BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/JR/2022-23/ 19762 – 19763]

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

In respect of:

Joseph Varghese
(PAN: ABOPV3793J)

George Varghese
(PAN: ABOPV3794R)

In the matter of

TCM Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that Shri Joseph Varghese (hereinafter referred to as "**Noticee 1**") and Shri George Varghese (hereinafter referred to as "**Noticee 2**"), (collectively referred to as "**Noticees**") were the promoter group entities of TCM Ltd. (hereinafter referred to as "**TCM**"/ "**Target Company**") during the financial year 2009-10 and were alleged to have acquired 61,859 shares (1.82%) and 1,50,458 shares (4.43%) of the target company respectively i.e 6.25% which is beyond the creeping acquisition limit of 5% p.a. and attracted an open offer obligation under the Regulation 11(1) of the SEBI (Substantial Acquisition of Shares and Takeovers), 1997 (hereinafter referred to as "**SAST Regulations, 1997**"). SAST Regulations, 1997 was repealed and in view of Repeal and Savings clause at regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers), 2011 (hereinafter referred to as "**SAST Regulations**"), it is alleged that the Noticees have violated regulation 3(2) read with regulations 13, 14, 15, 16, 17 and 18 of SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as the Adjudicating Officer in the matter, conveyed vide communique dated May 18, 2022 under Section 19 read with Section 15-I of the Securities and Exchange Board India Act, 1992 (hereinafter referred to as "SEBI Act") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to conduct adjudication proceedings in the manner specified under rule 4 of Adjudication Rules read with section 15I(1) and (2) of SEBI Act and if satisfied that penalty is liable, impose such penalty as deemed fit in terms of rule 5 of Adjudication Rules and section 15HB of the SEBI Act for the alleged violation of regulation 3(2) read with regulations 13, 14, 15, 16, 17 and 18 of SAST Regulations.

SHOW CAUSE NOTICE, HEARING AND REPLY

3. Show Cause Notice/s dated July 29, 2022 (hereinafter referred to as 'SCN') was issued to the Noticees in terms of Rule 4 of the Adjudication Rules requiring the Noticees alleging, inter alia, the following:

   - "*SEBI vide WTM Order dated October 06, 2017 directed the Noticees to make a public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, 2011 within a period of 45 days from the date of the Order.*
   - *Thereafter, the Noticees vide letter dated November 15, 2017 stated that they had appointed the merchant banker and already completed almost the entire process for open offer. However, the target company was forced to settle a major labour dispute amounting to Rs. 3.5 Crores due to which their liquidity position has been adversely affected and it was difficult for them to immediately meet the escrow requirements for the open offer which was to the tune of Rs. 300 lakhs. The Noticees, therefore, requested to provide an additional time of 45 days from November 20, 2017 to make a public announcement as directed by SEBI Order dated October 06, 2017.*
   - *SEBI approved their request for grant of additional time of 45 days till January 04, 2018. However, the Noticees failed to make a Public Announcement within the due date i.e. January 04, 2018.*

- *The Public Announcement for the open offer, as directed by SEBI was made on January 31,2018, with a delay of 27 days*."

4. The SCN was duly delivered to the Noticees. Vide letter dated August 12, 2022, they replied to the SCN stating, inter alia, the following:

    - *"My brother (Acquirer 2) and I (Acquirer 1), both forming part of the promoter group of TCM Limited had acquired 1,50,708 (4.43%) and 64,459 (1.89%) shares respectively thereby aggregating our total holding by 2,15,167 equity shares constituting 6.33% of the total paid up capital in a financial year in January 2010. This exceeded the creeping acquisition limit of 5% in a financial year ending March 31, 2010. Accordingly, SEBI vide order of the Whole Time Member no. WTM/GM/EFD/62/2017-18 dated October 6, 2017 ("WTM Order") directed them to make a public announcement to the public shareholders of the Target Company under the SEBI (SAST) Regulations, 2011. As per the SEBI Order NO. WTM/GM/EFD/62/2017-18 dated October 6, 2017 ("WTM Order"), the last date to make public announcement was November 19, 2017 (45 days from the date of the order passed).*
    - *However, we could not make the open offer within the stipulated time and approached the Whole Time Member with a request for an extension as there was unexpected settlement of a labour dispute to the tune of Rs. 300 lakhs.*
    - *The Whole Time Member was kind enough to grant us a further extension of 45 days and we had to make the open offer by January 4, 2018. Since we could not arrange the finances to meet the obligations under the SAST Regulations, we made the open offer with a delay of 27 days and the public announcement was made on January 31, 2018. The open offer was made on a price of Rs. 45.50 (Rupees Forty Five and Fifty Paise only) per fully paid-up equity share payable in cash comprising of Rs. 24.40/- per equity share plus interest of Rs. 20.74 per equity share (Rs. 24.40 + Rs. 20.74 = Rs. 45.14, rounded off to Rs. 45.50) calculated at the rate of 10% p.a. from January 8, 2010 till June 30, 2018 i.e. the scheduled date of payment of consideration to those shareholders who were holding shares in the Target Company when the open offer obligation had triggered (i.e. January 8, 2010) and continuing as shareholders till the date of the Letter of Offer. However, those shareholders who acquired shares subsequent to January 8, 2010 were eligible for an open offer price of Rs. 24.40 per equity share only.*

- *We would like to further submit that 73,555 shares (which constituted 2.16% of the fully diluted share capital of the company against the 26% of the fully diluted share capital of the company which we had offered to buy) were tendered in the open offer and of this 65,402 shares were accepted at a price of Rs.45.50/- per share and the balance of 8153 shares were accepted at Rs. 24.50/- per share."*

5. In the interest of natural justice, an opportunity of personal hearing was given to the Noticees to appear before the AO on September 14, 2022 vide notice dated August 19, 2022. The Authorised Representative (hereinafter referred to as "AR") appeared and reiterated the submissions made vide letter dated August 12, 2022. The Noticees made further submissions vide letter dated September 15, 2022 stating, inter alia, the following:

   - *The shareholding of the Acquirers before the acquisition and after the acquisition on January 8, 2010 is as under:*

Sl. No.	***Name of the Acquirer***	***Shareholding before the Acquisition***		***Shareholding after the Acquisition***	
		Number	***%***	***Number***	***%***
1	*George Varghese*	*70,849*	*2.08*	*2,21,537*	*6.52*
2	*Joseph Varghese*	*5,91,951*	*17.42*	*6,56,410*	*19.31*

   - *The number of shares accepted in the open offer and the price paid for the same is as under:*

Particulars	***Number of shares***	***Amount (in Rs.)***	
		Towards Principal	***Towards Interest @10% from January 8, 2010 to the actual date of payment***
Total number of shares proposed to be acquired in the open offer	*8,83,749*	*4,02,10,584 (assuming all the shareholders receive interest)*	

Total number of shares actually acquired	*73,555*	-	
Of which			
From shareholders who were shareholders since January 8, 2010	*65,402*	*15,95,808.80*	*13,79,982.20*
From shareholders who became shareholders after that date	*8,153*	*1,98,933.20*	

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

6. After perusal of the material available on record, I have the following issues for consideration :

   I) Whether Noticee has violated the provisions of regulation 3(2) read with regulation 13, 14, 15, 16, 17 & 18 of the SAST Regulations?

   II) Does the violation, if any, on part of the Noticee attract penalty under section 15HB of the SEBI Act?

   III) If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act?

7. Before proceeding, I would like to refer to the relevant provisions of the SAST Regulations which reads as under:

   3. Substantial acquisition of shares or voting rights.

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

   Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation.—For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.
(ii) in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the preallotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition .

Timing.

