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

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

In respect of
EPC Industries Ltd. (PAN No. AAACE2659J)

In the matter of
EPC Industries Ltd

FACTS OF THE CASE

1. An offer document (letter of offer) was filed by Mahindra & Mahindra Ltd (Acquirer) to acquire up to 34,51,613 fully paid up equity shares of face value of Rs. 10/- each representing 20% of the emerging voting capital of EPC Industries Ltd (hereinafter referred to as '**the Noticee**' / '**the Company')** at a price of Rs. 66.55 per share plus interest for delay in the offer schedule, of Re.1.00 per share at the rate of 10% p.a., to be paid to the eligible Shareholders of the company. The public announcement for the same was made on February 10, 2011 and the shares of the company were listed on Bombay Stock Exchange (hereinafter referred to as **'BSE'**) and The National Stock Exchange of India Limited (herein after referred to as **'NSE'**).

2. While examining the letter of offer document filed by the Acquirer to acquire the shares of the Company, it was observed that the Company had failed to comply with the provision of Regulation 8(3) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations, 1997'**) within the stipulated time for the years 2003 and 2005. Based on the aforesaid information with respect to the non-compliance of Takeover Regulations 1997, 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 company under Section 15A(b) of SEBI Act to inquire into and adjudicate the alleged violation of the aforesaid provisions of the Takeover Regulation, 1997.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer on September 02, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'SEBI Rules'**) to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of the Takeover Regulations, 1997 committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A Show Cause Notice (hereinafter referred to as '**SCN**') Ref. No. EAD-6/AK/VRP/30509/2013 dated November 27, 2013 was issued to the Noticee under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations, 1997 as detailed below:

Sl.no.	Regulation/ Sub-Regulation	Due date of compliance	Actual date of compliance	Delay (in days)
1	8(3)	30.04.2003	08.02.2004	284 Days
2	8(3)	30.04.2005	21.09.2005	144 Days

5. The Noticee was 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) of the SEBI Act for the alleged violations.

6. Vide reply dated December 16, 2013, the Noticee requested for further time of four weeks to file a reply in the matter. The request of the Noticee was acceded to and the

Noticee was advised to file a reply by January 10, 2014. Further, the Noticee was also granted an opportunity for personal hearing on January 23, 2014.

7. Vide reply dated January 10, 2014, Amarchand & Mangaldas & Suresh A Shroff & Company, the Authorized Representatives (AR) of the Noticee filed a reply in the matter. The AR *inter alia* submitted the following on behalf of the Noticee:

   i. That due to an inadvertent error, on two occasions, the Noticee had made delayed filings under Regulation 8(3) of the Takeover Regulations 1997, viz. with respect to disclosures to be made on April 30, 2003 and April 30, 2005 involving a delay of 284 days and 144 days respectively.

   ii. That the disclosure due on April 30, 2003 was made vide letter to BSE dated February 8, 2004 and the disclosure due on April 30, 2005 was made vide letter to BSE dated September 21, 2005. A copy of the letters of the Noticee dated February 08, 2004 and September 21, 2005 sent to BSE, forwarding therewith the filing under Regulation 8(3) to be made as on April 30, 2003 and April 30, 2005 have been annexed;

   iii. That during the year 2001, the Noticee had made a reference to the Board for Industrial and Financial Reconstruction (hereinafter referred to as '**BIFR**') and was declared "sick" in terms of the provisions of the Sick Industrial Companies (Special Provisions) Act, 1985 (hereinafter referred to as '**SICA'**);

   iv. That the draft revival scheme was sanctioned by BIFR on May 14, 2004 and a modified revival scheme was proposed and sanctioned by BIFR on March 6, 2007. The Company was discharged from the purview of BIFR/ SICA vide Order dated June 29, 2007.

