BEFORE SECURITIES AND EXCHANGE BOARD OF INDIA

EXECUTIVE DIRECTOR, V. S. SUNDARESAN

Final order under sections 11(1), 11(2)(h), 11(4), 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 read with regulation 32 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 in respect of:

Table 1—Particulars of the Noticees		
***Noticee* No.**	**Name**	**PAN / DIN / Commercial Register Number / Passport Number**
1	Markab Capital WLL	CRN in Kuwait: 392352
2	Ahmad Mohammad AA Al Omani	Civil ID no. 266061101145, Passport no. P0560928
3	Spencer John Wilson	British Passport no. 508244736
4	Markab India SPV Private Limited	PAN: AAMCM7283L
5	Nazeer Azam Sulthan	PAN: ALEPN1421F, DIN: 08072833
6	Uday Narayan Joshi	PAN: AAAPJ5792N, DIN: 02299219
7	Komandur Rajgopalan Ravi Kumar	PAN: AARPR5996F

(*The aforesaid entities are hereinafter individually referred to by their respective names / Noticee Nos. and collectively as* ***"Noticees"****)*

Background of the Company:

1. Uniply Industries Limited (hereinafter referred to as **"Uniply" / "Target Company"**) is listed on BSE Limited (hereinafter referred to as **"BSE"**) and National Stock Exchange

of India Limited (hereinafter referred to as **"NSE"**).

Show cause notice:

2. The present proceedings pertain to the Show Cause Notice dated September 9, 2021 (hereinafter referred to as "SCN") issued by Securities and Exchange Board of India ("**SEBI**") to the 7 *Noticees* mentioned in the table 1 on page 1. The SCN contained, inter alia, the following observations and allegations:

3. On July 3, 2019, M/s Markab Capital WLL, Kuwait, (hereinafter referred to as **"Acquirer No. 1" / "*Noticee* No.1"/ "Markab Kuwait"**) and M/s Markab India SPV Private Limited (hereinafter referred to as **"Acquirer No. 2" / "*Noticee* No.2"/ "Markab India"**) (hereinafter collectively referred to as **"Acquirers"**) had entered into a share purchase agreement (hereinafter referred to as **"SPA"**) with the sellers namely, Mr. Keshav Kantamneni, M/s KKN Holdings Private Limited and M/s Madras Electronic Solutions Private Limited (hereinafter collectively referred to as **"sellers"**). The salient features of the SPA were inter alia, as under:

   3.1. The sellers belong to the promoter group of Uniply.

   3.2. The sellers were collective beneficial owners of 4,58,28,268 fully paid-up equity shares of face value of ₹ 2 each, comprising 27.74% of total paid-up equity share capital of the Target Company. The sellers were also the beneficial owners of 32,32,954 warrants of face value of ₹10 each and issued at a premium of ₹400.85 [issue price ₹410.85 each and 25% paid up (i.e. actual payment made by warrant holder for each warrant was 25% of the issue price i.e. ₹ 102.7)]. Upon conversion, each warrant would convert into 5 equity shares of face value of ₹ 2 each.

   3.3. The sellers *agreed to transfer management control* and sell to the Acquirers, 3,42,23,835 equity shares from their existing shareholdings (constituting 20.71%) and 32,32,954 warrants owned by them. The Acquirers agreed to purchase equity shares at the rate of ₹ 82 per share and warrants *at par*, aggregating total purchase consideration of ₹ 3,13,84,19,257 (₹ 2,80,63,54,470 for equity shares and ₹ 33,20,64,787 for warrants).

3.4. **Details of sale:**

3.4.1. Equity Shares:

Table 2—Details w.r.t equity shares to be sold under the SPA				
Name of Sellers	**No. of equity share sold**	**% of paid-up capital**	**Sale price per equity shares (in ₹)**	**Sale Consideration (in ₹)**
Mr. Keshav Kantamneni (Seller 1)	85,81,364	5.19	82	70,36,71,848
M/s KKN Holdings Private Limited (Seller 2)	1,84,92,661	11.19	82	1,51,63,98,202
M/s Madras Electronic Solutions Private Limited (Seller 3)	71,49,810	4.33	82	58,62,84,420
Total	**3,42,23,835**	**20.71**	**82**	**2,80,63,54,470**

3.4.2. Warrants: Sellers agreed to sell 32,32,954 warrants (convertible into 1,61,64,770 equity shares) to acquirers *at par,* aggregating sale consideration of ₹ 33,20,64,787 for warrants.

3.5. **Details of Acquisitions:**

3.5.1. Equity shares:

Table 3— Details of acquisitions to be made by the two acquirers under the SPA					
Name of Acquirers	**No. of equity share agreed to be acquired**	**Shares agreed to be acquired from**	**% of paid-up capital**	**Purchase price per equity shares (in ₹)**	**Purchase Consideration (in ₹)**
Markab Capital WLL	3,42,19,835	Seller 1, 2, 3	20.71	82	2,80,60,26,470
Markab India SPV Private Limited	4,000	Seller 1	0	82	3,28,000
Total	**3,42,23,835**		**20.71**	**82**	**2,80,63,54,470**

3.5.2. Warrants: Acquirers agreed to buy 32,32,954 warrants (convertible into

1,61,64,770 equity shares) from seller *at par*, aggregating purchase consideration of ₹ 33,20,64,787 for warrants.

3.6. The calculation of acquisition of shares of Uniply as per SPA is as under:

Table 4—Calculation of total acquisition by the acquirers under the SPA					
	Existing Capital Equity capital (Pre-conversion of warrants)	**Percentage (%)**	**Equity shares upon conversion of Warrants**	**Emerging Capital Equity capital (Post conversion of all warrants)**	**Percentage (%)**
Total Paid up equity share capital	16,52,13,420	100	2,50,40,685*	19,02,54,105	100
Total Sellers Holding	4,58,28,268	27.74		4,58,28,268	24.08
Acquisition of equity shares under SPA	3,42,23,835	20.71		3,42,23,835	17.99
Acquisition of equity shares upon conversion of warrants under SPA				1,61,64,770	8.50
Acquirer's total acquisition under SPA				***5,03,88,605#***	***26.49***
Open offer size 26% of new emerging capital				4,94,66,067	26

** Total 50,08,137 warrants convertible into 2,50,40,685 equity shares. One warrant is convertible into 5 equity shares*

 # The acquirer had agreed to acquire total 5,03,88,605 [3,42,23,835 (existing shares) + 1,61,64,770 (new shares) = 5,03,88,605 equity shares] equity shares representing 26.49% voting share capital, as per emerging capital, in the target company.

4. On July 3, 2019, Acquirers also entered into a Memorandum of Understanding

(hereinafter referred to as **"MoU"**) with a Merchant Banker named D & A Financial Services (P) Limited ("hereinafter referred to as **"Merchant Banker" / "MB" / "Manager to the open offer"**) to manage the aforesaid acquisition / takeover of the Target Company.

5. Pursuant to the above, in terms of regulations 3(1) and 4 of the Takeover Regulations, Merchant Banker on behalf of the Acquirers, vide letter dated July 3, 2019 filed a public announcement dated July 3, 2019 to make an open offer, inter alia, with Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**).

6. The salient features of the public announcement dated July 3, 2019 (hereinafter referred to as **"PA"**) are, *inter-alia,* as under:
   6.1. On July 3, 2019, acquirers signed SPA with the sellers to acquire 3,42,23,835 equity shares constituting 20.71% of the total existing paid up equity share capital and constituting 17.99% of the emerging capital, and 32,32,954 warrants of ₹ 10 each, upon full conversion into equity share capital resulting into 1,61,64,770 equity shares of face value of ₹ 2 each, constituting 8.50% of the Emerging Capital of the Target Company along with complete control and management of the Target company.
   6.2. "Emerging Capital" includes existing total paid up equity share capital of 16,52,13,420 equity shares of face value of ₹ 2 each and 2,50,40,685 equity shares of face value of ₹ 2 subsequent to conversion of total 50,08,137 warrants.
   6.3. As on July 3, 2019, Acquirers hold *nil* equity shares representing *nil* % of the total paid up equity share capital of Target Company.
   6.4. After successful completion of open offer, the acquirer shall acquire substantial shares / voting rights along with complete control over the management and affairs of the target Company.
   6.5. An open offer is being made to the public shareholders of the Target Company for acquisition of 4,94,66,068 equity shares, constituting 26% of the emerging voting share capital of the company, at the price of ₹ 82 per equity share, aggregating to a consideration of up to ₹405.62 Crores assuming full acceptance by the Acquirers.

6.6. The open offer is made in compliance with regulations 3(1) and 4 of the Takeover Regulations.

6.7. The Detailed Public Statement (hereinafter referred to as **"DPS"**) is to be issued in accordance with regulation 13(4) of the Takeover Regulations by July 10, 2019 (i.e. within five working days of PA made on July 3, 2019).

6.8. The Acquirers are aware of their obligations and have adequate financial resources to meet their obligation under the offer and would comply with their obligations under the Takeover Regulations.

7. *Connection between Noticees:* Acquirer No. 2 is the wholly owned Indian subsidiary of the Acquirer No. 1. Mr. Ahmad Mohammad A A AL Omani is the person in control of the Acquirer No. 1 which in turn controls Acquirer No. 2.

7.1. As per Acquirer No. 1's letter dated July 3, 2019, Mr. Ahmad Mohammad A A AL Omani and Mr. Spencer John Wilson were directors of the Acquirer No. 1 as on July 3, 2019 i.e. as on date of SPA and PA.

7.2. Mr. Nazeer Azam Sulthan, Mr. Uday Narayan Joshi and Mr. Komandur Rajgopalan Ravi Kumar are the Directors of the Acquirer No. 2. As per MCA database, the details of tenures of directors are as under:

Table 5—Tenures of directors of acquirer no. 2

***Noticee* No.**	**Name**	**DIN**	**Date of Appointment**	**Date of Cessation**
1	Nazeer Azam Sulthan	08072833	June 10, 2019	August 14, 2019
2	Uday Narayan Joshi	02299219	June 20, 2019	continuing
3	Komandur Rajgopalan Ravi Kumar	00013473	August 14, 2019	continuing

8. As per the provisions of regulation 13(4) of Takeover Regulations, pursuant to the public announcement made under regulations 13(1) and 13(2) of Takeover Regulations, a DPS was to be published by the acquirer through the MB in accordance with regulations 14 and 15 of Takeover Regulations, *not later than five working days of the public announcement.*

9. As per regulation 17 of Takeover Regulations, the Acquirer, shall create an escrow

account towards security for performance of his obligations under Takeover Regulations not later than two working days prior to the date of the DPS, and deposit in escrow account, 25% of the offer consideration as the Cash Deposit or 25% of the offer consideration in form of a Bank Guarantee in favour of the MB together with 1% of offer consideration as Cash Deposit.

10. In view of the aforesaid, with regard to the open offer, the MB had made the following correspondences with SEBI:

    10.1. Vide an email dated July 10, 2019, the Merchant banker informed that pursuant to the public announcement, the DPS in terms of regulation 13(4) of the Takeover Regulations was required to be published within five working days i.e. July 10, 2019, however due to non-deposit of required amount by the Acquirers in the escrow account in terms of regulation 17 of Takeover Regulations, the DPS was not published.

    10.2. Vide letter dated July 24, 2019, the MB informed that Escrow account was opened by the Acquirers on July 6, 2019. The acquirers through emails dated July 8, 2019, July 9, 2019, letters dated July 11, 2019, July 18, 2019 and July 22, 2019 had assured that they are in the process of reinitiating the deposit and compliance of Escrow Requirements. However, till July 24, 2019 Escrow account remained unfunded.

    10.3. Vide an email dated July 29, 2019, the MB informed that despite various assurances given by the Acquirers, escrow requirements, as specified in regulation 17 of Takeover Regulations, were not complied by the Acquirers so far, therefore the DPS could not be released as per the schedule.

    10.4. Vide letter dated August 23, 2019, the MB informed that it had withdrawn its consent to act as 'manager to the open offer' and MOU dated July 3, 2019 was terminated due to breach/default of the conditions of MOU committed by the Acquirers.

