noticees) *inter alia* sought extension of time of three weeks to submit the reply to SCNs. Subsequent to the same, Mr. J. K. Shah (hereinafter referred to as the Authorised Signatory **'AS'** for the Promoter Noticees) vide letter dated November 27, 2013 *inter alia* informed that they were in the process of filing the consent application in term of SEBI Consent Circular no. EFD/ED/Cir-1/2007 as revised and

amended vide circular no. CIR/ EFD/1/2012 dated May 25, 2012 on behalf of the Promoter Noticees and requested to keep the Adjudication Proceedings in abeyance.

10. Mr. J.K. Shah, AS, vide letter dated January 30, 2014, on behalf of the Promoter Noticees submitted its reply to the SCNs. It was *inter alia* communicated therein that the Promoter Noticees proposed to withdraw their consent application and proceed with the Adjudication proceedings. Vide the aforesaid reply, the AS on behalf of the Promoter Noticees *inter alia* further submitted as follows:

10.1. ***Background about the Company/ ACL:***

*10.1.1. That ACL ever since 1988 was into losses and consequently in 1990 was declared Sick by Board for Industrial and Financial Reconstruction (hereinafter referred to as '**BIFR**') and that the company was acquired by the G.P. Goenka Group in the year 1994;*

10.1.2. That from the acquisition of the company in the year 1994 till 2009, the Promoter Noticees undertook several measures towards revival of the company, however, the company was not able to attain profits and in 2001, BIFR declared the scheme of rehabilitation as proposed in the year 1994 as a failure and the Monitoring Agency was directed to advertise for change in management of the company;

*10.1.3. That while the promoter Noticees were contesting against the aforesaid directions of the BIFR before the Appellate Authority for Industrial and Financial Reconstruction (hereinafter referred to as '**AAIFR'**), an Order of winding up was passed by BIFR in April 2004, which demanded time and focus of the Promoter Noticees in making appeals and appearing before the Courts and the AAIFR, alongside their continuous efforts of running and reviving the company;*

10.1.4. That it was in September 2006 that AAIFR dismissed the BIFR Order of winding up and referred the matter back to BIFR and a modified revival scheme was approved by BIFR in 2008;

10.1.5. That it was through the continuous efforts of the Promoter Noticees, due to which the networth of the company became positive and it came out from the purview of BIFR in 2009;

10.1.6. That though the networth of the company became positive in the year 2009, the operations of the company could not run smoothly due to continuous disruption from labour and liquidity crunch, and, that practically by September 2010, the company was not having any production;

10.1.7. That the records were shifted from corporate office of the company to Plant Office i.e. Registered Office, most of the staff left the company, further due to paucity of funds, no professional help could be hired and no single person was having the accountability;

*10.1.8. That the Promoter Noticee were not in a position to arrange lot of fund infusion that was needed and hence sold the company to M/s. Jaypee Development Corporation Ltd. (hereinafter referred to as **'JDCL'**) and during the said acquisition, the Merchant Banker pointed out the alleged violations.*

10.2. ***Submissions with respect to alleged non-compliance of Regulation 8(1) and 8(2) of Takeover Regulations, 1997 for the year 2001-03:***

10.2.1. That the allegation made under Regulation 8(1) of the Takeover Regulations, 1997 is not applicable to the Promoter Noticees and should be set aside as they belong to the Promoter/PAC in the Company and a separate provision under Regulation 8(2) is applicable to them;

10.2.2. That as regards allegation under Regulation 8(2) of the Takeover Regulations, 1997, the Promoter Noticees had informed the Merchant Banker that all the necessary requirements had been complied, though on being asked for the proof of submissions, owing to non availability of the same, the Merchant Banker had categorically taken the same as non-compliance;

10.2.3. That the Promoter Noticees had made the disclosures to the Company and as the records of the Company had not been well maintained with no direct responsibility on one person, thus, lot of documents of the Promoter Noticees and the Company had gone missing from the record. Thus the records which could not be made available to the Merchant Banker were reported as non-compliance by them;

10.2.4. That despite lack of availability of the documents, Promoter Noticees had ensured that the filing of necessary disclosures with the Company and subsequent disclosures by Company to stock exchanges was duly made.

10.3. ***Submissions with respect to alleged non-compliance of Regulation 31(2) and 31(3) of Takeover Regulations, 2011 for the year 2011:***

10.3.1. That the Promoter Noticees had made disclosures under Regulation 7(1A) of Takeover Regulations, 1997;

10.3.2. That during November 2011, there was change in promoter holding subsequent to invocation of pledge by pledgee on November 03, 2011, November 15, 2011 and November 16, 2011, which was duly intimated by the promoters in the format under Regulation 7(1A) of Takeover Regulations, 1997 within two working dates i.e. November 04, 2011, November 16, 2011 and November 17, 2011. In the disclosure so made there was clear declaration as to change in holding subsequent to invocation of pledge by pledgee and hence adequate compliance duly made;

10.3.3. That the period under consideration was transitional period from old Takeover Regulations, 1997 to the new Takeover Regulations, 2011 and due to lack of legal knowledge and unavailability of professional expertise and confusion as to applicability of provisions, disclosure was made in a different format;

10.3.4. That the Promoter Noticees have duly made the disclosures, however, in the wrong format. Hence the same should not be treated as non-compliance, but, merely an erroneous compliance with no harm to any public since the required information was duly made public;

10.3.5. That there had not been any malafide intent on part of the Promoter Noticees since disclosure was indeed made.

10.4. ***Submissions with respect to the alleged non-compliance of Regulation 11(2) r/w. 14(1) of Takeover Regulations, 1997 for the year 2009 by ISG****:*

10.4.1. That there was no actual acquisition by ISG as the transaction referred merely pertains to the return of shares which were invoked by the pledgee due to non-payment of the loan taken by ISG;

10.4.2. That as the financial condition of ISG was not good, there was continuous default by ISG in making repayment of the loan amount. ISG had pledged shares of the company as security against the borrowings made by it. These shares

were invoked by pledgee on repeated defaults in payment of loan amount (due to continued bad financial position and paucity of funds);

10.4.3. That there was no actual acquisition of shares, the shares were never sold or transferred, but, merely taken into custody on account of invocation of pledge with the objective of enforcing the repayment of loan and were in fact held in nature of fiduciary capacity by the pledgee;

10.4.4. That even after the invocation of the pledge, the lenders had not sold off these shares, which substantiates that the mere objective of invoking the pledge was to enforce repayment of loan. Upon making good the default, the shares were returned by the pledgee to the pledger (ISG);

10.4.5. That under the governing provisions of section 176[1] of Indian Contract Act, 1872, the pawnee has the right to retain the goods pledged as a collateral security and section 177[2] provides for the right to the pawnor to redeem the goods pledged at any subsequent time before the actual sale of them. Further that the term 'actual sale and collateral security' as referred in the sections states that the rights are not transferred merely on invocation of pledge;

10.4.6. That, thus, there was no actual acquisition of shares by ISG and merely because the shares invoked were returned back to the actual owner, it cannot be said to be violation of Regulation 11 of Takeover Regulations, 1997.

10.5. ***OTHER SUBMISSIONS:*** ***Sick Company***

10.5.1. That as per the modified rehabilitation scheme, which was approved by BIFR vide its order dated July 21, 2008, the Company as well as the Promoter Noticees had protection of BIFR with respect to past non-compliances. The relevant text of the modified scheme as brought out in the submissions is as stated below:

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[1] Section 176: ***"Pawnee's right where pawnor makes default***- *If the pawnor makes default in payment of the debt, or performance, at the stipulated time of the promise, in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged, on giving the pawnor reasonable notice of the sale. If the proceeds of such sale are less than the amount due in respect of the debt or promise, the pawnor is still liable to pay the balance. If the proceeds of the sale are greater than the amount so due, the pawnee shall pay over the surplus to the pawnor."*

[2] Section 177: *"If a time is stipulated for the payment of the debt, or performance of the promise, for which the pledge is made, and the pawnor makes default in payment of the debt or performance of the promise at the stipulated time, he may redeem the goods pledged at any subsequent time before the actual sale of them; but he must, in that case, pay, in addition, any expenses which have arisen from his default."*

Para (x) "The Promoters and associate companies of M/s ACL shall be exempted from the provisions of Section 372A relating to computation of the limit and exclusion of the same from the total overall limit and other applicable provisions of the Companies Act 1956, SEBI Act/Regulations/Guidelines, Depositories Act, Securities Contract Regulation Act, Listing guidelines, for inter alia, the investment in ACL."

10.5.2. That in the light of the aforesaid exemption and without prejudice to the submissions made, the Promoter Noticees have been exempted from all the penal provisions under applicable laws including SEBI, therefore, no penal provision may be implicated against the Promoter Noticees.

11. The AR of the Promoter Noticees vide email dated April 4, 2014 requested for personal hearing to be scheduled on May 07 or May 08, 2014. Accordingly, an opportunity of personal hearing was granted to the Promoter Noticees on May 7, 2014 vide hearing notice dated April 7, 2014. Mr. J. K. Shah (AS) along with Ms. Deepika Vijay Sawhney, Partner, Corporate Professionals (AR) (hereinafter collectively referred to as **'ARs'**) appeared on behalf of the Promoter Noticees. At the hearing, it was clarified to the ARs that under para 4 (c) of the SCNs, the regulations mentioned as 11(1) has to be read as 11(2) of the Takeover Regulations, 1997. The ARs *inter alia* submitted that one of the Promoter Noticees viz. Ms. Indu Goenka had expired and submitted a photo copy of the death certificate during the hearing. Further the ARs reiterated the submissions made vide letter dated January 30, 2014 and submitted that the promoters be exempted from violation of Regulation 8(1) & 8(2) and violation of Regulation 11(2) of the Takeover Regulations, 1997 in terms of BIFR Order dated July 21, 2008. During the hearing, the ARs were advised to provide the details of pledged shares, invocation of pledged shares and subsequent acquisition, as applicable, along with the supporting documents such as bank statements, demat statements etc.; the shareholding of the Promoter Noticees as on March 31, 2001, March 31, 2002 and March 31, 2003; duly Notarised copy of the death certificate of Ms. Indu Goenka etc.

