BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/NH/RJ/2023-24/29108-29111]

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

In respect of

Sr. No.	Notice Name	Noticee No.
1.	**Ms. Zalak Purvesh Parikh** PAN: ANYPP1513A	**Noticee No. 1**
2.	**Mr. Devabhai Nagjibhai Desai** PAN: AIXPD6478L	**Noticee No. 2**
3.	**Ms. Renukaben Rameshbhai Shah** PAN: FEXPS3390B	**Noticee No. 3**
4.	**Mr. Varun Jigneshkumar Shah** PAN: EQIPS9475M	**Noticee No. 4**

In the matter of A & M Febcon Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI'**) received a reference vide letter dated September 16, 2021, from BSE wherein it had *inter alia* observed that promoters viz. Noticee Nos. 1 and 2 have not made the requisite disclosures with regard to the changes in their shareholdings in the scrip of A & M Febcon Limited (hereinafter referred to as **'AMFL'/ 'company'**) in accordance with Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**Takeover Regulations'**).

2. Pursuant to receipt of the above reference, SEBI examined the matter and *prima facie* found that the promoters of AMFL i.e. Noticee Nos. 1 to 4 (hereinafter cumulatively referred to as '**Noticees'**) have violated Regulation 29(2) read with Regulation 29(3) of Takeover Regulations.

3. On this background, SEBI initiated the instant adjudication proceeding against the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

4. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as '**AO'**) vide communique dated January 12, 2023, under Section 19 read with Section 15-I of Securities and Exchange Board of India, 1992 (hereinafter referred to as '**SEBI Act'**) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to enquire into and adjudge under Section 15A(b) of the SEBI Act the alleged violations of Regulation 29(2) read with 29(3) of Takeover Regulations by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

5. Show Cause Notice (hereinafter referred to as '**SCN**') bearing No. SEBI/HO/EAD/EAD2/P/OW/2023/006951/2 dated February 16, 2023, was issued to the Noticees under Rule 4 of Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against the Noticees under Section 15A(b) of SEBI Act for the aforesaid alleged violations. The Noticees were also advised to submit their reply to SCN within 14 days from the date of receipt of the SCN.

6. The SCN, *inter alia*, alleged the following:

i. *In the course of examination, the details of shareholding of promoter entities provided by BSE and shareholding pattern disclosed on BSE by AMFL were analyzed. From the analysis of the said data, it is alleged that there were 16 instances where the change in aggregate shareholding of promoters of AMFL required disclosures under Regulation 29 of Takeover Regulations. It is further mentioned in the examination report that the Noticees being promoters of the company, were jointly and severally liable to disclose the particulars* *of aforesaid transactions to BSE and to the company under Regulation 29(2) of Takeover Regulations. The details of the said 16 instances are tabulated below:*

Statement of change in shareholding of promoters of A & M Febcon Ltd.									
Sr. No.	***Date of transaction***	***Type of transaction (Sale/Buy)***	***Promoters shareholding (Pre transactions) (in nos.)***	***Pre transaction promoters shareholding (in %)***	***Promoters shareholding (Post transactions) (in nos.)***	***Total Number of shares of the company***	***Post transaction promoters shareholdin g (in %)***	***Change (in %)***	***Disclosure required u/r 29(2)***
1.	*June 30, 2020*	*Buy*	*7296264*	*56.92%**	*7589323*	*12813205*	*59.23%*	*2.31%*	*Yes*
2.	*July 8, 2020*	*Sell*	*7589323*	*59.23%*	*7322062*	*12813205*	*57.14%*	*-2.09%*	*Yes*
3.	*July 14, 2020*	*Sell*	*7322062*	*57.14%*	*7045257*	*12813205*	*54.98%*	*-2.16%*	*Yes*
4.	*July 16, 2020*	*Sell*	*7045257*	*54.98%*	*6764995*	*12813205*	*52.80%*	*-2.19%*	*Yes*
5.	*July 17, 2020*	*Sell*	*6764995*	*52.80%*	*6360600*	*12813205*	*49.64%*	*-3.16%*	*Yes*
6.	*July 20, 2020*	*Sell*	*6360600*	*49.64%*	*5790361*	*12813205*	*45.19%*	*-4.45%*	*Yes*
7.	*July 21, 2020*	*Sell*	*5790361*	*45.19%*	*5339800*	*12813205*	*41.67%*	*-3.52%*	*Yes*
8.	*July 23, 2020*	*Sell*	*5339800*	*41.67%*	*4719264*	*12813205*	*36.83%*	*-4.84%*	*Yes*
9.	*September 21, 2020*	*Sell*	*4719264*	*36.83%*	*4394202*	*12813205*	*34.29%*	*-2.54%*	*Yes*
10.	*October 7, 2020*	*Sell*	*4394202*	*34.29%*	*4135242*	*12813205*	*32.27%*	*-2.02%*	*Yes*
11.	*October 23, 2020*	*Sell*	*4135242*	*32.27%*	*3599475*	*12813205*	*28.09%*	*-4.18%*	*Yes*
12.	*October 26, 2020*	*Sell*	*3599475*	*28.09%*	*3219475*	*12813205*	*25.13%*	*-2.97%*	*Yes*
13.	*October 27, 2020*	*Sell*	*3219475*	*25.13%*	*2934475*	*12813205*	*22.90%*	*-2.22%*	*Yes*
14.	*October 30, 2020*	*Sell*	*2934475*	*22.90%*	*2609455*	*12813205*	*20.37%*	*-2.54%*	*Yes*
15.	*November 4, 2020*	*Sell*	*2609455*	*20.37%*	*2265572*	*12813205*	*17.68%*	*-2.68%*	*Yes*
16.	*November 6, 2020*	*Sell*	*2265572*	*17.68%*	*1954202*	*12813205*	*15.25%*	*-2.43%*	*Yes*