11. Pursuant to the above, SEBI vide letter dated August 26, 2019 advised Acquirers and MB to urgently take necessary steps to conclude the pending open offer in the target company and ensure compliance in an expeditious manner. SEBI vide an email dated

August 26, 2019, had called Acquirers for a meeting. Acquirers vide email dated August 26, 2019, requested to postpone the meeting by ten days. Thereafter, SEBI once again vide the email dated August 28, 2019 called Acquirers for a meeting. However, Acquirers vide email dated September 4, 2019 once again requested, for postponement of meeting. In view of the request of the Acquirers, the meeting was rescheduled for September 13, 2019. However, the Acquirers did not attend the same.

12. After the public announcement of open offer, Acquirers did not acquire any shares of Uniply from the promoter-sellers and / or from the open market.

13. As brought out in the SCN, as per regulation 2(1)(a) i.e. definition of "acquirer"; regulation 3(1) relating to acquisition of 25% or more shares or voting rights; regulation 4 relating to acquisition of control and the provisions of regulation 13(1) and 13(4) relating to public announcement, open offer requirement under Takeover Regulations, are triggered by Acquirer along with persons acting in concert on (i) *agreeing to acquire shares* of the Target Company above the limits prescribed; and/or (ii) *agreeing to acquire control* of a Target Company. Therefore, agreement / decision / intention to acquire the shares and control of the Target Company by the acquirers triggered the open offer requirement under regulations 3(1) and 4 of Takeover Regulations respectively.

14. In view of the above, it is alleged that:

    14.1. Acquirers had entered into an SPA dated July 3, 2019 with an intention to acquire total 5,03,88,605 equity shares [3,42,23,835 (existing shares) + 1,61,64,770 (new shares) = 5,03,88,605 equity shares] representing 26.49% voting rights, as per emerging capital, in the target company along with control and management of the target company from the sellers / existing promoters. Thus, Acquirers were required to make a public announcement of an open offer to acquire shares and control of the target company in terms of provisions of regulations 3(1) and 4 of the Takeover Regulations and take subsequent steps in accordance with the Takeover Regulations, which they failed to do. Thus, it is alleged that Acquirers have violated the provisions of regulations 3(1) and 4 of the Takeover Regulations read with section 12A(f) of SEBI Act.

14.2. Regulation 13(4) of Takeover Regulations provides that pursuant to PA, a DPS shall be published by the acquirers through the manager to the open offer not later than five working days of the PA, which Acquirers failed to do. Further, as per the provisions of regulation 18(2) of Takeover Regulations, the letter of offer shall be dispatched to the shareholders not later than seven working days from the receipt of comments from the Board, which Acquirers failed to do. Thus, it is alleged that Acquirers had failed to publish the DPS and dispatch the letter of offer to the shareholders of the company within the stipulated time and deprived them of the exit opportunity by abandoning the mandatory open offer. Hence, it is alleged that Acquirers have violated the provisions of regulations 13(4) and 18(2) of the Takeover Regulations.

14.3. Regulation 25(1) of Takeover Regulations provides that prior to making the public announcement of an open offer for acquiring shares under Takeover Regulations, the Acquirers shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and he is able to implement the open offer, subject to any statutory approvals for the open offer that may be necessary. It is noted that Acquirers have stated in the PA that they were aware of their obligations and had adequate financial resources to meet their obligations under the offer and would comply with their obligations under the Takeover Regulations. It is alleged that Acquirers did not deposit the required amount in the escrow account in terms of regulation 17(1) of the Takeover Regulations and failed to ensure that firm financial arrangements was in place to implement the open offer in terms of regulation 25(1) of the Takeover Regulations. Hence, it is alleged that Acquirers have violated the provisions of regulations 17(1) and 25(1) of the Takeover Regulations.

14.4. Regulation 25(5) of Takeover Regulations states that the acquirer along with person acting in concert shall be jointly and severally responsible for fulfillment of applicable obligations under the Takeover Regulations. Thus, it is alleged that as per regulations 25(5) of Takeover Regulations, Acquirers are jointly and severally responsible for fulfillment of applicable obligations under the Takeover Regulations.

15. At the time of SPA and PA, Mr. Omani and Mr. Wilson were the directors of Markab Kuwait, and Mr. Omani had signed the SPA on behalf of Markab Kuwait. Further, at the time of SPA and PA, Mr. Nazeer and Mr. Joshi were directors of Markab India. Mr. Ravi Kumar joined as director of Markab India on August 14, 2019 and is still continuing i.e. he is the director of Markab India / during the period when it has to complete the open offer process.

16. It is alleged that in view of Section 27(2) of SEBI Act, Ahmad Mohammad AA Al Omani and Spencer John Wilson, being directors of Acquirer No. 1 and Nazeer Azam Sulthan, Uday Narayan Joshi and Komandur Rajgopalan Ravi Kumar being directors of Acquirer No. 2, had not been diligent and the non-compliance of the provisions of regulations 3(1), 4, 13(4), 17(1), 18(2) and 25(1) of the Takeover Regulations and section 12A(f) of SEBI Act is attributable to their neglect and are thus liable to be proceeded against along with Acquirers No. 1 and 2. Therefore, it is alleged that Acquirers No. 1 and 2 have violated the provisions of Regulations 3(1), 4, 13(4), 17(1), 18(2) and 25(1) of the Takeover Regulations and Section 12A(f) of SEBI Act and Mohammad AA Al Omani and Spencer John Wilson, being directors of Acquirer No. 1 and Nazeer Azam Sulthan, Uday Narayan Joshi and Komandur Rajgopalan Ravikumar, being directors of Acquirer No. 2 are liable to be proceeded against for the above said violations.

17. Vide the SCN, the *Noticees* were called upon to show cause as to why suitable directions under Sections 11B(1) and 11(4) read with Section 11(1) of SEBI Act read with regulation 32 of Takeover Regulations should not be issued against them for the alleged violations noted above. The *Noticees* were also called upon to show cause as to why appropriate monetary penalty under Sections 11B(2) and 11(4A) read with Section 15H(ii) and (iii) of SEBI Act read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (**"Penalty Rules"**) should not be levied upon them.

SERVICE OF SCN AND RELATED CORRESPONDENCE:

18. The SCN dated September 9, 2021 was issued to all the *Noticees* on the addresses and the email IDs available on record. In respect of Markab Kuwait, Mr. Omani and Mr.

Wilson, the SCN was not delivered on the addresses available on record. In respect of Markab Kuwait and Mr. Omani, SCN was sent to the email address of Mr. Omani and did not bounce back. Thereafter, a Whatsapp delivery of SCN was also made to Markab Kuwait and Mr. Omani on the mobile number of Mr. Omani available on record. However, in respect of Mr. Wilson, there was no email address available. As regards the other *Noticees*, the SCN was delivered on their respective address / email on record. The table below depicts the service of SCN to the *Noticees*:

Table 6—Service of SCN				
***Noticee* No.**	**Name**	**Status of service attempted on the address**	**Status of service through e-mail**	**Status of service through Whatsapp**
1.	Markab Capital WLL	Not delivered on the addresses available on record.	Email sent to the email address of Mr. Omani which didn't bounce back	Delivered
2.	Ahmad Mohammad AA Al Omani	Not delivered on the addresses available on record.	Email sent to the email address of Mr. Omani which didn't bounce back	Delivered
3.	Spencer John Wilson	Not delivered on the addresses available on record.	Email address not available	Mobile Number not available
4.	Markab India Private Limited	Delivered	—	—
5.	Nazeer Azam Sulthan	Delivered	—	—
6.	Uday Narayan Joshi	Delivered	—	—
7.	K R Ravi Kumar	Delivered	—	—

19. Pursuant to receipt of the SCN, Markab India, Mr. Ravi Kumar, Mr. Joshi and Mr. Nazeer, vide letters dated October 7 / 8, 2021, sought 2 months' time to file their replies in the matter. Thereafter, vide a letter dated October 28, 2021, Markab India, Mr. Ravi Kumar and Mr. Joshi sought inspection of documents. Mr. Nazeer also made a similar request vide a letter dated December 11, 2021.

20. Vide a letter dated December 28, 2021, Markab India, being a wholly owned subsidiary of Markab Kuwait was asked to deliver a copy of the SCN to Markab Kuwait and its directors namely, Mr. Omani and Mr. Wilson (as recorded in the SCN). A follow up letter dated January 20, 2022 was sent to Markab India and its directors to explain the steps they have taken in this regard. Thereafter, vide emails dated January 24, 2022, copies whereof were marked to SEBI, Mr. Ravi Kumar and Mr. Joshi intimated Mr. Omani about the SCN issued by SEBI. In the said emails, they also requested Mr. Omani to deliver the copy of the SCN to Mr. Wilson as his contact details were not available with them. Mr. Joshi and Mr. Ravi Kumar also forwarded the said information to Mr. Omani through courier and Whatsapp (which showed the double tick indicating *delivered*), and sent the details in that regard to SEBI vide letters dated January 27 / 29, 2022.

21. Subsequently, SEBI, vide letter dated February 14, 2022, advised the *Noticees* to file their response to the SCN. As no detailed response to the SCN was received from any of the *Noticees* till March, 2022, vide an email dated March 24, 2022, Markab India, Mr. Joshi and Mr. Ravi Kumar were advised by SEBI to submit their response latest by March 28, 2022. A similar email was sent to Mr. Nazeer on March 25, 2022.

22. Subsequently, replies from Mr. Joshi and Mr. Ravi Kumar dated March 25, 2022 were received by SEBI. Vide separate letters dated March 29, 2022, they informed that they have not received any response from Mr. Omani to their earlier communications forwarding SEBI's SCN. They also stated that they have no idea about any subsidiary of Markab Kuwait nor about any other company run by Mr. Omani in India. It was further stated that they were unaware about whether Mark AB Capital Ltd. Dubai, UAE, Mark AB Capital LLC and Mark AB Investment Capital India Pvt. Ltd are related to Markab Kuwait. A similar response was received from Mr. Nazeer vide a letter dated April 5, 2022.

PERSONAL HEARING:

23. An opportunity of personal hearing was provided to the *Noticees* on September 29,

2022. For the said hearing, the authorized representatives of *Noticees* [*except Markab Kuwait (Noticee No. 1) and Mr. Omani (Noticee No. 2)*] appeared and made their submissions. The *Noticees* also sought time for filing further written submissions in the matter, which were made subsequently.

REPLIES / WRITTEN SUBMISSIONS:

24. All the *Noticees* [*except Markab Kuwait (Noticee No. 1) and Mr. Omani (Noticee No. 2)*] had submitted their replies to the SCN. Pursuant to the personal hearing, they also submitted their written submissions. The replies / submissions of the *Noticees* are summarized as under:

24.1. **Spencer John Wilson** (***Noticee* No. 3)**

24.1.1. Mr. Spencer Wilson is a British citizen (British Passport No. 508244736) and has been residing in Canada since 2018. He is a person of stellar repute, has maintained a spotless record, and has not been subjected to any regulatory action, except for the present Notice. He has served as an independent director of several companies listed on the London Stock Exchange, and has a positive image in the business community.

24.1.2. He is not connected to any Indian entity, including the Target Company, and has not been involved in any transaction in relation to any Indian entity. While he had worked for Mr. Ahmad Mohammad AA Al Omani from 2010 to 2017, in a different entity called Markab International Trading FZE, registered in the UAE, he had not been associated with him or the *Noticee* No 1 during the concerned acquisition. He has neither worked with M/s Markab Capital WLL, nor with M/s Markab India SPV Private Limited.

24.1.3. The allegations in the SCN have been made only on the basis of a letter dated July 3, 2019 sent by *Noticee* No. 1 to the MB, which mentions that Mr. Wilson is a director of *Noticee* No. 1.

24.1.4. *Noticee* No. 3's association with *Noticee* No. 2 ended in 2017 and he was never connected to *Noticee* No. 1. If *Noticee* No. 3 was indeed a director of *Noticee* No. 1, then the address provided by *Noticee* No. 1 in the July Letter

should have been accurate. This supports the fact that stating *Noticee* No. 3's name as a director of *Noticee* No. 1 in the July Letter is either a gross error or a deliberate fraud by *Noticee* No.1.