12. The AS viz. Mr. J. K. Shah, on behalf of the Promoter Noticees vide letter dated May 20, 2014 provided a notarized copy of the death certificate of Ms. Indu Goenka and reiterated the earlier submissions made vide letter dated January 30, 2014. A copy of the BIFR order dated July 21,

2008, and a copy of the BIFR Order dated January 22, 2010, discharging the Company from the purview of Sick Industrial Companies Act (hereinafter referred to as **'SICA'**), was also provided. Further, *inter alia* the following additional submissions were made/ documents provided by the AS on behalf of the Promoter Noticees:

12.1. ***With respect to Regulation 8(1) & 8(2) of Takeover Regulations, 1997 for the year 2001-03:***

*12.1.1. A copy of one page document showing actual date of submission under Regulation 8(3) of the Takeover Regulations, 1997 by the company to Hyderabad Stock Exchange (hereinafter referred to as **'HSE'**) for the years 1997-98, 1998-99, 1999-00, 2000-01 and 2001-02 was placed on record so that at least the benefit of doubt may be given on the basis of the said document;*

12.1.2. That during the period of the alleged violation i.e. 2001-03, the company was under the purview of BIFR, and, as per the BIFR scheme as approved vide Order dated July 21, 2008, the promoters were exempted from non-compliance;

12.2. ***With respect to Regulation 11(2) r/w. 14(1) of Takeover Regulations, 1997:***

12.2.1. That during 2009 too, the Company was in BIFR and was exempted from the provisions of Takeover Regulations vide order dated July 21, 2008;

12.3. ***With respect to Regulation 31(2) and 31(3) of the Takeover Regulations, 2011 for the year 2011:***

12.3.1. That the format under Regulation 31(2) and 31(3) of the Takeover Regulations, 2011 solicits information regarding the details of encumbered/pledged shares and in the disclosure so made by the Promoter Noticees under Regulation 7(1A) of Takeover Regulations, 1997, they had specifically declared that the change in shareholding was subsequent to invocation of pledge by pledgees. Hence adequate compliance was duly made by the promoters and the information was duly made public, and thereby there was no harm to any public. Copy of the disclosure made under Regulation 7(1A) of the Takeover Regulations, 1997 was provided.

13. It was further *inter alia* observed that ISG had acted in concert with the other Promoter Noticees of the company comprising viz. Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, M/s. Skylark Rubber Products Ltd. (hereinafter referred to as

'Skylark'), M/s. NRC Ltd. (hereinafter referred to as **'NRC'**), M/s. Pallmall Edusystems & Medicare Services Pvt. Ltd. (hereinafter referred to as **'Pallmall'**)and M/s. Stone India Ltd. (hereinafter referred to as **'Stone India'**) (hereinafter collectively referred to as '**Promoter Group'**), while pledging ACL shares with the following four pledgees viz. M/s. Associated Capsules P. Ltd., M/s. Pam Pac Machines P. Ltd., M/s. Detco Polysters P. Ltd and M/s. Sewri Land Co. P. Ltd. as collateral security to avail the loan facilities. When Noticee ISG acting in concert with the other promoter Noticees as aforesaid, defaulted in repayment of the loans, the pledges were invoked by the aforesaid pledgees and the shares were transferred from the demat accounts of ISG to the demat accounts of the aforesaid four pledgees and consequently they were registered as beneficial owners in the records of the depository. When the loan account was settled, the pledgees transferred back the shares to ISG.

14. It was observed that when the four pledgees had invoked the pledges upon default committed in the repayment of the loans, the shares were transferred from the demat account of ISG to the demat accounts of the four pledgees. Upon such transfer, the shares acquired by the pledgees ceased to be the security for the loans, as the pledgees by virtue of invoking the pledge had become the beneficial owners. After the entire loan amounts to the aforesaid pledgees were paid and settled, the shares were returned back to ISG by the respective pledgees. This resulted in transfer of shares back from the demat account of the four pledgees to the demat account of ISG and consequent change of beneficial ownership.

15. The shareholding of the promoter group prior to such acquisition was 72.43%. Hence, as per Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations, the Promoter Noticees could not have acquired any additional shares entitling the Promoter Noticees to exercise voting rights therein, unless they made a public announcement to acquire shares in accordance with the Takeover Regulations, 1997. However, no such public announcement was made. Hence, Supplementary Show Cause Notices (hereinafter referred to as '**Supplementary SCNs'**) Ref: EAD-6/AK/AK/8088/2015/0-10 dated March 20, 2015 were issued to the Noticee Promoter Group alleging that the Promoter Noticee viz. ISG acting in concert with the other Promoter Noticees in the Promoter Group viz. Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India had violated the provisions of Regulation 11(2) read with 14(1) of the Takeover Regulations, 1997.

16. The transaction statement of ISG for transaction in the equity shares of ACL for the period May 01, 2008 to June 30, 2009 as provided by NSDL vide letter dated August 04, 2014 and as provided by CDSL vide email dated March 19, 2015, showing such changes of beneficial ownership was sent to the Noticee Promoter Group along with the Supplementary SCN. Similarly, the transaction statement of M/s. Associated Capsules Pvt. Ltd., M/s. Pampac Machines Pvt. Ltd. and M/s. Sewri Land Co. Pvt. Ltd. for transaction in the equity shares of ACL for the period May 01, 2008 to June 30, 2009 as provided by NSDL vide letter dated September 04, 2014 and the transaction statement of M/s. Detco Polysters Pvt. Ltd. for transaction in the equity shares of ACL for the period May 01, 2008 to June 30, 2009 as provided by CDSL vide email dated March 13, 2015, showing such transfer of beneficial ownership, was also provided along with the Supplementary SCN.

17. The details of the aforesaid alleged violations/ non-compliance of Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations, 1997 by ISG acting in concert with the other Promoter Noticees in the Promoter Group viz. Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India during quarters ended March and June 2009 is as given below:

Acquirer	Regulation	Date of acquisition	No. of shares bought	Total Promotes shareholding	
				Pre-acquisition	Post-acquisition
ISG along with the Promoter Group	11(2)r/w14(1)	22.01.2009	8,32,000	9,59.81,706 (72.43%)	9,67,27,706 (72.99%)
		07.02.2009	6,69,000		
		31.03.2009	2,20,000		
ISG along with the Promoter Group	11(2)r/w14(1)	13.04.2009	1,90,000	9,67,27,706 (72.99%)	9,70,51,706 (73.23%)
		20.04.2009	1,15,000		
		04.05.2009	1,000		
		04.05.2009	18,000		

18. It was, thus, alleged that through the aforesaid actions the Noticee Promoter Group viz. ISG along with Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India had each *inter alia* violated Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997 on seven (7) occasions.

19. Mr. J.K. Shah, AS, on behalf of ISG, vide letter dated April 29, 2015, *inter alia* made the following additional submissions to the supplementary SCN:

19.1 That ACL was acquired by the G.P. Goenka group in the year 1994 and BIFR approved a scheme under Section 18 of SICA for the rehabilitation of ACL;

19.2 That despite the efforts of the Group (erstwhile promoters of ACL) i.e. the Noticee Promoter Group, the company was not able to attain profits, and thereby in the year 2001, BIFR declared the Scheme as failure;

19.3 That in the year 2004, BIFR recommended the winding up of ACL. The erstwhile promoters of ACL challenged the BIFR recommendation and the same was set aside in the year 2006;

19.4 That in the year 2008, BIFR modified and approved the revival scheme for rehabilitation of ACL;

19.5 That in 2009, the networth of ACL became positive and it came out of the purview of SICA in January 2010, but, soon thereafter due to labour unrest and liquidity crunch, the operations of ACL came to a virtual standstill by September 2010;

19.6 That in the process of shifting of its registered office, lot of its vital documents were lost/ misplaced;

19.7 That the company was sold to JDCL and entered into Share Subscription and Share Purchase Agreement (SSPA) dated November 15, 2011 for acquisition of controlling stake in the company by JDCL. On January 21, 2012, a letter of Offer was issued;

19.8 That the merchant banker pointed out certain discrepancies with respect to the provisions of Takeover Regulations;

19.9 That ISG did not violate the provisions of Takeover Regulations, 1997 as they did not acquire any 'additional shares' and/ or 'additional voting rights' in ACL by virtue of the impugned transaction;

19.10 That pledge is defined in Section 172 of the Indian Contract Act, 1872 as "The bailment of goods as security for payment of a debt or performance of a promise is called a pledge. The bailor is in this case called the 'pawnor'. The bailee is called the 'pawnee';

19.11 That the transactions between ISG ('pawnor') and M/s. Sewri Land Co. Pvt. Ltd., M/s. Associated Capsules Pvt. Ltd., M/s. Pam Pac Machines Pvt. Ltd. and M/s. Detco Polyesters Pvt. Ltd. (collectively referred to as 'pawnees') were simply loan transactions secured by way of a pledge of its shares in ACL;

19.12 That deposit by ISG of the aforesaid shares with the Pawnees was in furtherance of the pledge and was not a transfer. Further, that the provisions of Indian Contract Act, 1872 are a special law governing the contractual rights and obligations interse parties thereto. Therefore the provisions of the Indian Contract Act, 1872 would supersede the provisions of Takeover Regulations in so far as any issue pertaining to contractual rights and obligations is concerned;

19.13 That it is an essential element of contract of pledge that the pawnor delivers the goods that are pawned to the pawnee and Section 173 of the Indian Contract Act, 1872 entitles the pawnee to retain the goods as security for payment of debt i.e. the loans in the present case;

19.14 That in law a pawnee can 'invoke' the pledge upon a default in payment by adopting any one of the following options: a) to bring a Suit against the pawnor for the debt and retain the goods pledged as collateral security; b) he may sell the thing pledged on giving the pawnor 'reasonable notice'. The pawnor would, however, have the right to redeem the goods until the sale after notice;

19.15 That the act of depositing the shares with the pawnee did not create any 'interest' in the shares in favour of the pawnee and was only done in furtherance of the respective terms of the loan/ pledge agreements. The act of depositing the shares into the account of the pawnee only completed the act of bailment of shares as security;

19.16 That a pawn only creates in favour of the pawnee a special right to retain possession of the shares as a collateral security and/ or to dispose of the same by way of a sale after reasonable notice;

19.17 That as per the relevant provisions of the Companies Act and the Indian Contract Act, the pledgees did not acquire voting rights and/ or any other rights of an ordinary shareholder in the company by virtue of deposit of shares in ACL;

19.18 That it has been held by the Hon'ble Supreme Court of India in the case of Balakrishnan v. Swadeshi Polytex Ltd. that the legal title to the goods pledged would not vest with the pawnee. The Supreme Court held that the pawnor of shares continued to be the member of the company and could exercise all rights of a shareholder of the company;

19.19 That ISG redeemed the shares by making payment of the loan amounts as is admitted in the notice, upon which shares were re-deposited into its account;

19.20 Therefore for the reasons aforementioned, ISG did not acquire any additional shares and/ or voting rights in ACL as alleged in the SCN. The Promoter Group was at all relevant times the legal owner of the pledged shares in ACL and that the transactions impugned were redemption of a pledge of shares and are not a transfer and/ or acquisition of shares and/ or voting rights as alleged at all;

19.21 That the Order dated July 25, 2008 of BIFR sanctioning the Scheme for rehabilitation of ACL clearly stipulated that the provisions of SEBI Act, the Takeover Regulations etc. would not apply to ACL and its promoters;

19.22 That the provisions of SICA are a special law pertaining to rehabilitation of sick industrial companies and supersede the provisions of SEBI Act as well as Takeover Regulations and in any event, the provisions of the SEBI Act and Takeover Regulations have expressly been held to not apply to ISG as well as to the other promoters of ACL;

19.23 That without prejudice to the aforementioned submissions, even if it is held that ISG acted contrary to the letter of law, the transactions were not and/ or are not intended to be in violation of the spirit of law;

19.24 That it is seen from the transactions impugned that the shares were redeemed as per the terms of the respective loan/ pledge agreements and not at the prevalent market price. This corroborates the fact that the understanding between the parties was that this transaction was one for a pledge of shares and the redemption thereof and not a transaction for acquisition of shares;

