

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. AK/AO- 12-13/2017]

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

Mr. Ganesh Kumar Singhania (PAN No. AKTPS7277C); **Ms. Anita Singhania** (PAN No. ADAPA6445Q)

In the matter of

M/s Square Four Projects (India) Ltd. (formerly known as M/s. Essen Supplements India Ltd.)

FACTS OF THE CASE

1. An offer document (letter of offer) was filed by Mr. Ganesh Kumar Singhania and Ms. Anita Singhania (hereinafter referred to as '**Acquirers**'/ '**Noticee promoters**'/ '**Noticees**') to acquire 20.00% of expanded subscribed equity share capital and 20.12% of expanded voting share capital of Essen Supplements India Ltd. (hereinafter referred to as '**the Company**') at a price of Rs.10/- per fully paid up equity shares and Rs.5/- per partly paid up equity shares in cash. The public announcement for the same was made on October 20, 2010. The shares of the company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**'), Ahmedabad Stock Exchange Ltd. (hereinafter referred to as '**ASE**') and The Hyderabad Stock Exchange Ltd. (hereinafter referred to as '**HSE**').
2. On perusal of the letter of offer (hereinafter referred to as '**LoO**'), SEBI *inter alia* observed that Mr. Ganesh Kumar Singhania and Ms. Anita Singhania, the promoters of the company had failed to comply with the provisions of Regulation 7(1) and 7(1A) read with Regulation 7(2), as also Regulation 11(2) read with Regulation 14(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (hereinafter referred to as '**Takeover Regulations**').

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer vide Order dated August 08, 2013 under Section 15-I read with Section 19 of the SEBI Act, read with Regulations 44 and 45 of the Takeover Regulations to inquire into and adjudge under Sections 15A(b) and 15H(ii) of SEBI Act for the alleged violations/ non-compliance of the provisions of Takeover Regulations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notices (hereinafter referred to as '**SCNs**') dated November 29, 2013, Ref No. EAD-6/AK/VRP/30315/2013 and EAD-6/AK/VRP/30322/2013 were issued to the Noticees under rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**SEBI Rules**') communicating the alleged violations of Takeover Regulations, as applicable. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against them in terms of Rule 4 of the SEBI Rules and penalty be not imposed under Section 15A(b) and 15H(ii) of SEBI Act, 1992 for the alleged contravention of Takeover Regulations.
5. The details in respect of violation/ non-compliance of Regulation 7(1) & 7(1A) read with 7(2) of Takeover Regulations by the Noticee promoters are as given below:

Name of the Acquirer	Regulation Violated	Date of Transaction	Due date for Compliance	Purchase	Shareholding of the acquirer (in %)		Actual date of Compliance	Delay (no. of days)
					Pre-acquisition	Post-acquisition		
Mr. Ganesh Kumar Singhania and Ms. Anita Singhania	7(1) r/w 7(2) of Takeover Regulation	24.07.2009	26.07.2009	30,54,588 (53.14%)	0.00	53.14	27.07.2009	1

Name of the Acquirer	Regulation Violated	Date of Transaction	Due date for Compliance	Purchase	Shareholding of the acquirer (in %)		Actual date of Compliance	Delay (no. of days)
					Pre-acquisition	Post-acquisition		
Mr. Ganesh Kumar Singhania and Ms. Anita Singhania	7(1)& 7(1A) r/w 7(2) of Takeover Regulations	18.02.2010	20.02.2010	3,07,666 (5.35%)	53.14	58.49	Not complied	Not complied

6. The details in respect of violation/non-compliance of Regulation 11(2) read with 14(1) of Takeover Regulations by the Noticee promoters are as given below:

Name of the Acquirer	Regulation	Date of acquisition	No. of Shares bought	Total Shareholding Promoters	
				Pre-acquisition	Post-acquisition
Mr. Ganesh Kumar Singhania and Ms. Anita Singhania	11(2) r/w 14(1)	18.02.2010	22,730 (0.39%)	58.49%	58.88%

7. Vide individual letters dated December 16, 2013, the Noticees replied to the SCN and stated that they had acted as acquirers to acquire shares of M/s Square Four Projects (India) Ltd. (formerly known as M/s. Essen Supplements India Ltd.) through the open offer route, and accordingly after successful completion of the same, they became the promoters of the company. The Noticees stated that they had very little knowledge about SEBI, Stock Exchange Laws, Rules and Regulations. Further that the entire assignment was supposed to be handled by their Merchant Banker, who was appointed in professional capacity to handle the entire takeover process smoothly and with due compliance of all the Rules & Regulations, as applicable thereto. The Noticees submitted that they

were informed that all the compliances were duly made and accordingly the records were handed over to them.

8. The Noticees further stated that they needed to check the papers and documents executed at the time to ascertain whether the relevant compliances had been made or not and that they needed to contact the Manager to Offer and the Registrar to the Offer to know the exact status. Since the matter was old, the Noticees requested for an additional period of 45 days to submit their reply to the SCN. The request of the Noticees was acceded to vide letter dated December 18, 2013 and an opportunity for personal hearing was also granted to the Noticees before the undersigned on January 22, 2014.
9. The Noticees vide individual letters dated January 10, 2014 reiterated their submissions made vide letter dated December 16, 2013. The Noticees *inter alia* further stated that they were able to locate the papers pertaining to compliance under Regulation 7(1) and 7(1A) read with Regulation 7(2) of the Takeover Regulations, but, the details in respect of non-compliance of Regulation 11(2) read with 14(1) of the Takeover Regulations, as alleged in the SCN were not traceable. Also that the Noticees were not getting any reference to the same in any of the papers or documents made available to them.
10. The Noticees requested that they be provided the details in respect of the non-compliance of Regulation 11(2) read with 14(1) of Takeover Regulations as alleged in the SCN, so that they could recheck and verify the matter. The Noticees further stated that they shall submit a composite reply once they receive the information.
11. Thereafter vide letter dated January 23, 2014, the Noticees were informed that the letter of offer document dated January 15, 2011 signed by both the Noticee promoters itself contained the relevant details in respect of the non-compliance of Regulation 11(2) read with Regulation 14(1) of Takeover Regulations as alleged in the SCN, and that the same was provided to them with the SCN. Accordingly, a second opportunity for personal hearing was given to the Noticees on February 13, 2014. At the request of the Noticees vide letter dated January 28, 2014, the hearing was rescheduled to February 12, 2014 and the same was informed vide letter dated January 29, 2014.