24.1.5. *Noticee* No.3 moved to Canada in 2018, and around the time of the concerned acquisition, he was attending the University of Toronto, Canada, and thereafter worked for a call center business where he continues to work till date. He was attending the University in person and was conferred the degree of Bachelor of Arts in October, 2019.

24.1.6. The above completely disproves the assumption that *Noticee* No. 3 was a director in *Noticee* No. 1, especially during the period of the concerned acquisition, i.e., July-August, 2019.

24.1.7. From a perusal of the annexures to the Notice shared by SEBI, it can be seen that there is simply no mention of *Noticee* No. 3 in the entire transaction. He had neither been a signatory to the SPA signed between the Acquirers and the Sellers, nor had he signed the memorandum of understanding with the Merchant Banker. Further, he has not signed any other document in relation to the concerned acquisition or the pursuant open offer. There is no other document which independently even alludes to *Noticee* No. 3 holding any directorship in *Noticee* No. 1. In fact, SEBI has not relied upon even a single piece of communication between him and any other entity to establish that he was even aware of such a company, much less the concerned acquisition, or the open offer pursuant thereto.

24.1.8. It is extremely relevant to note the contents of the letter sent by *Noticee* No. 2 on March 26, 2019. In that letter, *Noticee* No. 2 unequivocally states that *Noticee* No. 3 was working with him in a company registered in the UAE. It is further stated that *Noticee* No. 2 had let *Noticee* No. 3 go and that *Noticee* No. 3 was no longer employed with him as on the date of the letter. It is also stated that the company in which *Noticee* No. 3 worked was shut down after he was let go.

24.1.9. It is apparent that SEBI has failed to carry out any independent investigation, or rely on any other document apart from the July Letter

provided by *Noticee* No. 1. It is pertinent to clarify that the document SEBI has relied on is not a document procured from a regulatory, statutory, or governmental authority based in either Indian or foreign jurisdiction, but merely a letter issued by *Noticee* No. 1 and signed by its director, *Noticee* No. 2.

24.1.10. MB had, *inter alia*, filed a transaction note that outlined the flow of the transaction in relation to the open offer pursuant to the Concerned Acquisition. As a part of this note, the MB has stated that *Noticee* No. 3 was a director of Markab Capital WLL, and that such statement was made after verifying the directorship details of *Noticee* No. 1. In this regard, it is seen that the MB has relied on certain documents such as the certified charter document, and a letter from the Commercial Register Department of the Ministry of Commerce and Industry, Kuwait to establish and verify the identity of *Noticee* No. 1 as a registered company bearing license no. 392352. With respect to *Noticee* No. 2, the MB has relied on documents such as the passport and civil id of *Noticee* No. 2 in establishing that he was the sole shareholder of *Noticee* No. 1. However, the Merchant Banker has not referred to any document to establish that *Noticee* No. 3 was in fact a director of *Noticee* No. 1.

24.1.11. While the MB expressly stated that it had verified the details of the directors of *Noticee* No. 1, it failed to file with SEBI any document that would provide the details of *Noticee* No. 3. It appears that the MB simply relied on the translated documents submitted by *Noticee* No. 1, instead of conducting its own due diligence by procuring the originals from *Noticee* No.1.

24.1.12. Perplexed by the allegations in the SCN, *Noticee* No. 3 engaged the services of a lawyer in Kuwait to obtain the official filing documents of the entity in which he has been falsely named as a director, i.e. *Noticee* No. 1. [*A copy of the original document in Arabic and the English translation of the document has been enclosed.*] It is evident from these documents that the correct name of *Noticee* No. 1 is 'Markab Capital General Trading Co. SPC'. It should be noted that the Commercial Register Number of this entity is the same as the purported Commercial Register Number of *Noticee* No. 1

mentioned in the documents shared by SEBI by way of SEBI Letter dated June 15, 2022, i.e. 392352.

24.1.13. The Extract Certificate of the Commercial Register for *Noticee* No. 1 mentions the legal status of *Noticee* No. 1 as a 'sole person company', and mentions *Noticee* No. 2 as the only partner/ manager of the company. As the name suggests, a sole person company is a legal entity that can only have a single shareholder, act as the sole partner, and be the manager of such company.

24.1.14. In the present context, wherein the legal status of *Noticee* No. 1 is that of a sole person company, and *Noticee* No. 2 is mentioned as the only partner/manager of the company, and in the absence of any other verified document that would indicate him as a director of *Noticee* No. 1, *Noticee* No. 3 cannot be presumed to be a director in *Noticee* No. 1, which is a single person company.

24.1.15. As mentioned hereinabove, *Noticee* No. 3 is a reputed individual who holds a British passport and has held board positions in various listed companies in the United Kingdom. It is submitted that, from the abovementioned details, it appears that *Noticee* No. 1 and *Noticee* No. 2 used the name of *Noticee* No. 3 to lend credibility to them. By failing to perform adequate due diligence, the MB has allowed this fraud committed by *Noticee* No. 1 and *Noticee* No. 2 to play out. By merely relying on the July Letter, which is submitted to be completely false and misleading, and by not adducing any other evidence to assert and allege that *Noticee* No. 3 was a director of *Noticee* No. 1, SEBI has attempted to shift the burden of proof onto *Noticee* No. 3 to prove he was not a director.

24.1.16. For Section 27(2) to be applicable, the alleged contraventions or violations have to be committed with the consent or connivance of the concerned director. It has to be established that such person was in charge of, or was involved in conducting the business of the company.

24.1.17. In order to make an allegation that *Noticee* No. 3 has failed to carry out his duty as a director of *Noticee* No. 1, SEBI has to first prove that *Noticee* No. 3

is a director of *Noticee* No. 1, and is required to provide at least prima facie evidence to prove that *Noticee* No. 3 was a director.

24.1.18. During the hearing, the competent authority had raised a query as to whether the *Noticee* No. 3 had filed any complaints, or initiated any proceedings against *Noticee* Nos. 1 and 2, for falsely naming him as a director of the *Noticee* No. 1. In this regard, firstly, it is submitted that *Noticee* No. 3 had never been associated with *Noticee* No. 1 in any capacity, and thereby had never served as a director of such entity. In fact, the SCN was never received by *Noticee* No. 3 as the address stated in the Notice has not been his residence for almost ten years. He became aware of the Notice only after going through the alerts with his name in his personal inbox around February, 2022. After becoming aware of such Notice, he has been primarily concerned with the current proceedings initiated by SEBI, and has sought to clear his name from such proceedings at the earliest.

24.1.19. *Secondly,* it is submitted that *Noticee* No. 1 is registered in Kuwait and *Noticee* No. 2 is a resident national of Kuwait. The local jurisdiction of Kuwait, to the understanding of *Noticee* No. 3, is skewed to favour its citizens, and any retaliatory act by either entities may force the *Noticee* No. 3 to be subjected to legal action in Kuwait, and may require him to attend such proceedings in person. Given that he is in no way or manner associated with any entity, either in Kuwait or India, and is presently working as a mere employee of a call centre business in Canada, the *Noticee* No. 3 seeks to avoid any further legal proceedings in any jurisdiction, that will come at great cost to his resources, as well as time

24.1.20. *Thirdly, Noticee* No. 3 has provided all available material to establish a bona fide case that he has been wrongly named as a director of *Noticee* No. 1, independent of any action against that initiated by him against such entities. Further, it should be noted that *Noticee* No. 3 has filed a reply and appeared before SEBI, which is not the case with *Noticee* Nos. 1 and 2, as is evident from the personal hearing on September 29, 2022. This is testament to *Noticee* No. 3's bona fides.

24.1.21. Accordingly, it is submitted that, the *Noticee* No.3's decision to not initiate any action against *Noticee* Nos. 1 or 2 at this juncture, should not prejudice his position, or the submissions made on his behalf, in the Reply, and during the personal hearing.

24.2. **Markab India SPV Private Limited (*Noticee* No. 4)**

24.2.1. Though SCN is one, multiple actions have been proposed such as debarment under Section 11 of SEBI Act and levying monetary penalty under 4 (1) of AO Rules, 1995 against us. It is in gross violation of Article 20(2) of the Constitution of India, which stipulates that no person shall be prosecuted and punished for the same offence, more than once.

24.2.2. Under Rule 4 of Penalty Rules, the proceedings are being split into two separate and distinct stages, i.e. First Stage being the issuance of SCN as to why an enquiry should not be held and if the conclusion arrived at the first stage is that an enquiry is to be held, the second stage would be for imposing the penalty. But in the SCN first stage has been skipped and it appears that the Ld. competent authority has already held that we are guilty and we have been show caused as to why penalty should not be levied. In this connection, we like to place reliance on the judgment of the Guahati Hight Court in Sunita Agrawal vs Securities and Exchange Board of India & Anr (WP(C)/530/2022) wherein, the Hon'ble High Court has held that prejudice was caused to the Noticees because of the composite Notice issued to the Noticees.

24.2.3. Markab SPV is a company incorporated on June 10, 2019, at present having its registered office at Avanta Centre 2"d Floor, Block E, International Trade Tower, Nehru Place, New Delhi- 110019 having paid up capital of ₹10,00,000/- only divided into 1 lakh shares of ₹ 10/- each. Markab SPV was wholly owned subsidiary of Markab Capital WLL, a company registered in Kuwait.

24.2.4. Markab Capital WLL is the multi-family office and Merchant banking arm of several large Middle Eastern family groups. They have got high net worth clients based throughout the Middle East. Markab WLL manages a diversified

portfolio of private equity investments. Their private equity activities include the following-

- Strategic management buy-outs and buy-ins
- Expansion capital for existing operations
- Ownership transformation
- Investment in Pre-IPO companies

24.2.5. As the name suggests, Markab SPV was only a special purpose vehicle with nominal capital of ₹ 10 lakh only and its main purpose was to act only as a facilitator of the transaction proposed by Markab WLL. The office of Markab SPV in India was to act only as a representative office in India of Markab WLL, which is a global conglomerate and intended to acquire a listed company in India. The full control of Markab SPV was with Markab WLL since Markab SPV was a Wholly Owned Subsidiary ("WOS") of Markab WLL.

24.2.6. The total shares that were proposed to be acquired by the Acquirer no. 2 were 4,000 equity shares constituting 0.00% of the existing paid up share capital of the Target Company under the SPA.

24.2.7. Considering that Markab SPV was a WOS of Markab WLL, the complete console of Acquirer No. 2 was with Acquirer No. 1 and also nearly all the shares of Uniply were being acquired by Acquirer No. 1. This further establishes that Acquirer No.2 was only facilitator for the said transaction and did not have any role. This is corroborated from the Public Announcement, which shows Markab SPV was controlled by Markab Capital WLL and we were shown as part of Markab Capital Group.

24.2.8. Even the final financial statements were only being prepared in India, however, the same were approved by Mr. Omani of Markab WLL and only then the financial statements were filed with statutory authorities.

24.2.9. The SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company. SCN is repeating the same allegation again and again and only general allegations have been levelled without any documentary evidence.

24.2.10. We have neither earned any disproportionate gain nor gained any unfair advantage; no harm has been caused to any investor nor any loss has occurred to any investor; and the default, if any, is not repetitive. SCN has also not quantified the alleged profit made by us and/ or loss averted by us.

24.2.11. The following were the directors of Acquirer No. 2 at the time of entering into SPA and at the time of public announcement:-

i) Mr. Nazeer Alam Sulthan

ii) Mr. Uday Narayan Joshi,

24.2.12. Mr. Nazeer signed the SPA and also the public announcement on behalf of Markab SPV. The Memorandum of Understanding entered with the Merchant Banker was also signed by Mr. Nazeer. Therefore, it is established that he was day to day in-charge as a director and was responsible for all the actions and we cannot be held responsible for the same. Mr. Nazeer was only authorized to carry out day to day activities and he was in control on behalf of Markab WLL.

