BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : ORDER/VKV/HKS/2019-20/5142-5144]

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

Sl. No.	Name of the Entity	PAN
1.	Shri Sanjay Jethalal Soni	[PAN: BVSPS9741N]
2.	Smt. Krupa Sanjay Soni	[PAN: BVSPS9740P]
3.	M/s. J M Soni Consultancy	[PAN: AAGFJ2939P]

IN THE MATTER OF PARICHAY INVESTMENTS LIMITED.

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had conducted the Investigation in the matter relating to the trading activity of certain entities, in the scrip of Parichay Investments Limited (hereinafter referred to as **"PIL or Scrip"**). During the relevant time the shares of PIL was listed on BSE Limited (hereinafter referred to as **"BSE"**).

2. Pursuant to the Investigation, SEBI initiated adjudication proceedings under Section 15H of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as **"SEBI Act"**) against Shri Sanjay Jethalal Soni, his wife Smt. Krupa Sanjay Soni and his proprietary concern M/s. J M Soni Consultancy (hereinafter collectively referred to as **"Noticees"**) for the alleged violation of the

provisions of Regulation 10 and Regulation 11 (1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulation 35 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST Regulations"**) for the alleged failure to make public announcement to acquire shares of PIL (Target Company).

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Sahil Malik was appointed as the Adjudicating Officer **(AO)** by SEBI, under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, referred to as **"Adjudication Rules"**) to conduct adjudication proceedings *inter-alia* in respect of the Noticees, in the manner specified under Rule 4 of the Adjudication Rules read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and in terms of Section 15H of the SEBI Act. Subsequently, in the matter, the undersigned has been appointed as AO by SEBI, on August 13, 2019, in the place of Shri Sahil Malik to inquire into and adjudge, the violation of Regulation 10 and Regulation 11 (1) of the SAST Regulations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated August 24, 2017 read with supplementary Show Cause Notice dated October 24, 2018 (hereinafter collectively referred to as **"SCN"**) was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15H of the SEBI Act, on the Noticees for the alleged violation of Regulation 10 and Regulation 11 (1) of the SAST Regulations.

5. The Authorised Representative **(AR)** of the Noticees filed reply to the SCN vide letter dated November 06, 2017. The relevant extracts of the aforesaid reply, mainly to the effect the aforesaid allegation against the Noticees, are *inter-alia* reproduced hereunder.

a) *It is submitted that, Sanjay Soni is registered as Sub-Broker with Prabhudas Lilladhar Pvt Ltd.*

b) *The Noticees stated that, collectively they never held 1,70,650 equity shares of Parichay as on 29-09-2010. It is submitted that, the Noticees never acquired or held such shares which would entitle them to exercise 15% of voting rights in Parichay. The value of 1,70,650 equity shares at 29-09-2010 was around Rs.1.19 crores.*

c) *The Noticees denied to have held such shares of worth Rs.1.19 Crores.*

d) *The main business of Sanjay Soni, being sub-broker is share trading and investments and such trades were executed in day to day course of business. Further, the SCN does not discloses the built-up of the shareholding of the Noticees from beginning of the Investigation period. The AO has provided short information in respect of the built up of shareholding of the Noticees, which is devoid from the records of the Sanjay Soni.*

e) *The Noticees denied to have trigger the Open Offer limits on 29- 09-2010, 11-10-2010, 30-11-2010 and 06-12-2010.*

f) *The Noticees have requested the brokers to provide the contract notes for the trade executed during the investigation period, however, the balances considered as cumulative shareholding does not match with the stock Ledger available with them.*

g) *The Noticees have matched the trades as disclosed at page 10 of the SCN with the Ledger available with them. They confirm that, the shareholding* *disclosed in table at Para 6 on page no 10 doesn't match with the Ledger available.*

h) *It is stated that, Sanjay Jethalal Soni is the registered Sub-Broker and main line of business is investment, share trading and advisory services.*

i) *As per Regulation 3 of SEBI (SAST), 1997, the provisions of trigger of Open Offer doesn't apply to Share Broker for acquisition of Shares for their clients. It may be noted that, the total quantity attributed to Sanjay Soni and J M Soni Consultancy was not entirely for self-acquisition.*