** Promoter group shareholding as per March 2020 shareholding pattern is 56.92%*

ii. However, it is alleged that the Noticees being promoters did not make any disclosure in respect of 2% or more change in shareholding of promoter group on 16 instances as stated in the above table. Further, it was noted that BSE in its aforesaid letter dated September 16, 2021 has mentioned that the Noticees have not filed any disclosures under Regulation 29(2) of Takeover Regulations for the abovementioned transactions.

iii. Therefore, it is alleged that the Noticees have violated Regulation 29(2) read with Regulation 29(3) of Takeover Regulations.

Service of SCN and Hearing Notice on Noticee No. 1

7. The delivery of SCN to Noticee No. 1 was attempted in the following manner as tabulated below:

Table 1

Sr. No.	Mode of Delivery	Addresses/ Email IDs	Remarks
1.	Delivery through Speed Post with Acknowledgment Due	A/2, …. Ahmedabad	The SCN returned undelivered with a remark 'left'
		6, Devipark ... Ahmedabad	The SCN returned undelivered with a remark 'left'
2.	Delivery of digitally signed SCN through Email	'pur…5@gmail.com'	Digitally signed SCN was duly delivered on February 17, 2023..
		'zal…k@gmail.com'	Digitally signed SCN was duly delivered on March 08, 2023.
		'jig…3@yahoo.com'	Digitally signed SCN was duly delivered on February 17, 2023.

**Email IDs and addresses are excised for confidentiality*

The relevant records in this regard are present in the case record.

8. In the interest of natural justice, attempts were made to undertake service of the SCN on Noticee No. 1 through Stock Exchanges and Depositories in terms of SEBI circular No. SEBI/HO/EFD1/EFD1_DRA4/P/CIR/2022/104 dated July 29, 2022. In this regard, the following response was received from the Market Infrastructure Institutions (hereinafter referred to as 'MIIs'):

Table 2

Sr. No.	Name of MIIs	Remarks
1.	NSE	Undelivered

2.	BSE	Undelivered
3.	NSDL	Not Delivered
4.	CDSL	Returned Undelivered
5.	MSEI	Not Registered

9. Thereafter, the service of the SCN dated February 16, 2023, was attempted on Noticee No. 1 by way of affixture at the last known address of Noticee No. 1. The status of the affixture was, *inter-alia*, mentioned as under:

   "…it was found that the said entity is not staying at the mentioned address…affixture of the said SCN could not be done"

10. In view thereof and in the interest of natural justice, the service of the SCN dated February 16, 2023, was undertaken on Noticee No. 1 through newspaper publication in terms of the provisions of Rule 7(d) of the Adjudication Rules. The notice regarding the issuance of SCN in the instant matter was published in 'The Times of India' (English newspaper and Ahmedabad Edition), 'Ahmedabad Express' (Gujarati newspaper and Ahmedabad Edition) and 'Metro Herald' (Hindi newspaper and Ahmedabad Edition) on June 15, 2023. In this regard, the following may be noted:

    10.1. Vide the said publication, Noticee No. 1 was informed about the issuance of SCN dated February 16, 2023 and was advised to download the soft copies of the said SCN along with the annexures from the SEBI Website.