   v. That the management of the Noticee were engaged with the BIFR proceedings and were focused on making efforts to revive the Noticee/ Company. This contributed to the inadvertent lapse in filing the reports in a timely manner. However, from 2007 onwards, the Noticee has ensured full compliance with the provisions of Regulation 8(3) of the Takeover Regulations, 1997;

vi. That thus the lapse was inadvertent and hence was not intentional non-compliance;

vii. The Noticee has not obtained any disproportionate gain or unfair advantage from the delay in reporting, nor is there any evidence to suggest that that the delay in reporting caused any loss to investors. Further, the Noticee has taken adequate steps to ensure that similar violation does not occur;

viii. That the Noticee had submitted a voluntary consent application with SEBI on February 28, 2011 in relation *inter alia* to instances of delayed reporting which are subject matter of the notice. Subsequently, they again submitted an application for settlement of the matter under the Consent Mechanism vide letter dated January 8, 2014.

8. Thereafter, on the scheduled date of the hearing, i.e. January 23, 2014, Ms. Ipsita Dutta and Ms. Gazal Rawal from the Amarchand & Mangaldas & Suresh A Shroff & Company, the AR of the Noticee appeared on behalf of the Noticee and made submissions. The ARs *inter alia* reiterated the written submissions filed vide letter dated January 10, 2014 and submitted that they would be filing further submissions by February 05, 2014.

9. Accordingly, vide letter dated February 05, 2014, the ARs of the Noticee filed further submissions, reiterating their earlier submissions. The Noticee stated that they had filed a Consent Application dated February 26, 2011 with SEBI *inter alia* in respect of the aforesaid delay. The Noticee stated that subsequently a revised consent application dated September 30, 2011 was filed by the Noticee, however, the same was rejected by SEBI. The Noticee filed another consent application dated January 08, 2014 in the matter.

10. It was, however, subsequently informed by SEBI that the Consent Application of the Noticee dated January 08, 2014 had been returned. Accordingly, the Noticee was granted another opportunity for personal hearing on January 12, 2017 vide hearing notice dated December 14, 2016. However, the Noticee requested for an adjournment of the hearing, and the same was acceded to.

11. During the course of the adjudication proceedings, the Hon'ble Supreme Court vide its Order dated November 26, 2015 in the matter of *SEBI v. Roofit Industries Ltd.* opined that the Adjudicating Officer had no discretion under Section 15J in deciding the quantum of penalty for offences committed between 2002 and 2014, other for than penalty under Section 15F(a) and Section 15HB of the SEBI Act. However, subsequently, another Bench of the Hon'ble Supreme Court in the matter of *Siddharth Chaturvedi v. SEBI* vide Order dated March 14, 2016 stated that the matter deserved consideration at the hands of a larger Bench. Accordingly, the Supreme Court directed that the papers of these appeals be placed before the Hon'ble Chief Justice of India for placing these matters before a larger Bench. Hence, the current Adjudication proceedings were kept on hold until determination of the issue of applicability of Section 15J to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

12. However, subsequent to the amendment made vide the Finance Act, 2017 to Section 15J of the SEBI Act, 1992 (notified on April 26, 2017), the following Explanation has been inserted in Section 15J:

    ''*Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.''.*

13. Thus, it is now settled that Section 15J also applies to Sections 15A(a), (b) and (c), 15B, 15C, 15D, 15E, 15F(b)& (c), 15G, 15H and 15HA of the SEBI Act, for offences committed between 2002 and 2014.

14. Subsequent to the notification of the Finance Act, 2017 and the amendment made thereby to Section 15J of the SEBI Act, another opportunity of personal hearing was granted to the Noticee on May 26, 2017 vide hearing notice dated April 28, 2017. On the scheduled date of hearing, i.e. May 26, 2017, Mr. Ratnakar Nawghare, Company Secretary

of the Noticee Company, along with Ms. Vaneesa Agrawal and Ms. Shivangi from Suvan Law Advisors, the new ARs of the Noticee, appeared on behalf of the Noticee Company. The new ARs filed further written submissions dated May 26, 2017 in the matter and highlighted that the BIFR vide its Order dated March 14, 2007 had granted an exemption to the Noticee from the applicability of SEBI Rules, Regulations and Guidelines. A copy of the said Order was provided with the submissions. The ARs, in their written submissions, while reiterating the earlier submissions have also *inter alia* made the following additional submissions:

a) That the issuance of SCN after nearly ten years of the alleged violation has caused grave prejudice and hardship to the Noticee/ the Company, and the Noticee/ Company has not been able to respond effectively to the SCN. The Noticee have cited the case of A.R.Antulay and others v R.S. Nayak and another (1992) 1S.C.C. 225 which emphasized the importance of a speedy trial citing the following reasons: *"…undue delay may well result in requirement of ability of the accused to defend himself, whether on account of death, disappearance or non-availability of witnesses or otherwise…."*;

b) That in light of the revival proceedings under BIFR, the Company was facing financial and management crunch at the time and there was lack of professional staff in the Company to look into Company's records and compliances. A lot of documents had gone missing, and since the records were not complete, the documents which could not be made available to the Merchant Banker were reported as non-compliance by the Merchant Banker;

c) That under the modified revival scheme, BIFR vide its Order dated March 14, 2007, had granted an exemption to the Company from the applicability of provisions of the Companies Act, 1956 and DCB/ CLB/ SEBI rules, regulations and guidelines. Further, it has been stated by the ARs that under the first revival scheme, BIFR vied Order dated May 14, 2004 had sanctioned to the Company a general exemption from compliance of any other law, except SICA. The relevant extracts, as per the AR are as follows:

Paragraph no. 5.3.5 of the sanctioned modified revival scheme, 2007:

"To exempt the company from any applicable provisions of the Companies Act, 1956… and the applicability of the provisions of DCA / CLB / SEBI rules, regulations and guidelines".

Paragraph no.19.14 of the sanctioned revival scheme of 2004 and paragraph 8(viii) of the Sanctioned modified scheme, 2007

"the provisions of the scheme shall have effect notwithstanding anything inconsistent therewith in any other law including SEBI (Disclosure for Investor Protection) Guidelines….."

d) That in this regard, the ARs have further cited the Adjudicating Order dated July 31, 2005 in the matter of Andhra Cement Ltd. The ARs have also cited Order dated October 19, 2005 in the matter of Bagalkot Udyog Ltd.;
e) The ARs have also cited a few orders of SEBI / Adjudicating Officers to state that minimal/ no penalty should be imposed for their non-deliberate and technical violation.

CONSIDERATION OF ISSUES

15. I have carefully perused the written submissions of the Noticee, the submissions made at the hearing and the documents available on record. I observe that the Company is alleged to have failed to comply with the provision of Regulation 8(3) of the Takeover Regulations, 1997 within the stipulated time for the years 2003 and 2005.

16. The issues that, hence, arise for consideration in the present case are:

a) Whether the Company has failed to comply with the provision of Regulation 8(3) of the Takeover Regulations, 1997 within the stipulated time for the years 2003 and 2005?
b) Do the violations, if any, attract monetary penalty under Section 15 A (b) of SEBI Act?
c) 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

17. Before moving forward, it is pertinent to refer to the relevant provisions of the Takeover Regulation, 1997, which reads as under:

Regulation 8 (3) of the Takeover Regulations, 1997

Continual disclosures.

8. (1) ..

(2) ..

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

18. The issue for consideration is whether the Noticee did not comply with the provisions of the Takeover Regulations, 1997 within the stipulated time. As per Regulation 8(3) of the Takeover Regulations, 1997 the Company was required to make yearly disclosure within 30 days from the financial year ending March 31, to the stock exchanges on which the shares of the Company are listed, the changes, if any, in respect of the holdings of the persons referred to under sub regulation (1) and also holdings of promoters or person(s) having control over the Company as on 31st March. With regard to the aforesaid compliances, the Noticee in its submissions has stated that the lapses/delay in compliance of making disclosures have occurred due to inadvertence. Thus, I find that the Noticee has admitted to the delay in complying with the alleged provisions of Takeover Regulations, 1997.

