

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/JS/VC/2025-26/31549-31550)**

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

In respect of

Noticee No.	Name and PAN of the Noticee
1	Nilesh Malshi Savla (PAN: AAEPS0827P)
2	Meena Nilesh Savla (PAN: AKUPS3442E)

In the matter of RKD Agri & Retail Limited

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an examination in the matter of acquisition of equity shares of RKD Agri & Retail Limited (hereinafter referred to as '**RKD**' or '**target company**') by Nilesh Malshi Savla (hereinafter referred to as '**Noticee-1**') and Meena Nilesh Savla (hereinafter referred to as '**Noticee-2**') [hereinafter together referred to as '**Noticees**' or '**acquirers**'].
2. Based on the findings in the examination report, SEBI initiated adjudication proceedings against Noticees for alleged violation of the following provisions:
 - a) Regulation 3(1) read with regulation 3(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') by Noticee-1;
 - b) Regulation 3(2) read with regulation 3(3) of SAST Regulations by Noticee-2;
 - c) Regulation 29(2) and 29(3) read with regulation 28(2) of SAST Regulations by the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

3. Pursuant to transfer of erstwhile Adjudicating Officer (hereinafter referred to as 'AO') who had been appointed so vide order dated February 03, 2025, the undersigned was appointed as AO in the matter vide order dated April 02, 2025 under section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Rules**') read with section 19 of the SEBI Act, to inquire into and adjudge under the provisions of the sections 15A(b) and 15H of the SEBI Act for the alleged violations by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice Ref. No. SEBI/HO/EAD-8/AS/VC/5786/1-2/2025 dated February 24, 2025 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of the provisions of rule 4(1) of the Rules read with section 15-I of the SEBI Act, requesting the Noticees to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed upon them under section 15A(b) and 15H of the SEBI Act for the alleged violations. I note that SCN issued to the Noticees was duly served upon them.
5. The allegations levelled against the Noticees in the SCN were as under:

A. "Findings w.r.t. delay in giving an open offer for acquiring shares of the target company by the acquirers."

- (i) *The board of directors of RKD, i.e., the target company, at its meeting held on December 21, 2022, considered and approved the issue and allotment of 3,81,25,000 warrants to the promoters/acquirers and 1,60,75,000 warrants to Public (Non Promoters - Public Category), aggregating to 5,42,00,000 warrants, convertible into equal number of equity shares of ₹1/- (Rupee One only) each fully paid up ("Equity Share") on preferential basis ("Preferential Issue") and convening of an Extra Ordinary General Meeting ("EGM") of the members of the target company, on Wednesday, January 25, 2023.*
- (ii) *The shareholders of the target company in the EGM on January 25, 2023 approved the preferential issue at a price of ₹1/- per warrant or such higher price which shall not be less than the minimum specified price as per regulation 165 of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, and such warrants shall be convertible within a period of 18 months from the date of allotment, in one or more*

tranches in such manner and on such other terms and conditions, as the Board may, in its absolute discretion, think fit.

- (iii) Pursuant to above approval, 3,81,25,000 warrants were acquired by Noticee-1 and Noticee-2 on March 08, 2023.
- (iv) **First Transaction:** The board of directors of the target company, at the meeting held on May 05, 2023, approved the issue and allotment of 1,20,00,000 (One Crore Twenty Lakh) equity shares to Noticee-2, upon exercise of option for conversion of warrants. The said allotment led to an increase in the shareholding/voting rights of Noticee-2 by 25.84%, i.e., from 36.17% to 62.01% of voting share capital of the target company. On May 05, 2023, the board of the target company also approved the issue and allotment of 53,50,000 (Fifty Three Lakh Fifty Thousand) equity shares to non-promoters, upon exercise of option for conversion of warrants. The said allotment resulted in change of the shareholding/voting rights of the non-promoters from 26.46% to 29.89%. Accordingly, after first transaction, the promoter shareholding increased from 35,29,715 shares to 1,55,29,715 shares and public shareholding increased from 12,70,285 shares to 66,20,285 shares. The total shareholding in the company, therefore, increased from 48,00,000 shares to 2,21,50,000 shares. The changes in shareholding of the company pursuant to first transaction are mentioned in the table given below:

Table-1

Shareholders Category	Shareholding & Voting Rights as on March 31, 2023		Shareholding & Voting Rights after First Transaction (May 05, 2023)	
	No.	%	No.	%
(1) Promoter and Promoter Group / Acquirers				
Meena Nilesh Savla	17,36,310	36.17	1,37,36,310	62.01
Nilesh Malshi Savla	17,93,405	37.36	17,93,405	8.10
Total (a)	35,29,715	73.54	1,55,29,715	70.11
b. Promoters other than (a) above	-	-	-	-
Total 1 (a+b)	35,29,715	73.54	1,55,29,715	70.11
(2) Public (other than Promoter Group / Acquirers)	12,70,285	26.46	66,20,285	29.89
GRAND TOTAL (1+2)	48,00,000	100.00	2,21,50,000	100.00

- (v) Pursuant to the above transaction, acquirer, i.e., Noticee-2 triggered the obligation to make an open offer on May 05, 2023 (Date when public announcement was required to be given for First Triggering Event), in terms of regulation 3(2) read with regulation 3(3) of SAST Regulations. However, it is observed that the public announcement of the open offer on First Triggering Event, under the SAST Regulations, was filed with the stock exchange, SEBI and the target company only on February 22, 2024, with a delay of 293 days.
- (vi) In view of the above, it is alleged that there was a delay of 293 days in giving an open offer for acquiring shares of the target company by the Noticee-2, thereby she violated the provisions of regulation 3(2) read with regulation 3(3) of SAST Regulations.

- (vii) **Second Transaction:** The board of directors of the target company, at the meeting held on February 10, 2024, approved the issue and allotment of 1,67,00,000 (One Crore Sixty Seven Lakh) equity shares to Noticee-1 (Promoter and Promoter Group), upon exercise of option for conversion of warrants. The said allotment resulted in increase in the shareholding/voting rights of Noticee-1 by 32.43%, i.e., from 8.10% to 40.53% of voting share capital of the target company. On February 10, 2024, the Board of the company also approved the issue and allotment of 67,75,000 (Sixty Seven Lakh Seventy Five Thousand) equity shares to non-promoters, upon exercise of option for conversion of warrants. The said allotment resulted in change of the shareholding/voting rights of the non-promoters from 29.89% to 29.36%. Accordingly, after second transaction, the promoter shareholding increased from 1,55,29,715 shares to 3,22,29,715 shares and public shareholding increased from 66,20,285 shares to 1,33,95,285 shares. The total shareholding in the company, therefore, increased from 2,21,50,000 shares to 4,56,25,000 shares. The changes in shareholding of the company pursuant to second transaction are mentioned in the table given below:

Table-2

Shareholders Category	Shareholding & Voting Rights after First Transaction (May 05, 2023)		Shareholding & Voting Rights after the Second Transaction (February 10, 2024)	
	No.	%	No.	%
(1) Promoter and Promoter Group / Acquirers				
Meena Nilesh Savla	1,37,36,310	62.01	1,37,36,310	30.11
Nilesh Malshi Savla	17,93,405	8.10	1,84,93,405	40.53
Total (a)	1,55,29,715	70.11	3,22,29,715	70.64
b. Promoters other than (a) above	-	-	-	-
Total 1 (a+b)	1,55,29,715	70.11	3,22,29,715	70.64
(2) Public (other than Promoter Group / Acquirers)	66,20,285	29.89	1,33,95,285	29.36
GRAND TOTAL (1+2)	2,21,50,000	100.00	4,56,25,000	100.00

- (viii) Pursuant to the above transaction, acquirer, i.e., Noticee-1 triggered the obligation to make an open offer on February 10, 2024 (Date when public announcement was required to be given for Second Triggering Event), in terms of regulation 3(1) read with regulation 3(3) of SAST Regulations. However, it is observed that the public announcement announcing the open offer on Second Triggering Event, under the SAST Regulations, was filed with the stock exchange, SEBI and the target company on February 22, 2024, with a delay of 12 days.
- (ix) In view of the above, it is alleged that there was a delay of 12 days in giving an Open Offer for acquiring shares of the target company by the Noticee-1, thereby he violated the provisions of regulation 3(1) read with regulation 3(3) of SAST Regulations.