12. The Noticees filed individual replies on February 12, 2014 *inter alia* stating as under:
- (i) *That the Noticees acted as acquirer of the shares of M/s Square Four Projects (India) Ltd. (formerly known as M/s. Essen Supplements India Ltd.) through open offer route and accordingly after successful completion of the same, they became promoters of the company;*
 - (ii) *That the Noticees have very little knowledge about SEBI, the Stock Exchanges Laws, Rules and Regulations. Therefore the entire assignment was handled by Merchant Bankers who were appointed on professional capacity to handle the entire takeover process smoothly, with due compliance of all Rules and Regulations, as applicable. The Noticees were informed that all the compliances were duly made while handing over all the records;*
 - (iii) *That in respect of the acquisition made on July 24, 2009, the violation of Regulation 7(1)/7(1A) was only for one day and since the compliance was duly made, hence, the same may be condoned;*
 - (iv) *That in respect of acquisition made on February 18, 2010, the Noticees have stated that the compliance of Regulation 7(1)/ 7(1A) was duly made at that time. It was stated that the compliance in terms of Regulation 7(3) of the Takeover Regulations, which follows only after compliance of Regulation 7(1)/ 7(1A) was sent to stock exchange on February 19, 2013;*
 - (v) *That since the compliance was made and it was a case of acquisition through open offer, where all other compliances were duly made by the merchant banker and others involved at that time, the same may also be condoned;*
 - (vi) *That nobody's interest was hampered due to such late disclosures, even though the Noticees fully agree on the sanctity of the compliances;*
 - (vii) *That no undue advantage had been passed on or had accrued to anyone due to such delayed non-compliance;*
 - (viii) *That as regards other non-compliance, the Noticees sought time for sixty days to present their submissions, as they needed time to find the necessary papers.*
13. A personal hearing was conducted on February 12, 2014 wherein Mr. Atul Kumar Labh, Authorized Representative (hereinafter referred to as '**AR**') of the Noticees appeared on their behalf and made submissions. The AR reiterated the submissions made vide individual letters dated January 10, 2014 and also made additional submissions vide letter dated February 12, 2014. The AR requested grant of time for submitting additional written submissions in respect of the alleged violation of Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations, as alleged in

the SCN. The AR stated that the Noticees needed more time to locate and find the papers, hence requested for further sixty days time to make submissions. The AR was *inter alia* advised to make submissions by March 12, 2014.

14. Thereafter, the Noticees filed a letter dated March 24, 2014, reiterating their earlier replies and further stating that they were still unable to locate the documents/ details with respect to non-compliance of Regulation 11(2) of Takeover Regulations as alleged in the SCN and sought more time to furnish the same. The Noticees also *inter alia* stated that they had not sold even a single share in the market since acquisition, hence, have not derived any profit. It was also stated that delay in disclosure neither benefitted the Noticees, nor, any undue advantage was passed on. The Noticees stated that they were trying their best to revive the company and any penalty would affect the interest of the shareholders. It was pointed out that the number of shareholders of the company were very less and virtually there was no trading in the shares of the company at the Exchanges. Subsequently, the Noticees filed individual letters dated June 30, 2014 and reiterated their earlier written submissions.
15. From the replies of the Noticees and the copy of the compliance submitted by them, it was noted that the company had made disclosures under Regulation 7(3) on February 19, 2010 in respect of acquisition of 3,07,666 shares (5.35%) made by the Noticees on February 18, 2010. The said facts were cross checked from BSE website. However, the transaction date for the above acquisition on BSE website appeared as July 24, 2009. Accordingly, vide email dated August 14, 2014, BSE was advised to confirm the transaction date and reporting date of the said disclosures made by the Noticees. In response, BSE vide e-mail dated August 20, 2014 stated that the company had made disclosures under Regulation 7(3) on February 19, 2010 in respect of acquisition of 3,07,666 shares made by the Noticees viz. Mr. Ganesh Kumar Singhania and Ms. Anita Singhania, mentioning the transaction date as July 24, 2009.
16. From the disclosure details provided by BSE, it was noticed that the entities had made disclosures dated February 19, 2010 under Regulation 13(6) of SEBI (Prohibition of Insider Trading) Regulation 2002 (hereinafter referred to as '**PIT Regulations**') and under Regulation 7(3) of the Takeover Regulations. However, it was noted that the date of acquisition of shares was disclosed as February 18, 2010 in the disclosure made under Regulation 13(6) of PIT Regulations and as July

- 24, 2009 in the disclosure made under Regulation 7(3) of the Takeover Regulations. Hence, vide email dated August 21, 2014, BSE was requested to further confirm the actual date of acquisition of 3,07,666 shares by the Noticees. In response, BSE vide their e-mail dated September 25, 2014 stated that the company had informed BSE that there was a typographical error in the disclosure submitted by the company. BSE vide their aforesaid email further stated that vide letter dated September 23, 2014, the company submitted revised disclosure pertaining to the said transaction of February 18, 2010 which was taken on record and also disseminated on the BSE website.
17. On perusal of the said letter dated September 23, 2014 sent by the company to BSE, it was noted that the company had informed BSE that there were certain typographical errors in the earlier disclosure, hence, they have duly corrected the figures and the dates. The company informed BSE that the number of shares acquired through public offer was 3,30,396 shares constituting 5.69%, instead of 3,07,666 shares constituting 5.35%. Also that the date of acquisition was correctly given as February 18, 2010 in the disclosure made under Regulation 13(6) of PIT Regulations, however, was wrongly mentioned as July 24, 2009 in disclosure made under Regulation 7(3) of the Takeover Regulations, which has been corrected through the revised disclosure.
18. However, it was noted on perusal of the post offer public announcement that was made to the shareholders of the Company by M/s. V. C. Corporate Advisor Pvt. Ltd. (hereinafter referred to as **‘Manager to the Offer’**) in terms of Takeover Regulations and subsequent amendments thereto on behalf of Mr. Ganesh Singhania and Ms. Anita Singhania (the Noticees) that the actual shares acquired by the acquirers in open offer were 3,07,666 shares during the period October 1, 2009 to October 20, 2009. Further, the last date of completion of dispatch consideration was October 29, 2009. Therefore, it was realized that the acquisition date cannot be later than October 29, 2009.
19. As per the disclosures in the Letter of Offer, the Noticees viz. Mr. Ganesh Singhania and Ms. Anita Singhania (Acquirers) had further acquired 22,730 shares (0.39%) through off-market transaction on February 18, 2010 without making a public announcement, which was in violation of Regulation 11(2) of the Takeover Regulations.
20. In view of the above, it appeared that vide the revised disclosure dated September 23, 2014 sent by the company to BSE, the company had clubbed the acquisition through open offer (5.35% in

October 2009) and acquisition through off market (0.39% dated February 18, 2010), and shown these two separate acquisitions as a single transaction dated February 18, 2010. This was found to be contrary to the information disclosed in the post offer public announcement and facts stated above.

