BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2022-23/18237]

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) RULES, 1995

In respect of:

VKA Enterprises Private Limited (Earlier Known as Patriarch Developers Private Limited) (PAN- AACCP7052Q**)**

In the matter of
Thirdwave Financial Intermediaries Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**), initiated adjudication proceeding against Patriach Developers Private Limited {now known as VKA Enterprises Limited (hereinafter referred to as **Noticee / Acquirer**)} for the alleged violation of provision of regulation 3(3) read with 3(1) of (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (hereinafter referred to **SAST Regulation**), Regulation 10(7) and 30(1) and 30(2) read with 30(3) of SAST Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI, vide communique dated June 2, 2022 **,** appointed the undersigned as the Adjudicating Officer under Section 15-I of Securities and Exchange Board of India Act, 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'**) r/w Section 19 of the SEBI Act, 1992 to inquire into and adjudge under section 15H(ii), 15A(a) and 15A(b) of the SEBI Act for the violation alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A Show Cause Notice (hereinafter referred to as **“SCN”**) no. SEBI/EAD-3/BM/GN/23358/2022 dated June 03, 2022 was issued to the Noticees under rule 4(1) of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the **SEBI Rules**) to show cause as to why an inquiry should not be held against them in terms of Rule 4 of Adjudication Rules read with Section 15-I (1) & (2) of SEBI Act, and penalty, if any, be not imposed on Noticee under Section 15H(ii), 15A(a) and 15A(b) for the alleged violation of Regulation 3(3) read with 3(1) of SAST Regulation, Regulation 10(7) and Regulation 30(1) and 30(2) read with 30(3) of SAST Regulations.

4. The allegations levelled against the Noticee are as under:

   a. On March 30, 2017, Noticee acquired 4.53% shares of the Thirdwave Financial Intermediaries Limited (hereinafter referred to as the **Target Company**). As a result of which the shareholding of the Acquirer increased from 22.73% to 27.26%. The total promoter shareholding as a result of such transaction increased from 36.59% to 41.12%.

   b. As the individual shareholding of the Noticee breached the threshold of 25% as prescribed under Regulation 3(3), open offer was triggered under regulation 3(3) of SAST Regulations. The open offer was not made at that point of time and came to the notice of SEBI during the processing of open offer by Zhongmin Guoen Industrial Group (UK) Limited.

   c. Further, during the processing of the Draft Letter of Offer filed by Zhongmin Guoen Industrial Group (UK) Limited, SEBI observed that, subsequent to the scheme of arrangement approved by the court on September 27, 2018, Talwar Steels Private Limited amalgamated into Noticee. This resulted into acquisition of more than 25% shares of the Target Company by Noticee and therefore triggered the requirement to make open offer under Regulation 3(1) read with

Regulation 3(3) of SAST Regulations, however, the transaction was exempt under 10(1)(d)(iii) of SAST Regulations.

d. Though the open offer was exempt, the Acquirer was required to make disclosure to under Regulation 10(6) and 10(7) of SAST Regulations. Though the disclosure under Regulation 10(6) was made in a timely manner, the disclosure under Regulation 10(7) was alleged to be made with a delay. Further, the Noticee was required to make disclosures under Regulations 30(1) and 30(2) read with regulation 30(3) of SAST regulation, which the Noticee allegedly did not make.

e. In view of the above observations, it was alleged that Noticee had violated the provisions of Regulation 3(3) read with 3(1) of SAST Regulation, Regulation 10(7) and Regulation 30(1) and 30(2) read with 30(3) of SAST Regulations.

5. Vide email dated June 23, 2022, the Noticee had sought extension for the submission of reply. In furtherance of the request, vide email dated June 28, 2022, timeline for submission of the reply was given till July 15, 2022.