B. Findings w.r.t. delay in making disclosures under regulation 29(2) and 29(3) read with regulation 28(2) of SAST Regulations.

- (x) As per examination report, following was the chronology of events w.r.t. reorganization of shareholding of the company and consequent delay in making related disclosures by acquirers:
- (a) NCLT, on July 23, 2020, passed an Order in the matter of Scheme of Arrangement between RKD Trendy Retailers Private Limited with Himalchuli Food Products Limited (new name being- RKD Agri & Retail Limited).
 - (b) Pursuant to the scheme, Noticee-1 and Noticee-2, on September 24, 2020, had acquired 14,35,500 and 14,64,500 equity shares of ₹1/- each, representing 18.53% and 21.87% respectively, of total paid up share capital of Himalchuli food products Limited.
 - (c) On September 26, 2020, disclosure was filed by both the Noticees under regulation 29(2) of SAST Regulations.
 - (d) On November 20, 2020, the Noticees received an email from the BSE, observing the discrepancy in the disclosure made on September 26, 2020 with respect to non-mentioning the date of purchase of shares in the disclosure letter.
 - (e) On November 20, 2020, revised disclosure was filed by the Noticees under regulation 29(2) of SAST Regulations. Hence, it was observed that the said revised disclosure was filed with a delay of 54 days.
- (xi) Further, it was observed during examination that the Noticees acquired warrants on March 08, 2023 and so they were required to make disclosure under regulation 29(2) read with Regulation 28(2) of SAST Regulations. However, the said disclosure by the Noticees was made on March 05, 2024, i.e., with a delay of 362 days.
- (xii) In view of the above, it was alleged that Noticee-1 and Noticee-2 have violated the provisions of regulation 29(2) and 29(3) of SAST Regulations read with regulation 28(2) of SAST Regulations.”

6. Vide letter dated March 07, 2025, Noticees submitted common reply to the SCN. Reply of the Noticees stated, *inter alia*, as under:

“At the outset we submit that before the warrant issue in question the RKD Agri & Retail Ltd is a BSE listed Company with a small equity Share capital of Rs. 48,00,000/- and negative net worth because of accumulated losses.

The target company had decided to issue warrants to the promoters and outside investors for funding of the capital expenditure, support growth plans of the Company, working capital requirements, repayment of loans and general corporate purposes or any combination thereof to pursue the business objects of the Company.

Thereafter, the shareholders of the Target Company in their Extra Ordinary General Meeting held on 25th January, 2023 approved the Preferential issue at a price of Re. 1/- per warrant as per Regulation 165 of the SEBI (ICDR) Regulations, 2018 and such warrants shall be convertible within a period of 18 months from the date of allotment in one or more tranches on such terms and conditions, as the Board may think fit.

Accordingly, on receipt of In -Principle approval from BSE Ltd. the Board of Directors in their meeting held on 8th March, 2023 have allotted 3,81,25,000 Warrants to Mr. Nilesh Savla and Mrs. Meena Savla, promoters of the Company and 1,60,75,000 Warrants to the Public/ Non-Promoters on receipt subscription money of Rs. 0.25 per warrant.

FIRST CONVERSION:

In the first tranche actually each of the promoters was supposed to convert the equal number of warrants aggregating to 1,20,00,000 however, inadvertently the amount was subscribed through only one of the promoters, i.e., Mrs. Meena Savla and therefore the threshold limit was crossed and open offer was triggered however, after the allotment the target company made an application to the BSE Limited for listing of new shares of the Company and in due course of time the approval was received from BSE Ltd. for listing and trading of said 1,73,50,000 Equity Shares of Re. 1/- each on 30th June, 2023. As per the prior plan, the difference in capital due to conversion of both the promoters warrants would not lead to a situation where the open offer would be triggered, but due to some personal reasons Mr. Nilesh Savla could not be a part of the first tranche of conversion and hence there was a difference in the promoter holding.