21. Hence, vide letter dated January 07, 2015, the Noticees were advised to clarify the reason for discrepancy between their claim that the acquisition of 3,07,666 shares was made on February 18, 2010, vis-à-vis the disclosure in public announcement that 3,07,666 shares were acquired by the Acquirers (Mr. Ganesh Singhania and Ms. Anita Singhania) (the Noticees) in the open offer during period October 01, 2009 to October 20, 2009. The Noticees were also advised to provide documentary evidence in support of their fresh claim that acquisition of 3,07,666 shares was made on February 18, 2010.

22. Vide individual letters dated January 20, 2015, the Noticees *inter alia* submitted as under:

(i) *That at the time of takeover of the company and change of management, handled by the Manager to the Offer, the shares were purchased / transferred to the Noticees in the following manner:*

a. Through Private Placement	:	20,00,000 equity shares
b. Through Agreement	:	10,54,588 equity shares
c. Shares through open offer	:	3,30,396 equity shares

(ii) *That there was no off-market purchase;*

(iii) *That on perusing the records after initiation of the matter, the Noticees found that there was a document as signed by them and which was made by the Manager to the Offer dated February 19, 2010 for disclosure under Regulation 7(3) of the Takeovers Regulations, wherein they have disclosed that 3,07,666 equity shares have been acquired through open offer, whereas in reality 3,30,396 equity shares were tendered to them through open offer (date mentioned as July 24, 2009);*

(iv) *Similarly, the Noticees found that there was a document signed by them and which was made by the Manager to the Offer dated February 19, 2010 for disclosure under Regulation 13(6) of the PIT Regulations, wherein they have disclosed that 3,07,666 equity shares have been acquired through open offer, whereas in reality 3,30,396 shares were tendered to them through open offer (dated mentioned as February 18, 2010);*

- (v) That they are not well acquainted with the SEBI Rules and Regulations and had signed the documents in good faith as prepared by the Manager to the Offer. Further that they had acquired a listed company for the first time and therefore totally dependent on the Manager to the Offer;*
- (vi) That when the matter was pointed out by BSE to them, on their advice the revised disclosures were made;*
- (vii) That they do not know on what basis the merchant banker had made the documents. Further that there was no off-market purchase;*
- (viii) That their holding in the company was 33,84,984 shares, which was subsequently increased to 70,84,984 shares, by issue of further preference shares on October 15, 2010.*

23. From the aforesaid letter, it was observed that the Noticees had submitted that 3,30,396 shares had been acquired by them in the open offer and that there were no off-market purchases. Whereas based on documentary evidence available with SEBI and based on evidence provided by the Manager to the Offer, it was observed that the Noticees had acquired only 3,07,666 shares through the open offer. In the matter, the Manager to the Offer submitted to SEBI vide e-mail dated March 20, 2015, the copy of the letter received from the Registrar to the Offer viz. M/s. Maheshwari Datamatics Pvt. Ltd., copy of the bank statement and copy of 45 days report filed with SEBI.

24. From the letter received from the Registrar to the Offer and the bank statement, it was observed that a total of 3,07,666 shares were acquired from 28 shareholders and total of Rs.30,76,845.30 was debited towards the payment of consideration against the shares acquired, which also included demand draft issuance charges and CESS (at an offer price of Rs. 10/- per share).

25. The Manager to the Offer vide email dated April 23, 2015 also provided the details of acquisition of 22,730 shares by the Noticee promoters Mr. Ganesh Singhania and Ms. Anita Singhania on February 18, 2010 through off-market at a price of Rs. 8/- per share.

26. On the other hand, it was observed that the Noticees had not submitted any documents in support of their claim for acquisition of 3,30,396 shares through open offer. In absence thereof, and based on the documents available on record, vide email dated April 24, 2015 and letter dated April 29,

2015, it was reiterated that the Noticee promoters viz. Mr. Ganesh Singhania and Ms. Anita Singhania have *inter alia* violated Regulation 7(1) and Regulation 7(1A) read with Regulation 7(2) of Takeovers Regulations pursuant to acquisition of 3,07,666 shares in the open offer. Also that the Noticee promoters have *inter alia* violated Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations pursuant to acquisition of 22,730 shares on February 18, 2010 through off-market at a price of Rs. 8/- per share. The Noticees were also granted another opportunity of personal hearing on May 25, 2015.

27. Vide email dated May 21, 2015, the Noticees requested that the hearing be postponed by two weeks. In response, by return email on the same date, the Noticees were informed that their request for adjournment was acceded to. Further, vide email dated May 26, 2015, the Noticees were informed that the hearing was rescheduled to June 17, 2015.
28. Accordingly, the hearing was conducted on June 17, 2015, wherein Mr. Atul Kumar Labh, AR of the Noticees appeared on their behalf. It was clarified to the AR during the hearing that in letter dated January 07, 2015 issued to the Noticees, the date was inadvertently mentioned as February 18, 2014 instead of February 18, 2010 at point (7) of the said letter. The AR clarified that there was no dispute as regards documental evidence produced by SEBI to the Noticees with respect to the acquisition of 3,07,666 shares by the Noticees through open offer and with respect to 22,730 shares acquired by the Noticees through off-market transaction. The AR made further individual written submission on behalf of the Noticees vide letter dated June 16, 2015 and reiterated the submissions made therein.
29. Vide the said individual letters dated June 16, 2015, the Noticees while reiterating their earlier submissions *inter alia* made the following further submissions:
 - (i) *That they were surprised to see the contents of SEBI's various letters and information and documents provided to the Adjudicating Officer/ SEBI by the Manager to the Offer;*
 - (ii) *That they were not able to locate the papers despite several attempts and they were always told that all compliances were duly made and there was no violation;*