19.25 That if the impugned transactions are eventually found to be objectionable on purely technical grounds, it was clearly not the intention of the parties to the transaction to violate the spirit behind Takeover Regulations. ISG seek to rely upon a number of authorities, which will be referred at the time of personal hearing to show how such mitigating circumstances are a relevant aspect to be taken into consideration in such similar cases;

*19.26 That for reasons aforementioned they do not answer to the term 'acquirer' as defined under the Takeover Regulations, they are without prejudice to their rights to making an application under Regulation 4 of Takeover Regulations to exclude the transactions impugned from the provisions of Takeover Regulations. In this respect, it has been stated that the provisions of the Limitation Act apply to SEBI and that the present matter pertains to the transitional period between the old regulations and the new regulations and there was no judicial pronouncement by either SEBI or Securities Appellate Tribunal (hereinafter referred to as **'SAT'**) during the relevant period that held that the transactions of the nature impugned were in any way violative of the letter and/ or spirit of the Takeover Regulations;*

19.27 That the act of pledging of shares as against the loan and subsequent release of pledge on repayment of loan is purely an independent act of ISG with no involvement of other promoters in the said transaction. The other promoters had no involvement in the loan transaction under reference and hence cannot be said to be persons acting in concert;

19.28 Furthermore that the use of term 'invoked' is misconceived and flawed for the reasons stated above and the SCN admits that the shares were transferred back when the loans were repaid;

19.29 That the shares were only taken into constructive possession by the pawnees to enforce the repayment of loan and were in fact held in a fiduciary capacity by the Pawnees, which were returned back to the legal owner i.e. ISG after the repayment of the loan. The transfer of shares into the account of the Pawnees was a technicality arising out of special circumstances surrounding the pledge of dematerialized shares, which needed to be done simply to complete the bailment process in line with the provisions of the Indian Contract Act, 1872, however, the legal ownership of the shares never changed hands;

19.30 That the shares were only transferred for the purpose of security for repayment of loan and there was no acquisition of shares and/ or voting rights, and hence, there was no violation of Takeover Regulations. ISG did not cease to be the owner of the shares pledged and at all material times continued to be the owner with all consequential rights in respect thereof, including, but, not limited to all voting rights appurtenant to the subject shares;

19.31 The SCN itself acknowledges the fact that the loan was 'settled' and nowhere alleges that the shares were re-purchased.

20. Further, Mr. J.K. Shah, AS vide individual letters dated April 29, 2015 has *inter alia* made the following additional submissions to the supplementary SCNs issued on behalf of Boydell, Skylark and Pallmall:

20.1 That Skylark and Pallmall stands merged with ISG with effect from April 01, 2008 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated September 11, 2009;

20.2 That Boydell also stands merged with ISG with effect from April 01, 2011 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated February 01, 2013;

20.3 That the loan cum pledge agreements are independent contracts interse ISG and the Pawnees;

*20.4 That under the alleged transactions not a single share has been acquired by Boydell, Skylark and Pallmall and they can by no way be termed as 'Acquirer' under the Takeover Regulations, 1997, further it is erroneous to allege them as 'Persons Acting in Concert' (hereinafter referred to as '**PACs**'), when the transaction of pledge by ISG were independent transaction;*

20.5 That to be termed as 'PACs', the most important ingredient is 'Common Objective or Purpose of Substantial Acquisition' and the SCN has failed to establish the 'Common Objective or Purpose' between ISG and them;

20.6 That merely by being the promoters of the same company, they cannot be alleged to be PACs for a transaction wherein no acquisition of shares or voting rights has been made by them either directly or indirectly;

20.7 That under no circumstances had they acted as persons acting in concert with ISG, thus, they have not violated Regulation 11(2) of Takeover Regulations, 1997;

20.8 That contentions and submissions as well as mitigating circumstances made by ISG to be considered in their case as well.

21. Mr. J.K. Shah, AS vide individual letters dated April 29, 2015 has *inter alia* reiterated the submissions made as aforesaid by Boydell, Skylark and Pallmall from 20.3 to 20.8 above on behalf of Kavita and Mr. Shrivardhan Goenka. Further, vide individual letters dated April 29/30,

2015, NRC, Stone India, Orchard and Sewand have also *inter alia* also reiterated the aforesaid submissions made by Boydell, Skylark and Pallmall from 20.3 to 20.8 above. The Director of ISG again enclosed a copy of the death certificate of Ms. Indu Goenka for reference and record.

22. An opportunity of hearing was granted to the Noticee Promoter Group on May 14, 2015. Mr. J. K. Shah (AS) along with Ms. Deepika Vijay Sawhney and Mr. R.P Ganti (AR) (hereinafter collectively referred to as **'ARs'**) appeared on behalf of the Noticee Promoter Group and reiterated the submissions made in the replies dated April 29, 2015 and stated that they would make further submission in the matter by May 29, 2015. The ARs further stated that the Noticees other than ISG were not party to the loan agreement entered into by ISG, which was a part of the normal business transaction of ISG. The ARs were *inter alia* advised to furnish copy of form with filed RoC after the completion of merger of Boydell, Pallmall and Skylark with ISG; copy of the loan agreement between lender(s) and ISG with respect to the loan transaction referred to in the SCN; confirm that other than the acquisition of shares shown in Table under para 10 of Supplementary SCN, no other acquisition of shares had taken place during the quarter ended March 2009 and quarter ended June 2009; etc.

23. Vide letter dated May 28, 2015, AS on behalf of ISG provided copy of the forms filed with RoC after the completion of the merger of Boydell, Pallmall and Skylark with ISG and copies of loan agreements between lender(s) and ISG. Vide the said letter, the AS on behalf of ISG *inter alia* further stated/ reiterated as follows:

25.1 that there was no violation of Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations, 1997, for there being no acquisition at all;

25.2 that for the transactions under consideration, the act of ISG was independent of and isolated from the other promoter/ group entities, hence for the alleged violation, the other promoter/ group entities should not be implicated;

25.3 that ISG being an existing company within the meaning of the Companies Act, 2013 is a separate legal entity, and the loan transaction under discussion was undertaken by ISG on its name and the same is an independent business transaction;

25.4 that pursuant to the invocation of pledge, the shares were transferred into the demat account of the lender account, just because of a technical issue, as neither the

Depositories Act, 1996, nor, the depository participants facilitate any parking facility for pledged shares in case of invocation of pledge. Thus, due to absence of a specific provision in the law, the pledged shares happened to be transferred into the account of the lenders;

25.5 That to complete a sale transaction, the following points are key ingredients, and in absence of these essential elements, the invocation and subsequent redemption transaction cannot be said to be sale or purchase:

- *The borrower does not account for as sale its investment in shares merely on invocation, neither does the lender book such shares as purchases in their accounts/ balance sheet;*
- *It is only when shares get sold by the lender, subsequent to invocation, either to itself or to any third party that the investment is accounted for as sold by the borrower from its books;*
- *Also when shares actually get sold, it is only the amount of loan and interest due that is adjusted by the lender and the differential, if any, is to be paid or received by the borrower;*
- *In case of the borrower too, it is subsequent to the actual sale by the lender that the borrower makes the required entries and adjustment in its books of accounts as well as income tax returns.*

25.6 That the loan by pledge agreements entered into between two parties pursuant to substantive provisions contained in Indian Contract Act cannot be overridden by procedural provisions contained under SEBI (Depositories and Participants) Regulations, 1996 and SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997;

25.7 That shares under consideration continued to remain in books of ISG and were not booked into the lender's books and that the invocation of pledge provided the right to the pledge to sell the shares or to file a suit for recovery of money, but, the amount of loan was repaid to the lenders. Thus, the invocation of pledge was made just to attain certain comfort level for recovery of loan by the lender and no actual sale of shares happened;

25.8 That the word 'pledge' is not separately defined in Companies Act, SEBI Act, the Depositories Act or in any of the regulations of SEBI, hence, the definition as set out in Indian Contract Act shall prevail. Accordingly invocation of pledged shares by the lender

and consequent transfer of the same to his account are simply completion of the 'bailment' process as defined in the Indian Contract Act and not purchase by the lender;

25.9 That it is well established and laid principle of law that to be termed as "Persons Acting in Concert" (PAC), the promoters must share a common objective or purpose of substantial acquisition of shares or voting rights. It has been stated that the Promoter Group did not share any common objective for the purpose of increasing their shareholding or voting rights in ACL through the impugned transactions of loan by pledge of shares, pledge invocation and subsequent redemption. That merely because the Promoter Noticees are of the same promoter group, with their being no common objective or purpose, they cannot be alleged to be in violation of Regulation 11(2) in so far as the impugned transactions are concerned. In the matter, reference has been made to the concept of PAC elaborately dealt by Hon'ble Supreme Court in case of *Daiichi Sankyo Co. Ltd. and the judgement of Hon'ble Bombay High Court in the matter of K.K.Modi vs. Securities Appellate Tribunal [(2003) 113 COM. Cases 148 Bom.]. Also, reference has been made to the Order of the Hon'ble SAT in the matter of Rajesh Toshniwal vs. SEBI and others dated June 01, 2012. Further reference has also been made to the Hon'ble SAT's Order dated May 11, 2012 in the matter of Nikhil Mansukhani vs. SEBI.*

24. Vide email dated June 10, 2015, the following details/ documents were sought:

26.1 Details of promoters and Board of Directors of the companies viz. Boydell, Orchard, ISG, NRC, Skylark, Kavita, Pallmall, Sewand and Stone India at the relevant point of time;

26.2 Copy of resolution of Board of Directors of ISG in the meeting held on March 03, 2008 and any other applicable resolutions relating to the loan cum pledge agreement entered by ISG with M/s. Associated Capsules P. Ltd., M/s. Pam Pac Machines P. Ltd., M/s. Detco Polysters P. Ltd and M/s. Sewri Land Co. P. Ltd.;

26.3 The objective and purpose of the loan taken by ISG from M/s. Associated Capsules P. Ltd., M/s. Pam Pac Machines P. Ltd., M/s. Detco Polysters P. Ltd and M/s. Sewri Land Co. P. Ltd. along with supporting documents;

26.4 The actual utilization of the loan amount taken by ISG from M/s. Associated Capsules P. Ltd., M/s. Pam Pac Machines P. Ltd., M/s. Detco Polysters P. Ltd and M/s. Sewri Land Co.

P. Ltd. along with supporting copy of the relevant bank statements reflecting those entries.

25. The AS of the Promoter Group vide letter dated July 03, 2015 provided the details/ documents sought. It was *inter alia* stated vide the said letter that the loans were taken by ISG from the aforementioned parties in the ordinary course of business and that these borrowings have no association or relation with ACL. It was further stated therein that since the transactions are of much prior period, the exact details are not traceable and indicative pattern of loan utilization was provided.