The delay in announcing the open offer by 293 days by Mrs. Meena Savla was sheer inadvertence and totally non intentional. Further, this is to bring to the notice that the promoters have complied with the provisions of the SAST Regulations and carried out the open offer at a price including interest at the rate of 10% p.a. The detailed calculation is given hereunder:

Particulars	First Triggering Event	Second Triggering Event
Price, highest of the prices as per Regulation 8(2) of the SEBI (SAST) Regulations, 2011	₹ 1	₹ 1
Interest		
Triggering Event	May 05, 2023	February 10, 2024
Last date considered for communicating the rejection/acceptance and completion of payment of consideration or return of Equity Shares to the Public Shareholders for calculation of interest	July 29, 2024	July 29, 2024
Delayed Days	451	170
Rate of Interest	10%	10%
Total (Price + Interest)	1.12	1.05

SECOND CONVERSION:

As Mr. Nilesh Savla could not convert his warrants into shares in the first tranche along with Mrs. Meena Savla, he opted to convert his shares in the tranche that was considered in the Board Meeting held on 10th February, 2024. By the end of the meeting and through the calculations, it was clear that Mr. Nilesh Savla was supposed to make an open offer but could not do so immediately because most of the funds he was having were utilised for conversion of the warrants that were held by him. This lead to a delay and post 12 days an open offer was announced on 22nd February, 2024.

We therefore submit that the delay in open offer was totally unintentional and without prejudicing anybody's right. Hence, we would like to point out the following:

- a. no disproportionate gain or unfair advantage made as a result of the delay in open offer.
- b. no loss has been caused to an investor or group of investors as a result of default
- c. the nature of default is not regular in nature
- d. the acquirers are and have been the existing promoters of the target company
- e. Also, the promoters have acted bonafide and without causing any loss to any shareholder or public at large and thus we humbly pray that the delay caused was for the first time by the acquirers and it shall be condone without levying any penalty on the Acquirers/promoters of the Target Company.

DELAY IN DISCLOSURE U/R 29(2)

With regards to the disclosure dated 26th September, 2020 we wish to clarify that there is no delay in filing the disclosure because the shares arise out of the sanctioned scheme of Amalgamation were allotted on 24th September, 2020 and immediately the declaration was given on 26th September, 2020 which is within the timelines as provided for in the regulations.

Your goodselves will appreciate that during this period it was a first pandemic wave of COVID-19 and Lock down was announced by the Government and everybody was compelled to operate from house with limited infrastructure.

We received an observation from BSE one and half month after our submission and informed that the date is not mentioned, either the statement is missed out or lost and, we replied to BSE promptly on the same day and submitted the disclosure putting the date in the said appropriate column and it should be read in continuation of my original submission which was made in time and should not be treated as revised.

We therefore respectfully submit to consider this as an extension of the earlier submission which was made within the time lines of the SEBI SAST Regulations, rather than a delayed submission. We request you to consider our prayer and levy no penalty on the acquirers.

DELAY IN DISCLOSURE U/R 29(2) READ WITH REG 28(2)

With regards to the disclosure made on 05th March, 2024 we have to submit that the warrants were allotted on 08th March, 2023. However, we misconstrued that the warrants being issued to the promoters of the Target Company have paid only subscription money of Rs. 0.25 and they do not carry voting rights hence the disclosure under Regulation 29(2) was not given as required under the Regulation within 2 working days from the acquisition of warrants. However, the disclosure was given to the BSE under Regulation 30 of SEBI (LODR) Regulations, 2015 and it was in a public domain. However, when the Merchant Banker informed that the warrants be treated as share for the purpose of disclosure hence, we submitted the disclosure.”

7. Vide notice of hearing dated April 09, 2025, an opportunity of being heard on April 23, 2025 was granted to the Noticees. On April 23, 2025, Authorized Representative (“AR”) of the Noticees, Mr. Sanjay Shringarpure attended hearing

in person at SEBI and reiterated the submissions made by them vide letter dated March 07, 2025.

CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticees in the SCN, their reply, submissions made during personal hearing and material available on record. The issues that arise for consideration in the present case are as follows:

- I. Whether there was a delay in making an open offer for acquisition of shares of the target company by Noticee-2 and thereby she violated regulation 3(2) read with regulation 3(3) of SAST Regulations?
- II. Whether there was a delay in making an open offer for acquisition of shares of the target company by Noticee-1 and thereby he violated regulation 3(1) read with regulation 3(3) of SAST Regulations?
- III. Whether there was a delay in making disclosures by Noticees under SAST Regulations and thereby they violated regulation 29(2) and 29(3) read with regulation 28(2) of SAST Regulations?
- IV. Does the violation, if any, attract monetary penalty under section 15H and 15A(b) of the SEBI Act?
- V. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15-J of the SEBI Act read with rule 5(2) of the Rules?