- (iii) *That they were told that 3,30,396 shares had been received from the public and accordingly the payment made to the public was explained to the Noticees by calculating the figures on the basis of 3,30,396 shares only;*
- (iv) *That they got sure about the receipt of 3,30,396 shares from the public by the fact that all the shares were credited in their account and they got all the shares in their book. Thus, they thought that 3,30,396 shares were given to them;*
- (v) *That their aggregate holding post completion of public offer was 33,84,984 shares and the same was reflected in all documents including the shareholding pattern etc.;*
- (vi) *That whatever documents given to them for signature were duly signed by them in good faith, as all the persons involved at the time were qualified professionals and all of them were supposed to discharge their duties in a faithful and transparent manner;*
- (vii) *That they were not aware that 22,730 shares out of 3,30,396 shares given to them in the name of public, were purchased off-market;*
- (viii) *That accordingly when the matter was raised by BSE, they submitted the revised disclosures on the anticipation that 3,30,396 shares was the correct figure of shares which they had received from the public. Hence, they intimated to BSE that the earlier disclosed figure might be wrong;*
- (ix) *That they were allotted 37,00,000 equity shares on private placement basis on October 15, 2010, and even at that time nothing was informed to them about the earlier event. And they signed all the documents in good faith;*
- (x) *That they have not sold even a single share in market since acquisition of the same, hence, they had not derived even a single penny profit from the share market;*
- (xi) *That nobody's interest had been hampered due to this, even though they fully agree on the sanctity of compliances. Further that no undue advantage had been passed on or had been accrued to anyone due to this;*
- (xii) *That the number of shareholders of the company are very less, hence the aforesaid non-compliance had hardly hampered or effected or jeopardized anybody's interest.*

30. During the course of the adjudication proceedings, the Hon'ble Supreme Court vide its Order dated November 26, 2015 in the matter of *SEBI Vs. 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.

31. 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.”.

32. 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. Hence, the matter was proceeded with and the Noticee were afforded another opportunity to make oral/ written submissions in the matter vide hearing notice dated April 11, 2017.

33. Shri AK Labh, the AR of the Noticees appeared on the scheduled date for hearing, i.e. May 08, 2017 and reiterated the submissions made during earlier hearings and replies/ written submissions.

CONSIDERATION OF ISSUES

34. I have carefully perused the written submissions filed by the Noticees, the submissions made at the hearing by the AR on behalf of the Noticees and the documents on record. I observe that the

allegation against the Noticees is that they have violated Regulation 7(1) & 7(1A) read with Regulation 7(2) and Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations.

35. The issues that, therefore, arises for consideration in the present case are:
- i. Whether the Noticees have violated the provisions of Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations due to acquisition of 30,54,588 shares (53.14%) in July 2009?
 - ii. Whether the Noticees have violated the provisions of Regulations 7(1) and 7(1A) read with Regulation 7(2) of the Takeover Regulations due to acquisition of 3,07,666 shares (5.35%) in October 2009? (It is pertinent to mention here that though the SCN had alleged acquisition of 3,07,666 shares (5.35%) on February 18, 2010, during the adjudication proceedings it was realized that the acquisition had actually happened in October 2009);
 - iii. Whether the Noticees violated the provisions of Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations due to the off market acquisition of 22,730 shares (0.39%) on February 18, 2010?
 - iv. Does the violation, if any, attract monetary penalty under Section 15A(b) and/ or Section 15 H(ii) of SEBI Act, as applicable?
 - v. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15-J of SEBI Act?

FINDINGS

36. Before moving forward, it is pertinent to refer to the provisions of Regulation 7(1), 7(1A), 7(2) and regulation 11(2) of the Takeover Regulations, which read as under:

Acquisition of 5 per cent and more shares or voting rights of a company.

7. ¹[(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per

¹ Substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002, w.e.f. 9-9-2002. Prior to its substitution, sub-regulation (1) read as under: —
(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five percent shares or voting rights in a company, in any manner whatsoever, shall disclose the aggregate of his shareholding or voting rights in that company, to the company

cent ²[or fifty four per cent or seventy four per cent] shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.]

³(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, ⁴[or under second proviso to sub-regulation 2 of regulation 11] shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Explanation.—For the purposes of sub-regulations (1) and (1A), the term 'acquirer' shall include a pledgee, other than a bank or a financial institution and such pledgee shall make disclosure to the target company and the stock exchange within two days of creation of pledge.

(2) The disclosures mentioned in [sub-regulations (1) and (1A)]⁵ shall be made within [two days]⁶ of,—
(a) the receipt of intimation of allotment of shares; or
(b) the acquisition of shares or voting rights, as the case may be.

Consolidation of holdings.

11. (1) ...

⁷[(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

² Inserted vide SEBI(Substantial Acquisition of Shares and Takeovers) Amendment Regulations, 2004 wef 30.12.2004

³ The earlier provision which read as follows

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

Substituted vide SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002 dated 9th September, 2002

⁴ Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

⁵ Substituted for "sub-regulation(1)" by SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment)Regulations, 2001 published in the official Gazette of India dated24.10.2001

⁶ The words [four working days of] substituted vide SEBI(Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2002 dated 9thSeptember, 2002

⁷ Substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006, w.e.f. 26-5-2006. Prior to its substitution, sub-regulation (2), as amended by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2005, w.e.f. 30.12.2004 and SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998, w.e.f. 28-10-1998, read as under:

company, shall acquire either by himself or through ⁸[or with] persons acting in concert with him any additional shares ⁹[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.]

¹⁰[Provided further that such acquirer may, ¹¹[notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11,] 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 buy back 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%).]*

"(2) An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, 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, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these regulations"

⁸ Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

⁹ Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, w.e.f. 30-10-2008.

¹⁰ Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, w.e.f. 30-10-2008.

¹¹ Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

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:

37. Now, the first issue that arises for consideration is whether the Noticees have violated Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations during the year 2009. I note that the Noticees had acquired 30,54,588 shares, i.e. 53.14% of the total paid up capital of the company on July 24, 2009. Prior to this acquisition, the Noticees did not hold any shares of the company. Hence, their holding in the company had increased from Nil to 53.14% as a result of the acquisition. Regulation 7(1) read with Regulation 7(2) of the Takeover Regulations provides that any acquirer, who acquires shares or voting rights which, taken together with shares or voting rights, if any, held by him, would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed, within two days. Hence, since the holding of the Noticees had increased from Nil to 53.14% of the shares of the company, they were under an obligation to disclose the same within two days to the company and also to the stock exchange. Thus, they were required to make the disclosure by July 26, 2009. However, the disclosure was made by them on July 27, 2009, i.e. with a delay of one day.