j) *Being a registered Sub-Stock Broker, SAST 1997 Regulations, categorically provides exemption from applicability of Chapter III provisions, therefore, no trigger of open offer under regulation 10 of SEBI SAST 1997 can be attributed to Sanjay Soni, J M Soni Consultancy and Krupa Sanjay Soni.*

k) *Further, the categorization of Person Acting in Concert for Krupa Soni with Sanjay Soni u/r 2(1)(e)(1) of Takeover Regulations, 1997 is incorrect as trading of shares by Sanjay Soni was account of its own business dealings in its regular course of business in the capacity of Stock Broker and whereas the share trading by Krupa Soni was under her personal account.*

6. Subsequent to my appointment as the Adjudicating Officer in the matter, vide Hearing Notice dated August 19, 2019, the Noticees were provided an opportunity of personal hearing on August 29, 2019. However, vide email dated August 29, 2019, AR of the Noticees sought adjournment of the said hearing and requested for another opportunity of personal hearing. Therefore, in the interest of natural justice vide Hearing Notice dated August 29, 2019, the Noticees were provided one more opportunity of hearing on September 11, 2019. However, the Noticees have failed to attend the said hearing scheduled on September 11, 2019.

7. Thereafter, vide email dated September 12, 2019 the Noticees requested for time to file written submissions without availing opportunity of personal hearing. Considering the said request, the Noticees have been provided additional time to file written submissions in the matter. Consequently, vide letter dated September 19, 2019 the Noticee have made the following submissions in the matter.

1. *At Page No. 10 of the SCN dated August 24, 2017, the alleged trigger points are provided to disclosure violation of regulation 10 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 by us. We submit that, the Ld. Adjudicating Officer has not provided complete information to justify the trigger of regulation 10 of SEBI Takeover Regulations on September 29, 2010, October 11, 2010, November 30, 2010 and December 06, 2010. In the said table, the cumulative pre shareholding is not provided in the SCN.*

2. *We state that, it is incumbent and mandatory upon the Ld. Adjudicating Officer to provide the cumulative existing holding prior to adding the net buy quantity in order to identify the cumulative resultant quantity and basis which the violation of regulation 10 of SEBI Takeover Regulations, 1997 can be alleged or identified on September 29, 2010, October 11 2010, November 30, 2010 and December 6, 2010.*

3. *The Ld. Adjudicating Officer is obligated under law to provide full information to enable the delinquent to provide explanation and rebut each and every allegation as contained in the SCN and in-absence of pre trigger or pre acquisition shareholding of the noticees, the SCN is void and any adjudication proceedings basis such SCN is bad in law.*

4. *We as Noticees to said show cause are not in position to put forth defense to allegation of violation of regulation 10 of SEBI Takeover Regulations on*

September 29, 2010, October 11, 2010, November 30, 2010 and December 06, 2010 in absence of complete information.

5. *As per the said Table at page No. 10 of SCN dated August 24, 2017, it is not clear, whether the Ld. AO has negated the effect of Inter-se trades, Self-Trades and Match trades between parties. To arrive at trigger points on each date, all prior inter-se trades, Self-Trades and Match trades must be negated to have clear perspective of resulting voting power of the group.*

6. *Therefore, the computation of percentages need revisit to arrive at the trigger limits of SEBI Takeover Regulations, 1997.*

7. *We rely upon judgement of Hon'ble "Securities Appellate Tribunal, Mumbai in following cases:* ***Appeal No: 417 of 2018, 440 of 2018- Ashok Shivlal Rupani*** *Vs.* ***SEBI (Dated August 22, 2019). In Mr. Rakesh Kathotia & Ors.*** *vs.* ***SEBI (Appeal No. 07 of 2016 decided on May 27, 2019)*** *proceedings were quashed on account of inordinate delay.*