19. I further find that the subsequent ARs of the Noticee, has submitted that due to the delay in the matter they have not been able to respond effectively to the SCN. The AR/ Noticee

has also stated that due to the circumstances prevalent at the time, i.e. the Company being under BIFR, several documents were misplaced. As a result, in whichever instances the records were not traceable, the Merchant Banker reported the same as non-compliance. However, the matter at hand can certainly not be an instance where the papers were misplaced, as the Noticee itself has submitted copies of the delayed disclosures and has stated that the disclosure due on April 30, 2003 was made vide letter to BSE dated February 8, 2004 and the disclosure due on April 30, 2005 was made vide letter to BSE dated September 21, 2005. Further, with reference to delay in initiating adjudication, the Noticee has not pointed out any prejudices and disadvantages suffered by it due to the alleged delay in initiating proceedings. And mere delay in initiating proceedings cannot be a reason for absolving any person of the liability arising under law.

20. There are more than 5,000 listed companies who were required under Takeover Regulations, 1997 to make annual filing to the stock Exchanges where the company's shares were listed, in respect of the holdings of the promoters or person(s) having control over the company as on 31st March. The extant delayed disclosure by the company under Regulation 8(3) came to notice of the Manger to the Offer while carrying out the due diligence with respect to the compliances made by the company under Takeover Regulations, 1997 at the time of open offer by Mahindra & Mahindra Ltd ('Acquirer'). The same was accordingly disclosed in the letter of offer and to SEBI. SEBI thereafter initiated the extant adjudication proceedings in the matter. Besides, under the SEBI Act, there is no limitation on initiation of adjudication proceedings for violation of various provisions of Act and Regulations made thereunder.

21. In the case at hand, I find that as per the disclosures made in the letter of Offer and specifically admitted to by the Noticee that the default for the years 2003 and 2005 was made good with a delay as mentioned in Para 4 above. Thus, it is clear that the Noticee has records to prove that there was delayed compliance for the years 2003 and 2005. Further, the Noticee/ ARs have not demonstrated how the delay has caused any prejudice

to the Notice, especially since the Noticee had records to prove delayed compliance at the time of the issuance of the SCN. Thus, I do not find any merit in this submission of the Noticee.

22. The ARs have further stated that under the first revival scheme, BIFR vied Order dated May 14, 2004 had sanctioned to the Company a general exemption from compliance of any other law, except SICA. Further, under the modified revival scheme, BIFR vide its Order dated March 14, 2007 had granted exemption to the Company from the applicability of the provisions of the Companies Act, 1956 and DCB/ CLB/ SEBI rules, regulations and guidelines. The relevant extracts, as per the AR are as follows:

> Paragraph no.5.3.5 of the sanctioned modified revival scheme, 2007
> "To exempt the company from any applicable provisions of the Companies Act, 1956… and the applicability of the provisions of DCA / CLB / SEBI rules, regulations and guidelines".
>
> Paragraph no.19.14 of the sanctioned revival scheme of 2004 and paragraph 8(viii) of the Sanctioned modified scheme, 2007
> "the provisions of the scheme shall have effect notwithstanding anything inconsistent therewith in any other law including SEBI (Disclosure for Investor Protection) Guidelines….."

23. I have perused the aforesaid Orders/ Revival Schemes of the BIFR and I am unable to accept the contention of the ARs. I note that the Revival Scheme of 2004 did not envisage any capital expenditure. The Scheme envisaged reliefs, concessions, restructuring and rescheduling of dues of the Company's Bankers', namely, SBI, SBICI Bank Ltd and Bank of India, and the institutions with whom it placed its debentures in respect of which dues are in arrears, namely, UTI, LIC Mutual Fund, Army Group Insurance Fund, General Insurance Corporation, New India Assurance Co Ltd and United India Insurance Co Ltd.