    10.2. Noticee No. 1 was also informed through the publication that in the interest of natural justice, an opportunity for a personal hearing is granted to her on June 29, 2023 at 03:00 PM

    10.3. It was also mentioned in the said publication that in case Noticee No. 1 fails to submit her reply to the aforesaid SCN and/or fails to avail the opportunity of a personal hearing within the granted time, the Adjudicating Officer would proceed further on the basis of material available on record.

11. Further, the Zoom link for the scheduled hearing was shared with the Noticee No. 1 vide email dated June 28, 2023. The relevant details in this regard are tabulated below:

Table 3

Sr. No.	Email IDs*	Remarks
1.	'pur…5@gmail.com'	Delivered on June 28, 2023
2.	‘zal…k@gmail.com’	Delivered on June 28, 2023
3.	‘jig…3@yahoo.com’	Delivered on June 28, 2023

**Email IDs are excised for confidentiality*

The relevant details in this regard are kept on record.

12. However, it is noted that the Noticee No. 1 did not avail the opportunity of the said online hearing. Further, attempts were made to contact the Noticee No. 1 over telephonic call. However, the contact number of the Noticee No. 1 was unreachable.

13. In this context, to ensure that the SCN and Hearing Notice were duly served upon the Noticee No. 1, efforts were made to obtain contact details of the Noticee No. 1 from the depositories, banks and other intermediaries in the course of proceedings. In this regard, it is pertinent to highlight that the aforesaid addresses and email IDs where service of SCN was undertaken upon the Noticee No. 1 are in consonance with the contact details of Noticee No. 1 as recorded in her Aadhar Card, Voter ID Card, KYC documents of State Bank of India (Sanand, Ahmedabad branch), Yes Bank (Shahibaug, Ahmedabad branch) and Cosmos Co-operative Bank Ltd. (Paldi, Ahmedabad branch) and client registration form of SBICAP Securities Limited.

14. In this context, it is noted that the SCN along with the annexures and the Hearing Notice has been duly served on the Noticee No. 1 in terms of the procedure laid under Adjudication Rules.

15. In this context, I refer to the following judgments of Hon’ble Securities Appellate Tribunal (hereinafter referred to as ‘SAT’):

15.1. In the matter of **Vipul Babulal Jain v. SEBI** (Appeal No. 828 of 2022 decided on November 14, 2022), Hon’ble SAT has, *inter alia,* held as under:

“5. There is no assertion in the memorandum of appeal alleging non-receipt of the show cause notice through email. ***In view of Rule 7(b) of the Rules, service of the show cause notice was duly served through email. We are consequently of the opinion that the procedure adopted by the AO for serving the show cause notice was in accordance with the Rule 7(b) of the Rules.****”*

15.2. In the matter of **Menika & Ors. v. SEBI** (Appeal No. 468 of 2022 decided on January 05, 2023) Hon’ble SAT has, *inter alia,* held as under:

“6. On the issue of service, we find that the show cause notice was sent to Menika vide speed post acknowledgment due on July 16, 2020 on her residential address which is the same as indicated in the memo of appeal. Since the acknowledgement card was returned with a remark “No Status”, the respondent served the show cause notice vide email on the email I.D. “menika124@gmail.com” and also at “deepakkgrade@gmail.com”. ***The show cause notice was delivered on the aforesaid email address, which, in our opinion, is sufficient service as per the proviso to Rule 7(b) of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as ‘Rules of 1995’).*** *In addition to the aforesaid, the show cause notice was also published on March 2, 2021 in various newspapers, namely, Times of India (Chandigarh and Varanasi edition), The Hindustan Times (Delhi edition), Navbharat Times (Delhi edition), Dainik Jagran (Ghaziabad and Varanasi edition) and Dainik Bhaskar (Chandigarh edition). …*

…

9. The aforesaid facts have not been disputed by the appellants. We are of the opinion, ***that in view of the glaring evidence that has been filed by the respondent, service of the show cause notice, etc. was properly done by the respondent under the Rules of 1995. We are satisfied that the appellants were duly served with the show cause***

notice and as well as the notice for hearing. In spite of service, the appellants chose not to appear." (Emphasis supplied)

16. Under these circumstances, I observe that even though the Noticee No. 1 has not availed the various opportunities provided to her, the principles of natural justice have been adequately complied with in the present matter. Accordingly, I am proceeding to deal with the matter on merits based on the material available on record.