8. *As per the above judgements, it is mandatory for SEBI to explain the delay in issuance of Show Cause Notice in the Notice itself. It is admitted fact that, all allegations are of the year 2010 as such the investigation period July 21, 2010 to August 30, 2011. The first SCN is dated August 24, 2017 and second SCN is dated October 24, 2018. It is not in dispute the SCN is issued after 7-8 years of relevant investigation period and the both SCN do not provide any reasons for this inordinate delay in issuance of SCN. Since, no reasons are specified in the SCN for the delay, the SCN itself becomes infructuous as per the Hon. SAT Judgement Appeal No: 417 of 2018, 440 of 2018- Ashok Shivlal Rupani Vs. SEBI (Dated August 22, 20 19). In Mr. Rakesh Kathotia & Ors. Vs. SEBI (Appeal No. 07 of 2016 decided on May 27, 20 19).*

9. If the Ld. AO still proceeds to adjudicate basis of these SCN upon us, it will be held as deliberate contempt of judgements of Hon. SAT, wherein the judgement of SAT is absolutely clear that, if the delay is inordinate and the reasons for such delay is not provided in the SCN, the SCN itself is bad in law and any resultant adjudication proceedings will be void-ab-initio. Therefore this instant adjudication proceedings as per the Hon. SAT Judgement in Ashok Rupani case and Rakesh Kathothia case is bad in law.

10. Without prejudice to above, it is admitted position that, Sanjay Soni was registered as Sub-Broker with Prabhudas Lilladher Pvt Ltd. As per regulation 3(1)(f) of SEBI Takeover Regulations, the provisions of regulation 10, 11 and 12 are not applicable to Stock Brokers.

11. Without generality to above in the event the Ld. Adjudicating Officer records a finding that, we have not complied with the provisions of regulation 10 and 11(1) of SEBI Takeover Regulations, 1997 and proceeds to levy penalty, it is urged that , following grounds be also considered u/s 15J of SEBI Act, 1992. In terms of Apex Court Judgement dated February 28, 2019 in Bhavesh Pabari V s. SEBI, the Honorable Apex Court has held that:

> *"Therefore, to understand the conditions stipulated in clauses (a), (b) and (c) of Section 15 J to be exhaustive and admitting of no exception or vesting any discretion in the Adjudicating Officer would be virtually to admit/concede that in adjudications involving penalties under Sections 15 A, 15 B and 15 C, Section 15 J will have no application. Such a result could not have been intended by the legislature. We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15 J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15 J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty."*

12. *It is a matter of record that, there are more than 7 separate Adjudication Order are passed against us thereby levying penalty of Rs.2.98 Crores. Our income levels are very less and it is impossible to pay up these penalties. We state that, we have incurred losses in our trades executed in Parichay Investments Limited during the investigation period. Therefore, no profit has been made by us out of our trades executed in Parichay Investments Limited.*

13. *No intention to make any substantial acquisition of shares of Parichay Investments Limited.*

14. *We equivocally state that, we had no understanding of provisions of concept of Persons acting in concert as provided in SEBI Takeover Regulations, 1997. The concept of PAC we came to understand in the year 2017-2018, when our lawyer made us understanding the provisions governing relationship of Persons acting in concert.*

ISSUES FOR CONSIDERATION AND FINDINGS

8. I have carefully perused the SCN, the documents / material available on record and submissions of the Noticees. The issues that arise for consideration in the present case are:

   1) Whether the Noticees violated the provisions of Regulation 10 and Regulation 11 (1) of the SAST Regulations?

   2) Whether the Noticees is liable for imposition of monetary penalty under Section 15H of the SEBI Act?

   3) If yes, then what should be the quantum of monetary penalty?

9. It is pertinent to mention here that a common SCN dated August 24, 2017 was issued against the Noticees along with other 15 entities, pertaining to the violations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, certain Disclosure violations under SAST Regulation as well as Disclosure violations under SEBI (Prohibition of Insider Trading) Regulations, 1992. In addition to the above, in the same SCN it was also alleged that the Noticees have failed to make public announcement to acquire shares of PIL in terms of Regulation 10 and Regulation 11 (1) of SAST Regulations. Subsequently, a supplementary SCN dated October 24, 2018, was issued to the Noticees in respect of the connection amongst the Noticees as well as connection of the Noticees with other entities.