26. It was noted from the copies of resolution passed at the meeting of the Board of Directors of ACL on March 03, 2008, April 02, 2008 and April 30, 2008 and provided vide aforesaid letter dated July 03, 2015 that consent was accorded by the Board of Directors of ISG to avail short term loan of Rs. 35 lacs, Rs. 50 lacs, Rs. 25 lacs and Rs. 1 crore from M/s. Sewri Land Co. Pvt. Ltd., M/s. Pam Pac Machines Pvt. Ltd., M/s. Detco Polysters Pvt. Ltd and M/s. Associated Capsules Pvt. Ltd. respectively *inter alia* against pledge of 80,000 shares of Stone India, 4,40,000 shares of ACL, 55,000 shares of Stone India and 2,45,000 shares of Stone India respectively held by ISG. The resolution whereby Board of Directors of ISG accorded approval for pledge of ACL shares in place of Stone India shares was not provided. Hence, vide email dated July 14, 2015, AS of the Promoter Group was advised to provide the resolution whereby Board of Directors had accorded approval for ACL shares in place of Stone India shares. Also, the reason for pledging ACL shares instead of shares of Stone India was sought.

27. Vide email dated July 24, 2015, AS of the Promoter Group forwarded a copy of the resolution passed at the meeting of the Board of Directors of the company held on May 30, 2008, whereby consent was accorded by the Board of Directors of ISG to pledge shares of ACL, Star Paper Mills Ltd. etc. as may be required. AS vide the said email dated July 24, 2015 further clarified that the shares of ACL were required to be pledged in order to maintain the security cover as per the pledge agreements, because of considerable fall in the market value of shares of Stone India during the period.

CONSIDERATION OF ISSUES

28. I have carefully perused the written submissions of the Promoter Noticees/ Promoter Group, the submissions made at the hearing and the documents available on record. It is observed that the allegation against the Promoter Noticees/ Promoter Group is that they have failed to make the relevant disclosures under the provisions of Regulations 8(1) & 8(2) of the Takeover Regulations, 1997 and/ or Regulation 31(2) read with 31(3) of Takeover Regulations, 2011 and/ or Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997, as applicable.

29. The issues that, therefore, arises for consideration in the present case are:

29.1. Whether the Promoter Noticees had violated the provision of Regulations 8(1) & 8(2) of the Takeover Regulations, 1997 during the year 2001 to 2003?

29.2. Whether the Promoter Noticees had violated the provision of regulation 31(2) read with 31(3) of Takeover Regulations, 2011 during the year 2011?

29.3. Whether the Promoter Group at the relevant point of time viz. ISG acting in concert with Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India had *inter alia* violated Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997 on seven (7) occasions during the year 2009?

29.4. Does the violation, if any, as aforesaid, attract monetary penalty under Section 15 A (b) and/ or Section 15 H(ii) of SEBI Act, as applicable?

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

FINDINGS

30. Before moving forward, it is pertinent to refer to the provisions of Regulations 8(1) & 8(2) of the Takeover Regulations, 1997, Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997 and Regulation 31(2) read with 31(3) of Takeover Regulations, 2011 which reads as under:

8. Continual disclosures

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

(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.

Consolidation of holdings

11. *(1)…*

(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures seventy-five per cent (75%) the words and figures ninety per cent (90%) were substituted.

Provided further that such acquirer may, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).

Timing of the public announcement of offer

14.*(1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein:*

Provided that in case of disinvestment of a Public Sector Undertaking, the public announcement shall be made by the merchant banker not later than 4 working days of the acquirer executing the Share Purchase Agreement or Shareholders Agreement with the Central Government or the State Government as the case may be, for the acquisition of shares or voting rights exceeding the percentage of shareholding referred to in regulation 10 or regulation 11 or the transfer of control over a target Public Sector Undertaking.

Regulation 31(2) read with 31(3) of takeover Regulation, 2011

Disclosure of encumbered shares

31(1) The promoter of every target company shall disclose details of shares in such target company encumbered by him or by persons acting in concert with him in such form as may be specified.

(2) The promoter of every target company shall disclose details of any invocation of such encumbrance or release of such encumbrance of shares in such form as may be specified.

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the creation or invocation or release of encumbrance, as the case may be to,—

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

31. I find that AS has provided a notarized copy of the death certificate of Ms. Indu Goenka. I note that in the matter of Padmalaya Telefilms Ltd. (November 2, 2006), the Hon'ble Whole Time Member (hereinafter referred to as 'WTM') of SEBI *inter-alia* held that: "…Since the proceedings were initiated against the personal acts of omission of a person who is no more alive to face the penalty, the proceedings against him are liable to be abated".

32. Further, In Girijandini vs. Bijendra Narain (AIR 1967 SC 2110), the Hon'ble Supreme Court, inter-alia observed that in case of personal action, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim actio personalis moritur cum persona (personal action dies with the death of the person) would apply.

33. In view of the above, the adjudication proceedings against late Ms. Indu Goenka initiated vide SCN dated October 24, 2013 and Supplementary SCN dated March 20, 2015 are liable to be abated. The matter in respect of late Ms. Indu Goenka is accordingly disposed of.

34. Now, the first issue for consideration is whether the Promoter Noticees at the relevant point of time i.e. Boydell, ISG, Sewand, Kavita, Orchard, late Ms. Indu Goenka and Mr. Shrivardhan Goenka were required to make the relevant disclosures under the provisions of Regulations 8(1) and 8(2) of the Takeover Regulations, 1997. I find from the replies of the Promoter Noticees that ACL ever since 1988 was into losses. Consequently in 1990, ACL was declared Sick by BIFR and was acquired by the G.P. Goenka Group in the year 1994. The G.P. Goenka Group undertook several measures towards revival of the company, however, the company was not able to attain profits and in 2001, BIFR declared the scheme of rehabilitation as proposed in the year 1994 as a failure and the Monitoring Agency was directed to advertise for change in management of the company. In September 2006, AAIFR dismissed the BIFR Order of winding up, referred the matter back to BIFR and a modified revival scheme was approved by BIFR vide its Order dated July 21, 2008.

35. I note that under the modified rehabilitation scheme approved by BIFR vide its Order dated July 21, 2008, the Promoter Noticees i.e. Boydell, ISG, Sewand, Kavita, Orchard, late Ms. Indu Goenka and Mr. Shrivardhan Goenka at the relevant point of time (2001-2003), were provided relief by BIFR vide the said Order by exempting them from the provisions applicable *inter alia* with respect to Companies Act, SEBI Act/Regulations/Guidelines, Depositories Act, Securities Contract Regulation Act, Listing guidelines, etc., as regards their investments in ACL. The alleged violation of Regulations 8(1) & 8(2) of the Takeover Regulations, 1997 pertain to the period from 2001 to 2003 i.e. when the company was under the purview of BIFR. Thus, without going into

the merits of the allegation in the SCN dated October 24, 2013 and in the submissions made by the Promoter Noticees through their various replies and at the time of hearing, I find that the Promoter Noticees viz. Boydell, ISG, Sewand, Kavita, Orchard, late Ms. Indu Goenka and Mr. Shrivardhan Goenka at the relevant point of time (2001-2003) are exempted from the provisions of the SEBI Regulations, in view of the Scheme sanctioned by BIFR vide Order dated July 21, 2008. Besides, as brought out earlier, the adjudication proceedings against late Ms. Indu Goenka initiated vide SCN dated October 24, 2013 and Supplementary SCN dated March 20, 2015 are liable to be abated. As such, no action can be taken against the Promoter Noticees as regards disclosures required to be made under Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 during the period 2001-2003, when the Company was declared sick.

36. The next issue for consideration is whether the Promoter Noticees i.e. Boydell, ISG, Sewand, Kavita, Orchard, late Ms. Indu Goenka and Mr. Shrivardhan Goenka at the relevant point of time (2011) have violated the provisions of Regulation 31(2) read with 31(3) of Takeover Regulations, 2011. I note that under Regulation 31(2) read with 31(3) of Takeover Regulation, 2011, the Promoter Noticees were required to disclose details of any invocation of encumbered shares or release of encumbrance of shares within seven working days from the invocation or release of encumbrance to the stock exchange where the shares of the company were listed and also to the company at its registered office.

37. I note that the Promoter Noticees vide their reply dated January 30, 2014 have *inter alia* admitted that during November 2011, there was change in promoter holding subsequent to invocation of pledge by pledgee (HDFC and IDFC) on November 3, 2011, November 15, 2011 and November 16, 2011. It has also *inter alia* been submitted that the same was duly intimated by the Promoter Noticees in the format under Regulation 7(1A) of Takeover Regulations, 1997 within 2 working dates i.e. on November 4, 2011, November 16, 2011 and November 17, 2011. I find from the disclosures as available on the BSE website that the Promoter Noticees had disclosed under regulation 7(1A) as follows:

Date of transaction	Transfer of Shares (Invocation of pledge)	Pre-holding	Post-holding	Date of reporting to BSE under Reg. 7(1A)
03-11-2011	26,61,142 (1.82%)	6,29,05,443 (43.08%)	6,02,44,301 (41.26%)	09-11-2011/ 11-11-2011
15-11-2011	14,90,699 (1.02%)	6,02,44,301 (41.26%)	5,87,53,602 (40.24%)	18-11-2011
16-11-2011	12,97,101 (0.89%)	5,87,53,602 (40.24%)	5,74,56,501 (39.35%)	17-11-2011 18-11-2011

38. The Promoter Noticees, I find have *inter alia* stated in their submissions that they had duly made the disclosure, however, in the wrong format due to lack of legal knowledge and unavailability of professional expertise and confusion as to applicability of the provisions. The Promoter Noticees have stated that, hence, the same should not be treated as non-compliance, but, merely an erroneous compliance with no harm to any public, since the required information was duly made public.

39. In the matter, I find it pertinent to mention here that the disclosure obligation has to be discharged only in the manner prescribed under the law. I further note that Takeover Regulations, 1997 was amended by SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2009, w.e.f. January 28, 2009 for disclosure specifically of pledged shares by incorporating Regulation 8A. Under Regulation 8A of Takeover Regulations, 1997, promoters were required to disclose the invocation of pledge of shares to the company under Regulation 8A(3), and the company in turn, was required to disclose to the stock Exchanges under Regulation 8A(4). Hence, I note that even under Takeover Regulations, 1997, disclosure of invocation of pledge of shares done by the pledgee could not have been disclosed under Regulation 7(1A). I further note that the format under Regulation 31(2) read with 31(3) of the Takeover Regulations, 2011 is a much broader one, which requires disclosure of names of all the promoters, their shareholding in the target company and their pledged shareholding as on the

reporting date, irrespective of whether they are reporting on the date of the event or not. Thus, I note that the intent of disclosure of encumbered shares under Regulation 31(2) read with 31(3) of the Takeover Regulations, 2011 is to provide a complete picture of the shares pledged by the promoter group, to enable the shareholders/ investors to take an informed investment decision.