Service of SCN and Hearing Notice on Noticee No. 2

17. The SCN was, first, served upon Noticee No. 2 vide email and SPAD. The relevant details in this regard are provided as under:

Table 4

Sr. No.	Email ID/Address*	Mode	Remarks
1	76, …. Ahmedabad	Delivery through Speed Post with Acknowledgment Due	Delivered on February 20, 2023 as per the consignment tracking on India Post which has been certified by the In-Charge, Matunga BPC.
2	dev…i@gmail.com	Email	Digitally Signed SCN duly delivered on February 17, 2023.

**Email ID and address are excised for confidentiality*

The relevant records in this regard are present in the case record.

18. As there was nothing on record to suggest that the Noticee No. 2 has submitted reply to the SCN within the time provided in the SCN, vide email dated March 10,

2023 time till May 17, 2023, was provided to the Noticee No. 2 to submit his reply to the SCN. However, it is noted from the material on record that no response was received from Noticee No. 2 within the said period.

19. In the interest of natural justice, the service of SCN on Noticee No. 2 was also undertaken through courier (Blue Dart DHL) in terms of Adjudication Rules. The SCN via courier was delivered on May 16, 2023. It is pertinent to note that as per the record of delivery of the said courier, the SCN was received by Noticee No. 2.

20. I note that there is nothing on record to suggest that Noticee No. 2 has furnished a reply to the SCN in spite of multiple opportunities being provided to him. In this background and in consonance with the Adjudication Rules, an opportunity for a personal hearing was granted on July 11, 2023 vide Hearing Notice dated June 23, 2023 to Noticee No. 2. Further, the Noticee No. 2 was advised to file his reply to SCN before July 06, 2023. Furthermore, SCN was also annexed with the said Hearing Notice. The relevant details with regard to the service of Hearing Notice dated June 23, 2023 are tabulated below:

Table 5

Sr. No.	**Mode**	**Email IDs/Address/Mobile Number***	**Remarks**
1.	Digitally Signed Hearing Notice and SCN delivered through email	dev…i@gmail.com	Delivered on June 23, 2023
		dev….7@gmail.com	Delivered on June 23, 2023
2.	Delivery through Speed Post with Acknowledgment Due	76, …. Ahmedabad	Delivered on June 28, 2023, as per the consignment tracking on India Post website.
3.	Courier (Blue Dart DHL)	76, …. Ahmedabad	Delivered on June 24, 2023. From the record available, it

			is noted that the recipient of the Hearing Notice was Noticee No. 2.
4.	Digitally Signed Hearing Notice delivered through instant messaging (Whatsapp)	989…4	Delivered on July 10, 2023 at 06:00 PM Seen by the recipient on July 10, 2023, at 06:02 PM

**Email IDs, contact numbers and addresses are excised for confidentiality*

The relevant details in this regard are kept on record.

21. Further, a Zoom link for the hearing was also shared with Noticee No. 2 vide email dated July 10, 2023. The relevant details in this regard are tabulated below:

Table 6

Sr. No.	**Email IDs***	**Remarks**
1.	dev…i@gmail.com	Delivered on July 10, 2023.
2.	dev….7@gmail.com	Delivered on July 10, 2023.

**Email IDs are excised for confidentiality*

The relevant details in this regard are kept on record.

22. However, it is noted that the Noticee No. 1 did not avail the opportunity of the said online hearing. In the greater interest of justice, another opportunity for a personal hearing on July 20, 2023 was granted to Noticee No. 2 vide email dated July 13, 2023. Further, one more opportunity was granted to Noticee No. 2 to file his reply to SCN before July 19, 2023. The relevant details with regard to the service of the said Hearing Notice is provided below:

Table 7

Sr. No.	Email IDs*	Remarks
1.	dev…i@gmail.com	Delivered on July 13, 2023.
2.	dev….7@gmail.com	Delivered on July 13, 2023.

**Email IDs are excised for confidentiality*

The relevant details in this regard are kept on record.

23. Further, the Zoom link for the hearing scheduled on July 20, 2023 was shared with the Noticee No. 2 vide email dated July 19, 2023. The relevant details in this regard are tabulated below:

Table 8

Sr. No.	Email IDs*	Remarks
1.	dev…i@gmail.com	Delivered on July 19, 2023.
2.	dev….7@gmail.com	Delivered on July 19, 2023.

**Email IDs are excised for confidentiality*

The relevant details in this regard are kept on record.

24. I note that in order to ensure that the SCN and Hearing Notice were duly delivered to the Noticee No. 2, efforts were made to obtain contact details of the Noticee No. 2 from the depositories during the course of instant proceedings. In this regard, it is pertinent to highlight that the aforesaid addresses and email IDs where service of SCN was undertaken upon the Noticee No. 2 are in consonance with the contact details of Noticee No. 2 as recorded by the depositories.