10. It is noted from the records available to me that the separate Adjudication Orders were passed against the Noticees and other entities in respect of violations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, certain Disclosure violations under SAST Regulation as well as Disclosure violations under SEBI (Prohibition of Insider Trading) Regulations, 1992.

11. The extant Order is dealing with the allegations against the Noticees mainly to the effect that the Noticees have failed to make public announcement to acquire shares of PIL in terms of Regulation 10 and Regulation 11 (1) of SAST Regulations, as alleged in the SCN dated August 24, 2017 read with supplementary SCN dated October 24, 2018.

12. It is pertinent to mention here the relevant provisions of Regulation 10 and Regulation 11 (1) of SAST Regulations, allegedly violated by the Noticees:-

Regulation 10. Acquisition of fifteen per cent or more of the shares or voting rights of any company.

“No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.”

Regulation 11. Consolidation of holdings.

“(1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent., in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

13. I note that the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 have been repealed by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. In terms of Regulation 35 of the SAST Regulations, 2011, specifically, Regulation 35(2) (a) and (b), any obligation or liability acquired, accrued or incurred under SAST Regulations, 1997 or any legal proceedings initiated under the SAST Regulations, 1997 shall remain unaffected and proceeded with as if the SAST Regulations, 1997 have not been repealed.

14. It is noted from the records available to me that Shri Sanjay Jethalal Soni and Smt. Krupa Sanjay Soni are husband and wife and Shri Sanjay Jethalal Soni is the proprietor of M/s. J M Soni Consultancy. I note that the said relation/connection is not disputed by the Noticees. It is observed that M/s. J M Soni Consultancy, being proprietorship firm, is for all practical purpose another name used by Shri Sanjay Jethalal Soni for his personal investment in the shares

of PIL. Therefore, I find that these three Noticees are closely related and connected with each other in a manner bound by a common objective and purpose with respect to their trading activities in the shares of PIL. The relation/connection amongst the Noticees imply that all of them have acted in unison in acquiring the shares and voting rights of PIL during the investigation period. Thus, the Noticees can be said to be the persons who have acted in concert for acquiring shares of PIL, within the meaning and import assigned to phrase ‘persons acting in concert’ in terms of Regulation 2 (1) (e) of the SAST Regulations.

15. I note that the Noticees being PAC are alleged to have been violated the provisions of Regulation 10 and Regulation 11 (1) of SAST Regulations on the following dates during the financial year 2010-11:-

Transaction Date	Buy	Sell	Net	Cumulative shareholding	Percentage shareholding	Violating Provisions of SAST Regulations
29-Sep-10	18,900	-5,550	13,350	1,84,000	15.33%	Regulation 10
11-Oct-10	30,500	-20,550	9,950	1,81,650	15.14%	Regulation 10
29-Oct-10	30,600	-200	30,400	2,66,400	22.20%	Regulation 11 (1)
30-Nov-10	35,850	-10,650	25,200	1,99,400	16.62%	Regulation 10
06-Dec-10	10,950	-3,000	7,950	1,86,150	15.51%	Regulation 10

16. It is noted that this is the case where the Noticees have altogether traded in the scrip of PIL (the Target Company) during the investigation period consequently, their collective shareholdings in the scrip crossed the threshold limit of 15.00% on four occasions i.e. on September 29, 2010, October 11, 2010, November 30, 2010 and December 06, 2010 as tabulated above. Thus, the Noticees were required to make public announcement to acquire shares of PIL in terms of Regulation 10 of SAST Regulations. Further, on October 29, 2010 the Noticees have crossed the limit of creeping acquisition i.e. 5% shares of PIL thus they were required to make public announcement to acquire shares of PIL in terms of Regulation 11 (1) of the SAST Regulations. It is observed that the Noticees did not make any public announcement to acquire shares of PIL in terms of the

aforesaid SAST Regulations. Therefore the Noticees have violated the provisions of Regulation 10 and Regulation 11 (1) of SAST Regulations on the aforesaid dates during the financial year 2010-11.