24.3. **Nazeer Azam Sulthan (*Noticee* No. 5)**

24.3.1. I am heading the business in an Oil & Gas EPC Company and have vast experience in executing projects for clients in Middle East and Africa. I started my career in 1991 with a Japanese Automation Major until 2012. I hold a BSc Degree in Physics, B. Tech from MIT and an Executive Masters in Business Administration in Projects and Finance and have more than 25 years of professional experience. I further submit that I have an impeccable track record in terms of compliances and save and except the matter under reference, no adverse direction has ever been passed against me by any regulatory authority including SEBI.

24.3.2. I was a director in Markab India from June 10, 2019 to August 14, 2019 and I was appointed as a Managing Director in the Target Company vide letter dated August 14, 2019. However, I resigned from the directorship of the Target Company vide my letter dated October 30, 2019 which was duly accepted by the Board of the Target Company on November 7, 2019 and the

same was communicated to the stock exchanges on the same date. The letter of the acceptance of my resignation as well as the letter containing information communicated to the stock exchanges mentions that though I was appointed as a director in the target company, I did not join it and I resigned from my directorship vide my letter dated October 30, 2019. I submit that I was neither a director on the Board of the Acquirer nor I was a person acting in concert. I was no longer a PAC when I resigned from the directorship of the Acquirer. I was no longer representing the interest of the Acquirer Company. In no way I was sharing the objective with the acquirer.

24.3.3. Further my letter dated October 30, 2019 also mentions about my e-mail dated October 17, 2019 sent to the Company elaborating upon various issues in the Target Company which required immediate attention and action. In my e- mail I had sought certain clarifications based on the observations in the Audited Annual Reports.

24.3.4. SCN has not brought out my role as a director separately and a common SCN has been issued. As per established legal jurisprudence, the SCN ought to elucidate the role of director and a director cannot be held responsible just by holding position as a director.

24.3.5. The office of Markab SPV in India was to act only as a representative office in India of Markab WLL, which is a global conglomerate and intended to acquire a listed company in India.

24.3.6. At the time of entering into SPA and at the time of public announcement, I was one of the Directors in Acquirer No. 2 and the other director was Mr. Uday Narayan Joshi.

24.3.7. It is submitted that when the Public Announcement was made on July 3, 2019, the price of the shares of the Company was ₹63, however when I resigned from the Target Company, the price of the shares had fallen to ₹ 44.15. I submit that your goodself can itself see that there has been no price rise pursuant to the public announcement unto my resignation in the company and further thereafter. I deny that by failing to make a DPS under Regulation 13(4) of the SAST Regulations, any violation has been made on my part.

24.3.8. I submit that MOU entered with the MB was signed by me as I was authorized by Markab WLL to comply with its directions, as I was the Managing Director of the Acquirer No.2 which was just a SPV of the Acquirer No.1 whose main work was to coordinate, facilitate and act as a representative for Acquirer No.1.

24.3.9. Without prejudice, I submit that Acquirer no. 2 was only to acquire 4,000 shares of Uniply which is NIL percentage of total paid up share capital of Uniply.

24.3.10. In so far as PA is concerned, I submit that PA was made on scheduled date by the acquirers on the date of signing of SPA i.e., on July 3, 2019.

24.3.11. The issues in the Target Company which required immediate attention from the management were personally communicated by me to the MB. Vide my email dated October 17, 2019, I had brought to the notice of the Target Company some issues which I came across in the Audited Balance Sheets of the Target Company and its associates in carrying out the due diligence before the acquisition. Further, I submit that I had kept Mr. MK Doogar of D&A Financial Services Limited informed on a personal level. I had informed him personally by calling him about all the problems faced by Uniply while I was carrying out its due diligence.

24.3.12. The concerns raised by me (in relation to Uniply) have now been corroborated in the Order passed by National Company Law Tribunal Chennai. The Order pronounced for admitting Uniply into Corporate Insolvency Resolution Process. I wish to bring to your kind notice that Para 11 of the said Order states that the first default by Uniply happened in and around May 8, 2019. Therefore, I submit that the concerns raised by me were genuine. I further submit that the first default has happened prior to entering into SPA and this fact/default was not disclosed by Uniply. Hence, due to various concerns observed in Uniply, no further steps could be taken for the open offer.

24.3.13. SCN has been issued in complete contravention of the law laid down by the Hon'ble Securities Appellate Tribunal as SCN cannot be issued merely

because of the fact that one is a director. The SCN can be issued to a director only if a role is ascribed to him in the commission of the alleged violation. Reliance is placed in this regard on the order of Hon'ble SAT in the matter of *P.G. Electroplast Ltd. And Ors. v. SEBI.*

24.3.14. I joined as a director on June 10, 2019 and duly resigned from the directorship on August 14, 2019 which was duly communicated to the Stock Exchange and the communication of SEBI was received on August 26, 2019. Therefore, I did not have any authority or interest in the aforesaid matter.

24.3.15. Further, it was on the direction of Mr. Omani that I reverted back to the mail dated August 26, 2019. I was no longer representing the interest of the Acquirer No. 2. In no way I was sharing the objective with the acquirer. Hence, I submit that I was not representing the acquirer or any person acting in concert with them.

24.3.16. Acquirer No. 1 was based out of Dubai and I also lived in Dubai I was suggested to be a part of the process and was appointed as a Director in Acquirer No. 2.

24.3.17. The SCN has not brought out any concrete figure of the loss incurred by the Indian investors due to the announcement made by the company.

24.4. **Uday Narayan Joshi (*Noticee* No. 6)**

24.4.1. The Examination report of SEBI received under covering letter dated January 6, 2022 has also not found me guilty of violation of any provision of SEBI Act and / or Takeover Regulations and has not recommended any action against me which proves my innocence in the matter. Further, the said SCN has been issued in complete contravention of the law laid down by the Hon'ble Securities Appellate Tribunal as SCN cannot be issued merely because of the fact that one is a director. The SCN can be issued to a director only if a role is ascribed to him in the commission of the alleged violation.

24.4.2. Section 174 (1) of the Companies Act, 2013 stipulates that the quorum for meeting of Board of Directors is two directors. Further Section 174 (2) of the Companies Act, 2013 stipulates that in case the number of directors is

reduced below the quorum fixed for the Board meeting stipulated by sub section 1 (i.e.2 directors), then two directors have to continue for the purpose of increasing the number of directors or for summoning a General Meeting of the Company. I have continued to comply with the aforesaid provisions of the Companies Act and therefore, I am continuing as a Director.

24.4.3. Markab SPV is currently not carrying out any operations.

24.4.4. I have not received any remuneration from either Markab WLL and/ or Markab SPV from the date of my appointment till date.

24.4.5. It has come to notice that the license of the Markab Capital WLL to carry out business has been cancelled.

24.4.6. In the present proceedings the first stage of conducting enquiry has been skipped and SCN has been issued to show cause why penalty should not be levied. In this connection I would like to place reliance on the judgment of the Guahati Hight Court in Sunita Agrawal vs Securities and Exchange Board of India & Anr (WP(C)/530/2022). In light of the judgment of the Hon'ble Gauhati High Court, the SCN is not maintainable, is void ab initio and ought to be withdrawn.

24.4.7. The instant SCN does not bring out my separate role as a director to make me vicariously liable for the provisions of SEBI Act and Takeover Regulations.

24.4.8. I have neither earned any disproportionate gain nor gained any unfair advantage; no harm has been caused to any investor nor any loss has occurred to any investor; and the default, if any, is not repetitive

24.5. **Komandur Rajgopalan Ravi Kumar *(Noticee* No. 7)**

24.5.1. Section 174 (1) of the Companies Act, 2013 stipulates that the quorum for meeting of Board of Directors is two directors. Further Section 174 (2) of the Companies Act, 2013 stipulates that in case the number of directors is reduced below the quorum fixed for the Board meeting stipulated by sub section 1 (i.e. 2 directors), then two directors have to continue for the purpose of increasing the number of directors or for summoning a General Meeting of the Company. I have continued to comply with the aforesaid provisions of

the Companies Act and therefore, I am continuing as a Director.

24.5.2. Considering that Markab SPV was WOS of Markab WLL, the complete control of Acquirer No.2 was with Acquirer No.1 and also nearly all the shares of Uniply were being acquired by Acquirer No. 1. This further establishes that Acquirer No. 2 was only a facilitator of the said transaction and I did not have any role in that also since I joined much later on August 14, 2019. I was only appointed as a director in professional capacity for my expertise in debt syndication, equity finance, budgeting, etc. much after the announcement of proposed takeover.

24.5.3. It is not in dispute that my appointment as a Director was only on August 14, 2019 and it is a matter of record that the alleged Open Offer compliances had triggered on July 3, 2019 which is much prior to my appointment. Therefore, I being appointed as a director subsequent to the trigger for compliances cannot be held liable / responsible.

24.5.4. Even as per the SCN, Acquirers are Noticee No. 1 and Noticee No. 4 and therefore I as a Director cannot be held liable. It is on record that apart from an averment in the SCN, that I was appointed as a Director on August 14, 2019 there is no averment/ allegation with respect to my role in the transaction in question.

24.5.5. I have neither earned any disproportionate gain nor gained any unfair advantage; no harm has been caused to any investor nor any loss has occurred to any investor; and the default, if any, is not repetitive.

24.5.6. I did not have any role in the entire transaction including takeover, signing of SPA and MOU, public announcement, compliances etc. to warrant violation of any provision of SEBI Act and/ or Takeover Regulations.

24.5.7. Acquirer No. 1 conducted due diligence of the target company. After conducting due diligence, it was found that there were deficiencies regarding shortage of funds in Uniply Industries Ltd. Those deficiencies were not disclosed at the time of signing the SPA. Vide letter dated October 17, 2019, Mr. Nazeer had sought information regarding shortage of funds from the Target Company and till date there was no reply from the Target Company.

Hence, Mr. Nazeer vide letter dated October 30, 2019 had resigned from the role of director of the Target Company. Hence, Acquirer No. 1 did not send funds to Acquirer No. 2 and we did not proceed further with the acquisition of shares. Therefore, we deny that we have violated any provisions of Takeover Regulations by not acquiring any shares of the Target Company pursuant to the public announcement.

24.5.8. At the outset, no action has been initiated against MB which is in gross violation of principles of natural justice, equity and fair play and also Article 14 of Constitution of India which guarantees Right to Equality. The entities which are evidently the main players in the alleged fraud have been conveniently left out of the proceedings and we have been roped in the proceedings which establishes that the investigation has been carried out in a biased manner ignoring the aforesaid principles. Hon'ble SAT has held that all the parties involved in any alleged fraud must be proceeded against in an unbiased manner. In the present case no action has been initiated against MB. In view of the same, actions initiated suffers from the vice of inequality and ought to be quashed.

24.5.9. The repetitive nature of offence, if any is one of the factors mentioned in section 15J for levy of penalty and our offence, if any does not fall under the definition of repetitive default. Hence, no penalty ought to be levied.

CONSIDERATION OF ISSUES

25. On a perusal of the observations and allegations brought out in the SCN, replies filed by the *Noticees*, oral / written submissions filed by them and other material available on record, the following issues arise for consideration in the present proceedings:

(1) Whether the acquirers have violated the provisions of the Takeover Regulations as alleged in the SCN?

(2) If the answer to issue no. (1) is in the affirmative, what is the liability of the directors of the acquirers for such violations?

(3) Whether the violations, if any, attract the issuance of directions and imposition of

monetary penalty in terms of the provisions of the SEBI Act and Takeover Regulations?

(4) If answer to issues no. (1), (2) and (3) is in the affirmative, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the *Noticees*?

26. Before proceeding further with the examination of the issues listed above, I find it pertinent to deal with certain common preliminary objections raised by the *Noticees*.

27. A common contention raised by some of the *Noticees* is that though the SCN is one, but multiple actions have been proposed, such as, debarment under section 11 of SEBI Act and levying monetary penalty under the Penalty Rules against the *Noticees*. The same, as contended, is tantamount to double jeopardy and is in gross violation of Article 20(2) of the Constitution of India, which stipulates that no person shall be prosecuted and punished for the same offence, more than once.