25. In this context, it is noted that the SCN along with the annexures and the Hearing Notice has been duly served on the Noticee No. 2 in terms of the procedure laid under Adjudication Rules.

26. In this context, I refer to the following judgments of Hon’ble SAT:

26.1. In the matter of **Shubhi Bansal v. SEBI** (Appeal No. 79 of 2022 decided on February 22, 2022) held, *inter-alia*, as under:

"2. In this regard, we have perused the impugned order and we find that the show cause notice dated July 29, 2021 was delivered to the appellant on July 30, 2021. Further, the hearing notice dated September 29, 2021 was also delivered. ***In spite of service the appellant chose to remain absent and neither filed a reply nor contested the issue. Accordingly, we are of the opinion that the appellant was duly served and if the appellant chose not to contest the proceedings then it is not the fault of the respondent but the fault lies totally with the appellant."*** *(Emphasis supplied)*

26.2. In the matter of **Vipul Babulal Jain v. SEBI** (Appeal No. 828 of 2022 dated November 14, 2022), it was, *inter-alia*, held the following:

"5. There is no assertion in the memorandum of appeal alleging non-receipt of the show cause notice through email. In view of Rule 7(b) of the Rules, service of the show cause notice was duly served through email. We are consequently of the opinion that the procedure adopted by the AO for serving the show cause notice was in accordance with the Rule 7(b) of the Rules."

27. Under the circumstances, even though the Noticee No. 2 has not availed the opportunities provided to him, I observe that the principles of natural justice have been adequately complied with in the present matter. Accordingly, I proceed to deal with the matter on merits based on the material available on record.

Service of SCN and Hearing Notice on Noticee Nos. 3 and 4

28. The SCN was served upon the Noticee Nos. 3 and 4 vide email and SPAD. The details in this regard are provided as under:

Table 9

Sr. No.	Email ID/Address*	Mode	Remarks
1.	A/16, …. Ahmedabad	Delivery through Speed Post with	Delivered on February 21, 2023, as per the

		Acknowledgment Due	consignment tracking on India Post which has been certified by the In-Charge, Matunga BPC.
2.	119...n@gmail.com	Email	Digitally Signed SCN duly delivered on February 17, 2023.

**Email ID and address are excised for confidentiality*

The relevant records in this regard are present in the case record.

29. As there was nothing on record regarding the submission of reply by the Noticee Nos. 3 and 4, vide email dated March 10, 2023 time till May 17, 2023 was provided to the Noticee Nos. 3 and 4 to submit their reply to the SCN. However, no response was received from the Noticee Nos. 3 and 4.

30. In consonance with the Adjudication Rules, the service of SCN on Noticee Nos. 3 and 4 was undertaken through courier (Blue Dart DHL). The SCN via courier was duly delivered on April 19, 2023. It is pertinent to note that as per the record of delivery of the said courier, the SCN has been duly received by Noticee Nos. 3 and 4.

31. As the Noticee Nos. 3 and 4 did not furnish a reply to the SCN in spite of multiple reminders given to them, said Noticees were granted an opportunity for a personal hearing on July 11, 2023. Further, Noticee Nos. 3 and 4 were advised to file their reply to SCN before July 06, 2023. Furthermore, SCN was also annexed with the said Hearing Notice. The relevant details with regard to the service of Hearing Notice dated June 23, 2023, are tabulated below:

Table 10

Sr. No.	Mode	Email IDs/Address *	Remarks
1.	Digitally Signed Hearing Notice and SCN delivered through email	119...n@gmail.com	Digitally Signed SCN was duly delivered on June 23, 2023.
2.	Delivery through Speed Post with Acknowledgment Due	A/16, …. Ahmedabad	Delivered on June 28, 2023.
3.	Courier (Blue Dart DHL)	A/16, …. Ahmedabad	Delivered on June 24, 2023. From the record available, it is noted that the recipients of the Hearing Notice were Noticee Nos. 3 and 4.

**Email IDs and addresses are excised for confidentiality*

32. On July 10, 2023, an email sent by Noticee No. 3 from the email ID '119...n@gmail.com' was received. In the said mail, it was, *inter alia,* stated:

    "I received your email for a hearing scheduled on 11th July 2023 at 3.30 pm. Please note that I will not be able to attend the hearing as I have a medical appointment for my Grandmother Ms. Renuka Shah. Hence, I Varun Shah and Ms. Renuka Shah both will be occupied in Medical and hence will not have access to the system for online hearing.