17. With regard to the details of shareholdings, the Noticees have contended that the cumulative pre shareholding was not provided in the SCN and therefore we are not in position to put forth defence to allegation of violation of Regulation 10 of SAST Regulations. In this regard, I note that at page No.10 of the SCN the Noticees have been provided summary of their cumulative shareholding on those particular dates when their shareholding crossed 15% threshold, thus triggering the requirement of public announcement to acquire shares of PIL in terms of Regulation 10. Further, the day wise transactions in detail were provided to the Noticees in the form of trade and order logs as Annexure to the SCN and the summary of the cumulative shareholding of the Noticees on the particular dates are based on the aforesaid day wise transactions. The details of the trading done by the Noticees in the shares of PIL as observed from trade and order log during the investigation and the consequent cumulative holding of shares/voting rights of PIL by the Noticees are given hereunder.

Date	Buy	Sell	Net	Cumulative	%
21-Sep-10	8,550	0	8,550	1,22,150	10.18
22-Sep-10	12,350	0	12,350	1,34,500	11.21
24-Sep-10	34,500	-3,600	30,900	1,65,400	13.78
27-Sep-10	5,650	-11,100	-5,450	1,59,950	13.33
28-Sep-10	11,650	-950	10,700	1,70,650	14.22
29-Sep-10	**18,900**	**-5,550**	**13,350**	**1,84,000**	**15.33**
30-Sep-10	48,050	-5,500	42,550	2,26,550	18.88
1-Oct-10	0	-1,550	-1,550	2,25,000	18.75
4-Oct-10	900	-14,950	-14,050	2,10,950	17.58
5-Oct-10	0	-40,300	-40,300	1,70,650	14.22
6-Oct-10	1,000	0	1,000	1,71,650	14.30
7-Oct-10	24,900	-32,450	-7,550	1,64,100	13.68
8-Oct-10	17,350	-9,750	7,600	1,71,700	14.31
11-Oct-10	**30,500**	**-20,550**	**9,950**	**1,81,650**	**15.14**
12-Oct-10	14,500	-5,050	9,450	1,91,100	15.93
14-Oct-10	15,000	-5,500	9,500	2,00,600	16.72
15-Oct-10	300	-9,050	-8,750	1,91,850	15.99
18-Oct-10	200	0	200	1,92,050	16.00

Date	Buy	Sell	Net	Cumulative	%
19-Oct-10	21,650	-7,500	14,150	2,06,200	17.18
20-Oct-10	100	-1,000	-900	2,05,300	17.11
21-Oct-10	7,750	-7,750	0	2,05,300	17.11
22-Oct-10	16,000	-5,750	10,250	2,15,550	17.96
25-Oct-10	16,150	-12,200	3,950	2,19,500	18.29
26-Oct-10	400	0	400	2,19,900	18.33
27-Oct-10	2,300	-500	1,800	2,21,700	18.48
28-Oct-10	21,000	-6,700	14,300	2,36,000	19.67
29-Oct-10	**30,600**	**-200**	**30,400**	**2,66,400**	**22.20**
2-Nov-10	9,050	0	9,050	2,75,450	22.95
3-Nov-10	7,150	-19,150	-12,000	2,63,450	21.95
8-Nov-10	14,550	-7,950	6,600	2,70,050	22.50
9-Nov-10	200	-2,000	-1,800	2,68,250	22.35
12-Nov-10	5,500	-15,300	-9,800	2,58,450	21.54
15-Nov-10	500	-29,100	-28,600	2,29,850	19.15
16-Nov-10	19,950	-13,550	6,400	2,36,250	19.69
18-Nov-10	0	-1,800	-1,800	2,34,450	19.54
19-Nov-10	9,800	-2,000	7,800	2,42,250	20.19
22-Nov-10	3,850	-73,250	-69,400	1,72,850	14.40
23-Nov-10	20,300	-16,950	3,350	1,76,200	14.68
24-Nov-10	4,150	-16,750	-12,600	1,63,600	13.63
25-Nov-10	35,300	-37,950	-2,650	1,60,950	13.41
26-Nov-10	18,200	-13,350	4,850	1,65,800	13.82
29-Nov-10	19,650	-11,250	8,400	1,74,200	14.52
30-Nov-10	**35,850**	**-10,650**	**25,200**	**1,99,400**	**16.62**
1-Dec-10	4,000	-39,500	-35,500	1,63,900	13.66
2-Dec-10	14,450	-11,050	3,400	1,67,300	13.94
3-Dec-10	16,000	-5,100	10,900	1,78,200	14.85
6-Dec-10	**10,950**	**-3,000**	**7,950**	**1,86,150**	**15.51**
7-Dec-10	27,300	-2,000	25,300	2,11,450	17.62
8-Dec-10	11,250	-5,850	5,400	2,16,850	18.07
9-Dec-10	9,500	-5,550	3,950	2,20,800	18.40
10-Dec-10	6,,650	-12,450	-5,800	2,15,000	17.92
13-Dec-10	450	0	,450	2,15,450	17.95
14-Dec-10	0	-2,500	-2,500	2,12,950	17.75
15-Dec-10	13,800	-29,300	-15,500	1,97,450	16.45
16-Dec-10	9,450	-4,000	5,450	2,02,900	16.91
20-Dec-10	3,050	0	3,050	2,05,950	17.16
21-Dec-10	500	-1,000	-500	2,05,450	17.12
22-Dec-10	19,700	-9,950	9,750	2,15,200	17.93
23-Dec-10	4,600	-37,100	-32,500	1,82,700	15.23
24-Dec-10	6,400	-17,800	-11,400	1,71,300	14.28