13. (1) The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company. (2) Such public announcement,—

(a) in the case of market purchases, shall be made prior to placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds;
(b) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon converting convertible securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company shall be made on the same day as the date of exercise of the option to convert such securities into shares of the target company;
(c) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion shall be made on the second working day preceding the scheduled date of conversion of such securities into shares of the target company;
(d) pursuant to a disinvestment shall be made on the same day as the date of executing the agreement for acquisition of shares or voting rights in or control over the target company;
(e) in the case of indirect acquisition of shares or voting rights in, or control over the target company where none of the parameters referred to in sub-regulation (2) of regulation 5 are met, may be made at any time within four working days from the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
(f) in the case of indirect acquisition of shares or voting rights in, or control over the target company where any of the parameters referred to in sub-regulation (2) of regulation 5 are met shall be made on the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;
(g) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which21 [the board of directors of the target company authorises such preferential issue.];
(h) the public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under regulation 10, shall be made not later than the ninetieth day from the date of 22[closure of the buy-back offer by the target company].;
(i) the public announcement pursuant to any acquisition of shares or voting rights in or control over the target company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer, shall be made not later than two working days from the date of receipt of intimation of having acquired such title.

(2A) Notwithstanding anything contained in sub-regulation (2), a public announcement referred to in regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of,-

(i) an agreement and any one or more modes of acquisition referred to in subregulation (2) of regulation 13, or

(ii) any one or more modes of acquisition referred in clause (a) to (i) of subregulation (2) of regulation 13, shall be made on the date of first such acquisition, provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.]

(3) The public announcement made under regulation 6 shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.

(4) Pursuant to the public announcement made under sub-regulation (1) and subregulation (3), a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with regulation 14 and regulation 15, not later than five working days of the public announcement:

Provided that the detailed public statement pursuant to a public announcement made under clause (e) of sub-regulation (2) shall be made not later than five working days of the completion of the primary acquisition of shares or voting rights in, or control over the company or entity holding shares or voting rights in, or control over the target company.

Explanation.— It is clarified that in the event the acquirer does not succeed in acquiring the ability to exercise or direct the exercise of voting rights in, or control over the target company, the acquirer shall not be required to make a detailed public statement of an open offer for acquiring shares under these regulations.

Publication.

14. (1) The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public.

(2) A copy of the public announcement shall be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement.

(3) The detailed public statement pursuant to the public announcement referred to in sub-regulation (4) of regulation 13 shall be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and any one regional language daily with wide circulation at the place where the registered office of the target company is situated and one regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the target company are recorded during the sixty trading days preceding the date of the public announcement.

(4) Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to,—

(i) the Board through the manager to the open offer,

(ii) all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public,

(iii) the target company at its registered office, and the target company shall forthwith circulate it to the members of its board.

Contents.

15. (1) The public announcement shall contain such information as may be specified, including the following,—

(a) name and identity of the acquirer and persons acting in concert with him;

(b) name and identity of the sellers, if any;

(c) nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;

(d) the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;

(e) the offer price, and mode of payment of consideration; and

(f) offer size, and conditions as to minimum level of acceptances, if any.

(2) The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make an informed decision with reference to the open offer.

(3) The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares under these regulations shall not omit any relevant information, or contain any misleading information.

Filing of letter of offer with the Board.

16. (1) Within five working days from the date of the detailed public statement made under sub-regulation (4) of regulation 13, the acquirer shall, through the manager to the open offer, file with the Board, a draft of the letter of offer containing such information as may be specified along with a non-refundable fee, as per the following scale, 24[by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board,—

Sl. No.	***Consideration payable under the Open Offer***	***Fee (Rs.)***
a.	*Upto ten crore rupees.*	*Five lakh rupees (Rs. 5,00,000)*
b.	*More than ten crore rupees, but less than or equal to one thousand crore rupees.*	*0.5 per cent of the offer size*
c.	*More than one thousand crore rupees.*	*Five crore rupees (Rs. 5,00,00,000) plus 0.125 per cent of the portion of the offer size in*

		excess of one thousand crore rupees (1000,00,00,000)