9. Before proceeding further, it is pertinent to refer to the relevant provisions of SAST Regulations which are alleged to have been violated by the Noticees, as under:

SAST Regulations:

“Substantial acquisition of shares or voting rights.

3(1) No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

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

3(3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

Disclosure-related provisions.

28(2) For the purposes of this Chapter, the acquisition and holding of any convertible security shall also be regarded as shares, and disclosures of such acquisitions and holdings shall be made accordingly.

Disclosure of acquisition and disposal.

29(2) Any person together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.

Provided that in case of listed entity which has listed its specified securities on Innovators Growth Platform, any reference to “five per cent” shall be read as “ten per cent” and any reference to “two per cent” shall be read as “five per cent”.

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to,—

- (a) every stock exchange where the shares of the target company are listed; and
- (b) the target company at its registered office.”

10. Based on perusal of the material available on record, submissions of the Noticee and the facts and circumstances of the case, the issues raised in this matter are dealt in the following paragraphs.

Issue I. Whether there was a delay in making an open offer for acquisition of shares of the target company by Noticee-2 and thereby she violated regulation 3(2) read with regulation 3(3) of SAST Regulations?

11. It was alleged in the SCN that Noticee-2 triggered the obligation to make an open offer on May 05, 2023 (date when public announcement was required to be given for First Triggering Event, i.e., the board of directors of the target company approved the issue and allotment of 1,20,00,000 equity shares to Noticee-2 upon exercise of option for conversion of warrants), which led to an increase in the shareholding/voting rights of Noticee-2 by 25.84%, i.e., from 36.16% to 62.01%, in terms of regulation 3(2) read with regulation 3(3) of SAST Regulations. However, the public announcement of the open offer on First Triggering Event under the SAST Regulations, was filed with the stock exchange, SEBI and the target company on February 22, 2024. Hence, it was alleged that there had been a delay of 293 days in giving an open offer for acquiring shares of the target company by the Noticee-2, thereby she violated the provisions of regulation 3(2) read with regulation 3(3) of SAST Regulations.
12. As per regulation 3(2) of SAST Regulations, no acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.
13. I note that Noticee-2 admitted the violation and stated that in the first tranche actually each of the promoters was supposed to convert equal number of warrants aggregating to 1,20,00,000, however, inadvertently the amount was subscribed through only one of the promoters, i.e., Mrs. Meena Savla and therefore the threshold limit was crossed and open offer was triggered. Noticee-2 further submitted that due to some personal reasons, Mr. Nilesh Savla could not be a part of the first tranche of conversion and hence there was a difference in the promoter

holding. She further submitted that the delay in announcing the open offer by 293 days was sheer inadvertence and totally unintentional.

14. Therefore, in view of the above, I hold that Noticee-2 violated the provisions of regulation 3(2) read with regulation 3(3) of SAST Regulations.

Issue II. Whether there was a delay in making an open offer for acquisition of shares of the target company by Noticee-1 and thereby he violated regulation 3(1) read with regulation 3(3) of SAST Regulations?

15. SCN alleged that Noticee-1 triggered the obligation to make an open offer on February 10, 2024 (date when public announcement was required to be given for Second Triggering Event, i.e., the Board of Directors of the target company approved the issue and allotment of 1,67,00,000 equity shares to Noticee-1, upon exercise of option for conversion of warrants), in terms of regulation 3(1) read with regulation 3(3) of SAST Regulations. The said allotment resulted in increase in the shareholding/voting rights of Noticee-1 by 32.43%, i.e., from 8.10% to 40.53% of voting share capital of the target company. However, the public announcement of the open offer on Second Triggering Event under the SAST Regulations, was filed with the stock exchange, SEBI and the target company on February 22, 2024. Hence, it was alleged that there had been a delay of 12 days in making an Open Offer for acquiring shares of the target company by the Noticee-1, thereby he violated the provisions of regulation 3(1) read with regulation 3(3) of SAST Regulations.
16. As per regulation 3(1) of SAST Regulations, no acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.
17. I note that Noticee-1 admitted the violations and stated that by the end of the meeting held on February 10, 2024, it was clear through calculations that Noticee-

1 was supposed to make an open offer but could not do so immediately because most of the funds he was having were utilised for conversion of warrants that were held by him, which led to a delay and open offer was announced by him on February 22, 2024. i.e., after 12 days.