18. Besides the Noticees have been provided all the relevant information relied upon in the SCN, the Noticees have not submitted any details or documentary evidences, such as their statement of shareholdings from the depositories in the scrip of PIL which prove contrary to the shareholding details provided in the SCN. Therefore, I do not find merit in the said contention of the Noticees.

19. It is observed that the collective shareholdings of the Noticees in the Target Company as on September 21, 2010 was 10.18% (i.e. 1,22,150 shares) of the paid up equity share capital of PIL. Thereafter the Noticees purchased / sold shares of PIL and their holdings exceeded 15.00% of the paid up capital of PIL on four occasions i.e. September 29, 2010 (15.33%), October 11, 2010 (15.14%), November 30, 2010 (16.62%) and December 06, 2010 (15.51%). It is also pertinent to note that the change in collective shareholdings of the Noticees is net of their buy and sell of shares after taking into account the effect of self-trades and inter-se transfers. Therefore, I find that the Noticees have crossed the threshold of 15.00% on the aforesaid four occasions, consequently in terms of Regulation 10 of SAST Regulations the Noticees were required to make public announcement to acquire shares of PIL. However, the Noticees did not make any public announcement to acquire shares of PIL. Therefore, I find that the Noticees have repeatedly breached the provisions of Regulation 10 of SAST Regulations on September 29, 2010, October 11, 2010, November 30, 2010 and December 06, 2010.

20. Further, as per Regulation 11(1) of the SAST Regulations, an acquirer, whose shareholding in the target company together with the shareholding of persons acting in concert with him is 15% or more but less than 55% can acquire additional voting rights of only up to 5% in the company within a financial year. Therefore, if the aggregate acquisition of shares/voting rights by such acquirers at any point of time within a financial year crosses the limit of five percent, then such acquirers are required to make public announcement to acquire shares of target company in terms of regulation 11(1) of the SAST Regulations, irrespective of the fact that the shareholding of the acquirer has subsequently declined below the threshold limit due to sale of shares by them.

21. It is noted from the details of trading undertaken by the Noticees in the scrip of PIL as tabulated above that on October 11, 2010, the Noticees had acquired

15.14% shares in the target company and by trading further in the scrip, they have increased their shareholdings in the target company to 22.20% on October 29, 2010. Thus, the acquisition of shares/voting rights on October 29, 2010 crossed the creeping acquisition limit of 5% prescribed under Regulation 11(1) of the SAST Regulations, however, the Noticees did not make any public announcement to acquire shares of PIL. Thus, I find that the Noticees have also violated the provisions of Regulation 11 (1) of the SAST Regulations on October 29, 2010.