28. With reference to the above preliminary objection, I find it relevant to advert to the findings of Hon'ble SAT in the matter of *G. V. Films Ltd*. v. *SEBI* (Order dated February 15, 2021) wherein the Hon'ble SAT held the following:

> *"6. With regard to the issue on the principles of double jeopardy, the learned counsel contended that the company was already debarred for a period of five years and, on the same cause of action, a further penalty of Rs 25 lacs could not be imposed. It was urged that the order of the AO penalizing the company on the same cause of action amounts to double jeopardy. In support of his submission, the learned counsel placed reliance on the decisions of the Hon'ble Supreme Court in Union of India vs. Kunisetty Satyanarayana, [(2006) 12 SCC 28] decided on November 22, 2006 and Lt. Governor, Delhi vs. H. C. Narinder Singh [(2004) 13 SCC 342] decided on April 9, 2003.*
>
> *7. In our view, this submission cannot be accepted for the reasons that the principles of double jeopardy as stated aforesaid is in relation to the service laws which is distinguishable and is not acceptable in the instant case. <u>We find that</u>*

under Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act'), powers have been given to the WTM to issue direction under Section 11 and 11B of the SEBI Act. While exercising these powers, directions were issued debarring the company from accessing the securities market for a period of five years. The SEBI Act further provides powers to the AO to levy penalty for violation of SEBI Act and its regulations. Thus, the powers are of the authorities are different and distinct and does not overlap. The law permits the authorities to impose different penalties and, therefore, it is not the case of double jeopardy."

29. In line with the above findings of Hon'ble SAT, the power to issue directions (including debarment) and the power to impose monetary penalty are distinct and can be exercised by SEBI without attracting double jeopardy enshrined under Article 20(2) of the Constitution of India. In this context, it is noted that vide the Finance Act, 2018 (with effect from March 8, 2019), the provisions of SEBI Act were amended to enable the exercise of the powers of issuance of directions and imposition of monetary penalty by one single authority (in terms of the delegation done by SEBI). Accordingly, considering the above findings of Hon'ble SAT, it is clear that the power to issue directions (including debarment) under section 11B (1) read with section 11 of the SEBI Act and the power to impose monetary penalty in terms of section 11B (2) read with 11(4A) of the SEBI Act are distinct powers conferred upon SEBI under the SEBI Act. They can either be used separately, or in combination depending on the objective that is sought to be achieved in a particular proceeding. In view of the above, I do not find any merit in the preliminary objection raised by the *Noticees* in this regard.

30. Another preliminary objection raised by some of the *Noticees* is that under rule 4 of the Penalty Rules, the proceedings are being split into two separate and distinct stages, i.e. *first* Stage being the issuance of SCN as to why an enquiry should not be held and if the conclusion arrived at the first stage is that an enquiry is to be held, the *second* stage would be for imposing the penalty. It has been argued that in the present case, the first stage has been skipped and it appears that the competent authority has already held that the *Noticees* are guilty and they have been show caused as to why penalty should not be levied. In this connection, reliance has been

placed on the judgment of the Gauhati High Court in *Sunita Agrawal vs Securities and Exchange Board of India & Anr* (WP(C)/530/2022) wherein, the Hon'ble High Court had held that prejudice was caused to the *Noticees* because of the composite notice issued to the *Noticees*.

31. To put the contention of the *Noticees* in context, I find it important to refer to the text of rule 4 of the Penalty Rules, which reads as under:

> ***"Holding of inquiry.***
>
> ***4.*** *(1) In holding an inquiry for the purpose of adjudging under sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15HA and 15HB whether any person has committed contraventions as specified in any of sections 15A, 15B, 15C, 15D, 15E, 15EA, 15EB, 15F, 15G, 15HA and 15HB the Board or the adjudicating officer shall, in the first instance, issue a notice to such person requiring him to show cause within such period as may be specified in the notice (being not less than fourteen days from the date of service thereof) why an inquiry should not be held against him.*
>
> *(2) Every notice under sub-rule (1) to any such person shall indicate the nature of offence alleged to have been committed by him.*
>
> *(3) If, after considering the cause, if any, shown by such person, the Board or the adjudicating officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for the appearance of that person either personally or through his lawyer or other authorised representative.*
>
> *(4) On the date fixed, the Board or the adjudicating officer shall explain to the person proceeded against or his lawyer or authorised representative, the offence, alleged to have been committed by such person indicating the provisions of the Act, rules or regulations in respect of which contravention is alleged to have taken place.*

(5) The Board or the adjudicating officer shall then give an opportunity to such person to produce such documents or evidence as he may consider relevant to the inquiry and if necessary the hearing may be adjourned to a future date and in taking such evidence the Board or the adjudicating officer shall not be bound to observe the provisions of the Evidence Act, 1872 (11 of 1872) :

***Provided** that the notice referred to in sub-rule (3), and the personal hearing referred to in sub-rules (3), (4) and (5) may, at the request of the person concerned, be waived.*

[(5A) The Board may appoint a presenting officer in an inquiry under this rule.

(6) While holding an inquiry under this rule the Board or the adjudicating officer shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which, in the opinion of the Board or the adjudicating officer, may be useful for or relevant to, the subject-matter of the inquiry.

(7) If any person fails, neglects or refuses to appear as required by sub-rule (3) before the Board or the adjudicating officer, the Board or the adjudicating officer may proceed with the inquiry in the absence of such person after recording the reasons for doing so."

32. In my view, the above mentioned rule 4 of the Penalty Rules only brings out the step by step procedure to be followed by the Board / Adjudicating Officer while conducting the proceedings. In terms of the scheme of the Rules, the Board / Adjudicating Officer arrives at the conclusion to hold the *Noticee* guilty only after conducting the hearing and consideration of all the materials / submissions put forth by the *Noticee*. Issuance of a composite SCN does not cause any prejudice to the *Noticees* contrary to what has been argued in the present case by some of the *Noticees*. It is important to highlight that Hon'ble Supreme Court had the occasion to address the issue of interpretation of rule 4(3) of the Penalty Rules in the matter of *Kavi Arora Vs. Securities & Exchange Board of India* (Order dated 14/9/2022), wherein, *inter alia,* the following

was held: -

"47. After the Board forms its opinion to appoint an Adjudicating Officer, comes the next stage, which is the stage Under Rule 4 of an inquiry for adjudging Under Sections 15A, 15B, 15C, 15D, 15E, 15F, 15G, 15H, 15I, 15J and 15HB whether any person has committed contraventions as specified in those sections. The inquiry commences with a Show Cause Notice calling upon the Noticee to show cause why an inquiry should not be held against him. The Show Cause Notice has to specify the nature of offence alleged to have been committed and the penalty proposed, to enable the Noticee to effectively reply to the show cause. A reading of Section 4(3) makes it clear that, if after considering the cause, if any shown by the Noticee, the Adjudicating Officer is of the opinion that an inquiry should be held, he shall issue a notice fixing a date for appearance of that person either personally or through his lawyer or other authorised representative. The Noticee is not required to be heard personally or through lawyer before taking a decision to proceed with an inquiry in respect of the contraventions alleged in the Show Cause Notice. Decision to proceed or not to proceed with the inquiry may be taken on the basis of the reply of the Noticee to the Show Cause Notice. Once it is decided to proceed with the inquiry, an opportunity of personal hearing is mandatory. The inquiry has to be conducted in accordance with law, in compliance with the principles of natural justice.

48. In this case, the Board was of the opinion that there were grounds for adjudication and accordingly appointed Adjudicating Officer. Adjudicating Officer issued Show Cause Notice to the Petitioner to which the Petitioner gave a preliminary reply and thereafter sought documents as observed above. Inspection of some documents was permitted. After considering the reply, the Adjudicating Officer was of the opinion that inquiry should be held. Accordingly, a notice fixing a date for appearance was issued. There was no procedural irregularity, at least till the stage of notice fixing a date of hearing."

33. In view of the above quoted observations of the Hon'ble Supreme Court, I find that

there was no procedural infirmity in the present matter as regards the issuance of composite SCN to the *Noticees*. The objections by the *Noticees* in this regard, are therefore, unfounded and cannot be accepted.

34. In addition to the above, Markab India has raised an objection that no action has been taken against the MB and the entities which are the main players in the alleged fraud. It is noted in this regard that the present proceedings have been initiated for non-compliance with open offer related provisions on the part of the acquirers and against their directors for failing to perform their duties. The SCN does not allege fraud against any entity including the *Noticees*. As regards the Merchant Banker, separate proceedings were initiated, which were disposed of vide a separate order of SEBI which is available in the public domain. I, therefore, do not find any merit in the objection raised by Markab India in this regard.

35. I shall now proceed to examine the key issues for consideration in light of the replies, written submissions and arguments put forward by the *Noticees* during the personal hearing.

Issue no. (1)—Whether the acquirers have violated the provisions of the Takeover Regulations as alleged in the SCN?

36. I note that in the present case, the facts are pretty much undisputed. On July 3, 2019, the two acquirers namely, Markab Kuwait and Markab India had entered into a SPA with the sellers (i.e. Mr. Keshav Kantamneni, M/s KKN Holdings Private Limited and M/s Madras Electronic Solutions Private Limited) who belong to the promoter group of the target company to acquire 3,42,23,835 equity shares (constituting 20.71% of the existing paid up capital of the target company) and 32,32,954 warrants (*upon conversion, each warrant would convert into 5 equity shares of face value of ₹ 2 each i.e. 1,61,64,770 equity shares*). Along with the said acquisition, the management control of the target company was to be transferred to the acquirers. The Acquirers agreed to purchase equity shares at the rate of ₹ 82 per share and warrants at par,

aggregating total purchase consideration of ₹ 3,13,84,19,257 (₹ 2,80,63,54,470 for equity shares and ₹ 33,20,64,787 for warrants).

37. The calculation of acquisition of shares of Uniply as per SPA is as under:

Table 7—Calculation of acquisition of shares of the target company					
	Existing Capital Equity capital (Pre-conversion of warrants)	**Percentage (%)**	**Equity shares upon conversion of Warrants**	**Emerging Capital Equity capital (Post conversion of all warrants)**	**Percentage (%)**
Total Paid up equity share capital	16,52,13,420	100	2,50,40,685*	19,02,54,105	100
Total Sellers Holding	4,58,28,268	27.74		4,58,28,268	24.08
Acquisition of equity shares under SPA	3,42,23,835	20.71		3,42,23,835	17.99
Acquisition of equity shares upon conversion of warrants under SPA				1,61,64,770	8.50
Acquirer's total acquisition under SPA				***5,03,88,605***	***26.49***
Open offer size 26% of new emerging capital				4,94,66,067	26

* Total 50,08,137 warrants convertible into 2,50,40,685 equity shares. One warrant is convertible into 5 equity shares

38. On the date of SPA itself i.e. July 3, 2019, Acquirers also entered into a MoU with the MB to manage the aforesaid acquisition / takeover of the Target Company.

39. Pursuant to the above, in terms of regulations 3(1) and 4 of the Takeover Regulations, MB, on behalf of the Acquirers, vide letter dated July 3, 2019 filed a *public announcement* dated July 3, 2019 to make an open offer, *inter alia,* with SEBI. It was, *inter alia,* stated in the PA that the DPS is to be issued in accordance with regulation 13(4) of the Takeover Regulations by July 10, 2019 and the Acquirers are aware of their obligations and have adequate financial resources to meet their obligations under the offer and would comply with their obligations under the Takeover Regulations.

40. There is no dispute as to the fact that after the PA, the acquirers have not complied with any of the consequential obligations under the Takeover Regulations such as publication of DPS, deposit of funds in escrow account, etc. Further, the Acquirers did not acquire any shares of Uniply from the promoter-sellers and / or from the open market.