(2) The consideration payable under the open offer shall be calculated at the offer price, assuming full acceptance of the open offer, and in the event the open offer is subject to differential pricing, shall be computed at the highest offer price, irrespective of manner of payment of the consideration:

a. Upto ten crore rupees. One lakh twenty five thousands rupees (1,25,000) b. More than ten crore rupees, but less than or equal to one thousand crore rupees. One lakh twenty five thousands rupees (1,25,000) plus 0.025 per cent of the portion of the offer size in excess of ten crore rupees (10,00,00,000). c. More than one thousand crore rupees, but less than or equal to five thousand crore rupees. One crore twenty five lakh rupees (1,25,00,000) plus 0.03125 per cent of the portion of the offer size in excess of one thousand crore rupees (1000,00,00,000). d. More than five thousand crore rupees. Two crore fifty lakh rupees (2,50,00,000) plus 0.01 per cent of the portion of the offer size in excess of five thousand crore rupees (5000,00,00,000), subject to a maximum of three crore rupees (3,00,00,000).

Provided that in the event of consideration payable under the open offer being enhanced owing to a revision to the offer price or offer size the fees payable shall stand revised accordingly, and shall be paid within five working days from the date of such revision.

(3) The manager to the open offer shall provide soft copies of the public announcement, the detailed public statement and the draft letter of offer in accordance with such specifications as may be specified, and the Board shall upload the same on its website.

(4) The Board shall give its comments on the draft letter of offer as expeditiously as possible but not later than fifteen working days of the receipt of the draft letter of offer and in the event of no comments being issued by the Board within such period, it shall be deemed that the Board does not have comments to offer:

Provided that in the event the Board has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.

Provided further that in the event the Board specifies any changes, the manager to the open offer and the acquirer shall carry out such changes in the letter of offer before it is dispatched to the shareholders.

(5) In the case of competing offers, the Board shall provide its comments on the draft letter of offer in respect of each competing offer on the same day.

(6) In the event the disclosures in the draft letter of offer are inadequate the Board may call for a revised letter of offer and shall deal with the revised letter of offer in accordance with sub-regulation (4).

Provision of escrow.

17. (1) Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount as per the following scale:

Sl. No.	***Consideration payable under the Open Offer***	***Escrow Amount***
a.	*On the first five hundred crore rupees*	*an amount equal to twenty-five per cent of the consideration*
b.	*On the balance consideration*	*an additional amount equal to ten per cent of the balance consideration*

Provided that where an open offer is made conditional upon minimum level of acceptance, hundred percent of the consideration payable in respect of minimum level of acceptance or fifty per cent of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.

(2) The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.

(3) The escrow account referred to in sub-regulation (1) may be in the form of,—

(a) cash deposited with any scheduled commercial bank;

(b) bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or

(c) deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin:

Provided that securities sought to be provided towards escrow account under clause (c) shall be required to conform to the requirements set out in sub-regulation (2) of regulation 9.

(4) In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.

(5) For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.

(6) For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer

period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.

(7) For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.

(8) The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under regulation 21.

(9) In the event of non-fulfillment of obligations under these regulations by the acquirer the Board may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special escrow account, either in full or in part.

(10) The escrow account deposited with the bank in cash shall be released only in the following manner,—

(a) the entire amount to the acquirer upon withdrawal of offer in terms of regulation 23 as certified by the manager to the open offer: Provided that in the event the withdrawal is pursuant to clause (c) of sub-regulation (1) of regulation 23, the manager to the open offer shall release the escrow account upon receipt of confirmation of such release from the Board;

(b) for transfer of an amount not exceeding ninety per cent of the escrow account, to the special escrow account in accordance with regulation 21;

(c) to the acquirer, the balance of the escrow account after transfer of cash to the special escrow account, on the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer;

(d) the entire amount to the acquirer upon the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments;

(e) the entire amount to the manager to the open offer, in the event of forfeiture for non-fulfillment of any of the obligations under these regulations, for distribution in the following manner, after deduction of expenses, if any, of registered market intermediaries associated with the open offer,— (i) one third of the escrow account to the target company;

(ii) one third of the escrow account to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009; and

(i) *one third of the escrow account to be distributed pro-rata among the shareholders who have accepted the open offer.*

Other procedures.