22. The Noticees have submitted that Mr. Sanjay Jethalal Soni is a registered Sub-Broker. The total quantity attributed to Sanjay Soni and J M Soni Consultancy was not entirely for self-acquisition. Thus it is submitted that being a registered Sub-Stock broker, SAST 1997 Regulations, categorially provides exemption from applicability of Chapter III provisions, therefore, no trigger of open offer under Regulation 10 of SEBI SAST 1997 can be attributed to them.

23. I note that, in support of the aforesaid claim the Noticees have not provided any evidence which shows that the impugned dealings in the shares of PIL by Sanjay Jethalal Soni and J M Soni Consultancy were done as a Broker on behalf of their clients. However, on the contrary it is observed from the trade log that Sanjay Soni and J M Soni Consultancy have traded in the scrip of PIL and acquired shares in their name and PAN. Therefore, it cannot be attributed that being a Sub-Stock Broker Sanjay Jethalal Soni and J M Soni Consultancy have acquired the shares of PIL, on behalf of their clients in the normal course of business. Hence, there is no merit in the said claim of the Noticees, rather I note that the Noticees being PAC have acquired the shares of PIL and crossed the threshold of 15.00% on September 29, 2010, October 11, 2010, November 30, 2010 and December 06, 2010, which requires them to make public announcement to acquire shares of PIL in terms of Regulation 10 of SAST Regulations.

24. The Noticees have submitted that there was inordinate delay in the issuance of SCN and therefore the SCN become infructuous as per the Hon'ble Securities Appellate Tribunal (**"SAT"**) judgement in the matter of *Ashok Shivlal Rupani Vs. SEBI* (Order dated August 22, 2019) and in *Rakesh Kathotia & Ors. Vs. SEBI* (Order dated May 27, 2019). In this regard, I note from the records that the involvement of the Noticees in various scrips came to the attention of SEBI and the stock exchanges through various market alerts. It is observed from the records that during the period from January 2010 to August 2011 the Noticees alongwith other connected entities were indulged in irregular/manipulative trading activities in the various scrips (as many as in 5 scrips) including the scrip of PIL. I find that the SEBI initiated the investigation as soon as information regarding malafide actions came to its notice. The investigation process is a detailed one which passes through various levels of analysis. This consumes considerable time depending on the number of entities involved, scrips involved and the complexity of the transactions. After completion of the Investigation, in the year 2017, SEBI initiated Adjudication proceedings and the proceedings under Section 11 and 11B of the SEBI Act. Consequently, the SCN was issued to the Noticees in the instant matter on August 24, 2017 and a supplementary SCN on October 24, 2018. The Noticees have also made several correspondences and also sought extensions to make submissions in the matter. Further, in the interest of natural justice the Noticees have been provided several opportunities to make their submissions in the instant proceeding. Considering the aforesaid, I note that there was no inordinate delay on the part of SEBI. It is further noted that in the instant matter the Noticees have repeatedly failed to make public announcement to acquire shares of PIL on five occasions and deprived the shareholders at the relevant time of their statutory rights / opportunity to exit from the Target Company and therefore they breached the provisions of SAST Regulations. Such charges against the Noticees make the instant matter very grave, which do not warrant the delay to be considered as a mitigating factor. In this regard, it is relevant to refer here the observations of Hon'ble SAT in the matter of ***Ranjan***

Varghese Vs. SEBI (Appeal No.177 of 2009 and Order dated April 08, 2010), as under:-

> *"The fact that the appellants acting in concert with each other had made the acquisitions which triggered the Takeover Code, it was incumbent upon them to make a public announcement which, admittedly, they have failed to do so. This failure has seriously prejudiced the public investors/shareholders of the company who have been deprived of their valuable right to exit by offering their shares to the acquirer. We cannot lose sight of the fact that one of the primary objects of the Takeover Code is to allow the public shareholders an exit route when the target company is either taken over by an acquirer or an acquirer makes a substantial acquisition therein."*