24. I further find that the Modified Scheme of 2007, at Clause 5 states that the need for consideration/ approval of the modified revival scheme arose due to further erosion of networth and unwillingness of the Bankers to lend further due to lack of security. The Promoters, as a result had proposed a 'One Time Settlement'. The total cost of the Modified Scheme was calculated as Rs.40.05 crore, which *inter alia* included the one time settlement of secured creditors. The said funds were to be brought in by two financial investors, namely Schroder Credit Renaissance Fund Ltd (SCRFL) and Schroder Credit Renaissance Fund LP (SCRFLP). The funds were brought in by the financial investors, SCRFL and SCRFLP as:

i. Rs. 22,05,00,000 as Equity (4,500,000 equity shares of face value of Rs. 10 each at an issue of Rs. 49 per share) to the financial investors and

ii. Rs.18,00,00,000 as debt.

25. The above has been reiterated in clause 6 of the Modified Scheme, which set out details of the cost of the Scheme and Means of Finance as:

6. COST OF SCHEME AND MEANS OF FINANCE

The Total Cost of the Scheme has been estimated as Rs.38.05 cr which is as under:

COST OF SCHEME

	Rs. In Cr.
One Time Settlement with SBI, SBICI and BOI (See Para 6.2.1)	10.00
One Time Settlement with Non Convertible Debenture Holders (See Para 6.2.2)	7.20
Retrofitting and Capex	6.30
Other Initial Expenses and repayment of overdue outstanding etc.	3.00
Initial Working Capital	*13.55
Total	**40.55**

Means of Finance

	Rs. In Cr.
Issue of 4,500,000 equity shares of face value of Rs.10 each at an issue price of Rs.49 per share to the financial investor M/s Schroder Credit Renaissance Fund Ltd. (SCRFL) & M/s Schroder Credit Renaissance Fund LP (SCRFLP)	22.05
Debt	*18.00
Total	**40.05**

The MDRS (*Modified Draft Revival Scheme)* envisaged infusion of Debt of Rs.16.00 cr. The excess amount of debt of Rs.2.00 cr. Received from the investor M/s SCRFL & SCRFLP would be utilized for the purpose of working capital requirement of the company.

26. I am, thus of the opinion that the exemption granted under Clause 5.3.5 (Para 1) is in this specific context, rather than a general exemption. The said Clause 5.3.5 reads as follows:

> *"5.3.5 To exempt the Company from any applicable provisions of the Companies Act, 1956 particularly with reference to Section 81(1-A) for issue of* ***preferential allotment to the investor****, Section 17, 31, 192(a) for* ***relevant changes*** *in the Articles and Memorandum of Association and the applicability of the provision of DCA/ CLB/SEBI rules, regulations and guidelines.*
>
> *To exempt the Company from the applicability of the provisions of the SEBI (Employee Stock Options Scheme and Employees Stock Purchase Scheme) Guidelines, 1999, for the issue of upto 500,000 equity shares of the Company of the face value of Rs. 10 each under a Stock Option Scheme to Employees including to persons that belong to the promoter group who are employees and/ or are members of the Board of Directors of the Company."* (emphasis supplied)

27. From the above, I note that the first para of the said Clause 5.3.5 grants exemption from **any applicable provisions** of the Companies Act, 1956 and further makes *particular* reference to issue of **preference shares to the investors**, and exemption from Section 17,

31, 192(a) for **relevant changes** in the Articles and Memorandum of Association. Thus, it becomes clear that the exemption is not a general exemption, but rather, relate to only to the issue of preferential shares to SCRFL and SCRFLP, as part of the investment was to be made in the form of equity shares, i.e. Rs. 22,05,00,000 as Equity (4,500,000 equity shares of face value of Rs. 10 each at an issue of Rs. 49 per share). From the same, it follows that that the exemption from *inter alia* SEBI rules, regulations and guidelines also relate to the preferential issue to the investors, and are not exhaustive or general in nature. This is further strengthened by the fact that the second paragraph of Clause 5.3.5 relates to a specific exemption from the SEBI (Employee Stock Options Scheme and Employees Stock Purchase Scheme) Guidelines, 1999. In my opinion, if there was indeed a general / exhaustive exemption provided to the Company from applicability of SEBI rules, regulations and guidelines under the first para of Clause 5.3.5, there would not have arisen any need for a specific mention of the SEBI (Employee Stock Options Scheme and Employees Stock Purchase Scheme) Guidelines, 1999 in the second para of the same clause. Hence, I am unable to accept the contention of the Noticee/ AR that the said exemption applies to the proceedings at hand.