18. (1) Simultaneously with the filing of the draft letter of offer with the Board under sub-regulation (1) of regulation 16, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.

(2) The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date, not later than seven working days from the receipt of comments from the Board or where no comments are offered by the Board, within seven working days from the expiry of the period stipulated in sub-regulation (4) of regulation 16:

Provided that where local laws or regulations of any jurisdiction outside India may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, and the shareholders resident in such jurisdiction hold shares entitling them to less than five per cent of the voting rights of the target company, the acquirer may refrain from dispatch of the letter of offer into such jurisdiction:

Provided further that every person holding shares, regardless of whether he held shares on the identified date or has not received the letter of offer, shall be entitled to tender such shares in acceptance of the open offer.

(3) Simultaneously with the dispatch of the letter of offer in terms of sub-regulation (2), the acquirer shall send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company.

(4) Irrespective of whether a competing offer has been made, an acquirer may make upward revisions to the offer price, and subject to the other provisions of these regulations, to the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last three working days before the commencement of the tendering period.

(5) In the event of any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer shall,— (a) make corresponding increases to the amount kept in escrow account under regulation 17 prior to such revision;

(b) make an announcement in respect of such revisions in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and

(c) simultaneously with the issue of such an announcement, inform the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

(6) The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public:

Provided that the acquirer and persons acting in concert with him shall not acquire or sell any shares of the target company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period.

(6A) The acquirer shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board.]

(7) The acquirer shall issue an advertisement in such form as may be specified, one working day before the commencement of the tendering period, announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, whether for the acquisition attracting the obligation to make an open offer under these regulations or for the open offer, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified:

Provided that such advertisement shall be,— (a) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and (b) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

(8) The tendering period shall start not later than twelve working days from date of receipt of comments from the Board under sub-regulation (4) of regulation 16 and shall remain open for ten working days.

(9) Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.

(10) The acquirer shall, within ten working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer.

(11) The acquirer shall be responsible to pursue all statutory approvals required by the acquirer in order to complete the open offer without any default, neglect or delay:

Provided that where the acquirer is unable to make the payment to the shareholders who have accepted the open offer within such period owing to non-receipt of statutory approvals required by the acquirer, the Board may, where it is satisfied that such non-receipt was not attributable to any willful default, failure or neglect on the part of the acquirer to diligently pursue such approvals, grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders for the delay at such rate as may be specified:

Provided further that where the statutory approval extends to some but not all shareholders, the acquirer shall have the option to make payment to such shareholders in respect of whom no statutory approvals are required in order to complete the open offer.

(12) (a) The acquirer shall issue a post offer advertisement in such form as may be specified within five working days after the offer period, giving details including aggregate number of shares tendered, accepted, date of payment of consideration.

(b) Such advertisement shall be,—

(i) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and

(ii) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.

Findings

Issue No. I) Whether Noticees have violated the provisions of regulation 3(2) read with regulation 13, 14, 15, 16, 17 & 18 of the SAST Regulations.

8. From the documents available on record, I find that the Noticees held 19.50% (Noticee 1 held 17.42% and Noticee 2 held 2.08%) of the total share capital of the target company and acquired further 6.33% (Noticee 1 acquired 1.89% and Noticee 2 acquired 4.44%) of shares requiring them to make public announcement under regulation 3(2) read with regulations 13, 14, 15, 16, 17 and 18 of SAST Regulations. Vide order dated October 6, 2017, SEBI directed the Noticees to make public announcement within a period of 45 days i.e. on or before November 20, 2017. Vide letter dated November 15, 2017 the Noticees requested to provide an additional time of 45 days which was granted by SEBI. Accordingly, the Noticees were to make public announcement within January 4, 2018. However, the Noticees made the public announcement on January 31, 2018, i.e. with a delay of 27 days.