6. In the interest of natural justice and in order to conduct an enquiry in terms of Rule 4(3) of the Adjudication Rules, the Noticee was granted an opportunity of personal hearing on July 18, 2022, vide Hearing Notice dated June 29, 2022. The Noticee vide letter dated July 14, 2022 stated that with effect from May 25, 2022 name of Patriach Developers Private Limited has been changed to VKA Enterprise Private Limited and have made following submissions :

a. Noticee submitted that the said SCN ex facie itself discloses no cause of action or any violation as alleged therein or otherwise against us.

b. Noticee also submitted that as on March 30, 2017 it was Talwar Steels (P) Ltd., who had acquired the said 4.53% of shares in the target company. Pursuant to Section 233 of Companies Act, 2013, the concerned Regional Director on 29.08.2018 approved the Scheme of Amalgamation of S.M. Estate & Properties (P) Limited and Talwar Steels Private Limited (amalgamating companies) with *us i.e Patriach Developers Private Limited. By virtue of the aforesaid Scheme of Amalgamation, all the shareholding of "Talwar Steels Private Limited" in Thirdwave Financial Intermediaries Limited (the Target Company) was transferred and vested into us. It is under these circumstances that we are replying to the instant SCN for the default occurred on 30.03.2017 by "Talwar Steels (P) Limited" i.e. before the execution of Scheme of Amalgamation.*

c. *Noticee further submitted that even for sake of assumption without admission, the SCN discloses no cause of action or any allegations against us. There are no allegations, of we making any monetary gains in any manner whatsoever and/or causing any harm to the shareholders of the company or public at large. Therefore noticee request that the said SCN be withdrawn against us.*

d. *Noticee further submitted that, we are one of the promoter group entities along with others. The SCN has grossly failed to bring out anything on record to show our involvement in the allegations made therein. There are no allegations of them making any monetary gains even for sake of assumptions.*

Noticee *while replying to the said SCN para wise, has made the following submissions-*

e. *Noticee submitted that, with respect to the para 3 and 4 we state that it does not specify any quantity of shares acquired. It merely indicates the percentage (4.53%) of target company acquired on March 30, 2017. AR stated that as on March 30, 2017 it was Talwar Steels (P) Ltd., who had acquired the said 4.53% of shares in the target company. The shareholding of the acquirer having increased from 22.73% to 27.26% and about the promoter group shareholding as a result of such transaction having increased from 36.59% to 41.12%. Therefore since noticee not being specifically the acquirer on March 30, 2017 were caught unaware of any such breach of threshold. It was only on September 27, 2018 that the said Talwar Steels Private Limited amalgamated into noticee that we stood amalgamated and stepped into the shoes as noticee. It is also relevant to note at this point that even prior to and upon said acquisition of 4.53%*

of the target company there is absolutely no change in control of the target as the Shareholders of noticee company and other two shareholders of the target company viz. Siddhant Agarwal & Prudent Management & Industrial Consultants (P) Ltd form a homogenous set of persons from the same family and the status remains same even today after lapse of five years from the said transaction.

f. *Noticee further submitted that, for the quarter ending June 2012, the total Promoter Holding in the Target Company was 36.59% of the total paid up share capital of the Target Company, whereas the shareholding of the acquirer i.e. the erstwhile "Talwar Steels (P) Limited for the quarter ending June 2012 was 22.73% of the paid up share capital of the Target Company. During the quarter ending June 2012 to December, 2016 there was no change in the shareholding of the acquirer i.e. erstwhile Talwar Steels (P) Limited. Thereafter, the acquirer on 30.03.2017, acquired 4.53% of the paid-up share capital of the Target Company. Pursuant to the aforesaid transaction, the shareholding of the entire Promoter Group increased by 4.53% which was within the creeping acquisition limits under Regulation 3(2) of SEBI (SAST) Regulations, 2011. Thus the requirement to make open offer under Regulation 3(3) of the SEBI (SAST) Regulations, 2011 was technical to say the least. The amalgamation having resulted into acquisition of more than 25% shares of the Target Company by us is the continuation of the erstwhile Talwar Steels (P) Ltd., having acquired 4.53% of shares of target company and not any fresh violation. Neither does the SCN indicate any fresh violation or acquisition.*

