BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. JJ/AK/AO–52-59/2014

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

In respect of:

S. No.	Name	PAN	Order Number
1	E-Ally Consulting (India) Private Limited	AABCE5603P	JJ/AK/AO/52/2014
2	Shree Jaisal Electronics and Industries Limited	AACCS5723P	JJ/AK/AO/53/2014
3	Mr. Sandeep Maloo	AFCPM7905F	JJ/AK/AO/54/2014
4	Mrs. Neeta Maloo	AFWPM2867G	JJ/AK/AO/55/2014
5	Mr. Labh Chand Maloo	AARPM3126E	JJ/AK/AO/56/2014
6	Mrs. Lata Maloo	ABGPM1104N	JJ/AK/AO/57/2014
7	Sandeep Maloo (HUF)	AAJHS6164A	JJ/AK/AO/58/2014
8	Labh Chand Maloo (HUF)	AABHL1516K	JJ/AK/AO/59/2014

In the Matter of

M/s Mangal Credit and Fincorp Limited

(Formerly known as "M/s Tak Machinery & Leasing Limited)

BACKGROUND

1. An open offer was made by Mr. Meghraj S. Jain & Mr. Ajit S Jain (hereinafter collectively referred to as "**Acquirers**") along with Mr. Sohanlal V. Jain & Mrs. Kankubai S. Jain in terms of SEBI (Substantial

Acquisition of Shares and Takeovers) Regulations, 2011 **(SAST Regulations, 2011)**, to the shareholders of M/s Tak Machinery & Leasing Limited (hereinafter referred to as **"TMLL"**), Target Company listed at BSE Limited (**BSE**) and Ahmedabad Stock Exchange (**ASE**), through a public announcement dated March 15, 2013 for acquisition of 4,10,553 equity shares of ₹10 each, representing 29.14% of expanded paid up share capital of TMLL, at a price of ₹220 per fully paid up equity share, payable in cash

2. While examining the offer document pertaining to the afore-mentioned Open Offer, SEBI observed certain non compliance of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulations, 2011 by promoters, namely, E-Ally Consulting (India) Private Limited (hereinafter referred to as **"EACIPL"**), Shree Jaisal Electronics & Industries Limited (hereinafter referred to as **"SJEIL"**), Mr. Sandeep Maloo (hereinafter referred to as **"Sandeep"**), Mrs. Neeta Maloo (hereinafter referred to as **"Neeta"**), Mr. Labh Chand Maloo (hereinafter referred to as **"Labh"**), Mrs. Lata Maloo (hereinafter referred to as **"Lata"**), Sandeep Maloo (HUF) (hereinafter referred to as **"Sandeep HUF"**) and Labh Chand Maloo (HUF) (hereinafter referred to as **"Labh HUF"**) (hereinafter collectively referred to as **"Promoter Group/Noticees"**).

3. Following non-compliances by the Noticees with regard to provisions of the SAST Regulations, 2011 was observed.

By Promoter Group:

S.No.	**Regulations**	**Due date of compliance**	**Actual date of compliance**	**Delay if any (in no. of days)**
1	30(1) & 30(2) r/w 30(3)	12.04.2012	27.04.2012	15

APPOINTMENT OF ADJUDICATING OFFICER

4. Shri Piyoosh Gupta was appointed as the Adjudicating Officer vide order dated June 27, 2013 to inquire and adjudge under Section 15A(b) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**), the violations of provisions of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulations, 2011 alleged to have been committed by EACIPL, SJEIL, Sandeep, Neeta, Labh, Lata, Sandeep HUF, Labh HUF. Pursuant to the transfer of Shri Piyoosh Gupta, the undersigned was appointed as Adjudicating Officer vide Order dated November 08, 2013 to enquire and adjudge the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show Cause Notices **(SCNs)** dated February 05, 2014 in terms of the provisions of Rule 4(1) of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Rules**") were issued to the Noticees, calling upon the Noticees to show cause why an inquiry should not be held against them under Rule 4(3) of the Rules for the alleged violations as specified in the SCNs and penalty be not imposed under section 15A(b) of SEBI Act. The said SCNs were duly delivered to the Noticees by Speed Post (Acknowledgement / Proof of Delivery is present on record).