40. In this context, I would like to rely on the judgment of ***Hon'ble Securities Appellate Tribunal (SAT) in Premchand Shah and Others V. SEBI (Appeal no. 108 of 2010 decided on February 21, 2011),*** wherein it was observed that "..... *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. …….Non disclosure of the information in the prescribed manner deprived the investing public of the information which is required to be available with them when they take an informed decision while making investments."*

41. In this connection, I would also like to place reliance on the decision of the ***Hon'ble Supreme Court of India in Kunwar Pal Singh vs. State of U.P. [(2007) 5 Supreme Court Cases 85],*** wherein the Court observed that: *"…….The principle is well settled that where any statutory provision provides a particular manner for doing a particular act, then, that thing or act must be done in accordance with the manner prescribed therefore in the Act." [Emphasis supplied]* The ***Hon'ble Supreme Court of India vide its order dated April 21, 2009 in Civil Appeal No. 3696 of 2005 (SEBI Vs Saikala Associates Limited)*** *has also inter alia* observed that:*"…….When something is to be done statutorily in a particular way, it can only be done that way."*

42. Further, I note from the BSE website that as on September 30, 2011, promoters had pledged 91.88% of the shares held by them, which constituted 41.44% of the total shareholding of the company. I also note that the Promoter Noticees have submitted that though the networth of the company had became positive in the year 2009, the operations of the company could not run smoothly due to continuous disruption from labour and liquidity crunch, and that practically by September 2010, the company was not having any production. Considering the problems that the company was facing and the fact that the promoters had pledged 91% of its holding, it was all the more important for the shareholders/ investors to be informed about the invocation of pledge of shares by the pledgee in the manner prescribed under the law, so that investing public were not deprived of any vital information.

43. I further note that the Promoter Noticees have *inter alia* admitted to their not making the disclosure under the relevant provisions of Regulations 31(2) read with 31(3) of Takeover Regulations, 2011. Thus, it is established without doubt that the Promoter Noticees viz. Boydell, ISG, Sewand, Kavita, Orchard, late Ms. Indu Goenka and Mr. Shrivardhan Goenka at the relevant point of time had admittedly violated the provisions of Regulations 31(2) read with 31(3) of Takeover Regulations, 2011 on three (3) occasions.

44. The third issue for consideration is whether the Promoter Group comprising Promoter Noticee viz.ISG acting in concert with the other Promoter Noticees of ACL at the relevant point of time viz. Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India, had violated the provision of Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997 on seven (7) occasions during the year 2009.

45. I note that at the relevant point of time during the year 2009, the Promoter Group holding was more than fifty-five per cent (55%), but, less than seventy-five per cent (75%) of the paid-up capital of the company. Further, the acquisitions made were on account of return of invoked shares by the pledgee and not on open market. Hence, the Promoter Group comprising Promoter Noticee viz.ISG acting in concert with the other Promoter Noticees of ACL at the relevant point of time viz. Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India could not have acquired any additional shares, unless they made a public announcement to acquire shares in accordance with the Takeover Regulations, 1997 on each occasion.

46. I, however, find that a scheme for revival of the sick company ACL was sanctioned by BIFR vide its Order dated June 06, 1994 and BIFR had appointed Industrial Development Bank of India (hereinafter referred to as **'IDBI'**) as the monitoring agency to monitor the progress of implementation of the said scheme. Further to the same, I find that a modified revival scheme of ACL was sanctioned by BIFR on July 21, 2008 and IDBI was appointed as the monitoring agency to monitor the progress of implementation of such modified scheme as well. The said modified revival scheme exempted *inter alia* the promoters of ACL from the provisions

applicable with respect to Companies Act, SEBI Act/Regulations/Guidelines, Depositories Act, Securities Contract Regulation Act, Listing guidelines, etc., as regards their investments in ACL. It is noted that IDBI vide letter dated October 14, 2009 had submitted a status report stating that the net worth of the company had turned positive as on March 31, 2009, hence, the company may be discharged from the purview of SICA/ BIFR. BIFR at the proceedings held on January 22, 2010 *inter alia* noted that the provisions of the scheme had been substantially implemented and the net-worth of the company had become positive as on March 31, 2009, hence, the company no more remained a sick company under section 3(1) (o) of SICA and discharged the company from the purview of SICA at the said proceeding.

47. I note from the above that the net-worth of ACL had become positive as on March 31, 2009 and from thereon the company no more remained a sick industrial company. Hence, I consider March 31, 2009 as the date on which company ceased to be a sick company and the company's net-worth had turned positive. The acquisitions made by the Promoter Group on account of return of 8,32,000 shares on January 22, 2009 and return of 6,69,000 shares on February 07, 2009 by the concerned pledgees, pertain to the period when the Promoter Group was exempted vide BIFR Order dated July 21, 2008 as regards their investments in ACL. As such, no action can be taken against the Promoter Group comprising Promoter Noticee viz.ISG acting in concert with the other Promoter Noticees of ACL at the relevant point of time viz. Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India for the violation of Regulation 11(2) read with 14(1) of the Takeover Regulation, 1997 on two (2) out of the seven (7) occasions i.e. in respect of acquisition of 8,32,000 shares on January 22, 2009 and in respect of acquisition of 6,69,000 shares on February 07, 2009. Further, it has already been brought out above that the adjudication proceedings against late Ms. Indu Goenka initiated vide SCN dated October 24, 2013 and Supplementary SCN dated March 20, 2015 are liable to be abated.

48. Now, the next issue for consideration is whether the Promoter Group comprising Promoter Noticee viz.ISG acting in concert with the other Promoter Noticees of ACL at the relevant point of time viz. Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India, had violated Regulation 11(2) read with 14(1) of the

Takeover Regulation, 1997 due to return of invoked shares by the concerned pledgees on the following occasions after the net-worth of ACL had become positive as on March 31, 2009:

(i) 2,20,000 shares on March 31, 2009; (ii) 1,90,000 shares on April 13, 2009; (iii) 1,15,000 shares on April 20, 2009; (iv) 1,000 shares on May 04, 2009; and (v) 18,000 shares on May 04, 2009.

49. To arrive at a conclusion we need to examine the following issues:

a) Firstly, whether return of invoked shares by the pledgees amounts to fresh acquisition of shares?

b) If so, whether the Promoter Group of ACL was acting in concert with respect to the aforesaid acquisitions on account of return of invoked shares by the respective pledgees?

c) If so, whether the Promoter Group violated Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997?

50. Now as regards the first issue as to whether return of invoked shares by the pledgees amounts to fresh acquisition of shares, I note that ISG had pledged the ACL shares held by it with the following four pledgees viz. M/s. Associated Capsules P. Ltd., M/s. Pam Pac Machines P. Ltd., M/s. Detco Polysters P. Ltd and M/s. Sewri Land Co. P. Ltd as collateral security to avail loan facilities. I further note that as per ISG's own admission, there was continuous default in repayment of the loan amount to the pledgees and that the shares were invoked by pledgees on such repeated defaults in payment of loan amount (due to continued bad financial position and paucity of funds).

51. I find that ISG has submitted that the transactions between itself *('pawnor')* and M/s. Sewri Land Co. Pvt. Ltd., M/s. Associated Capsules Pvt. Ltd., M/s. Pam Pac Machines Pvt. Ltd. and M/s. Detco Polyesters Pvt. Ltd. (collectively referred to as *'pawnees')* were simply loan transactions, secured by way of a pledge of its shares in ACL. ISG has stated that the act of depositing the shares with the pawnee did not create any 'interest' in the shares in favour of the pawnee. It has been stated that a pawn only creates in favour of the pawnee a special right to retain possession of the shares as a collateral security and/ or to dispose of the same by way of a sale after reasonable notice.

52. It is pertinent to mention here that as long as the shares remained under pledge, ISG was the beneficial owner and the only effect of the pledge was that the shares under pledge could not be transferred any further or dealt with in the market without the concurrence of the pledgees. The pledge by itself did not bring about any change in the beneficial ownership of the shares pledged and there was no question of the aforesaid provisions of the Takeover Regulations, 1997 being triggered. I, however, note that the pawnor/ISG had made a default in payment of the loan amount within the stipulated time.

53. I note that Paras (7) and (16) of the Loan cum Pledge Agreements entered by ISG with the aforesaid Pawnees read as follows:

"7. In case of expiry of due date or in case of any other default, the lender shall have full rights to sell, dispose of or otherwise deal with the said securities on such terms and price that the lender may think fit and apply the net proceeds towards satisfaction of the ICD amount outstanding against the Borrower along with interest, charges etc."

"16. The Pledger also undertakes to give Irrevocable Power of Attorney in favour of the lender to authorize the lender to sell or transfer the said pledged securities for the purpose of realizing their dues."

54. Thus, I note from the above that the Loan cum Pledge Agreement provided Irrevocable Power of Attorney to the pledgees to transfer the shares in case of default for the purpose of realizing their dues. Besides, I note here that the Indian Contract Act too entitles the pledgee to invoke the pledge when a default occurs. Further, if shares are held in demat form, the Depositories Act and the Regulations framed thereunder provide the manner in which the pledge is to be created and invoked. Upon invoking of the pledge, the procedure on such invocation is that the depository cancels the entry of pledge in its records and registers the pledgees as beneficial owners of the shares in their records and makes the necessary amendments in its records. The pledgees, thus, become the beneficial owners of the shares. In the extant case, I note that as per its own admission, there was a continuous default on the part of ISG in repayment of the loans that resulted in the pledges being invoked by the aforesaid four pledgees. This resulted in transfer of shares from the demat account of ISG to the demat accounts of the aforesaid four pledgees and the pledgees being registered as beneficial owners in the records of the

depository. I note further that under the Depositories Act, it is the beneficial owner in whom all the rights vests.

55. Also, every person holding equity share capital of company and whose name is entered as beneficial owner in the records of the depository is deemed to be a 'member' of the concerned company as per Section 41 of the Companies Act and sub-section (3) thereof. And once a person becomes a member, he is entitled to exercise all the rights of a member until he ceases to be a member. Further, a person ceases to be a member by transferring his share to another person.

56. I note here that ISG has claimed that the legal title to the goods pledged would not vest with the pawnee. ISG has stated that as per the relevant provisions of the Companies Act and the Indian Contract Act, the pledgees did not acquire voting rights and/ or any other rights of an ordinary shareholder in the company by virtue of deposit of shares in ACL. In the matter, I find that ISG has placed reliance on the decision in the case of *Balakrishnan v. Swadeshi Polytex Ltd.* wherein the Supreme Court has observed that the pawnor of shares continued to be the member of the company and could exercise all rights of a shareholder of the company.

57. I note that the aforesaid decision dated February 12, 1985 pertains to the matter where Receiver was appointed by the Collector of Kanpur in respect of Swadeshi Cotton Mills Company Ltd. The Swadeshi Cotton Mills Company Ltd. held 10 lac shares out of 39 shares of Swadeshi Polytex Ltd. The receiver so appointed seized 1 lac shares and further attached 9 lac shares of Swadeshi Polytex Ltd. held by Swadeshi Cotton Mills Company Ltd. Section 169 (1) of the Companies Act provides that the Board of directors of a company shall, on the requisition of such number of members of the company as is specified in sub-section (4), forthwith proceed duly to call an extraordinary general meeting of the company. Sub-section 4 (a) says that the number of members entitled to requisition a meeting in regard to any matter shall be in the case of a company having a share capital, such number of them as held at the date of the deposit of the requisition, not less than one-tenth of such of the paid up capital of the company as at that date carries the right of voting in regard to that matter. The Swadeshi Cotton Mills Company and four others share-holders who together held 10,01,950 shares of Rs. 10 each in Swadeshi Polytex Company sent a notice to the Polytex Company under section 169 of the

Companies Act requiring the Board of Directors of Swadeshi Polytex Company to consider and pass certain resolutions. In this context, the appellants in the said case had contended that since a Receiver had been appointed by the Collector in respect of the shares held by Swadeshi Cotton Mills Company and they had also been attached, the shares held by Swadeshi Cotton Mills Company could not be taken into consideration for determining the required qualification to issue the notice under section 169 of the Companies Act requisitioning the extraordinary general meeting, and that if those shares were omitted from consideration, then the shares held by the other requisitionists would not be sufficient to issue the said notice. It is in this context, the Hon'ble Supreme Court held that –

"The privileges of a member can be exercised by only that person whose name is entered in the Register of Members. A Receiver whose name is not entered in the Register of Members cannot exercise any of those rights unless in a proceeding to which the Company concerned is a party and an order is made therein……. Even where the holder of a share whose name is entered in the Register of Members hands over his shares with blank transfer forms duly signed, the transferee would not be able to claim the rights of a member as against the company concerned until his name is entered in the Register of Members." ……

"An order of attachment cannot, therefore, have the effect of depriving the holder of the shares of his title to the shares. We are of the view that the attachment of the shares in the Polytex Company held by the Cotton Mills Company had not deprived the Cotton Mills Company of its right to vote at the meeting or to issue the notice under section 169 of the Act."