    I request you to please give me another opportunity of being heard in the next hearing after a week's time.

    I assure your good office to submit my explanation for the Show Cause Notice in the meantime."

33. In light of the aforesaid request, the hearing was rescheduled to July 20, 2023. Further, the said Noticees were provided with another opportunity to submit their reply to the SCN before July 19, 2023. However, Noticee Nos. 3 and 4 did not submit any reply to the SCN within the said period.

34. Subsequently, the hearing was conducted on July 20, 2023. On the said date of hearing, Noticee No. 3 and Mr. Viral Ranpura, authorized representative attended the hearing through videoconferencing on behalf of Noticee Nos. 3 and 4. During the hearing, Noticee No. 3 admitted that his PAN details, address and email ID were the same as mentioned in the SCN. On the request of the Noticee Nos. 3 and 4, additional time till July 26, 2023 was granted to make further submissions in the instant matter.

35. After the lapse of the aforesaid period, Noticee No. 3, vide email dated July 27, 2023 requested for further time to submit written submission. The request of the said Noticee was acceded to in the interest of natural justice and the Noticee Nos. 3 and 4 were advised to submit their reply before July 31, 2023. However, no reply was received from the Noticee Nos. 3 and 4.

36. In the interest of natural justice, vide emails dated August 04, 2023 and August 21, 2023, further opportunities of submitting a reply to the SCN was provided to the said Noticees. However, there is nothing on record to show that the Noticee Nos. 3 and 4 have submitted any reply to the SCN.

37. From the foregoing paragraphs, it is noted that Noticee Nos. 3 and 4 have been granted sufficient opportunities to present their case vide repeated opportunities to submit a reply to the SCN. They were also provided with a chance of being heard through personal hearing. Therefore, I note that the principles of natural justice have been adhered to in the present proceedings. In view of the above and in view of the facts and circumstances of the matter, I deem it appropriate to proceed against the Noticee Nos. 3 and 4, based on the material available on record.

CONSIDERATIONS OF ISSUES

38. After careful perusal of the material on record, the issues that arise for consideration in the present case are as follows:

    I. Whether the Noticees have violated the provisions of the Regulation 29 (2) read with Regulation 29 (3) of Takeover Regulations?
    II. Does the violation, if any, on the part of Noticees attract a monetary penalty under section 15A(b) of the SEBI Act, 1992?
    III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act, 1992?

39. The relevant extracts of the provisions of law, allegedly violated by the Noticee, are mentioned as under:

Regulation 29 Takeover Regulations

"…

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

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

(a) every stock exchange where the shares of target company are listed; and

(b) the target company at its registered office.

…"

FINDINGS

I. Whether the Noticees have violated the provisions of the Regulation 29 (1) read with Regulation 29 (3) of Takeover Regulations?

40. It is alleged that the Noticees, acting as Persons Acting in Concert (hereinafter referred to as '**PAC'**), have failed to make requisite disclosure on 16 instances in terms of Regulation 29(2) read with Regulation 29(3) of Takeover Regulations during the period from March 31, 2020, to November 6, 2020 (hereinafter referred as '**relevant period'**).

41. From the material on record, it is noted that AMFL is a company listed on BSE. From the 'statement showing shareholding pattern of the Promoter and Promoter Group' for the relevant period, it is observed that the Noticees have been identified as promoters and the promoters group of the company.

42. As the Noticees were Promoter and Promoter group of AMFL, they are deemed to be 'persons acting in concert' (hereinafter referred to as '**PAC'**) in terms of Regulation 2(1)(q)(2) of the Takeover Regulations. As there is nothing on record to rebut the said presumption, I find that the Noticees were acting as PAC during the relevant period.

43. From the material on record, it is noted that the Noticees while acting as PAC were collectively holding 56.92% shareholding in AMFL as on March 31, 2020. Further, it is observed that all the Noticees had executed trades in the scrip of AMFL during the relevant period.