g. *Thus Noticee respectfully submitted that the violations even if assumed are singular, inadvertent and technical to say the least. Further, Noticee stated that the acquirer was of the bonafide opinion that the open offer and disclosures were not mandated for the shareholding of the promoter group was already above 25% and the 4.53% acquisition was below threshold limit prescribed under Regulation 3(2) of SAST Regulations 2011. The purported lapse therefore be considered to be at most an inadvertent technical lapse as no intention of suppressing any fact was ever intended.*

h. *Noticee further submitted that the intentions of the acquirer were genuine and bonafide and no wrong doing is demonstrated since the erstwhile Talwar Steels (P) Ltd made necessary disclosures of the said acquisition with exchanges within prescribed time and till the violation was brought to their notice by Merchant Bankers during due diligence, they did not receive any notice/communication or queries from exchanges. Thus it was in all earnestness that the acquirer had been conducting its compliances. Noticee crave leave to refer and rely on Judgements by Hon'ble Supreme Court in the matter of* ***224 (SC), Securities and Exchange Board of India v. Sunil Krishna Khaitan*** *to assist AO in the matter and in support of our contentions.*

i. *Noticee also referred to recent order in Kesar Petroproducts Limited, and stated that the promoter company of a listed company transferred 48.16% to two children of an individual promoter. Consequently, each child held under 25% in the target. This transfer caused no change in the overall promoter shareholding or effective control of the target. SEBI ruled that since (i) the acquirers along with PACs held over 25% in the target; and (ii) the acquisition resulted in the children's individual shareholding crossing 5%, Regulation 3(3) read with the Creeping Acquisition Threshold was triggered. Ultimately, SEBI did not order a public announcement, relying on its powers to grant exemptions based on the facts and circumstances of the case.*

j. *Noticee further stated that on 30.06.2020 Zhongmin Guoen Industrial Group (UK) Limited had entered into a Share Purchase Agreement to acquire substantial shares and control over the Target Company, which triggered the requirement to make open offer under Regulation 3(1) and Regulation 4 of SEBI (SAST) Regulations, 2011. Pursuant to that, Merchant Banker was appointed by Zhongmin Guoen Industrial Group (UK) Limited for the open offer process under the Regulations and has come out with an open offer for the shareholders of the Target Company under Regulation 3(1) and Regulation 4 of SEBI (SAST) Regulations. That during said open offer, the Merchant Banker carried out the Due Diligence of the compliances undertaken by the Promoters of the Target Company under SEBI (SAST) Regulations. It was only during the said due* *diligence carried out by the Merchant banker and simultaneously being discussed and confirmed by its legal Consultant; that noticee became aware of the fact that individual shareholding of the acquirer i.e erstwhile Talwar Steels (P) Ltd., has crossed 25% and a technical breach of Regulation 3(3) of SEBI (SAST) Regulations has been inadvertently done by erstwhile Talwar Steels (P) Ltd.*

k. *Noticee further stated that the acquisition of shares was done as off market transaction at a price of INR 7.50 (Indian Rupees Seven and Fifty Paisa Only) and the open offer requirement arose on 30.03.2017. It is pertinent to note herein that if the noticee would make an open offer on the date of amalgamation order, the Offer Price for the said open offer including interest at the rate of 10 percent per annum would come to be INR 8.65 (Indian Rupees Eight & paise Sixty-Five Only) or thereabout which would be much lower than the Market Price of the Target Company as on the amalgamation date hereunder i.e. between 30/09/2018 & 31/10/2018 the market price of the Target Company was Rs. 27.05(L) & 28.300-1).*