58. In the extant case of ACL under consideration, on invocation of pledge, the pledgees were registered as beneficial owners in the records of the depository in whom all the rights vests under the Depositories Act and deemed to be a *'member'* of ACL as per Section 41 of the Companies Act and sub-section (3) thereof. Thus, going by the decision of the Hon'ble Supreme Court in the case of *Balakrishnan v. Swadeshi Polytex Ltd.*, I note that on invocation of pledge, pawnees became the member of the company and could exercise all rights of a shareholder of the company. Hence, subsequently when shares were returned back by the Pawnees to the pawnor, return of invoked shares by the Pawnees resulted in fresh acquisition of shares.

59. ISG has submitted that there was no actual acquisition of shares/ voting rights by ISG, as the transaction referred merely pertains to the return of shares which were invoked by the pledgee due to non-payment of the loan taken, the shares were never sold or transferred, but, merely taken into custody on account of invocation of pledge with the objective of enforcing the repayment of loan and were in fact held in nature of fiduciary capacity by the pledgee. Further that merely because the shares invoked were returned back to the actual owner, it cannot be said to be violation of Regulation 11 of Takeover Regulations, 1997. It is pertinent to mention here that the definition of the expression 'acquirer' under Regulation 2 (1) (b) of the Takeover Regulations, 1997 states that any acquisition would attract the provisions of the Takeover Regulations, 1997, and the only requirement is that the subject matter of the acquisition should be 'shares' or 'voting rights' or 'control' over the company. According to Regulation 2 (1) (b) 'acquirer means any person who directly or indirectly acquirers or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer'.

60. Further, the definition of the expression 'shares' under Regulation 2(1)(k) of the Takeover Regulations, 1997 states that shares for the purpose means shares in the share capital of a company carrying voting right and includes any security which would entitle the holder to receive shares with voting rights. In the instant case, the pledgees had acquired ACL's equity shares carrying voting rights upon invocation of pledge on default in repayment of the loan amount. These shares, though held as security by the pledgees prior to invocation of the pledge, entitled the pledgees to exercise voting rights upon such invocation. Thus, when the shares were returned by the pledgees to ISG upon repayment of the loan amounts, there was transfer of beneficial ownership from the pledgees to ISG. Thus, as per the clear provisions of the Takeover Regulations, 1997, the instant transaction whereby pledgees returned the invoked shares back to ISG upon repayment of the loan was an acquisition. It becomes pertinent to mention here that regulation 3 (1) (f) of the Takeover Regulations, 1997 expressly excludes acquisition of shares in the ordinary course by banks and public financial institutions as pledgees. Thus, this limited exclusion further clearly confirms that acquisition of shares by way of invocation of pledge by persons other than banks and public financial institutions is to be considered as acquisition and would trigger the open offer provisions for the purpose of

Takeover Regulations, 1997, if it exceeds the threshold limit(s) prescribed under the Takeover Regulations, 1997.

61. I note that ISG has stated that under the governing provisions of section 176 of Indian Contract Act, 1872, the pawnee has the right to retain the goods pledged as a collateral security and section 177 provides for the right to the pawnor to redeem the goods pledged at any subsequent time before the actual sale of them. Further it has been stated that the term 'actual sale and collateral security' as referred in the sections states that the rights are not transferred merely on invocation of pledge. It has already been explained in detail above as to how on invocation of pledge, the pledgees became the beneficial owners of the shares. Hence, when the pledgees returned the invoked shares back to ISG upon repayment of the loan, it resulted in acquisition by ISG and persons acting in concert with ISG. If we accept the argument made by ISG that - there was no actual acquisition of shares/ voting rights by ISG and that merely because the shares invoked were returned back to the actual owner it cannot be said to be violation of Regulation 11 of Takeover Regulations, 1997, it would undermine the intent of the Takeover Regulations, as acquirers would then be able to acquire shares under the garb of pledge, in excess of the threshold limit(s) prescribed under the Takeover Regulations.

62. I note further that in the case of ***Jry Investments Private Limited vs. Deccan Leafine Services Ltd (Bombay High Court, date of decision 11 March, 2003)*** it was held that:

"It is, therefore, clear that the [Depositories] Act and the [SEBI (Depositories and Participants)] Regulations contain a whole and self-contained procedure for the creation of pledges. In any case, since it is not possible to physically deliver demated shares and therefore pledge them in accordance with the Indian Contract Act, 1872, it must be held that a pledge of such shares can only be validly created in accordance with the provisions of the Depositories Act, 1996."

63. I also note that the Noticee ISG has highlighted in its submission, the key ingredients which completes a sale transaction. ISG has asserted that the invocation and subsequent redemption transaction cannot be said to be sale or purchase in the absence of these essential elements. However, in the case at hand, the treatment in the book of accounts of the pledgor/ pledge cannot become a decisive factor, so long as the voting rights devolved upon the pledgee and

there was transfer of beneficial ownership/ voting rights in accordance with the provisions of the Depositories Act, 1996/ SEBI (Depositories and Participants) Regulations, 1996. I observe that Regulation 11(2) too talks about acquisition of shares or voting rights. Hence, whether or not there was a valid sale is immaterial, so long as there was a transfer of voting rights.

64. I note further that ISG has submitted that the shares were redeemed by making payment of the loan amounts, which has been admitted in the SCN, upon which shares were re-deposited into its account. Firstly, the SCN does not contain any such admission as claimed by ISG. Further, as has been brought out above, pledge of shares can only be validly created in accordance with the provisions of the Depositories Act, 1996/ SEBI (Depositories and Participants) Regulations, 1996. Thus, when the pledge was invoked, the pledgees became the beneficial owners of the shares as per Regulation 58(8) of the SEBI (Depositories and Participants) Regulations, 1996 and the voting rights were transferred to the pledgees. Thereafter on repayment of the loan, the shares were transferred back to ISG by the pledgees.

65. It has been further stated that the shares were redeemed as per the terms of the respective loan/ pledge agreements and not at the prevalent market price and this corroborates the fact that the understanding between the parties was that this transaction was one for a pledge of shares and the redemption thereof and not a transaction for acquisition of shares.

66. I note here that ISG did not get back the shares by redeeming the pledge. If that had been the case, the matter would have been different. It is observed that the shares were transferred in the names of the pledgees on invocation of the pledge. The manner in which the pledgees returned the shares back to the pledgor (ISG) upon repayment of the loan amount, only implies that the pledgees agreed to transfer the shares back to the pledgor (ISG) upon the loan being repaid, on the basis of an arrangement/ agreement between ISG and the pledgees. It was open to the pledgees to transfer the shares to third parties and appropriate the sale proceeds towards the outstanding loan amount. However, instead of doing that, they agreed to transfer the shares back to ISG, upon repayment of loan by ISG. This arrangement/ agreement will, however, not override or circumvent the statutory provisions of the Takeover Regulations, 1997 and Regulation 58 of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 which lays down the manner in which a pledge or hypothecation is created

and would only result in transfer of shares from the pledgees to ISG. This transfer is altogether different from the transfer by which the shares came to the pledgees upon invocation of pledge, and by no process of reasoning can it be said that the pledgees continued to hold the shares as collateral security which was returned to ISG upon the repayment of the loan. Regulation 58 of the Securities and Exchange Board of India (Depositories and Participants) Regulations 1996 is verbatim reproduced below for reference purpose:

*"**Regulation 58***

Manner of creating pledge or hypothecation.

58. (1) If a beneficial owner intends to create a pledge on a security owned by him, he shall make an application to the depository through the participant who has his account in respect of such securities.

(2) The participant after satisfaction that the securities are available for pledge shall make a note in its records of the notice of pledge and forward the application to the depository.

(3) The depository after confirmation from the pledgee that the securities are available for pledge with the pledger shall within fifteen days of the receipt of the application create and record the pledge and send an intimation of the same to the participants of the pledger and the pledgee.

(4) On receipt of the intimation under sub-regulation (3) the participants of both the pledger and the pledgee shall inform the pledger and the pledgee respectively of the entry of creation of the pledge.

(5) If the depository does not create the pledge, it shall send along with the reasons and intimation to the participants of the pledger and the pledgee.

(6) The entry of pledge made under sub-regulation (3) may be cancelled by the depository if the pledger or the pledgee makes an application to the depository through its participant:

Provided that no entry of pledge shall be cancelled by the depository with the prior concurrence of the pledgee.

(7) The depository on the cancellation of the entry of pledge shall inform the participant of the pledger.

(8) Subject to the provisions of the plegde document, the pledgee may invoke the pledge and on such invocation, the depository shall register the pledgee as beneficial owner of such securities and amend its records accordingly.

(9) After amending its records under sub-regulation (8) the depository shall immediately inform the participants of the pledger and pledgee of the change who in turn shall make the necessary changes in their records and inform the pledger and pledgee respectively.

(10) (a) If a beneficial owner intends to create a hypothecation on a security owned by him he may do so in accordance with the provisions of sub-regulations (1) to (9).

(b) The provisions of sub–regulations (1) to (9) shall mutatis mutandis apply in such cases of hypothecation:

Provided that the depository before registering the hypothecatee as a beneficial owner shall obtain the prior concurrence of the hypothecator.

(11) No transfer of security in respect of which a notice or entry of pledge or hypothecation is in force shall be effected by a participant without the concurrence of the pledgee or the hypothecatee as the case may be."