38. The Noticees have not contested the delay. They have in fact admitted that there had been a delay of one day, and have prayed that a lenient view may be taken. ***In light of the same, I find that it is established that the Noticees have violated Regulation 7(1) read with 7(2) of the Takeover Regulations with respect to acquisition of 30,54,588 shares (53.14%) on July 24, 2009, due to delayed compliance.***

39. The next issue that arises for consideration is whether the Noticees had violated Regulation 7(1) and Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations due to acquisition of 3,07,666 shares (5.35%) in October 2009. I note here that it was alleged in the SCN that the Noticees had violated Regulation 7(1) and Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations,

when they acquired 3,07,666 shares, i.e. 5.35% of the total paid up capital of the company on February 18, 2010. However, as has been brought out in the earlier paras, during the adjudication proceedings, it came to be realized that the Noticees had acquired 3,07,666 shares in October 2009 through an open offer. The Open offer closed on October 20, 2009. Further, it was realized that since the last day of the completion of dispatch consideration was October 29, 2009, the acquisition date cannot be later than October 29, 2009. In support of the same, the Manager to the Offer submitted a copy of the letter received from Registrar to the Offer and copy of the Bank Statement showing that a total of 3,07,666 shares were acquired from 28 shareholders. Moreover, with respect to another open offer filed by the Noticees on October 20, 2010, the Manager to the Offer has submitted that the Noticees had acquired 22,730 shares (0.39%) through off market on February 18, 2010.

40. The Noticees, on the other hand, have not been able to provide any documentary evidence to support their claim that they had acquired 3,30,396 shares on February 18, 2010. In fact, vide their letters dated January 20, 2015, they have submitted that on perusing their records, they came across documents signed by them for disclosures under Regulation 7(3) of the Takeover Regulations and Regulation 13(6) of the PIT Regulations, wherein it was mentioned that the number of shares acquired is 3,07,666. It is pertinent to note that the Noticees have themselves stated that this was a document signed by them. Further, the Noticees have not been able to produce any document on record to substantiate their claim that they had acquired 3,30,396 shares on February 18, 2010.
41. Hence, from the available documents on record, it is established that the Noticees had acquired 3,07,666 shares during the period October 01, 2009 to October 20, 2009. Prior to the said acquisition, the Noticees held 53.14% of the paid-up capital of the company and post the acquisition, the Noticees held 58.49%. Hence, the holding of the Noticees had increased from 53.14% to 58.49%. Thus, since the Noticees had crossed fifty four percent, they were under an obligation to disclose the same within two days to the company and also to the stock exchange under Regulation 7(1) of the Takeover Regulations. However, the Noticees failed to make the said disclosure.
42. Further, Regulation 7(1A) states that any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, or under second proviso to sub-regulation (2) of regulation 11, shall disclose purchase or sale aggregating two per cent or more of the share capital of the target company to the target company and the stock exchanges where shares of the target

company are listed, within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale. Since the cumulative holding of the promoters was between 15% and 55% of the paid-up capital of the company, the acquisition fell within the ambit of Regulation 11(1). In view of the same, the Noticees were under an obligation to disclose the acquisition under Regulation 7(1A) of the Takeover Regulations as well. However, the Noticees failed to make the said disclosure.

43. I note from the replies of the Noticees that they have stated that they recall that compliance of the same was made. However, no documentary evidence of disclosure made under Regulation 7(1) or 7(1A) has been provided. The Noticees submitted a copy of the compliance made by the company in terms of Regulation 7(3) of the Takeover Regulations and have stated that that the compliance under Regulation 7(3) follows only after compliance with Regulation 7(1) and 7(1A) of the Takeover Regulations has been made. I note that Regulation 7(3) provides that *every company, whose shares are acquired in a manner referred to in sub-regulation(1) and (1A) shall disclose to all the stock exchanges on which the shares of the said company are listed, the aggregate number of shares held by each of such persons referred above within seven days of receipt of information under sub-regulations(1) and(1A)*. Thus, I note from the above that disclosure by the company under Regulation 7(3) follows only after the acquirer(s) have made disclosure to the company under Regulation 7(1) and Regulation 7(1A) of the Takeover Regulations. However, I also note that both Regulation 7(1) and 7(1A) require the acquirer(s) to also disclose to the stock exchanges, where shares of the target company are listed. Hence, it is not sufficient that the acquirers merely make disclosures to the company, which thereafter makes disclosure of the same under Regulation 7(3) to the Stock Exchange. There is a separate and independent obligation on the acquirers too to make the disclosure to the Stock Exchanges directly under Regulation 7(1) and Regulation 7(1A) of the Takeover Regulations. Even presuming that compliance was made by the Noticees with one part of the Regulation, the same cannot exempt the Noticees from non-compliance with the second part of the Regulation. Furthermore, even from the disclosures made under Regulation 7(3) of Takeover Regulations and Regulation 13(6) of PIT Regulations by the company on February 19, 2010 to BSE, it is noted that the company under Regulation 7(3) has stated the date of reporting by the acquirers to the company as July 29, 2009 (i.e. much before the transaction which happened in October 2009), and under Regulation 13(6) has mentioned the date of intimation as February 18, 2010, (i.e. much after the transaction which happened in October 2009).

44. Thus, I note that firstly the disclosure made by the company under Regulation 7(3) of the Takeover Regulations on February 19, 2010 too was much delayed. Also, there appears some discrepancy in the date of intimation to the company as reported in the said disclosure. Secondly, no disclosure has been sent by the Noticees to the Exchange as required under Regulation 7(1) and Regulation 7(1A) read with Regulation 7(2) of the Takeover Regulations. There is an independent and separate statutory obligation under Regulation 7(1) and Regulation 7(1A) of Takeover Regulations, both on the acquirers as well as the company, for making disclosure to the Exchange, and disclosure by the company to the Exchange does not absolve the acquirer from making the relevant disclosure to the Exchange under the afore-mentioned regulations. However, from the documents available on record, I note that the said disclosure to the Exchange was not made by the Noticees.