6. Sandeep Maloo vide email dated March 03, 2014 had submitted the reply on behalf Noticees, which *inter alia* stated as under:

   "..............

   - *The Promoter and Promoter group did put its best effort to comply under regulations/ Sub- Regulations 30 (2)/ 30 (3) of (Takeover Regulations, 2011) but could not succeed in filing the same within stipulated time period. The delay of 15 days are purely accidental and unintentional due to health issues and lack of staff problems during that period.*
   - *In furtherance, there was no fraudulent intention or improper motive behind the delay and it was an accidental omission and inadvertence on*

the part of the promoter and Promoter group and caused in good faith due to oversight.

- *The delay of 15 (Fifteen) days caused is unintentional or without any malicious motive to pre-judice the interest of the shareholders of the Company and the general public.*
- *Thus, we request you to waive penalty, if any, under section 15 A (b) of the SEBI Act, 1992 for the alleged contraction of the Takeover Regulations. ...."*

7. In the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the Rules, the Noticees were granted an opportunity of personal hearing on April 10, 2014, vide notices dated March 20, 2014 at SEBI, Head Office, Mumbai. Mr. Vijaykumar Tiwari, Company Secretary, appeared as Authorized Representative, (hereinafter referred to as "**AR**") on behalf of the Noticees. During the hearing, the AR made the following submissions, which *inter alia,* stated as under:

".............

AR reiterated the reply made vide email dated March 03, 2014. Further, AR made the following submissions on behalf of the Noticees:

- *The Noticees are the current/existing promoters. The existing promoters have acquired this company in the year 2011-12. The compliances with respect to other regulatory authority were duly complied on time. The delay in compliances with respect to the regulation 30(1) & 30(2) r/w 30(3) of SAST Regulations, 2011 by the Noticees was due to lack of accurate advice from the professional consultants. Hereinafter all the compliances with respect to the regulation 30(1) & 30(2) r/w 30(3) of SAST Regulations, 2011 for the year 2012-13 and 2013-14 were duly complied on time.*

- *The name of the company has changed from M/s Tak Machinery & Leasing Limited to M/s Mangal Credit and Fincorp Limited. The address of the company has also changed to A-1701/1702, Lotus Corporate Park, Western Express Highway, Goregoan (East) 400062. ...."*

ISSUES FOR CONSIDERATION

8. I have carefully perused the oral and written submissions made by the Noticees and documents available on record. The issues that arise for consideration in the present case are:

   A. Whether the Noticees have violated provisions of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulations 2011?
   B. Whether the Noticees are liable for monetary penalty under Section 15A(b) of the SEBI Act?
   C. What quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

FINDINGS

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder.

ISSUE 1: Whether the Noticees have violated provisions of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulations 2011?

10. The provisions of regulation 30 of SAST Regulations, 2011 are read as under:

Continual Disclosure

30 (1) *Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five percent or more of the voting rights in a target company, shall disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

(2) *The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as* *of the thirty-first day of March, in such target company in such form as may be specified.*

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—*

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

11. I note that regulation 30(1) read with regulation 30(3) of SAST Regulations, 2011 mandates every person along with persons acting in concert (PACs) who holds more than 25% shares or voting rights in a company, were required to file disclosures of their shareholding as on 31st March of every financial year to the company as well as the stock exchanges within 7 working days from the financial year ending 31st March. From the documents available on record, I find that the shareholding of the Noticees as on March 31, 2012 was more than 25%. Further, Noticees are promoters of TMLL and also PACs. From the reply of the Noticees, I find that they had not disputed the fact that the Noticees are PACs and their shareholding as on March 31, 2012 was more than 25%.

12. I also note that under regulation 30(2) read with regulation 30(3) of SAST Regulations, 2011 the Noticees were under obligation to file disclosures regarding their shareholding to the company as well as the stock exchanges within 7 working days from the financial year ending March 31.