41. In respect of a case like the present one, where the Takeover Regulations were triggered by way of an SPA, law is clear and settled and the Hon'ble Courts / SAT on various instances have ruled on the same. However, the most pertinent to the present matter are the following findings of the Hon'ble Supreme Court given in the matter of *A.R. Dahiya* vs *SEBI* (Order dated November 26, 2015):

> *"16 In order to dispel doubts regarding the term 'acquisition', the same was subsequently defined in the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Under Regulation 2 Clause (1) Sub-clause (a)- 'acquisition' means directly or indirectly acquiring or agreeing to acquire shares or voting rights in, or control over, a Target Company. This definition clarifies that an acquisition takes place the moment the acquirer decides or agrees to acquire, irrespective of the time when the transfer stands completed in all respects. The definition explicates that the actual transfer need not be contemporaneous with the intended transfer and can be in futuro."*

42. Accordingly, once the proposed 'acquisition' under the SPA triggered the provisions of the Takeover Regulations, they were required to comply with all the requirements

stipulated under the Takeover Regulations and complete the open offer process. The only possible situation, wherein these obligations would not be required to be complied, would have arisen had the acquirers made an application for withdrawal of open offer in terms of the requirements of regulation 23 of the Takeover Regulations. Needless to say that such an application for withdrawal would be required to meet the conditions provided in regulation 23. Nonetheless, it is not the case of the acquirers that such an application for withdrawal was ever made. Therefore, the only way forward for the acquirers was to ensure compliance with the provisions of the Takeover regulations and complete the open offer.

43. As has been brought out in the SCN, the acquirers did not publish the DPS within the stipulated time limit and thereafter, vide various communications, kept on assuring the MB that they are in the process of reinitiating the deposit and compliance of Escrow Requirements. Further, when the acquirers failed to take necessary steps towards completing the pending open offer, SEBI also called the acquirers for a meeting, which at their request was postponed several times, and despite the same, the acquirers did not attend the meeting.

44. In view of the above, I find that by virtue of the fact that the Acquirers had entered into an SPA dated July 3, 2019 to acquire total 5,03,88,605 equity shares [3,42,23,835 (existing shares) + 1,61,64,770 (new shares) = 5,03,88,605 equity shares] representing 26.49% voting share capital (as per emerging capital) in the target company along with control and management of the target company from its existing promoters, the Acquirers were required to make a PA to acquire shares and control of Uniply in terms of regulations 3(1) and 4 of the Takeover Regulations. Such PA of an open offer is to be made for the purpose of acquiring shares of such target company in accordance with the Takeover Regulations and thus, serves as the first step towards completion of the open offer process envisaged under the said Regulations. The PA loses the purpose envisaged under the Takeover Regulations when the consequential steps under the Regulations are not taken by the acquirers making the PA. As noted earlier, in the present case, the acquirers, after making the PA dated July 3, 2019, did not take any steps towards ensuring compliance with the provisions

of Takeover Regulations. I am, therefore, of the view that the acquirers, in the instant case, have violated the provisions of regulations 3(1) and 4 of the Takeover Regulations read with Section 12A(f) of the SEBI Act.

45. Further, regulation 13(4) of the Takeover Regulations provides that pursuant to PA, DPS shall be published by the acquirers through the manager to the open offer not later than five working days of the PA, which Acquirers failed to do. Further, as per the provisions of regulation 18(2) of Takeover Regulations, the letter of offer shall be dispatched to the shareholders not later than seven working days from the receipt of comments from the Board, which Acquirers failed to do. Therefore, the acquirers by failing to publish the DPS and dispatch the letter of offer to the shareholders of the target company within the stipulated time, deprived them from the exit opportunity, and thereby violated the provision of regulations 13(4) and 18(2) of the Takeover Regulations.

46. Furthermore, regulation 25(1) of the Takeover Regulations requires that the acquirers prior to making the PA, shall ensure that firm financial arrangements have been made for fulfilling the payment obligations under the open offer and that they are able to implement the open offer. As noted earlier, the acquirers in the PA had stated that they were aware of their obligations and had adequate financial resources to meet their obligations under the offer and would comply with their obligations under the Takeover Regulations. However, they never deposited the required amount in the escrow account in terms of regulation 17(1) of the Takeover Regulations. The requirement of depositing a specified percentage of the offer consideration in the escrow account aims at ensuring the commitment of the acquirer towards completion of the open offer and also seeks to give an indication to the shareholders that the acquirer has firm financial arrangement in place in respect of the announced open offer. The same understanding is also reflected in the recommendation of *Justice P.N. Bhagwati Committee Report on Takeovers*, 1997, whereby the requirement relating to escrow account was introduced in the Takeover Framework for the first time. The Committee recommended, *inter alia*, as follows: -

"The Committee felt that the prospect of monetary loss in the event of non fulfilment of obligation is likely to spur him into timely completion of all activities connected with the offer. It would also act as a check against frivolous offers. The Committee was of the opinion that requiring cash deposit in an escrow account before the public announcement and forfeiture thereof if the acquirer fails to discharge his obligations under the offer may be a step forward in the interest of investors."

47. In view of the above recommendation of the Committee and the fact that the acquirers did not take any steps towards depositing the requisite sum in an escrow account or towards ensuring firm financial arrangements in respect of the open offer, I find that the acquirers have violated the provisions of regulations 17(1) and 25(1) of the Takeover Regulations.

48. At this juncture, I find it pertinent to address the contention raised by Markab India that it was only acting as a facilitator for the transaction and had no other role in the announced acquisition. I am not inclined to concur with the said contention especially for the reason that there was no compulsion for Markab India to acquire any share to perform the role of a facilitator. Admittedly, Markab India was created as a WOS of Markab Kuwait and therefore, being an extension of Markab Kuwait, it cannot be claimed by Markab India that it was totally aloof from the transaction and had no role to play in relation thereto. None of the *Noticees* have made any submission regarding the projected plans of Markab Kuwait or Markab India in respect of how the shareholding of the target company was to be held, had the open offer and the proposed acquisition been completed. It could have been a possibility that Markab Kuwait wanted to entrust Markab India with the responsibility of managing the target company *post facto.* However, none of that is part of the record and need not be delved into. But at the same time, that does not take away the fact that Markab India was created by Markab Kuwait and it agreed to acquire 4,000 shares of the target company, with some specific purpose, and not being simply a facilitator. Regulation 25(5) of Takeover Regulations states that the acquirers (along with person acting in concert) shall be jointly and severally responsible for fulfillment of applicable obligations under the Takeover Regulations. Accordingly, I find that by virtue of

regulations 25(5) of the Takeover Regulations, acquirer no. 1 and acquirer no. 2 are jointly and severally responsible for fulfillment of all the obligations under the Takeover Regulations.

Issue no. (2)—If the answer to issue no. (1) is in the affirmative, what is the liability of the directors of the acquirers for such violations?

49. Before addressing the question as to the liability of the directors of the acquirers for the violations noted above, I find it relevant to deal with one common submission that has been made by Markab India and Mr. Ravi Kumar that Mr. Nazeer was the only person authorized by Markab Kuwait for the day to day affairs of Markab India and he was also the signatory to the SPA with the promoter-sellers and also with the Merchant Banker The said argument seeks to shift the obligation of Markab India as the Acquirer No. 2, to a director. In this regard, it is noted that because of the very fact that Markab India was a party to the SPA and had agreed to purchase shares of Uniply (even though a miniscule percentage of the total proposed acquisition), an obligation was cast upon Markab India to make a public announcement for an open offer, which was made, but the subsequent steps in terms of the Takeover Regulations towards completion of the open offer were not taken. Markab India, being a separate legal person (a company) would be responsible for all the obligations that the Takeover Regulations cast upon it regardless of the fact that one of its own director was appointed by its parent entity to take care of its (Markab India's) day to day affairs and signing the SPA / MoU with the MB. I find that the director in such a case will be responsible for his duty as a director of the company, but surely the liability of the company as an acquirer cannot be shifted to the director and the acquirer shall remain responsible of its obligations under the Takeover Regulations.

50. It has been alleged in the SCN that the Directors as part of the Board of Directors are responsible for running the company's business and thus, the Directors of the Company have a statutory duty towards the Company to act diligently and are responsible for the operations of the Company as per the applicable provisions of law. In the present matter, it is alleged that in view of Section 27(2) of SEBI Act, *Noticee*

No. 2 and 3 being directors of *Noticee* No. 1 and *Noticee* No. 5, 6 and 7 being directors of *Noticee* No. 4 have not been diligent and the non-compliance of the provisions of Regulations 3(1), 4, 13(4), 17(1), 18(2) and 25(1) of the Takeover Regulations and Section 12A(f) of SEBI Act is attributable to the neglect of *Noticee* No. 2, 3 , 5, 6 and 7 and therefore, they are liable to be proceeded against along with *Noticees* No. 1 and 4.

51. I note that the allegations against the directors of *Noticee* no. 1 and 4 have been levelled in light of section 27(2) of the SEBI Act. For reference, section 27 is quoted as under:

> ***"Contravention by companies.***
>
> *27. (1) Where a contravention of any of the provisions of this Act or any rule, regulation, direction or order made thereunder has been committed by a company, every person who at the time the contravention was committed was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:*
>
> *Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such contravention.*
>
> *(2) Notwithstanding anything contained in sub-section (1), where an contravention under this Act has been committed by a company and it is proved that the contravention has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.*
>
> *Explanation : For the purposes of this section,—*
>
> *(a) "company" means any body corporate and includes a firm or other*

association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm."

52. Considering the provisions of section 27(2), the question that needs to be addressed in respect of all the directors named as *Noticees* in the SCN, is whether the contravention on part of the *Noticees* no. 1 and 4 has been committed with their consent or connivance, or is attributable to any neglect on their part. In this regard, for guidance, I find it relevant to refer to the following observations made by the Hon'ble Bombay High Court [with respect to the interpretation of section 27(2)] in the matter of *Radheshyam Surajmal Khandelwal and another* v. *SEBI and another* (Order dated April 20, 2017):

"14) The section itself contemplates a deeming provision and the Legislature has laid down that every person who was in charge of and responsible to the company for the conduct of the business of the company at the time when the offence was committed, as well as the company shall be deemed to be guilty of the offence. The said person in the capacity of a director shall be liable to be proceeded against and punished according to Law."

53. It has been stated in the SCN that as per *Noticee* no. 1 / Acquirer No. 1's letter dated July 3, 2019, Mr. Ahmad Mohammad A A AL Omani and Mr. Spencer John Wilson were its directors on July 3, 2019 i.e. as on date of SPA and PA. In this context, it is relevant to note the submission of Mr. Wilson, who has denied that he was ever a director of Markab Kuwait. He has submitted that the allegations in the SCN have been made only on the basis of a letter dated July 3, 2019 sent by *Noticee* No. 1 to the MB, which mentions that Mr. Wilson is a director of *Noticee* No. 1. He has further submitted that while he had worked for Mr. Omani between 2010 and 2017, in a different entity called Markab International Trading FZE, registered in the UAE, he had not been associated with him or Markab Kuwait during the concerned acquisition. He also submitted that he is not connected to any Indian entity, including the Target Company, and has not been involved in any transaction in relation to any Indian entity. To bolster his arguments, he has submitted that he moved to Canada in 2018, and

around the time of the concerned acquisition, he was attending the University of Toronto, Canada, and thereafter worked for a call center business where he continues to work till date. He was attending the University in person and was conferred the degree of Bachelor of Arts in October, 2019. On a perusal of the documentary records submitted by Mr. Wilson and the material on record, I am inclined to agree with his submission that apart from the letter sent by Markab Kuwait to the MB, there is nothing on record to establish that he was ever a director of Markab Kuwait . No document has been adduced by the MB to show his directorship details. The documents pertaining to University of Toronto, Canada and his call center job have also been submitted by Mr. Wilson. Considering the above, I am of the view that there is insufficient documentary evidence on record to show that Mr. Wilson was a director of Markab Kuwait and therefore, the benefit of doubt has to be extended to him. Thus, he cannot be held liable in the present proceedings as a director of Markab Kuwait. Consequently, the proceedings initiated under the present SCN against *Noticee* No. 3 (i.e. Mr. Wilson), stand disposed of.

54. With regard to the other director of *Noticee* no. 1 namely, Mr. Ahmad Mohammad A A AL Omani (mentioned in the SCN), it is noted that in the PA made by the acquirers, it was categorically stated that Mr. Omani was the only person in control / promoter of Acquirer no. 1. As already noted, since Mr. Wilson cannot be treated as the director of *Noticee* no. 1, the only person remaining as a director of *Noticee* no. 1 is Mr. Omani. In this view of the matter, it would not be incorrect to hold that Markab Kuwait was controlled, managed and directed by only one person i.e. Mr. Omani. Thus, Mr. Omani, being the sole person in control / promoter of *Noticee* no. 1 (also being the only director of *Noticee* no. 1) will be responsible for the acts / omissions of *Noticee* no. 1 as an acquirer.