67. The above view has also been held by Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT') in the matter of ***Liquid Holdings Private Limited v. SEBI,*** *where* SAT considered the question of whether transfer of shares pursuant to an invocation of pledge and subsequent re-transfer to the pledgor involves transfer of beneficial ownership of shares and triggers Takeover Regulations. The Hon'ble SAT held that:

"Upon the banks being recorded as beneficial owners of the shares in the records of the depository, they became members of the target company and they acquired not only the shares but also the voting rights attached thereto. But for the exemption granted to them under Regulation 3(1)(f)(iv) of the takeover code, they would have been required to comply with the provisions of Regulation 11(1) by making a public announcement to acquire further shares of the target company as envisaged therein. The shares acquired by the banks ceased to be the security for the loans as the banks had become the beneficial owners thereof. In December 2007, Morpen paid the entire loan amounts to the banks and settled the loan accounts. It was then that the banks issued a 'no dues certificate' to Morepen, the principal borrower and simultaneously executed DIS requiring their participants to debit their accounts and transfer the shares in the names of the appellants. Accordingly, the shares got transferred from the demat accounts of the banks to the demat accounts of the appellants in the records of the depository. On this transfer being made by the banks, the appellants acquired the shares and became their beneficial owners

as their names were entered in the records of the depository. Admittedly, the shares which the appellants acquired in December 2007 were in excess of the threshold limit(s) prescribed by Regulation 11(1) of the takeover code and, therefore, the said regulation got triggered. The appellants were required to come out with a public announcement to acquire further shares of the target company as envisaged in this Regulation. This was not done. Not only this, the appellants having acquired the shares from the banks were also required to make the necessary disclosures in terms of Regulation 7 of the takeover code to the target company and the stock exchanges where the shares were listed. This, too, was not done. We are, therefore, satisfied that the provisions of Regulations 7 and 11(1) stood violated and the adjudicating officer was right in recording a finding to this effect. No fault can, thus, be found with the impugned order, in this regard."

68. In view of the above, the argument made by ISG/ Promoter Group that the shares were only transferred for the purpose of security for repayment of loan and there was no acquisition of shares and/ or voting rights does not hold any merit. Thus, it is concluded that return of the shares by the pledgees to ISG amounts to fresh acquisition of shares/ voting rights of ACL as per the Takeover Regulations, 1997. Besides, I note that ISG has also *inter alia* admitted that pursuant to the invocation of pledge, the shares were transferred into the demat account of the lender account because of technical issue, as neither the Depositories Act, 1996, nor, the depository participants facilitate any parking facility for pledged shares in case of invocation of pledge.

69. Now, the next issue for consideration is whether the Promoter Group was acting in concert with ISG with respect to the said acquisition. I note from the submissions made that it has been claimed that the Promoter Group did not share any common objective for the purpose of increasing their shareholding or voting rights in ACL through the impugned transactions of loan by pledge of shares, pledge invocation and subsequent redemption. It has been submitted that merely because the Promoter Noticees are of the same promoter group, with their being no common objective or purpose, they cannot be alleged to be in violation of Regulation 11(2) in so far as the impugned transactions are concerned.

70. I note from the submissions made that the Promoter Group belonged to one group i.e. 'G.P. Goenka Group' and concerted efforts were put in by the group to revive ACL. Thus, I note that as per their own submissions, the promoter entities belonged to one group. It is, thus, not a case that the Promoter Group was a divided house as was the case in *K.K. Modi*. I note here that the Promoter Group has *inter alia* stated that the loan cum pledge agreements are independent contracts *inter se* ISG and the Pawnees, with no involvement of other promoters in the said transaction, hence, they cannot be said to be persons acting in concert.

71. In the matter, I note from the details of the promoters provided vide letter dated July 03, 2015 that most of the promoter Noticees are unlisted companies with equity interlinks among group affiliates through pyramidal structure and cross-holdings. Additionally, group affiliates are connected through relation based ties. I note that the Chairman of the group Mr. G.P. Goenka held direct/ indirect holding among all the group affiliates. Besides, Mr. Shrivardhan Goenka, son of Chairman Mr. G.P. Goenka, who was the Executive Director of ACL at the relevant point of time, was also the director in ISG as well as other promoter Noticees viz. Skylark, Kavita, Pallmall and Stone India. Further as per the Annual Report of ACL for the period 2009-10, I note that there were *interse* transfer of shares amongst the following Promoter Noticees viz. Boydell, Kavita, NRC, Orchard, Sewand and Stone India. As per the BSE website, I note that as on quarter ended June 30, 2009, pursuant to the said return of shares by the pledgees, ISG (28.02%) and its wholly owned subsidiary company viz. Boydell (25.35%) were holding more than 51% shares in ACL. Consequent to this holding, ACL became a subsidiary company of ISG. I further note from the Annual Report of ACL for the period 2009-10 that Mr. Shrivardhan Goenka, Executive Director and Key Managerial Personnel of ACL, and late Ms. Indu Goenka, relative (Mother) of Key Managerial Personnel of ACL, had significant influence on ISG, in which they were Director and Whole Time Director respectively. Further late Ms. Indu Goenka also held substantial interest in Kavita.

72. Thus, from the above it becomes clear that the aforesaid Key Management Personnel of ACL had significant influence on the transactions done by ISG. Further, it is also noted that the said Key Management Personnel of ACL were also acting as the Director of other Promoter Noticees viz. Skylark, Kavita, Pallmall and Stone India. Besides, there are equity interlinks among group affiliates through pyramidal structure and cross-holdings and group affiliates are connected

through relation based ties. Thus, I conclude that the Promoter Group acted in concert with ISG for the loan transactions under consideration in the SCN and that ISG did not act individually as claimed in the submissions. Once an individual becomes part of the group acting in concert with the intention of acquiring shares, it loses its identity as an individual and takes on the identity of the group as a whole. As per scheme of law as envisaged in the erstwhile Takeover Regulations, 1997, an individual is no longer regarded as a separate entity of the group, as he becomes an integral part of the entire unit as one cohesive structure. The objective of acquisition by the Promoter Group was consolidation and to increase the total Promoter Group holding which had gone down due to invocation of pledge by the pledgees. Besides, I note that the Takeover Regulations, 1997 does not differentiate acquisitions through independent business transactions from normal transactions, if the acquisition is in excess of the threshold limit(s) prescribed under the Takeover Regulations, 1997.

73. As regards the case of ***K.K. Modi*** relied upon, the shareholders were admittedly a divided house. In the present case, from the submissions made as well as from the facts brought out as above, it becomes clear that the Promoter Group acted in concert with respect to the loan transaction and subsequent acquisition of shares. The decision of the Hon'ble Supreme Court in the ***Daiichi*** case relied upon may not be of any assistance since it deals with a different set of facts relating to common object underlying the acquisition of shares. Even so, I am of the opinion there is nothing in the judgment that will contradict a finding in the extant case that the promoters were acting in concert, or as PACs. As noted earlier, consolidation of the promoters' holding, which had reduced subsequent to the invocation of pledge by the pledgee was the common objective. Further, in the matter of ***Rajesh Toshniwal vs. SEBI*** and others dated June 01, 2012 the Hon'ble SAT has stated that the promoters, as a rule, belong to a homogenous group unless otherwise proved by attendant circumstances to be otherwise. I note that the attendant circumstances in the extant case clearly indicate that the entire Promoter Group were into one class. Neither has the Promoter Group been able to prove otherwise. Again as regards ***the Hon'ble SAT's Order dated May 11, 2012*** in the matter of ***Nikhil Mansukhani Vs. SEBI***, it is noted that there was dispute between the two promoter groups, hence, the Hon'ble SAT observed *inter alia* that it was for the Board to bring sufficient material on record to show that inspite of conflict among the promoters, the members of the two groups were acting in concert while acquiring the shares. On the other hand, in the case under consideration, there is nothing on record that

shows that objective or purpose of the Promoter Group (other than ISG) was diametrically opposite to the objective or purpose of the Promoter Noticee viz. ISG. In fact, I find that there is sufficient material on record including the submissions made that bring out that the other Promoter Noticees (excluding ISG) were acting in concert with ISG. Thus, I conclude that Promoter Group of ACL was acting in concert with respect to the acquisitions made due to return of invoked shares by the respective pledgees.

74. Now, the next issue is whether the Promoter Group violated Regulation 11(2) read with Regulation 14(1) of Takeover Regulations, 1997 as a result of such acquisitions. As has been brought out before, I note that as at the relevant point of time during the year 2009, the Promoter Group holding was more than fifty-five per cent (55%), but, less than seventy-five per cent (75%) of the paid-up capital of the company. Further, the acquisitions made were not on open market, but, on account of return of invoked shares by the pledgee. Hence, the Promoter Group comprising Promoter Noticee viz.ISG acting in concert with the other Promoter Noticees of ACL at the relevant point of time viz. Boydell, Sewand, Kavita, Orchard, Ms. Indu Goenka, Mr. Shrivardhan Goenka, Skylark, NRC, Pallmall and Stone India could not have acquired any additional shares, unless they made a public announcement to acquire shares in accordance with the Takeover Regulations, 1997 on each occasion. I note that as and from March 31, 2009, i.e. when the net-worth of ACL turned positive, the Promoter Group acting in concert had acquired the following shares due to return of invoked shares by the concerned pledgees:

(i) 2,20,000 shares on March 31, 2009; (ii) 1,90,000 shares on April 13, 2009; (iii) 1,15,000 shares on April 20, 2009; (iv) 1,000 shares on May 04, 2009; and (v) 18,000 shares on May 04, 2009.

75. The Promoter Group was required to come out with a public announcement to acquire further shares of the company as envisaged in the Takeover Regulations, 1997. This was not done. I, however, note that the public announcement referred to in Regulation 11 has to be made not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein. Hence, I note that only one public announcement was required for acquisition of 1,000 shares and 18,000 shares done by the Promoter Group due to return of invoked shares by the pledgee on May 04, 2009 in two tranches. Hence, I note that the Promoter Group was

required to come out with a public announcement as envisaged in the Takeover Regulations, 1997 on four (4) occasions. However, the Promoter Group failed to make the public announcement on each such occasion. The adjudication proceedings against late Ms. Indu Goenka initiated vide SCN dated October 24, 2013 and Supplementary SCN dated March 20, 2015 are liable to be abated. However, it is established without doubt that the other Promoters of the Promoter Group at the relevant point of time had violated the provisions of Regulation 11(2) read with 14(1) of the Takeover Regulation, 1997 on four (4) occasions in 2009.

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

77. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under section 15A(b) of the SEBI Act for the violation of Regulation 31(2) read with Regulation 31(3) of the Takeover Regulations, 2011 and/ or under section 15H (ii) of the SEBI Act, for violation of Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations, 1997, as applicable, which reads as under:

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made thereunder,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

Penalty for non-disclosure of acquisition of shares and takeovers.

15H. *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*

(i) …….; or

(ii) make a public announcement to acquire shares at a minimum price; or

(iii) ……; or

(iv)……..,

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.

78. While determining the quantum of monetary penalty under Section 15 A(b) and/ or section 15H(ii), as applicable, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:-

Factors to be taken into account by the adjudicating officer

15J. *While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

79. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Promoter Noticees/ Promoter Group. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Promoter Noticees/ Promoter Group. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation also seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover Regulations is investor protection.

80. As per Section 15A (b) of the SEBI Act, the Promoter Noticees are liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, Section 15 H(ii) of SEBI Act provides for imposition of monetary penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher, if any person, who is required under the Act or any rules or regulations made there under, fails to make a public announcement to acquire shares at a minimum price. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliances by the Promoter Noticees/ Promoter Group. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliances by the Promoter Noticees/ Promoter Group.