l. *Noticee further submitted that, they have been alleged to have breached the threshold of 25% prescribed u/r 3(3) of SEBI (SAST) Regulations, but quantum of such breach is 50010 Equity Shares which @ 7.50 per share amounts to Rs. 3,75,075/-. Noticee has prayed to drop such technical and inadvertent and unintentional lapse and made reference to SAT Decision in SEBI vs Vakrangee Holdings (P) Ltd (Appeal No 353 of 2018) is requested.*

m. *Noticee also submitted that Zhongmin Guoen Industrial Group (UK) Limited who had substantially acquired shares of the Target Company vide share purchase agreement dated 30.06.2020 had made Public Announcement (PA) of open offer on 03/07/2020 wherein 29.35% of shares were proposed to be acquired by Zhongmin Guoen Industrial Group (UK) Limited @ INR 17 (Indian Rupees Seventeen Only) for each Equity Share of the Target Company. However subsequently they have to withdraw the same as they failed to get approval from DPIIT for FDI investment into India as per prevailing Government Policies.*

Noticee also submitted that, during last 12 months the shares of target company are traded at Rs. 37.25 (52 weeks High) & 15.45 (52 weeks Low). The price volume data as per BSE website during last 3 years are as below :-

Year	Open	High	Low	Close	Volume	No of Trades
2020	18.55	45.70	12.45	39.90	193449	450
2021	40.05	42.25	15.55	16.30	215438	1476
2022 (till Date)	16.40	28.05	15.45	23.00	74388	819

Therefore, the shareholders of the Target company had not gone into any losses

n. *Thus, Noticee has submitted that making an open offer in the present case by the noticee would be infructuous in light of the facts stated above and would not be beneficial to shareholders.*

o. *Noticee further stated and submitted that they have made necessary disclosures u/r 30(1), 30(2) & 30(3) to the exchanges as well as to the target company regularly through one of the promoters viz. Siddhant Agarwal as well as off market acquisition by Talwar Steels (P) Ltd was also communicated and disclosed to the target company in timely manner. They have also submitted that disclosures under above mentioned regulations were repetitive and realizing that the Board has withdrawn the same w.e.f 01/04/2022. In light of above noticee request and pray for dropping of the said violation which never occurred.*

p. *In reference to para 5-8 noticee denied the allegations and whatever inconsistent to their submissions all along.*

q. *In addition to the above, Noticee had also submitted that said SCN, does not contain adequate particulars or the documents relied upon to make the allegations as therein contained. The said SCN is therefore incomplete. AR thereby requested that in compliance with the requirements of natural justice, full and complete inspection be given to them of all documents relating to the matter, so that they can give a more comprehensive and detailed reply if required.*

7. In view of the abovementioned request of the Noticee, vide email dated July 15, 2022, in the interest of natural justice, inspection of documents was provided on July 18, 2022 and the hearing which was earlier scheduled on July 18, 2022 had been postponed to July 21, 2022.

8. The Noticee nominated an authorized representative (hereinafter referred to as **AR**) to appear on its behalf for the personal hearing dated July 21, 2022 vide e-mail dated July 19, 2022.

9. On the date of hearing, the AR appeared on behalf of the Noticee. The AR reiterated the submissions made by the noticee vide letter dated July 14, 2022. AR also sought extension till July 26, 2022 for the submission of additional replies.

10. Noticee vide email dated July 26, 2022 had submitted the documents in support of the argument that it made the disclosure under Regulation 30 of the SAST regulation. In addition to the foregoing, Noticee had made the submissions in line with the reply dated July 14, 2022.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

11. I have taken into consideration the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I: Whether Noticee has violated the provisions of Regulation 3(3) read with 3(1) of SAST Regulations, Regulation 10(7) and Regulation 30(1) and 30(2) read with 30(3) of SAST Regulations.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section for 15H(ii), 15A (a) and 15A(b) of SEBI Act.

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

12. Before proceeding further, it will be appropriate to refer the provisions of Regulations 3(3) read with 3(1) of SAST Regulation, Regulation 10(7) and Regulation 30(1) and 30(2) read with 30(3) of SAST Regulations, 2011 alleged to have been violated by the Noticees. The texts of the alleged provisions are as under-

Regulation 3- Substantial acquisition of shares or voting rights.