45. ***Hence, in view of the above, it is established that the Noticees failed to make the disclosure under Regulation 7(1) and 7(1A) of the Takeover Regulations in respect of the acquisition of 3,07,666 made during the period October 2009.***

46. The next issue that arises for consideration is whether the Noticees have violated Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations during the year 2010. As noted above, it was alleged that the Noticees had acquired 22,730 shares (0.39%) through off market on February 18, 2010. As noted above, in their replies filed vide letters dated January 20, 2015, the Noticees submitted that 3,30,396 shares had been acquired by them in the open offer and that there were no off-market purchases. However, based on documentary evidence available with SEBI and based on evidence provided by the Manager to the Offer, it is observed that the Noticees had acquired only 3,07,666 shares through the open offer. In support thereof, the Manager to the Offer had submitted to SEBI vide e-mail dated March 20, 2015, a copy of the letter received from the Registrar to the Offer, copy of the bank statement, and copy of the 45 days report filed with SEBI. The scanned copies of the same were provided to the Noticees. As noted earlier, from the letter received from the Registrar to the Offer and the bank statement, it was observed that total of 3,07,666 shares were acquired from 28 shareholders and total Rs. 30,76,845.30 was debited towards the payment of consideration against the shares acquired, including Demand draft issuance charges and CESS (at an offer price of Rs. 10/- per share). Further, the Manager to the Offer vide email dated April 23, 2015 also provided the details of acquisition of 22,730 shares by the promoter Noticees viz. Mr. Ganesh Singhania and Ms. Anita

Singhania on February 18, 2010 through off-market transactions at a price of Rs. 8/- per share. The email along with the annexure provided by the Manager to the Offer were also provided to the Noticees vide letter dated April 29, 2015.

47. Thereafter, vide their reply dated June 16, 2015 and during the course of the hearing held on June 17, 2015, the Noticees / their AR clarified that there was no dispute as regards the documentary evidence produced by SEBI to the Noticees with respect to acquisition of 3,07,666 shares by the Noticees through open offer and with respect to 22,730 shares acquired by the Noticees through off-market transaction. Instead, the Noticees reiterated that they were not well versed with SEBI laws and had signed all documents provided to them by the Manager to the Offer in good faith. They have stated that they were told that 3,30,396 shares had been received from public and that they were never made aware of the fact that 22,730 shares were purchased through off market transaction.
48. I note that the Noticees have, thus, not contested the documentary evidence produced with respect to acquisition of 3,07,666 shares by the Noticees through open offer and with respect to 22,730 shares acquired by the Noticees through off-market transaction. As per Regulation 11(2) of the Takeover Regulations, 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, can acquire either by himself or through or with 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. Further, the second proviso to Regulation 11(2) as inserted by amendment of the Takeover Regulations with effect from October 30, 2008 states that an acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement, 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, so long as 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; and that the post-acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent (75%).

49. In the extant matter, I note that the promoter holding prior to acquisition of 22,730 shares (0.39%) through off-market was 58.49% and post-acquisition was 58.88%. Thus, I find that the Noticees could have acquired up to 5% shares or voting rights without making an open offer under the second proviso to Regulation 11(2) of the Takeover Regulations, provided they satisfied all the conditions therein, including that such acquisition should be through open market purchase in normal segment on the stock exchange. However, I note that as per the available documents on record, the acquisition of 22,730 shares (0.39%) made by the Noticees on February 18, 2010 was through off-market mode, and not by way of open market purchase on the stock exchange. As noted above, the Noticees have not disputed the evidence provided by SEBI in this regard. In the matter, their only contention appears to be that they were unaware of SEBI laws, that the Merchant Banker was appointed to oversee all the compliances and that the Noticees had signed documents in good faith. However, being promoters of a listed company, the Noticees cannot take shelter under lack of knowledge, as ignorance of law cannot be a defense to get exemption from liability arising under law due to such non-compliances. It was the duty and obligation of the Noticees to at least read and review the documents that they were signing. Besides, the Noticees cannot claim that they were unaware of the fact that the letter of Offer signed by them on January 15, 2011 contained details of an off market acquisition of 22,730 shares made by them. The Noticees was required to come out with a public announcement to acquire further shares of the company as envisaged in the Takeover Regulations. This was not done. ***In view of the same, I find that it stands established that the Noticees have violated Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations, by not making a public announcement pursuant to the off market acquisition of 22,730 shares (0.39%) on February 18, 2010.***

50. Thus, I find that it stands established that Noticees have violated Regulation 7(1) read with 7(2) of Takeover Regulations when they acquired shares in July 2009; again violated Regulation 7(1) and also Regulation 7(1A) of the Takeover Regulations when they acquired shares during the period October 2009; and has further violated Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations when they acquired shares on February 18, 2010.

51. The next issue for consideration is whether the failure on the part of the Noticees as aforesaid attracts monetary penalty under section 15G and 15HB of SEBI Act, and, if so, what would be the monetary penalty that can be imposed on the Noticee. The ***Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri 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...”.

52. I further note that in the matter of ***Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010)***, the Hon’ble SAT has observed that *“Once it is established that the mandatory provisions of takeover code was violated the penalty must follow.”*

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

Penalty for failure to furnish information, return, etc.

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

(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).....

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

(iii).....

(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.

54. While determining the quantum of monetary penalty under Section 15A(b) and Section 15H(ii) of the SEBI Act, 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.

55. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. The main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. 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. As per Section 15A(b) of the SEBI Act, the 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, 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 available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee promoters. 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 promoter Noticees.