9. I observe that the Noticees have accepted that they have made the open offer with a delay of 27 days and the public announcement was made on January 31, 2018. However, the Noticees have stated that the open offer was made at a price of Rs. 45.50 per fully paid up equity share payable in cash comprising of Rs. 24.40 per equity share plus interest of Rs. 20.74 per equity share calculated at the rate of 10% p.a. from January 8, 2010 (the date on which the shares were acquired) till June 30, 2018 i.e. the scheduled date of payment of consideration to those shareholders which were holding shares in the target company when the open offer obligation had triggered and continuing as shareholders till the date of Letter of Offer. In case of those who became shareholders after January 8, 2010, only principal amount i.e. Rs. 24.40 was paid. Further, vide emails dated September 22, 2022 and September 28, 2022, the Noticees submitted documents including newspaper advertisement, data received from the Merchant Banker (who have in turn received from the Registrar), confirmation of payment made to the shareholders etc. in support of their submissions.

10. I observe that the number of shares accepted in the open offer and price paid for the same is as under:

	From shareholders who were shareholders since January 8, 2010	**From shareholders who became shareholders after that date**
Number of shares acquired	65,402	8,153
Amount paid towards Principal	15,95,808.80	1,98,933.20
Amount paid towards Interest	13,79,982.20	0

11. Hon'ble Securities Appellate Tribunal, in its order dated September 8, 2011 in the matter of Nirvana Holdings Pvt. Ltd. v SEBI (Appeal no. 31 of 2011) held that "*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*."

12. I observe that although the Noticees made the open offer and public announcement, it was done with a delay. Obligations like making open offer cannot be taken lightly and it was essential that the same was done within the given time. As there was delay in making the open offer and the public announcement, I find that the Noticee has violated regulation 3(2) read with regulations 13, 14, 15, 16, 17 and 18 of SAST Regulations.

ISSUE II : Does the violation, if any, on part of the Noticees attract penalty under section 15HB of the SEBI Act.

13. In view of the violation as established above, I refer to the order of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which held that - *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act*

and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".

14. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on the Noticee under the provisions of section 15HB of the SEBI Act, which reads as under:

    Section 15HB of SEBI Act: - Penalty for contravention where no separate penalty has been provided:

    Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

ISSUE III : If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in section 15J of the SEBI Act?

15. While determining the quantum of penalty under Section 15HA of the SEBI Act, it is important to consider the relevant factors as stipulated in the Section 15J of the SEBI Act which reads as under:-

    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.

16. I note that the available records do not quantify the amount of profits made by the Noticees or losses suffered by the investors due to the delay in making the open

offer or the public announcement. I also observe that the Noticees paid an interest from the date of acquisition (January 8, 2010) to the date of actual payment (June 30, 2018) at the rate of 10% to all the shareholders who were shareholders since January 8, 2010. I also find that the default by the Noticees is not repetitive in nature. However, as already observed above, I am of the view that by not making the mandatory public announcement within the stipulated time period specified under the SAST Regulations, Noticees have violated the statutory requirement of law. The contention of the Noticees that they have compensated the investors by paying interest for the delayed public announcement of open offer cannot be a valid ground to escape liability. However, I have nevertheless considered the same as mitigating factor while arriving at the quantity of penalty on the Noticees.

ORDER

17. Having considered the facts and circumstances of the case, observations/ findings as discussed above, the material available on record and the factors mentioned in section 15J of the SEBI Act as enumerated above, I in exercise of powers conferred upon me under section 15-I of the SEBI Act, hereby impose following penalty of Rs. 2,00,000/- (Rupees Two Lakh only) jointly and severally on the Noticees under section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

18. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

19. The aforesaid Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to “The Division Chief (Enforcement Department 1 DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.” The Noticees shall also provide the following details while forwarding DD / payment information:

- Name and PAN of the Noticee
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

20. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

21. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Joseph Varghese and George Varghese and also to the Securities and Exchange Board of India.

Date: September 28, 2022 **BARNALI MUKHERJEE**

Place: Mumbai **ADJUDICATING OFFICER**