28. Furthermore, I find that Clause 8(viii) of the same Modified Scheme, 2007 (which is identical to Clause 19.14 of the Original Scheme of 2004) states that the provisions of the scheme shall have effect notwithstanding anything *inconsistent therewith* contained in any other law. The aforesaid clause reds as under:

> *"The provisions of this scheme shall have effect notwithstanding anything inconsistent therewith contained in any other Law including SEBI (Disclosure for Investor Protection) guidelines (except the provisions of the Foreign Exchange Regulation Act, 1973 and the Urban Land (Ceiling and Regulations) Act, 1976 for the time being in force) or in the Memorandum and Articles of Association of the company or any other instrument having effect by virtue of any other law other than the sick industrial companies (Special Provisions) Act, 1985.*

29. Here, I am of the view that Clauses 5.3.5 and 8(viii) of the Scheme have to be read together. They apply only to the provisions of law 'applicable' to the Scheme and the

Scheme over-rides only those provisions of law which are 'inconsistent' with the Scheme. It is not as if the Scheme provides a general exemption from law, otherwise an applicant company and its promoters may seek exemption from any law which has no relevance to the scheme or in the context of the securities market even indulge in undesirable activities such as fraudulent trading (SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations) and seek shelter under the same. Considering all of the above, I am of the view that the reporting requirement under Reg. 8(3) of the Takeover Regulations, 1997 is not in any way inconsistent with the Scheme.

30. The Noticee, I find, has also submitted that the management of the Company were engaged with the BIFR proceedings and were focused on making efforts to revive the Noticee Company. Also that the Noticee did not have professional staff in the company to look into company's records and compliances. This contributed to the inadvertent lapse in filing the reports in a timely manner. However, because professional staff was not available, the Noticee cannot be absolved from compliances required to be made under the Takeover Regulations, 1997. I further find that the Noticee has admitted to the aforesaid violation. In this regard, I note that in the matter of ***Kanel Industries Ltd. vs SEBI*** (Date of Decision: 10.5.2013), the Hon'ble SAT noted the appellant company was a sick industrial company, and it had financial constraints. It was unable to appoint a full time company secretary, and as evident from the record even fees to the share transfer agent, NSDL and CDSL could not be arranged. The Hon'ble SAT held that these are important factors which should have motivated the Adjudicating Officer to impose a lesser penalty in the matter. Therefore, while upholding the Adjudicating Officer's Order, the Hon'ble SAT reduced the said penalty to Rs. 2,00,000/-. In view of the said Order of the Hon'ble SAT, I am of the view that while the circumstances of the Noticee deserve consideration, the Noticee cannot be completely exempt from all liability for their failure.

31. The ARs have also cited the Order of the undersigned in the matter of Andhra Cements Ltd, wherein also there was a sanctioned Scheme of the BIFR granting certain exemptions. However, I note that in the cited matter the sanctioned scheme had specifically brought

out that the company shall be exempt from any the penal provisions of the Companies Act and other related laws in respect of ***past defaults.*** On the other hand, in the case at hand, the exemption granted only relates to anything inconsistent with the Scheme.