56. I, however, note that the Noticee promoters Mr. Ganesh Singhania and Ms. Anita Singhania had acquired 22,730 shares (0.39%) on February 18, 2010 through off-market at a price of Rs. 8/- per share. The details of the price at which the Noticee promoters viz. Mr. Ganesh Kumar Singhania and Ms. Anita Singhania were required to make an open offer to the shareholders of the Company pursuant to acquisition of 22,730 shares (0.39%) on February 18, 2010, was sought from Managers to the Subsequent Offer made by the Noticee promoters in January 2011, i.e. VC Corporate Advisors Pvt. Ltd. (hereinafter referred to as ‘VCCAPL’). In response, VCCAPL have informed that the Offer price of the

Open Offer that was required to be made pursuant to acquisition of shares as aforesaid on February 18, 2010 by the Noticee promoters, would have been Rs. 10/- per share. The working as provided by VCCAPL in support thereof is as given below:

- ➔ As on February 18, 2010, the shares of the Company were listed on BSE & ASE. The shares of the Company were suspended from trading on BSE w.e.f. December 31, 2007 due to the non-compliances of various clauses of the Listing agreement. The aforesaid suspension was revoked by BSE vide Notice No. 20090429-15 dated 29.04.2009 effective from May 07, 2009.
- ➔ As the annualised trading turnover of the equity shares of the Company was not more than 5% of the total number of listed shares on stock exchanges, the equity shares are deemed to be infrequently traded within the meaning of explanation (i) to Regulation 20(5) of Takeover Regulations and therefore the Offer Price has been determined taking into account the following parameters:

Negotiated Price under the Agreements / Acquisition which triggered the Open Offer	:	Rs. 8.00 per fully paid equity share
Highest Price agreed to be paid by the Acquirers for acquisition, including by way of allotment in a public or rights or preferential issue during the twenty six week period prior to the date of Public Announcement	:	Rs.10.00 per fully paid equity share
Other parameters		Based on Latest available Audited Accounts for the year ended March 31, 2009
Return on Networth (%)	:	#N.M.
Book Value per share (Rs)	:	(-)3.69
Earning per Share (Rs)	:	(-)0.36
Industry Average P/E Multiple for Chemicals		10.60
Offer price P/E Multiple*		#N.M.

*Offer price/EPS

#N.M. means not meaningful

(Source: Capital Market VolXXIV/09 June 29-July 12, 2009).

- ➔ The Industry PE is not strictly comparable as the Industry segment covered by the Capital Market consists of companies, which have varied, and different businesses compared to ESIL and also vary widely in terms of financial parameters with ESIL.
- ➔ The last traded price of the equity shares on BSE was Rs 4.00 per share on 26.06.2009 (Source- www.bseindia.com)

57. Thus, I note that in view of the above, the Offer price of the Open Offer that was required to be made by the Noticee Promoters pursuant to acquisition of shares on February 18, 2010 would have been Rs. 10/- per share. The open offer under Regulation 11(2) of Takeover Regulations should have been made within four working days as per Regulation 14(1) of the Takeover Regulations. Hence, the open offer should have been made latest by February 23, 2010, however, the same was not done. The Noticee Promoters subsequently made an open offer in January 2011, pursuant to preferential allotment of 37,00,000 Equity Shares, which had again triggered open offer under the Takeover Regulations. The public announcement for the same was made by the Noticee Promoters on October 20, 2010.

58. Niche Technologies Pvt. Ltd., the Registrars to the Company has provided the details of shareholders who were holding shares as on February 18, 2010 and who had transferred shares at less than Rs. 10/- per share, prior to the said public announcement made by the Noticee Promoters on October 20, 2010. The said details showing the folio numbers and names of the shareholders who held shares as on February 18, 2010 in the Company along with the quantity of shares sold, price (below Rs. 10/-) at which the shares were sold, difference between the price at which open offer should have been made by the Noticee promoters and the actual price at which the shareholders had sold their shares prior to October 20, 2010, is given below:

Folio of the Sole/First Shareholder who held Physical Shares as on 18-02-2010	Name of the Sole/First Shareholder who held Physical Shares as on 18-02-2010	Number of Physical Shares held by Seller as on 18-02-2010	Number of Physical Shares Transferred up to 20.10.2010 out of Physical Shares held as on 18-02-2010	Date when the Physical Shares were Transferred	Amount (Rs.) at which the Physical Shares were sold	Rate	Category of Seller Shareholder	Difference
000047	BHIKAM CHAND SURANA	1,200	200	08/31/2010	1,600	8.00	Public Shareholder	400

Folio of the Sole/First Shareholder who held Physical Shares as on 18-02-2010	Name of the Sole/First Shareholder who held Physical Shares as on 18-02-2010	Number of Physical Shares held by Seller as on 18-02-2010	Number of Physical Shares Transferred up to 20.10.2010 out of Physical Shares held as on 18-02-2010	Date when the Physical Shares were Transferred	Amount (Rs.) at which the Physical Shares were sold	Rate	Category of Seller Shareholder	Difference
000066	SHANTILAL RAITHATHA	400	100	08/31/2010	800	8.00	Public Shareholder	200
000067	SAVJI BHAI MENPARA	300	300	08/31/2010	2,000	6.67	Public Shareholder	1,000
000115	MADHU AGARWAL	500	500	06/15/2010	3,000	6.00	Public Shareholder	2,000
000151	RAMESH U RAMCHANDANI	13,000	900	08/31/2010	7,000	7.78	Public Shareholder	2,000
000151	RAMESH U RAMCHANDANI	13,000	2,600	08/31/2010	22,000	8.46	Public Shareholder	4,000
000161	SANJAY KOTHARI	800	800	08/31/2010	6,000	7.50	Public Shareholder	2,000
001052	DIPAK G CHOLERA	6,000	5,900	04/16/2010	29,500	5.00	Public Shareholder	29,500
001055	AJAY KUMAR KAYAN	480,000	75,000	03/31/2010	300,000	4.00	Public Shareholder	450,000
001055	AJAY KUMAR KAYAN	480,000	37,500	03/31/2010	150,000	4.00	Public Shareholder	225,000
001055	AJAY KUMAR KAYAN	480,000	100,000	03/31/2010	400,000	4.00	Public Shareholder	600,000
001055	AJAY KUMAR KAYAN	480,000	100,000	03/31/2010	400,000	4.00	Public Shareholder	600,000
001055	AJAY KUMAR KAYAN	480,000	37,500	03/31/2010	150,000	4.00	Public Shareholder	225,000
001055	AJAY KUMAR KAYAN	480,000	40,000	04/05/2010	160,000	4.00	Public Shareholder	240,000
001055	AJAY KUMAR KAYAN	480,000	54,500	04/05/2010	218,000	4.00	Public Shareholder	327,000
001055	AJAY KUMAR KAYAN	480,000	35,000	04/05/2010	140,000	4.00	Public Shareholder	210,000
001064	SMIFS CAPITAL MARKETS LIMITED	448,300	100,000	03/31/2010	400,000	4.00	Public Shareholder	600,000
001064	SMIFS CAPITAL MARKETS LIMITED	448,300	48,300	03/31/2010	193,200	4.00	Public Shareholder	289,800
001064	SMIFS CAPITAL MARKETS LIMITED	448,300	100,000	03/31/2010	400,000	4.00	Public Shareholder	600,000
001064	SMIFS CAPITAL MARKETS LIMITED	448,300	100,000	03/31/2010	400,000	4.00	Public Shareholder	600,000