25. Without prejudice to above, even if it is presumed that there was delay in initiating the proceedings, this itself should not be a ground for discharging the Noticees from such grave charges. In this, I would like to refer the observations of Hon'ble Supreme Court of India in the matter of ***State vs. R. Vasanthi Stanley*** reported in AIR 2015 SC 3691. The Apex Court has held that *"…a serious economic offence or the offences that has the potentiality of creating a dent in the financial health of the institution cannot be quashed on the ground that there is delay in the trial…"*

26. In connection with the enforcement of the provisions of Regulation 10 and 11 of the SAST Regulation, it is pertinent to note the observations of Hon'ble SAT in the matter of ***Nirvana Holdings Private Limited vs. SEBI*** **(Appeal no. 31/2011 decided on September 08, 2011)**. The relevant paragraph of the aforesaid judgment of Hon'ble SAT is reproduced as under:

> *"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."

27. It is pertinent to mention here that in the same matter an Order was passed by the Hon'ble Whole Time Member, SEBI on July 31, 2019 in the proceedings under Sections 11 and 11B of the SEBI Act, 1992, read with Regulation 44 of the SAST Regulations in respect of the Noticees and *inter-alia* debarred the Noticees to access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly for a period of 5 years for the violation of Regulation 10 and Regulation 11(1) of the SAST Regulations.

28. In view of the foregoing, I am of the opinion that the Noticees, have failed to make public announcement to acquire shares of PIL on September 29, 2010, October 11, 2010, November 30, 2010 and December 06, 2010 in terms of Regulation 10 of SAST Regulations and on October 29, 2010 in terms of Regulation 11 (1) of SAST Regulations. Therefore, it is stablished that the Noticees have violated the provisions of Regulation 10 and Regulation 11 (1) of SAST Regulations.

29. Violation of the aforesaid Regulations of the SAST Regulations by the Noticees attract monetary penalty under Section 15H of the SEBI Act, i.e. at the relevant time *inter-alia* reads as follows:

“Penalty for non-disclosure of acquisition of shares and takeovers.

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

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

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

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,]

he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.”

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

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

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

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

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

(c) the repetitive nature of the default

***[Explanation –** For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]”*

31. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India 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….."*

32. In the instant matter, it is difficult to quantify the gains made by the Noticees or the loss caused to investors as a result of the failure of Noticees to make public announcement to acquire shares of PIL. The purpose of Regulation 10 and 11(1) of the SAST Regulations was to ensure that the public gets an exit opportunity once there is a breach of the threshold. It is also noted that at present the shares of the company are suspended from trading due to surveillance measures and the scrip was last traded at Rs.7.98. In the circumstances, it is noted that existing investors lost to avail valuable opportunities to exit from the scrip due to failure by the Noticees to make public announcement at the five occasions, they were required to do so, in terms of the Regulations applicable in this regard. The Noticees have breached the provisions of the aforesaid SAST Regulations on five occasions in the instant matter and it is also observed that the Noticees have breached the SEBI Act and the Regulations made thereunder in various other scrips, thus the contravention by the Noticees are repetitive in nature.

33. Since, the Noticees deprived the public shareholders from their valuable right and the default on the part of the Noticees are repetitive in nature, I am of the view that this is a fit case to impose such penalty that commensurate with the gravity of the violations committed by the Noticees.

ORDER

34. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the Adjudication Rules, I hereby impose penalty of Rs.18,00,000/- (Rupees Eighteen Lakh Only) payable jointly or severally by the Noticees viz. Shri Sanjay Jethalal Soni, his wife Smt. Krupa Sanjay Soni and his proprietary concern M/s. J M Soni Consultancy in terms of Section 15H of the SEBI Act, for their failure to make public announcement to acquire shares of PIL in terms of Regulation 10 and Regulation 11 (1) of SAST Regulations, 1997 read with Regulation 35 (2) of SAST Regulations, 2011.

35. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

36. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department-DRA-I), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 – A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051."

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

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

38. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : October 24, 2019
Place : Mumbai

Vijayant Kumar Verma
Adjudicating Officer