13. I find that Noticees have admitted that they had filed the necessary disclosures required under regulation 30(1) & regulation 30 (2) read with 30(3) of SAST Regulations, 2011 with delay, the details of which are as shown in the table below:

Regulation	Due date for compliance	Actual date of compliance	Delay (no. of days)
30(1) & 30(2) r/w 30(3)	12.04.2012	27.04.2012	15

14. I note that the Noticees, in their reply dated March 03, 2014 and during the course of hearing submitted that the delay in compliances was purely accidental, unintentional and due to lack of staff & proper professional advices. I am of the considered opinion that such response of the Noticees cannot absolve them from their duties of making disclosures under regulation 30(1) & regulation 30(2) of SAST Regulations, 2011 in the proper format and within the time limit prescribed under regulation 30(3) of SAST Regulations, 2011. The purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market and therefore, there can be no dispute that compliances of regulations is mandatory and it is duty of SEBI to enforce compliance of these regulations. The timeliness is the essence of disclosure and delayed disclosure would serve no purpose at all. I am of the view that when mandatory time period is stipulated for doing a particular activity, completion of the same after that period would constitute default in compliance.

15. In view of the above, I hold that the Noticees were under obligation to make the required disclosures under regulation 30(1) & regulation 30(2) of SAST Regulations 2011 within the time limit prescribed under regulation 30(3) of SAST Regulations 2011, which they have failed to do. Therefore, the allegation of violation of provisions of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulations 2011 by the Noticees stands established.

ISSUE 2: Whether the Noticees are liable for monetary penalty under Section 15 A (b) of the SEBI Act, 1992?

16. The provisions of section 15A(b) of SEBI Act is reproduced hereunder:

15A. <u>Penalty for failure to furnish, information, return etc.</u>

If any person, who is required under this Act or any rules or regulations made thereunder, -

(a)……………

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

(c)……………

17. In the matter of *SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216 (SC)*, the Hon'ble Supreme Court of India has held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant*".

18. As already observed, the Noticees violated the provisions of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulations 2011. Therefore, I find that the Noticees are liable for monetary penalty under Section 15A(b) of the SEBI Act, 1992.

ISSUE 3: What quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

19. While determining the quantum of penalty under section 15A(b), it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

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

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default."

20. In the absence of material on record, the amount of disproportionate gain or unfair advantage made as a result of the default and the amount of loss caused to the investors due to the said default cannot be quantified. The Noticees, in their reply have also submitted that they have not caused any loss to any investors by submitting the information belated with the stock exchanges and the Target Company. But, by virtue of the failure on the part of the Noticees to make the necessary disclosures on time, the fact remains that the investors were deprived of the important information at the relevant point of time. Our entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Hence, the violation of the Noticees cannot be viewed lightly. However, I have considered the fact and circumstances of the case. The violation of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulation, 2011 by the Noticees is for the financial year 2012 and the delay in making such disclosure is for 15 days. Thus, the default of the Noticees was not repetitive in nature.

21. In the forgoing paragraphs, it is now established that the Noticees have violated the provisions of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulations 2011. In view of the above and considering the facts and circumstances of the case and factors under Section 15J of the SEBI Act and the violation committed by the Noticees, I

find that imposing a penalty of ₹ 3,00,000/- (Rupees three lakhs only) on the Noticees would be commensurate with the violations committed by them.

ORDER

22. In exercise of the powers conferred under Section 15-I of the SEBI Act and in terms of the provisions of Section 15A(b) of the SEBI Act & Rule 5(1) of the Rules, I hereby impose a penalty of ₹ 3,00,000/- (Rupees three lakhs only) on E-Ally Consulting (India) Private Limited, Shree Jaisal Electronics & Industries Limited, Mr. Sandeep Maloo, Mrs. Neeta Maloo, Mr. Labh Chand Maloo, Mrs. Lata Maloo, Sandeep Maloo HUF and Labh Chand Maloo HUF for violations of regulation 30(1) & regulation 30(2) read with regulation 30(3) of SAST Regulations 2011. The Noticees shall be jointly and severally liable to pay the said monetary penalty.

23. The penalty shall be paid by way of demand draft drawn in favour of "SEBI – Penalties Remittable to Government of India" payable at Mumbai within 45 days of receipt of this Order. The said demand draft shall be forwarded to the Deputy General Manager, Corporation Finance Department, Securities and Exchange Board of India, Plot No. C4-A, 'G' Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400051.

24. In terms of the provisions of rule 6 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, copies of this Order are being sent to the Noticees and also to Securities and Exchange Board of India.

Date: April 23, 2014	**Jayanta Jash**
Place: Mumbai	**Adjudicating Officer**