44. In this background, I note that as per findings of investigation, there were 16 instances during the relevant period where there was a change of over 2% in the shareholding of Noticees collectively in the scrip of AMFL. Details of the said 16 instances are tabulated below:

Table 11

Statement of change in shareholding of promoters of A & M Febcon Ltd.								
Sr. No.	**Date of transaction**	**Promoters shareholding (Pre transactions) (in nos.)**	**Pre transaction promoters shareholding (in %)**	**Promoters shareholding (Post transactions) (in nos.)**	**Total Number of shares of the company**	**Post transaction promoters shareholding (in %)**	**Change (in %)**	**Transaction Undertaken by**
1.	June 30, 2020	7296264	56.92%	7589323	12813205	59.23%	2.31%	Noticee Nos. 2 and 3.
2.	July 8, 2020	7589323	59.23%	7322062	12813205	57.14%	-2.09%	Noticee Nos. 2 and 3.
3.	July 14, 2020	7322062	57.14%	7045257	12813205	54.98%	-2.16%	Noticee No. 2.
4.	July 16, 2020	7045257	54.98%	6764995	12813205	52.80%	-2.19%	Noticee Nos. 1 and 2.
5.	July 17, 2020	6764995	52.80%	6360600	12813205	49.64%	-3.16%	Noticee Nos. 1 and 2.
6.	July 20, 2020	6360600	49.64%	5790361	12813205	45.19%	-4.45%	Noticee Nos. 1 and 2.
7.	July 21, 2020	5790361	45.19%	5339800	12813205	41.67%	-3.52%	Noticee Nos. 1, 2 and 4.
8.	July 23, 2020	5339800	41.67%	4719264	12813205	36.83%	-4.84%	Noticee No. 2.
9.	September 21, 2020	4719264	36.83%	4394202	12813205	34.29%	-2.54%	Noticee Nos. 2 and 3.
10.	October 7, 2020	4394202	34.29%	4135242	12813205	32.27%	-2.02%	Noticee Nos. 1 and 3.
11.	October 23, 2020	4135242	32.27%	3599475	12813205	28.09%	-4.18%	Noticee Nos. 1 and 3.
12.	October 26, 2020	3599475	28.09%	3219475	12813205	25.13%	-2.97%	Noticee Nos. 1 and 3.
13.	October 27, 2020	3219475	25.13%	2934475	12813205	22.90%	-2.22%	Noticee Nos. 1 and 3.
14.	October 30, 2020	2934475	22.90%	2609455	12813205	20.37%	-2.54%	Noticee Nos. 1 and 3.
15.	November 4, 2020	2609455	20.37%	2265572	12813205	17.68%	-2.68%	Noticee No. 1.
16.	November 6, 2020	2265572	17.68%	1954202	12813205	15.25%	-2.43%	Noticee Nos. 1 and 3.

45. From the aforesaid table, it is noted that in the relevant period, the collective shareholding of the promoters i.e. Noticees in the scrip of AMFL had undergone a

change of over 2% on 16 instances. I note that the Noticees, who were PAC, were collectively holding more than 5% of the share capital of AMFL in the relevant period. Therefore, the said breach of the aforesaid 2% shareholding threshold in 16 instances triggered the disclosure requirement under the Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations.

46. Hence, the Noticees were required to make the disclosures to the Company as well as to the BSE, within two working days of the breach of the 2% shareholding threshold, in terms of Regulation 29(2) read with Regulation 29(3) of the Takeover Regulations.

47. However, from the BSE letter dated September 16, 2021, it is noted that the Noticees have not made the requisite disclosure under Regulation 29(2) of Takeover Regulations to BSE in respect of share transactions executed by them the scrip of AMFL. Further, it is noted from the material on record, that no disclosure in this regard was found on the BSE website when it was checked during the course of examination on December 13, 2022.

48. It is also noted that, during the course of the examination, information was sought from AMFL vide emails dated October 20, 2021, January 22, 2022, and February 11, 2022 with regard to disclosure made under 29(2) read with Regulation 29(3) of Takeover Regulations by the Noticees. Similarly, information was sought from the Noticee Nos. 1 and 2 vide email dated October 20, 2021 and February 11, 2022. However, it is noted that no response was received either from AMFL or the Noticee Nos. 1 and 2 regarding the disclosure under Takeover Regulations for the abovementioned instances by the Noticees.

49. As noted in the foregoing paragraphs, I note that Noticee Nos. 1 and 2 have neither submitted any reply nor attended the hearing. While Noticee No. 3 and 4 attended the hearing, they have not submitted any reply to the SCN despite multiple opportunities being provided. In this context, I find it apt to refer to and rely on the following orders of the Hon'ble SAT:

49.1. In the case of **Sanjay Kumar Tayal & Others v. SEBI** (Appeal No. 68 of 2013 decided on February 11, 2014), the Hon'ble SAT, *inter alia*, has held as under

"...appellants have neither filed reply to show cause notices issued to them nor have availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices..."