Regulation 3(1) SAST Regulation is as follows:-

3(1)No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five per cent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Regulation 3(3) of SAST Regulation is as follows:

3(3) For the purposes of sub-regulation (1) and sub-regulation (2), acquisition of shares by any person, such that the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, shall also be attracting the obligation to make an open offer for acquiring shares of the target company irrespective of whether there is a change in the aggregate shareholding with persons acting in concert.

Regulation 10- General exemptions.

Regulation 10(7) of the SAST Regulation is as follows:

10(7) In respect of any acquisition of or increase in voting rights pursuant to exemption provided for in clause (a) of sub-regulation (1), sub-clause (iii) of clause (d) of sub-regulation (1), clause (h) of sub-regulation (1), sub-regulation (2),sub-regulation (3) and clause (c) of sub-regulation (4), clauses (a), (b) and (f) of sub-regulation (4), the acquirer shall, within twenty-one working days of the date *of acquisition, submit a report in such form as may be specified along with supporting documents to the Board giving all details in respect of acquisitions, along with a non-refundable fee of rupees [one lakh fifty thousand] [by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board.*

Regulation 30- Continual disclosures.

Regulation 30(1) of SAST Regulation is as follows:

30(1) Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent 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.

Regulation 30(2) of SAST Regulation is as follows:

(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.

Regulation 30(3) of SAST Regulation is as follows:

(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."

FINDINGS

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case and submissions of the Noticee I record my findings hereunder:

ISSUE I: Whether Noticee had violated the provisions of Regulation 3(3) read with 3(1) of SAST Regulation, Regulation 10(7) and Regulation 30(1) and 30(2) read with 30(3) of SAST Regulation.

Allegation 1- Violation of Regulation 3(3) read with Regulation 3(1) of SAST Regulations.

14. It is alleged in the SCN that on March 30, 2017, Noticee acquired 4.53% shares of the Target Company. As a result of which the shareholding of the Acquirer increased from 22.73% to 27.26%. The total promoter shareholding as a result of such transaction increased from 36.59% to 41.12%. As the individual shareholding of the Noticee breached the threshold of 25% as prescribed under Regulation 3(3), open offer was triggered under regulation 3(3) of SAST Regulations. The open offer was not made at that point of time and came to the notice of SEBI during the processing of open offer by Zhongmin Guoen Industrial Group (UK) Limited

15. Vide reply dated July 14, 2022, Noticee submitted that, as on March 30, 2017 it was Talwar Steels (P) Ltd., who had acquired the said 4.53% of shares in the target company. Pursuant to Section 233 of Companies Act, 2013, the concerned Regional Director on 29.08.2018 approved the Scheme of Amalgamation of S.M. Estate & Properties (P) Limited and Talwar Steels Private Limited (amalgamating companies) with Noticee. By virtue of the aforesaid Scheme of Amalgamation, all the shareholding of "Talwar Steels Private Limited" in Thirdwave Financial Intermediaries Limited (the Target Company) was transferred and vested into Noticee. It is under these circumstances that they are replying to the instant SCN for the default occurred on 30.03.2017 by "Talwar Steels (P) Limited" i.e. before the execution of Scheme of Amalgamation.

16. It is thus observed from the reply of the Noticee that Talwar Steels Pvt. Ltd. (hereinafter referred to as **Talwar**) acquired 4.53% shares in target company and its shareholding increased from 22.73% to 27.26%. Talwar was therefore under obligation to make open offer under regulation 3(3) of SAST regulation which it failed to make. This liabilities of the Talwar continues even after the amalgamation with Noticee. In this regard I would like to refer to Section 240 of the Companies Act, 2013, which states as follows-

Section 240 - Liability of officers in respect of offences committed prior to merger, amalgamation, etc.