81. I note, here, that it has been *inter alia* submitted that as regards the non-compliance with regard to Regulation 31(2) read with 31(3) of Takeover Regulations, 2011, the period under consideration was transitional period from old Takeover Regulations, 1997 to the new Takeover Regulations, 2011. Hence, due to lack of legal knowledge, unavailability of professional expertise and confusion as to applicability of provisions, disclosure was made in a different format. I find that because professionally qualified personnel could not be appointed, the Promoter Noticees/ Promoter Group cannot be absolved from compliances required to be made under the Takeover Regulations, 1997/ Takeover Regulations, 2011, as applicable. Also, as has been brought out in the earlier part of the Order, it is reiterated that considering the problems that the company was facing and the fact that the promoters had pledged 91% of its holding, it was all the more important for the shareholders/ investors to be informed about the invocation of pledge of shares by the pledgee in the manner prescribed under the law, so that investing public were not deprived of any vital information.

82. Besides, a promoter of a listed company is expected to be up-to-date with regards to changes in the regulatory environment and should be able to seamlessly integrate any new directive introduced by the regulator, as regulations are in public interest. Non-compliance by the promoters undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

83. I further find that the Promoter Noticees have submitted that by making disclosure under Regulation 7(1A) of Takeover Regulations, 1997, instead of under Regulation 31(2) of Takeover Regulations, 2011, no harm has been caused to any public. In the matter, I note that the ***Hon'ble Securities Appellate Tribumal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014)*** has observed that:

"Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."

In view of the same, the argument put forth by the Promoter Noticees that no harm has been caused to any public due to non-disclosure under the specific provision of Takeover Regulations, 2011 is not relevant for the given case.

84. It has also been submitted that there had not been any malafide intent on part of the Promoter Noticees in not making disclosure under Regulation 31(2) of Takeover Regulations, 2011, since disclosure was indeed made under Regulation 7(1A) of Takeover Regulations, 1997. Further, I note that ISG has also stated that even if the impugned transactions are eventually found to be objectionable on purely technical grounds, it was clearly not the intention of the parties to the transaction to violate the spirit behind Takeover Regulations. In the matter, I note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** *had observed that:*

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

In view of the same, the argument put forth by the Promoter Noticees/ Promoter Group that there had not been any malafide intent or intent to violate the spirit behind the Takeover Regulations on their part, is also not relevant for the given case.

85. I find that the Promoter Noticees/ Promoter Group have also stated that the show cause against the Promoter Noticees/ Promoter Group is barred by limitation. I, however, find that under the SEBI Act there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder. Further, the provisions of Limitation Act apply only to proceedings in Courts and have no application to Quasi Judicial Bodies, notwithstanding the fact that such bodies may be vested with certain specified powers conferred on Courts under the Civil or Criminal Procedure. Further, In the matter of ***Radheyshyam Chiranjilal Goenka Vs. Adjudicating Officer, SEBI, the Hon'ble SAT*** held that –

"… adjudication under section 15I for default under section 15F cannot be said to be hit by Article 14 of the Limitation act, as the default identified thereunder being a continuing one, till such time it is made good. In the instant case the default was made good only in September 1999, whereas the adjudication proceedings had commenced much earlier as way back in the year 1998."

Similarly, in the case at hand too the default is one that continues till date. In such a case, there can be no question of the proceedings being barred by limitation.

86. I further note that the Promoter Noticees/ Promoter Group have also pointed out their right to make an application under Regulation 4 of Takeover Regulations to exclude the transactions impugned from the provisions of Takeover Regulations. I note here that in the case of ***M/s. Seed Securities Services Pvt. Ltd. in the matter of M/s. Blue Coast Hotels and Resorts Ltd.,*** the Learned Adjudicating Officer held that "*In my view, the proper course of action for the Promoters, in the given circumstances, would have been to make an application before the Takeover Panel under Regulation 4(2), before acquiring the shares retransferred by the banks. The Promoters having failed to do so have thus, violated Regulation 11(1) of the SAST Regulations by failing to make a public announcement to acquire shares in accordance with the said Regulations."* I also note that the cited Adjudication Order was upheld by the Hon'ble SAT. Furthermore, the facts of the case are almost identical to the one at hand. Similarly, in the present case the Promoter Noticees/ Promoter Group failed to apply for an exemption under Regulation 4 of the Takeover Regulations, 1997. Moreover, I note that the Regulation 4(2) of the Takeover Regulations, 1997 provides that the acquirer should file an application giving details of the proposed acquisition. The words *"proposed acquisition"* make it abundantly clear that the exemption has to be sought prior to the acquisition. There is no dispute that such an exemption

was neither sought nor granted. In view of the same, I am unable to find any merit in this submission of the Promoter Noticee/ Promoter Group.

87. I note that by not making the public announcement, the Promoter Group had resulted in denying the statutory right of the shareholders of the company to exit through open offer mechanism at the respective point of time. I believe that investor confidence in the securities market can be sustained largely by ensuring investors protection. It, thus, becomes imperative to impose monetary penalty for violation of the provisions of Takeover Regulations. In this regard, I note from the BSE website that at the relevant point of time, i.e. as at quarter ended June 30, 2009, there were about 51,760 public shareholders holding 26.68% out of the total shareholding of 13,25,23,415 shares, who were deprived of an exit opportunity due to failure of the promoter Noticees to make a public announcement of the open offer disclosing their intention to acquire shares of the company from the existing shareholders. It is pertinent to mention here that the average market price at the relevant point of time i.e. March 31, 2009 to June 2009, which was in the price band of around Rs. 22-23, started falling from about May 2010, and ultimately reached an average low price in the band of around Rs. 9-10 during August 2011 to November 15, 2011, when public announcement of the open offer by JDCL to acquire shares of ACL at Rs. 12/- per fully paid-up equity share was made. Thus, I note that to this extent, there was loss to the shareholders who either transferred the shares subsequently after the price fell or availed of the open offer made by JDCL.

88. ISG, I find, has stated that even if the impugned transactions are eventually found to be objectionable on purely technical grounds, it was clearly not the intention of the parties to the transaction to violate the spirit behind Takeover Regulations. Public announcement as envisaged under Regulation 11(2) of the Takeover Regulations is the announcement of the open offer by the acquirers and the persons acting in concert, primarily disclosing their intention to acquire shares of the target company from the existing shareholders, thereby giving an opportunity of exit to the public shareholders at a specified price during a specified time. In fact, I find that the penalty provision under Section 15H (ii) of the SEBI Act also specifically refers to failure to: "*make a public announcement to acquire shares at a minimum price"*. Thus, I conclude that failure to make public announcement to acquire shares at a minimum price is a serious matter, even if the transaction is otherwise in compliance, since the shareholders were deprived of an

exit opportunity at the relevant point of time. This providing of an exit opportunity to the shareholders at the relevant point of time further assumes significance in light of the submissions that the operations of the company could not run smoothly due to continuous disruption from labour and liquidity crunch.

89. I find that Chapter VI-A of the SEBI Act provides for Penalties and Adjudication. In particular, Sections 15A to Section 15 H (ii) are in the form of mandatory provisions imposing penalty in default of the provisions of the SEBI Act and Regulations. The provisions of penalty for non-compliance of the mandate of the Act are with an objective to have an effective deterrent to ensure better compliance of the provisions of the SEBI Act and Regulations, which is crucial for SEBI in order to protect the interests of investors in securities. Besides, in the extant case, I find that the violations are repetitive in nature. I note here that the Act has not included mens rea or deliberate or willful nature of the default as a factor to be considered by the Adjudicating Officer in determining the quantum. I have, however, taken note of the fact that from the acquisition of the company in the year 1994 till 2009, the Promoter Noticees/ Promoter Group undertook several measures towards revival of the company, and it was through the continuous efforts of the Promoter Noticees/ Promoter Group, due to which the networth of the company became positive and it came out from the purview of BIFR in 2009.

ORDER

90. After taking into consideration all the facts and circumstances of the case and material on records,

80.1 I find that the matter in respect of **Late. Indu Goenka** initiated vide SCN Ref: No. EAD-6/AK/VRP/27283/2013 dated October 24, 2013 and Supplementary SCN Ref: No. EAD-6/AK/AK/8088/2015/10 dated March 20, 2015 cannot be proceeded with as the Noticee has passed away and, thus, the matter becomes infructuous and adjudication proceeding cannot be proceeded with;

80.2 Further after taking into consideration all the facts and circumstances of the case, I find that the matter in respect of violation of Regulation 8(1) and 8(2) of the Takeover Regulations, 1997 during the period 2001-2003 initiated vide SCN dated October 24, 2013 against the **Promoter Noticees i.e. M/s. Boydell Media Pvt Ltd.** *(stands merged with M/s. ISG Traders Ltd. with effect from April 01, 2011 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated February 01, 2013)***, M/s. ISG Traders Ltd., M/s. Sewand Investments Pvt Ltd, M/s. Kavita Marketing Pvt Ltd., M/s. Orchard Holdings Pvt Ltd and Mr. Shrivardhan Goenka**, too cannot be proceeded with. Thus, the matter becomes infructuous and adjudication proceeding cannot be proceeded with;

80.3 I impose a penalty of **Rs. 3,00,000/- (Rupees Three Lac only)** under Section 15 A(b) of the SEBI Act on the **Promoter Noticees viz. M/s. Boydell Media Pvt Ltd.** *(stands merged with M/s. ISG Traders Ltd. with effect from April 01, 2011 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated February 01, 2013)***, M/s. ISG Traders Ltd., M/s. Sewand Investments Pvt Ltd, M/s. Kavita Marketing Pvt Ltd., M/s. Orchard Holdings Pvt Ltd and Mr. Shrivardhan Goenka, payable jointly and severally,** which will be commensurate with the violations committed by the Promoter Noticees for violation Regulation 31(2) and 31(3) of Takeover Regulation, 2011 during 2011;

80.4 I impose a penalty of **Rs. 85,00,000/- (Rupees Eighty Five Lac only)** under Section 15H(ii) of SEBI Act on the Promoter Group viz. **M/s. Boydell Media Pvt Ltd.** *(stands merged with M/s. ISG Traders Ltd. with effect from April 01, 2011 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated February 01, 2013)***, M/s. ISG Traders Ltd., M/s. Sewand Investments Pvt Ltd, M/s. Kavita Marketing Pvt Ltd., M/s. Orchard Holdings Pvt Ltd and Mr. Shrivardhan Goenka**, **M/s. Skylark Rubber Products Ltd.** *(merged with M/s. ISG Traders Ltd. with effect from April 01, 2008 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated September 11, 2009)***, M/s. NRC Ltd., M/s. Pallmall Edusystems & Medicare Services Pvt. Ltd.** *(merged with ISG M/s. ISG Traders Ltd. with*

effect from April 01, 2008 pursuant to the Scheme of Amalgamation approved by the Hon'ble High Court at Kolkata vide its Order dated September 11, 2009) **and M/s. Stone India Ltd., payable jointly and severally,** which will commensurate with the violations committed by the Promoter Group for violation of Regulation 11(2) read with 14(1) of the Takeover Regulation, 1997 during 2009.

91. The Promoter Noticees/ Promoter Group shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Jayanta Jash, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

92. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: **July 31, 2015** **Anita Kenkare**

Place: **Mumbai** **Adjudicating Officer**