18. Therefore, in view of the above, I hold that Noticee-1 violated the provisions of regulation 3(1) read with regulation 3(3) of SAST Regulations.

Issue III. Whether there was a delay in making disclosures by Noticees under SAST Regulations and thereby they violated regulation 29(2) and 29(3) read with regulation 28(2) of SAST Regulations?

19. It was alleged in the SCN that Noticee-1 and Noticee-2, on September 24, 2020, had acquired 14,35,500 and 14,64,500 equity shares of ₹1/- each, representing 18.53% and 21.87% respectively, of total paid up share capital of Himalchuli Food Products Limited. On September 26, 2020, disclosure was filed by both the Noticees under regulation 29(2) of SAST Regulations. However, the said disclosure was incomplete, which was informed to the Noticees by BSE on November 20, 2020. Therefore, Noticees filed revised and proper disclosure on November 20, 2020 under regulation 29(2) of SAST Regulations, with a delay of 54 days.
20. As per regulation 29(2) of SAST Regulations, any person together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company. As per regulation 29(3) of SAST Regulations, said disclosure must be made within two working days of the receipt of intimation of acquisition of shares.
21. Noticees submitted that there is no delay in filing the disclosure because the shares arise out of the sanctioned scheme of amalgamation were allotted on September

24, 2020 and the declaration was given on September 26, 2020 which is within the timelines as provided in the Regulations. Noticees received an observation from BSE one and half month after their disclosure and they replied to BSE promptly on the same day and submitted the disclosure putting the date in the said appropriate column and it should be read in continuation of their original submission which was made in time and should not be treated as revised.

22. I note that the disclosure filed by the Noticees on September 26, 2020 was not complete as date of acquiring of shares in the disclosure was not mentioned. However, taking into account the submission of the Noticees that first pandemic wave of COVID-19 and lockdown was announced by the Government and everybody was compelled to operate from house with limited infrastructure and the fact that the disclosure of acquisition of 14,35,500 and 14,64,500 shares by Noticee -1 and Noticee 2 was already in public domain, I am inclined to take a lenient view with respect to the alleged violations in this regard.
23. Further, it was alleged in the SCN that the Noticees acquired warrants on March 08, 2023 and hence they were required to make disclosures under regulation 29(2) read with regulation 28(2) of SAST Regulations. However, the disclosure by the Noticees w.r.t. warrants was made on March 05, 2024, i.e., with a delay of 362 days.
24. With respect to above allegations, Noticees admitted the violation and stated that they misconstrued that the warrants being issued to the promoters of the target company, since they had paid only subscription money of Rs. 0.25 and warrants did not carry voting rights, the disclosure under regulation 29(2) was not given as required under the Regulations within 2 working days from the acquisition of warrants. Noticees further submitted that when the merchant banker informed them that the warrants are treated as share for the purpose of disclosure, Noticees made the disclosure. In this regard, I find that under the given circumstances, the Noticees misconstruction of the law is not a valid defence against a charge of failure to make a statutory disclosure.

25. In view of the above, I hold that the allegation that Noticee-1 and Noticee-2 had violated the provisions of regulation 29(2) and 29(3) of SAST Regulations read with regulation 28(2) of SAST Regulations, stands established.

Issue II. Does the violation, if any, attract monetary penalty under section 15H and 15A(b) of the SEBI Act?