49.2. In this regard, I note that the Hon'ble SAT in the matter of **Classic Credit Ltd. v. SEBI** (Appeal No. 68 of 2003 decided on January 08, 2007) Hon'ble SAT, *inter alia*, held that

*"the appellants did not file any reply to the second show-cause notice. This being so, **it has to be presumed that the charges alleged against them in the show cause notice were admitted by them."***(Emphasis supplied)

50. In light of the foregoing discussions, it is established that the Noticees as PACs did not make disclosures to the BSE and AMFL in terms of Regulations 29(2) read with 29(3) of the Takeover Regulations and thereby, have violated the aforesaid provisions of Takeover Regulations.

II. Does the violation, if any, on the part of Noticees attract a monetary penalty under section 15A (b) of the SEBI Act?

51. As it has been established that the Noticees have violated Regulations 29(2) read with 29(3) of the Takeover Regulations, Noticees are liable for payment of a monetary penalty in terms of Section 15A(b) of the SEBI Act. Here, I deem it fit to refer to the order of Hon'ble SAT in the matter of **Annand Sarnaaik and Ors. vs SEBI** (Appeal No. 36 of 2018 decided on July 23, 2019) where it was, *inter alia,* held:

*"6. Having heard the learned counsel for the parties and having pondered over the matter, we find that on the facts narrated aforesaid the appellants were duty bound to make the necessary disclosures within the stipulated period under the PIT and SAST regulations. **Non-disclosures within the stipulated period violated the provisions of***

***the aforesaid regulations and, consequently, the penalty became leviable...*"** (Emphasis Supplied)

52. The text of the above-said Section 15A(b) of the SEBI Act is reproduced below for reference:

SEBI Act

"15A. Penalty for failure to furnish information, return, etc.- 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 therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations he shall be liable to a penalty which shall be not less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees."

III. If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act?

53. While determining the quantum of penalty under Section 15A(b) of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

SEBI Act

"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."

54. I note that the material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors as a result of the Noticee's failure. I also consider that there is nothing on record to show that Noticees were subjected to any other proceedings by the SEBI before the instant proceeding.

55. As noted in the Takeover Regulations Advisory Committee Report under the chairmanship of Mr. C. Achuthan, disclosure obligations under the Takeover Regulations are fairly critical and an important component of the legal regime governing the substantial acquisition of shares and takeovers.[1] It is pertinent to mention that the Hon’ble SAT in **Ankur Chaturvedi v. SEBI** (Appeal no. 434 of 2014 decided on August 04, 2015), *inter alia,* held that

> *“As rightly pointed out by the adjudicating officer the entire securities market stands on disclosure based regime and accurate and timely disclosures are fundamental in maintaining the integrity of the securities market. Therefore, omission on the part of the appellant in failing to make disclosures was detrimental to the interest of the investors in the securities market and hence no fault can be found with the decision of SEBI in imposing penalty”.*

56. Further, Hon'ble SAT in the case of **M/s. Coimbatore Flavors & Fragrances Ltd. & Ors v. SEBI** (Appeal No. 209 of 2014 decided on August 11, 2014), has, inter alia, held that

> *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."*

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[1]Report of The Takeover Regulations Advisory Committee Under the Chairmanship of Mr. C. Achuthan, Available at https://www.sebi.gov.in/sebi_data/commondocs/tracreport_p.pdf and accessed on August 31, 2023

57. It is also noted that the Noticees have not made the requisite disclosures under Regulations 29(2) read with 29(3) of Takeover Regulations till date for the aforesaid transactions.

ORDER

58. Having considered all the facts and circumstances of the case, the material available on record, the factors mentioned in preceding paragraphs and in the exercise of powers conferred upon me under Section 15-I of the SEBI Act 1992 read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty on the Noticees:

Table 12

Sr. No.	Name of Noticee	Violations established	Penal Provisions	Penalty
1.	Ms. Zalak Purvesh Parikh	Regulation 29(2) read with Regulation 29(3) of Takeover Regulations	Section 15A(b) of the SEBI Act	Rupees 16,00,000/- (Sixteen Lakhs) to be paid jointly and severally
2.	Mr. Devabhai Nagjibhai Desai			
3.	Ms. Renukaben Rameshbhai Shah			
4.	Mr. Varun Jigneshkumar Shah			

It is noted that there have been 16 instances where the Noticees have failed to make requisite disclosure. It is still a continuing violation. Therefore, I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticees.

59. Noticees shall remit/pay the said amount of penalty within 45 days of receipt of this order through the 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.

In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

60. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to the Securities and Exchange Board of India.

Date: August 31, 2023
Place: Mumbai

N HARIHARAN
ADJUDICATING OFFICER