32. Further, I find that the Noticee/ AR's have also sought to rely upon SEBI's Order in the matter of ***Bagalkot Udyog Ltd*** (date of decision - October 19, 2015). The said matter related to non-compliance with minimum public shareholding (MPS) norms by Bagalkot Udyog Ltd. In the cited matter, the BIFR had allowed the Company to delist from BSE and had also exempted the demerged company from the requirement of listing its equity shares with proper exit option to purchase the existing public shareholding of equity shares by the promoters. The BIFR had also observed that SEBI shall not take any coercive action against the sick company, its promoters and directors. Further, the BIFR observed that as a consequence of the delisting of the equity shares of the sick company, SEBI was to withdraw its Order dated June 04, 2013 (the interim order in the matter) and restrained SEBI from adjudicating or taking action on the show cause notice issued under the said order (Interim Order) against the company/ promoters/ directors. Thus, I find, that even in the cited case of Bagalkot Udyog Ltd, the BIFR had provided a very specific exemption from the said proceedings, and in light of the same, the Interim Order was withdrawn and direction were given by SEBI to not take any coercive action against the company. However, I find that in the case at hand the exemption does not in any way relate to the disclosure requirement under Regulation 8(3) of the Takeover Regulations, 1997, and nor was compliance of Regulation 8(3) of the Takeover Regulations, 1997 inconsistent with the sanctioned schemes of the BIFR.

33. Taking all of the above into consideration, I find that it is established without doubt that the Company has failed to comply with the provision of Regulation 8(3) of the Takeover Regulations, 1997 within the stipulated time during the years 2003 and 2005. The respective number of days of non-compliance in respect of each financial year has been enumerated in the table at Para (4) above.

34. I find that reference has also been made by the Noticee to the decision of ***Hon'ble High Court of Bombay in the matter of SEBI Vs. Cobot International Capital Corporation Limited (Cabot) {2004 51 SCL 307 (BOM)}*** to state that where the breach of the regulation is unintentional, not deliberate, technical, minor and based on a bonafide belief, strict enforcement of the regulations may not be warranted. The Hon'ble High Court has stated that the authority may refuse to impose penalty for justifiable reasons. However, I am of the view that any transaction which requires compliance to disclosure obligation under the Takeover Regulations/ PIT Regulations, if not complied, is always a serious matter, and cannot be considered a mere 'technical' violation, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of the information. I note that even in the cited judgment, the Hon'ble Supreme Court has stated that mens rea is not essential for imposing civil penalties under the SEBI Act and Regulations. Further, I also note that it has since been clarified by the ***Hon'ble Supreme Court in its Order dated May 23, 2006 in the case of Chairman SEBI vs. Shriram Mutual Fund and Anr.,*** wherein the Hon'ble Supreme Court also held that *"In our opinion, mens rea is not an essential ingredient for contravention of the provisions of a civil act. In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ……. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

35. I find further that the Noticee have also cited a few cases wherein the Adjudicating Officer took a lenient view or imposed lesser penalties. The cases cited by the ARs are mentioned hereunder:

    i. Classic Diamond (India) Ltd (date of Order- April 8, 2011): A penalty of Rs.25,000 was imposed for the violation of Regulation 13(3) of the SEBI (Prohibition of Insider Trading) Regulations, 1992;

ii. Shree Bhawani Paper Mills Ltd (date of Order- July 31, 2014): A penalty of Rs.25,000 was imposed for the violation of Regulation 8(3) of the Takeover Regulations, 1997;

iii. IFCI Financial Services Ltd (date of Order- May 22, 2017): No monetary penalty was imposed as the noticee therein had taken rectifying measures and that no loss had been caused to investors.

36. This, however, this does not automatically imply that same lower penalty need to be imposed in the extant case. The determination of penalty in the extant case would depend upon the facts and circumstances of the extant case. In the matter, I would like to refer to the ***Order of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Hybrid Financial Services Limited Vs. SEBI (Appeal No.119 of 2014 and Order dated 12.06.2014)***, wherein SAT had observed as follows:

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

37. In view of the same, I conclude that the aforesaid Orders referred to by the Noticee cannot become the yardstick for imposing penalty in the extant case and the penalty in the extant case would depend on the facts and circumstances of the extant case.