26. In the light of the findings and observations brought out against the Noticees in the foregoing paragraphs, it is evident that Noticees have violated the following regulatory provisions:
- (a) Noticee-1 - regulation 3(1) read with regulation 3(3) of SAST Regulations;
 - (b) Noticee-2 - regulation 3(2) read with regulation 3(3) of SAST Regulations;
 - (c) Noticee-1 and Noticee-2 - regulation 29(2) and 29(3) of SAST Regulations read with regulation 28(2) of SAST Regulations.
27. With regard to levy of monetary penalty, Noticees submitted that they have not made disproportionate gain or unfair advantage as a result of the delay in open offer, no loss has been caused to an investor or group of investors as a result of default, the nature of default is not regular in nature, the acquirers are and have been the existing promoters of the target company and they acted in *bona fide* manner. In this regard, I find from the discussions made hereinabove and other material available on record that there is considerable delay on the part of the Noticees in making open offers for acquiring shares of the target company and also delayed in filing disclosures to stock exchange for acquiring shares and warrants in violation of the SAST Regulations. Since there are two separate instances of violation of section 15H by Noticees, i.e., violation pertaining to the First Triggering Event (2023) with respect to Noticee-2 and violation pertaining to Second Triggering Event (2024) with respect to Noticee-1, both arising out of different set of transactions, the penalties are imposed accordingly.
28. In this regard, reference is drawn to the finding of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Komal Nahata v. SEBI (Appeal No. 5 of 2014 dated January 27, 2014)* wherein it 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 noncompliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure”.

29. Further, in Appeal No. 78 of 2014 in the matter of *Akriti Global Traders Ltd. v. SEBI*, the Hon'ble SAT vide order dated September 30, 2014 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*”.
30. Reliance is also placed on the judgment of Hon'ble Supreme Court in the matter of *SEBI v. Shriram Mutual Fund* [2006] 68 SCL 216 (SC), wherein it was, *inter alia*, 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. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not.*”
31. In view of the above, the aforesaid violations make Noticees liable for penalty under sections 15A(b) and 15H 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 therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;.”
- “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) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or
(ii) make a public announcement to acquire shares at a minimum price; or
(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or
(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,
he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.”

Issue III. If so, what would be the monetary penalty that can be imposed upon Noticees taking into consideration the factors stipulated in section 15-J of the SEBI Act read with rule 5(2) of the Rules?

32. While determining the quantum of penalty, the following factors stipulated in section 15-J of the SEBI Act are taken into account: -

“Factors to be taken into account while adjudging quantum of penalty

15J While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or 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 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.”

33. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to Noticees or the extent of loss suffered by the investors as a result of non-compliance to the provisions of SAST Regulations is not available. With respect to the repetitive nature of the default, I do not find anything on record against the Noticees. However, I note that the findings of the examination brought out a number of instances where Noticees violated the provisions of SAST Regulations as they had delayed in giving an open offer for acquisition of shares of the target company and delayed the filing of disclosures to stock exchange for acquisition of shares and warrants. In this regard, the fact that the Noticees made

a delayed open offer vide Letter of Offer dated June 24, 2024, is taken into account while adjudging the quantum of penalty.

ORDER

34. Taking into account the facts and circumstances of the case, material available on record, submissions of the Noticees, findings made hereinabove and factors mentioned in section 15J of the SEBI Act, in exercise of the powers conferred upon me under section 15-I of SEBI Act, 1992 read with rule 5 of the Rules, I hereby impose the following monetary penalty on the Noticees:

Noticee No.	Name of Noticee	Provisions violated	Penalty Provisions	Amount of penalty (in ₹)
1	Nilesh Malshi Savla	Regulation 3(1) read with regulation 3(3) of SAST Regulations	Section 15H of the SEBI Act	₹10,00,000/- (Rupees Ten Lakh Only)
2	Meena Nilesh Savla	Regulation 3(2) read with regulation 3(3) of SAST Regulations	Section 15H of the SEBI Act	₹10,00,000/- (Rupees Ten Lakh Only)
1 and 2	Nilesh Malshi Savla and Meena Nilesh Savla	Regulation 29(2) and 29(3) read with regulation 28(2) of SAST Regulations by the Noticees.	Section 15A(b) of the SEBI Act	₹1,00,000/- (Rupees One Lakh Only) Noticee-1 and 2 are jointly and severally liable to pay the said penalty.

In my view, the said penalty is commensurate with the violations committed by Noticees in this case.

35. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

36. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.
37. In terms of rule 6 of the Rules, copy of this order is sent to the Noticees and also to the SEBI.

Place: Mumbai

Date: July 28, 2025

JAI SEBASTIAN

ADJUDICATING OFFICER