55. Coming to the directors of Acquirer no. 2, as mentioned in the SCN, Mr. Nazeer Azam Sulthan, Mr. Uday Narayan Joshi and Mr. Komandur Rajgopalan Ravi Kumar were the Directors of the Acquirer No. 2 during the relevant period. As per MCA database, the details of tenures of directors are as under:

Table 8—Tenure of directors of Markab India				
***Noticee* No.**	**Name**	**DIN**	**Date of Appointment**	**Date of Cessation**
1	Nazeer Azam Sulthan	08072833	June 10, 2019	August 14, 2019
2	Uday Narayan Joshi	02299219	June 20, 2019	continuing
3	Komandur Rajgopalan Ravi Kumar	00013473	August 14, 2019	continuing

56. As seen from the above table, Mr. Nazeer and Mr. Joshi became the directors of Markab India / Acquirer no. 2 in June 2019 and were its directors when the PA was made by the Acquirer no. 1 and Acquirer no. 2 (i.e. on July 3, 2019). They were also the directors of Acquirer no. 2 when pursuant to the PA, Acquirer no. 2 (along with Acquirer no. 1) failed to issue the DPS within 5 working days of PA, and also failed to deposit 25% of the total offer consideration in an escrow account 2 days prior to the date of DPS. However, as has been noted earlier, no compliance with the applicable provisions of the Takeover Regulations was ever made. In this context, it is relevant to deal with the submission of Mr. Joshi who sought to distinguish his position in Acquirer no. 2 citing the fact that Mr. Nazeer signed the SPA and the PA on behalf of Markab India and also the MoU entered with the MB, which as per Mr. Joshi indicated that the day to day charge as a director was with Mr. Nazeer and he alone was responsible for all the actions. In this regard, it is noted that Markab India was a private limited company which was created as a WOS of Markab Kuwait. Mr. Joshi joined the company as a director in June 2019 before the SPA was entered into by the company. Admittedly, at that point of time, Markab India had only 2 directors namely, Mr. Joshi and Mr. Nazeer. In terms of section 174(1) of the Companies Act, the quorum for all meetings of the company is one-third of the total strength or 2 directors, whichever is higher. Accordingly, in respect of all the meetings of Markab India, Mr. Joshi would have been present since without him, the quorum would not have been complete. Even the fact that Mr. Nazeer was the signatory to the SPA, PA and the MOU does not alter the situation since the said documents were signed by Mr. Nazeer as one of the directors of Acquirer no. 2 and not in his individual capacity. Further, no document has been submitted by Mr. Joshi to show that despite being a director, he was not part of the decision making of Markab India. In view of the above, I do not find any reason

to distinguish between the role and responsibility of Mr. Joshi from that of Mr. Nazeer and find that both Mr. Joshi and Mr. Nazeer were "officers in default" within the meaning of section 2(60) of the Companies Act, 2013. While dealing with the issue of identification of a director as an "officer in default", Hon'ble Securities Appellate Tribunal in the matter of *Mr. Yogesh G. Gemawat v. SEBI* (Order dated April 16, 2019), held as under:

> *"In the absence of any document to show that any director was specified as per Clauses (a) to (c) of Section 5 of the Companies Act or any valid document to show that any person was authorized by the Board of Directors, the appellant cannot escape the liability as per Clause (g) of Section 5 of the Companies Act."*

57. In the present case, nothing has been brought on record to exhibit that the Acquirer no. 2 had designated any director as a Managing Director or Executive Director or CEO or Key Managerial Personnel. Therefore, I find that all the directors of Acquirer no. 2, during their respective tenures, were practically in charge of Acquirer no. 2 and thus, responsible for managing its affairs / business.

58. Mr. Nazeer has made a submission that his resignation letter dated October 30, 2019 addressed to the Target Company mentions about his e-mail dated October 17, 2019 sent to the Target Company elaborating upon various issues in the Target Company which required immediate attention and action. He also submitted that he had brought these issue to the notice of the MB also. He further submitted that the concerns raised by him turned out to be genuine as the target company / Uniply was ordered into CIRP by an order of NCLT, Chennai, which, *inter alia*, mentioned a default that was committed by Uniply even prior to signing of SPA. In this regard, I find that any due diligence or scrutiny into the affairs of the target company ought to have been done by the acquirers or its directors *before* entering into the SPA with the sellers. Any lacunas identified post the triggering of obligations under the Takeover Regulations does not absolve the directors or acquirers from the obligations that are cast upon them under the Takeover Regulations. The fact that the default committed by Uniply prior to signing of SPA could not be noticed by the acquirers or its directors, is actually

evident of the fact that proper due diligence was not carried out by the acquirers or their directors prior to signing the SPA. The acquirers / directors cannot seek refuge under their own mistake and inefficiency in committing the requisite due diligence. I, therefore, find no merit in the submission of Mr. Nazeer in this regard.

59. Another director of Acquirer no. 2 namely, Mr. Ravi Kumar joined Markab India on August 14, 2019 and is continuing as a director at present. As has been discussed earlier, the PA was made by Markab Kuwait and Markab India on July 3, 2019 and thereafter, no consequent steps were taken by them including the publication of DPS within the stipulated time. The information regarding the said PA and the subsequent non-filing of DPS, etc. were known to Mr. Ravi Kumar when he joined. A very basic due diligence about the company which he joined as a director, would have revealed that the company has triggered and not complied with a regulatory obligation. It is not the case of Mr. Ravi Kumar that he was not aware of the state of affairs relating to Acquirer no. 2 when he joined it as a director. The Takeover Regulations clearly provide that an open offer triggered there under can be completed even after delay, provided the Acquirer pays the interest to the shareholders in terms of the relevant provisions of the Takeover Regulations. Thus, Mr. Ravi Kumar, even though he joined about a month after the PA, was required as a director of Acquirer no. 2 to ensure compliance with the requirements under Takeover Regulations. As noted above, he knowingly got into a company which had an impending open offer obligation, and therefore, can be said to have accorded his consent to all the violations that arise out of such impending open offer obligations.

60. Mr. Ravi Kumar and Mr. Joshi were asked during the hearing why they continued as directors of Markab India SPV. In response thereto, they submitted that Section 174 (1) of the Companies Act, 2013 stipulates that the quorum for meeting of Board of Directors is two directors and further Section 174 (2) stipulates that in case the number of directors is reduced below the quorum fixed for the Board meeting (i.e. 2 directors), then two directors have to continue for the purpose of increasing the number of directors or for summoning a General Meeting of the Company. It has been argued by the said *Noticees* that they continued to comply with the aforesaid provisions of the

Companies Act and therefore continued as directors. In this regard, for the purpose of addressing the above argument of the *Noticees*, I find it relevant to refer to the text of section 174(1) and (2) of the Companies Act as well as section 168 which relates to "resignation of director". The provisions read as under:

174. Quorum for meetings of Board.— *(1) The quorum for a meeting of the Board of Directors of a company shall be one-third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.*

(2) The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.

168. Resignation of director.— *(1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company:*
Provided that a director shall also forward a copy of his resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.

(2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later: Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.
(3) Where all the directors of a company resign from their offices, or vacate their

offices under section 167, the promoter or, in his absence, the Central Government shall appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.

61. A perusal of the above provisions makes it clear that the understanding of section 174 put forth by the *Noticees (Mr. Joshi and Mr. Ravi Kumar)* is incorrect. Sub-section (3) of section 168 clearly provides for a situation wherein all the directors of a company can resign. Section 174(2) in my view provides for the scope of functions of directors when the number of directors falls below the quorum. The said provision does not in any way place a restriction on the directors from resigning from the company. Thus, I am unable to agree with the arguments put forth in this regard by Mr. Joshi and Mr. Ravi Kumar.

62. In connection with the foregoing discussion, I find it trite to note that any company being an artificial person and an inanimate legal entity cannot act by itself. It acts through its individual directors, who are expected to discharge their responsibilities on behalf of the company with utmost care, skill and diligence. Also as per section 179 of the Companies Act, 2013, the Board of a company is entitled to exercise all such powers and do all such acts and things which the company is legally authorized. The duty expected from an individual as a director of a company, has been succinctly expounded by the Hon'ble Supreme Court of India in the following findings made in the matter of *N Narayanan vs Adjudicating Officer, SEBI* (Order dated 26 April, 2013):-

"33. Company though a legal entity cannot act by itself, it can act only through its Directors. They are expected to exercise their power on behalf of the company with utmost care, skill and diligence. This Court while describing what is the duty of a Director of a company held in Official Liquidator v. P.A. Tendolkar (1973) 1 SCC 602 that a Director may be shown to be placed and to have been so closely and so long associated personally with the management of the company that he will be deemed to be not merely cognizant of but liable for fraud in the conduct of business of the company even though no specific act of dishonesty is provide

against him personally. He cannot shut his eyes to what must be obvious to everyone who examines the affairs of the company even superficially."

63. In addition to the above, it is also pertinent to mention here that in terms of regulation 2(1)(q)(2)(ii) of the Takeover Regulations, "*a company, its directors, and any person entrusted with the management of the company"* are deemed to be "persons acting in concert" with each other. Applying the same to the present case, Acquirer no. 1 and Mr. Omani, and Acquirer no. 2 and Mr. Nazeer, Mr. Joshi and Mr. Ravi Kumar are deemed to be "persons acting in concert with each other i.e. they are deemed to be persons *who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly* co-operate *for acquisition of shares or voting rights in, or exercise of control over the target company.* As noted earlier, as per regulation 25(5) of the Takeover Regulations, the acquirer and *persons acting in concert* with him shall be jointly and severally responsible for fulfilment of applicable obligations under the regulations. Accordingly, in light of this understanding also, the above named directors as *persons acting in concert* with their respective companies have to be held responsible for the violations alleged in the SCN noted above.

64. In view of what has been discussed above, I find that Mr. Omani (for Acquirer no. 1) and Mr. Nazeer, Mr. Joshi and Mr. Ravi Kumar (for Acquirer no. 2) are responsible and liable for the violations of the provisions of Takeover Regulations established in the preceding paragraphs.

Issue no. (3)—Whether the violations, if any, attract the issuance of directions and imposition of monetary penalty in terms of the provisions of the SEBI Act and Takeover Regulations?

65. Considering the above facts and circumstances, I am of the view that the charges in the SCN against the *Noticees* (except Mr. Wilson) are established. Since there is no dispute as to the breach of regulation 3(1) and 4 on part of the said

Noticees, the consequences of this breach should follow. I note that regulation 32 of the Takeover Regulations gives flexibility to SEBI to enforce the said regulations by way of several directions. In this context, I note that the Hon'ble Securities Appellate Tribunal, vide order dated September 8, 2011 in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011) observed as follows:

> *"It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."*

66. I note that the object and purpose of the Takeover Regulations, 1997 as well as Takeover Regulations, 2011 is to provide equality of treatment of all stakeholders, to provide an exit opportunity to the shareholders in case of substantial acquisition of shares or takeover and to ensure that persons in control of the target company do not consolidate their shareholdings in the target company in a clandestine manner and to

the detriment of other shareholders. I note that regulation 32 of the Takeover Regulations, 2011 provides for consequences of the breach of the provisions thereof. The guiding principles for the directions as provided in these regulations are the interests of the investors and securities market, which are the statutory guiding principles as inbuilt in the SEBI Act, 1992, the Takeover Regulations, 1997 and the Takeover Regulations, 2011. I, therefore, am of the view that the above mentioned principles laid down by Hon'ble SAT shall apply in the present case also.