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

Penalty for failure to furnish information, return, etc.

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

(a)….

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

39. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:-

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

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."

[Explanation.—For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.][1]"

40. Thus, I find that in the extant case, as per Section 15A(b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-J 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

[1] Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Prt II Section 1 dated March 31, 2017, wef April 26, 2017

available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further, from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. However, I note that the Hon'ble Securities Appellate Tribunal (SAT) in the matter of ***Komal Nahata Vs. SEBI*** (Date of judgment- January 27, 2014) has also 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."*

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

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

42. In view of the aforesaid judgments of SAT, the argument put forth by the Noticee that delay in reporting has not caused any loss to investors nor has the Noticee made any gain from delay in reporting is not relevant for the given case.

43. The main objective of the Takeover Regulations is to afford fair treatment for shareholders who may be affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there

is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations is investor protection.

44. As a listed company, the Noticee had a responsibility to comply with the disclosure requirements in accordance with their spirit, intention and purpose. Non-compliance/ Delayed compliance with disclosure requirements by a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

45. Further, I find that Section 15A(b) provides that failure to file any information (in the case at hand, the disclosures under Regulation 8(3) of the Takeover Regulations, 1997) within the time specified therefor in the Regulations attracts penalty of Rs. One Lakh for each day during which such failure continues or Rs. One Crore, whichever is less. I have noted the circumstances of the Company during the period of the violation wherein it had been declared a sick company and was under the purview of BIFR. Also, I have taken note of the fact that Noticee had taken subsequent steps to ensure that the annual disclosures are made within the stipulated time. In view of the same, I am inclined to take a lenient view in the matter.

46. Here, I would like to refer to the case of ***Jay Bharat Fabrics Mills Limited vs SEBI*** (Date of decision: 11.06.2014) before the Hon'ble SAT, wherein the violation was of non-redressal of investor complaints. The appellant challenged the impugned order mainly on the ground that it is a sick company within the meaning of Sick Industrial Companies (Special Provisions) Act, 1985 since 2005 and it is under rehabilitation process under the supervision of Board for Industrial and Financial Reconstruction (BIFR). The appellant also contended that its poor financial health has not been taken into consideration by the respondent while passing the impugned order. In this regard, the Hon'ble SAT noted that

"…due procedure established by law has been followed by the learned adjudicating officer in conducting the inquiry against the appellant and in imposing the penalty in question. Various aspects, including the sickness of the company and its poor financial health, have already been taken into consideration by the learned adjudicating officer while imposing a token penalty of Rs 3 lac. The law prescribes a severe penalty of Rs. 1 lac per day for violation which may go up to Rs. 1 crore for non-redressal of investors' grievances. In this connection, Section 15C of SEBI Act, 1992 provides that the SEBI Act enjoins upon SEBI to levy penalty on listed company which has failed to redress investors' grievances within the specified time prescribed by the Board whereas Section 15HB of the said Act lays down that where no penalty is prescribed for contravention of any of the provisions of the SEBI Act, 1992 or the rules or regulations made or directions issued by the SEBI shall be liable to a penalty which may extend to Rs.1 crore where no separate penalty is prescribed by the law. We, therefore, do not find any ground to interfere with the impugned order in the matter of imposition of penalty even on the ground of proportionality."

ORDER

47. After taking into consideration all the facts and circumstances of the case, I impose the penalty of **Rs. 2,00,000/- (Rupees Two Lakh Only)** on **the Noticee** viz. **EPC Industries Ltd** under Section 15 A(b) of SEBI Act, 1992, which will be commensurate with the violations committed by them.

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

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

49. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department, SEBI. The Format for forwarding details / confirmations of e-payments made to SEBI shall be in the form as provided at Annexure A of Press Release No. 131/2016 dated August 09, 2016 shown at the SEBI Website which is produced as under:

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

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

Date: September 29, 2017
Place: Mumbai

Anita Kenkare
Adjudicating Officer