Folio of the Sole/First Shareholder who held Physical Shares as on 18-02-2010	Name of the Sole/First Shareholder who held Physical Shares as on 18-02-2010	Number of Physical Shares held by Seller as on 18-02-2010	Number of Physical Shares Transferred up to 20.10.2010 out of Physical Shares held as on 18-02-2010	Date when the Physical Shares were Transferred	Amount (Rs.) at which the Physical Shares were sold	Rate	Category of Seller Shareholder	Difference
001064	SMIFS CAPITAL MARKETS LIMITED	448,300	100,000	03/31/2010	400,000	4.00	Public Shareholder	600,000
001068	PRITI A GANDHI	10,000	300	08/31/2010	2,000	6.67	Public Shareholder	1,000
001069	MANISH K ASHAR	1,600	400	08/31/2010	3,000	7.50	Public Shareholder	1,000
001130	KIRAN SHAH	3,300	3,300	09/30/2010	21,500	6.52	Public Shareholder	11,500
001155	KAMAL NAYAN CHOUBEY	150,000	75,000	03/31/2010	300,000	4.00	Public Shareholder	450,000
001155	KAMAL NAYAN CHOUBEY	150,000	75,000	03/31/2010	300,000	4.00	Public Shareholder	450,000
TOTAL							6,521,400	

59. The Noticee Promoters were holding 58.49% shares prior to acquisition of 22,730 shares on February 18, 2010 in off-market. Hence, the Noticee promoters were required to make an open offer at Rs. 10/- per share due to acquisition of shares on February 18, 2010, to further acquire 20% of the share capital of the company, which was not made. The Noticee promoters subsequently made an open offer in January 2011 pursuant to preferential allotment of shares, for which the public announcement was made on October 20, 2010. The aforesaid shareholders who were holding shares as on February 18, 2010, had sold shares prior to the said public announcement. Hence, the loss caused to the shareholders who had sold shares prior to the public announcement on October 20, 2010 is **approximately Rs. 65 lacs**, as per the working shown in the table above.

60. Vide individual letters dated June 24, 2015, the Noticees have stated that to the best of their knowledge, there were no other case of SEBI pending against them. The same was also confirmed from records available with SEBI.

61. I note that the Noticees have *inter alia* stated that neither have they derived any profit or undue advantage, nor, did the non-compliance hamper anybody's interest. Also that the number of shareholders of the company are less and hence the aforesaid non-compliances had hardly hampered or effected or jeopardized anybody's interest. I find it relevant to mention here the following observations made by the **Hon'ble SAT in the case of Gaylord Commercial Company Limited (Date of Decision: 10.04.2014)**;

"Argument that the appellant is a small company and has not violated any provisions in the past, that the delay in making disclosures has neither caused any loss to investors nor the appellant has gained any benefits on account of delay in making disclosures do not merit consideration, because, liability to pay penalty under Section 15A(b) of SEBI Act, 1992 has to be computed on the basis of each day during which the failure to comply with the regulation has continued and liability to pay such penalty is not dependent upon the fact as to whether such failure has occurred for the first time or not. Similarly, fact that no loss has occurred to the investors or that the appellant has not gained on account of delay in making disclosures would not be a ground for the appellant to escape penalty for failure to make disclosure within the stipulated time".

62. Further, **the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014)** has also similarly 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 Takeover Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."

In view of the above, the argument put forth by the promoter Noticees that their violation/ non-compliance did not hamper anybody's interest, nor, did they make any profit is not relevant for the given case.

63. I further note that by not making the public announcement, the Noticees had denied the statutory right to 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 particular, Sections 15A to Section 15 HB 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 and to promote the development of the securities market.

64. As has been brought out above, the argument that violation/ non-compliance did not hamper anybody's interest is not relevant for the given case. Besides, 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 and not a mere intimation of acquisition to the general public. Further, the argument *inter alia* made by the Noticees that it was a case of acquisition through open offer and that their aggregate shareholding post completion of the public offer was reflected in all documents including the shareholding pattern etc., as has been brought out in the earlier paras of the Order is also found to be incorrect. The open offer was triggered due to off market acquisition of shares and it was not a case of acquisition through open offer.
65. 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*" (*Emphasis supplied*). Thus, I conclude that failure to make public announcement to acquire shares at a minimum price is a serious matter and cannot be considered a mere "technical" lapse, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of an exit opportunity at the relevant point of time. Besides, any transaction which requires compliance of the Takeover Regulations, if not complied, is always a serious matter and the Noticees cannot claim ignorance of law to avoid liability, since the shareholders/ investors were deprived of the information. And I find that in the extant case, the failure of the Noticees to make open offer at the relevant point of time, is further compounded by the fact that there was almost no trading in the shares of the Company at the relevant point of time. It is observed that loss caused to the shareholders who had transferred their shares in off market after February 18, 2010 and before the public announcement made by the Noticee promoters on October 20, 2010 is approximately **Rs. 65 lacs**.

ORDER

66. After taking into consideration all the facts and circumstances of the case, I impose the following penalty of under Section 15H (ii) and 15A(b) of the SEBI Act on the **Noticees viz. Mr. Ganesh Kumar Singhania and Ms. Anita Singhania**, which will be commensurate with the violations committed by the Noticees. The promoter Noticees shall be **jointly and severally liable** to pay the below mentioned monetary penalty:

Transaction Date / Period	Regulation Violated (Takeover Regulations)	Penalty u/s. of SEBI Act	Amount (Rs.)
July 24, 2009	7(1) r/w 7(2)	15A(b)	1,00,000/- (Rupees One Lakh Only)
October 2009	7(1A) r/w 7(2)	15A(b)	3,00,000/- (Rupees Three Lakh Only)
October 2009	7(1) r/w 7(2)	15A(b)	3,00,000/- (Rupees Three Lakh Only)
February 18, 2010	11(2) r/ w 14(1)	15H (ii)	2,00,00,000/- (Rupees Two Crore Only)

67. The Noticees 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

68. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to 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)	

69. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: June 15, 2017

Place: Mumbai

Anita Kenkare

Adjudicating Officer