67. At this juncture, I also find it relevant to refer to the following observations made by Hon'ble Supreme Court of India in the matter of *SEBI v. Sunil Krishna Khaitan and Others* (Judgment dated Jul1y 1, 2022) wherein, while discussing the directions for open offer made in that case, the Hon'ble Court emphasized upon the manner of usage of discretion by SEBI before issuing directions in any matter:

> *"The direction given is that the shareholders should be given an option to sell the shares held by them on 16thJune 2007 by directing the respondents to make a public announcement to acquire the shares. Direction has also been given to pay interest @ 10% per annum from 16thJune 2007 till shares have been accepted in the open offer. The dividend paid, if any, would be adjusted. We are not stating that this direction canneverbe issued, but the exercise of discretion to issue the said directions has to be predicated and based upon good grounds and reasons. The directions of this nature are not automatic and are to be issued only when they are warranted and justified."*

68. In the present case, the SPA entered into between the acquirers and the promoter-sellers on July 3, 2019 triggered the requirement of making a public announcement of an open offer under regulation 3(1) and 4 of the Takeover Regulations, which was made but no consequential steps were taken in that regard by the acquirers. As already noted, the acquirers did not take any steps towards ensuring compliance with any of the provisions of the Takeover Regulations nor did they acquire any shares in the target company as envisaged under the SPA. They also did not deposit anything in the escrow account. In the facts of the case as narrated above, issuing of directions

available under regulation 32, such as, divestment of shares, transfer of shares or proceeds of the directed sale of shares to the SEBI (Investor Protection and Education Fund), not to give effect to any transfer of shares acquired, directing the acquirer or any person acting in concert or any nominee or proxy not to exercise any voting or other rights, etc., may not be of any effect. Accordingly, in the facts and circumstances of the present case discussed hereinabove, I do not find any reason to deviate from the normal rule to direct completion of the open offer to acquire shares of the target company in accordance with the provisions of Takeover Regulations, and issue any other directions envisaged in regulation 32.

69. I note that pursuant to the public announcement made on July 3, 2019, had the *Noticees* ensured compliances with all the consequential steps within the timelines specified in the Takeover Regulations, all formalities with respect to the open offer would have been completed on September 25, 2019. I, therefore, am of the view that since the public announcement now would provide a delayed exit opportunity to the shareholders of the target company, the *Noticees* should pay interest on the consideration amount to the shareholders who tender their shares in the open offer and who are eligible for interest as per law (from the day after the date, the open offer ought to have been completed).

70. An additional fact which merits mention at this juncture is that the target company is presently undergoing Corporate Insolvency Resolution Process ("CIRP") under the provisions of Insolvency and Bankruptcy Code, 2016 ("IBC") in terms of the order of Hon'ble National Company Law Tribunal, Chennai ("NCLT") dated October 4, 2021. The said order of the NCLT was also upheld by the Hon'ble National Company Law Appellate Tribunal, Chennai, and accordingly the CIRP is in progress. Considering the fact of ongoing CIRP, one concern that may emerge is whether the *Noticees* (those who are required to make the open offer) upon completion of the open offer, will be able to exercise control over the target company, especially in light of the fact that CIRP is in progress and the Board of the Uniply has been superseded.

71. As provided under section 17 of the IBC, *from the date of appointment of the interim*

resolution professional, the management of the affairs of the corporate debtor shall vest in the interim resolution professional ("IRP") and the powers of the board of directors of the corporate debtor, shall stand suspended and be exercised by the IRP. Further, section 20 of the IBC authorizes the IRP to manage the operations of the corporate debtor as a going concern. Thereafter, pursuant to appointment of resolution professional (in terms of section 22 of IBC), the resolution professional is authorized under section 23 to conduct the entire CIRP and manage the operations of the corporate debtor during the CIRP period. Further, in terms of section 28 of IBC, during the pendency of CIRP, the RP is required to take prior approval of the committee of creditors before taking any of the actions listed therein, such as, change in capital structure of the corporate debtor, record change in ownership interest of the corporate debtor, permit the disposal of shares of any shareholder of the corporate debtor or their nominees to third parties, etc.

72. The above position regarding control of affairs of the company under IBC has to be juxtaposed with the provisions of Takeover Regulations especially regulation 4, whereunder the acquirer, along with persons acting in concert, upon completion of the open offer in accordance with the Takeover Regulations, can exercise control over the affairs of the target company. Although, acquisition or holding of shares is not a condition precedent for exercise of such control, but in the present case, as announced in the PA, the acquirers had proposed to acquire control over the target company by virtue of the shares agreed to be purchased from the promoter sellers of the target company along with the shares to be acquired from the shareholders in the open offer.

73. It is noted that under the scheme of IBC, because of the ongoing CIRP, the control of the corporate debtor (Uniply in the present case) shifts from the hands of the shareholders to the creditors, and the IRP / RP exercises control over the affairs of the corporate debtor (the target company) on behalf of the creditors in accordance with the provisions of IBC. Reading the above mentioned provisions of the IBC and the Takeover Regulations together, I find that a harmonious interpretation is required to be accorded to the said provisions, which essentially relate to exercise of control

over the corporate debtor / target company, but operate at different stages i.e. before and after the initiation of CIRP. It is clear that pursuant to initiation of CIRP, when the control has shifted from the shareholders to the creditors, the exercise of control by virtue of shareholding (applicable to a company before initiation of CIRP) is not feasible because of operation of the above discussed provisions of IBC.

74. In my view, the completion of open offer providing an exit opportunity to the eligible shareholders, being in the interest of investors, has to be given precedence over the ability of the acquirer to exercise control over the target company. Accordingly, pursuant to the completion of the said open offer, when the *Noticees* (liable to complete the open offer) acquire substantial shares in the open offer, but are unable to acquire control of the target company because of the ongoing CIRP, the same has to be viewed as a consequence of delayed compliance with the law, and should not be treated as an excuse to deny the exit opportunity to the shareholders. Further, since the CIRP is ongoing, the *Noticees* (liable to complete the open offer), for the purpose of completing the open offer, may also be required to coordinate with the RP so that the provisions of IBC including section 28, wherever applicable, are adhered to. Needless to say that the legal obligations discussed in the present order arose because of the transaction announced in July 2019 and had the open offer been completed then, possibly, the target company would not have landed in CIRP.

75. At this juncture, it is relevant to address a common submission made by some of the *Noticees* that the SCN does not bring out any identifiable loss that has been caused to the investors on account of non-completion of the open offer and that the price of the scrip had in fact fallen pursuant to the PA which shows that no violation was caused because of non-publication of DPS and other subsequent steps. In this regard, I find it pertinent to mention that in respect of violation of open offer obligations under the Takeover Regulations the palpable loss that is caused to the investors is the denial of an exit opportunity in the event of substantial acquisition / change in control. As held by the Hon'ble SAT in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011), *"The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of*

shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly". Further, the calculation of loss that may be caused to the shareholders on account of non-availability of the open offer, is a function of the timing of the open offer and the prevailing market conditions as on the date of such offer. Thus, it is neither practical nor essential to specify the loss caused to the investors on account of violations as have been established in the present case. Considering the same, I do not find any merit in the above noted submission of the *Noticees* in this regard.

Issue no. (4)—If answer to issues no. (1), (2) and (3) is in the affirmative, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the *Noticees*?

76. As brought out in the preceding paragraphs, the violations alleged in the SCN have been established against all the *Noticees* except *Noticee* no. 3.

77. With regard to Noticee no. 3, since the material available on record is insufficient to establish that he was a director of Acquirer no. 1, no direction is required to be issued against him.

78. Coming to the other *Noticees,* as has been discussed in the preceding paragraphs, Acquirer no. 1 / Noticee no. 1 was the main acquirer, which was controlled, managed and directed by only one person named Mr. Omani / Noticee no. 2. Acquirer no. 2 was created as the WOS of Acquirer no. 1 as a special purpose vehicle for the announced acquisition and was declared as an acquirer in the PA made on July 3, 2019. Further, Noticees nos. 5, 6 and 7 were the directors of Acquirer no. 2 / Noticee no. 4. Having regard to the discussions in the earlier paragraphs regarding the role and responsibility of all the *Noticees,* the question that remains to be addressed is about the directions to be issued and monetary penalty to be imposed against the Noticees.

79. It is relevant to mention here that for the imposition of penalty under the provisions of the SEBI Act, guidance is provided by Section 15J of the SEBI Act. The said provision reads as follows:

"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."

80. In the present case, the SCN has not quantified the profit made by the *Noticees* on account of the violations discussed in preceding paragraphs, nor does it bring out the quantified loss caused to the investors because of the violations committed by the *Noticees*. However, at the same time, the violations of the provisions of SEBI Act and the Takeover Regulations have been established against the *Noticees (except Noticee no. 3)* in light of the reasons discussed in detail in the preceding paragraphs. Also, as already discussed, the loss that has been caused to the investors in the present case is the denial of an exit opportunity in the event of substantial acquisition / change in control in the target company. It is also noteworthy that the non-compliance with open offer requirements is a continuing violation, which in the instant case, has continued from September, 2019 (as discussed earlier) till date. I, therefore, find that the above factors have to be considered for the purpose of arriving at the amount of penalty to be levied in the present case.

81. In view of the foregoing, I, in exercise of powers conferred upon me under sections 11(1), 11(2)(h), 11(4), 11B(1) read with section 19 of the SEBI Act and regulations 32 of the Takeover Regulations, hereby issue the following directions:

81.1. Noticees no. 1, 2 and 4 (i.e. Markab Capital WLL, Mr. Ahmad Mohammad AA Al Omani and Markab India SPV Private Limited) are directed to:

81.1.1. take the requisite steps within a period of 15 days from the date of this order to complete the open offer to acquire shares of the target company in accordance with the provisions of the Takeover Regulations;

81.1.2. pay, along with the consideration amount, interest at the rate of 10% *per annum* from September 26, 2019 to the date of payment of consideration, to the shareholders whose shares are accepted in the open offer.

81.2. Except for the purpose of ensuring compliance with the direction at paragraph 81.1 above, *Noticees* no. 1, 2 and 4 are restrained from accessing the securities market and prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, in any manner, whatsoever, till the time they ensure compliance with the directions issued at paragraph 81.1.

81.3. Noticees no. 5 and 6 (i.e. Mr. Nazeer Azam Sulthan and Mr. Uday Narayan Joshi) are restrained from associating themselves with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this order till the expiry of 3 (three) years.

81.4. Noticee no. 7 (i.e. Mr. Komandur Rajgopalan Ravi Kumar) is restrained from associating himself with any listed public company and any public company which intends to raise money from the public, or any intermediary registered with SEBI from the date of this order till the expiry of 1 (one) year.

82. Further, in exercise of powers conferred upon me under sections 11(4A) and 11B(2)

read with section 15H(ii) and (iii) of the SEBI Act, I hereby impose the following monetary penalty:

Sl. No	Name of the *Noticee*	Penalty Amount (₹)
1	Markab Capital WLL	1,00,00,000 (payable jointly and severally)
~~2~~	Markab India SPV Private Limited	
~~3~~	Ahmad Mohammad AA Al Omani	50,00,000
~~4~~	Nazeer Azam Sulthan	10,00,000
~~5~~	Uday Narayan Joshi	10,00,000
~~6~~	Komandur Rajgopalan Ravi Kumar	10,00,000

83. The *Noticees* shall remit / pay the said amount of penalties within forty five (45) days from the date of receipt of this order. The *Noticees* shall remit / pay the said amount of penalties either by way of a Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of ED/CGM (Quasi-Judicial Authorities) -> PAY NOW. In case of any difficulties in online payment of penalties, the said *Noticees* may contact support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, Division of Post-Inspection Enforcement Action, Market Intermediaries Regulation and Supervision Department, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:-tad@sebi.gov.in in the format as given in table below:

Case Name	
Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	

Payment is made for : (like penalties /disgorgement /recovery/settlement amount/legal charges along with order details)	

84. This order shall come into force with immediate effect. The order shall be served upon the *Noticees* for ensuring compliance with the above directions. A copy of the order shall also be sent to Capital Markets Authority, Kuwait for their information and necessary action, if any.

85. Further, a copy of this Order shall be forwarded to the recognized Stock Exchanges, Depositories and Registrar and Transfer Agents and Ministry of Corporate Affairs / concerned Registrar of Companies for their information and necessary action.

Sd/-

V. S. SUNDARESAN

Date: February 16, 2023 **EXECUTIVE DIRECTOR**

Place: Mumbai **SECURITIES AND EXCHANGE BOARD OF INDIA**