Notwithstanding anything in any other law for the time being in force, the liability in respect of offences committed under this Act by the officers in default, of the transferor company prior to its merger, amalgamation or acquisition shall continue after such merger, amalgamation or acquisition.

17. I would also like to refer to the Para 5 of the Scheme of Amalgamation under section 233 of the Companies Act, 2013 between S M Estate Properties Private Limited (Transferor company no. 1), Talwar Steels Private Limited (Transferor company no. 2) and Patriarch Developers Private Limited (Transferee Company), which states as follows-

On and from the Appointed date, all suits, actions, claims and legal proceedings by or against the Transferor Companies pending and/or ***arising*** *on or before the Effective Date shall be continued and / or enforced as desired by the Transferee Company and on and from the effective date, shall be continued and / or enforced by or against the Transferee Company as effectually and in the same manner and to the same extent as if the same had been originally instituted and/or pending and/or* ***arising*** *by or against the Transferee Company. On and from the Effective Date, the Transferee Company shall have the right to initiate, defend, compromise or otherwise deal with any legal proceedings relating to the Undertaking, in the same manner and to the same extent as would or might have been initiated by the Transferor Companies as the case may be, had the Scheme not been made. If any suit, appeal or other proceedings relating to the Undertaking, of whatever nature by* *or against the Transferor Companies be pending, the same shall not be abate or be discontinued or in any way be prejudicially affected by reason of the amalgamation of the Undertaking or by anything contained in this scheme but the proceedings may be continued, prosecuted and enforced by or against the Transferee Company in the same manner and to the same extent as it would or might have been constituted, prosecuted and enforced by or against the Transferor Companies as this Scheme had not been made.*

18. Thus as can be seen from above, under the provisions of the scheme of amalgamation between S M Estate Properties Private Limited (Transferor company no. 1), Talwar Steels Private Limited (Transferor company no. 2) and Patriarch Developers Private Limited (Transferee Company) it is explicitly mentioned that "On and from the Appointed date, all suits, actions, claims and legal proceedings by or against the Transferor Companies pending and/or **arising** on or before the Effective Date shall be continued and / or enforced as desired by the Transferee Company and on and from the effective date, shall be continued and / or enforced by or against the Transferee Company as effectually and in the same manner and to the same extent as if the same had been originally instituted and/or pending and/or **arising** by or against the Transferee Company". Thus, by virtue of the scheme of amalgamation between the S M Estate Properties Private Limited (Transferor company no. 1), Talwar Steels Private Limited (Transferor company no. 2) and Noticee (Transferee Company), the liabilities before the scheme of amalgamation got transferred to the transferee company i.e. Noticee. Since, there was open offer obligation on Talwar which it did not comply with, due to the amalgamation, non-compliance of Talwar (transferor) gets vested on the Noticee. In view of the same Noticee is responsible for the past violations of the Talwar and the liability falls on the Noticee.

19. Noticee has also contended that even prior to and upon said acquisition of 4.53% of the target company there is absolutely no change in control of the target as the Shareholders of their company and other two shareholders of the target company viz. Siddhant Agarwal & Prudent Management & Industrial Consultants (P) Ltd form a homogenous set of persons from the same family and the status remains same

even today after lapse of five years from the said transaction. From the perusal of Regulation 3(3) read with 3(1) of SAST Regulation I observe that, regulation mentions of the change in shareholding and if the individual shareholding of the promoter breach the 25%, then promoter has to make the open offer. In view of the same, the abovementioned contention of the noticee is not maintainable.

20. Noticee has referred to the Judgment of the Hon'ble Supreme Court of India in the matter of *Securities and Exchange Board of India vs Sunil krishna Khaitan*, I have perused the aforesaid order and observed that violations in the said order is of the Regulations 44 and 45 of the Takeover Regulations 1997, which is different from the violations alleged in the present case. In view of the same, the case referred by the Noticee of the Hon'ble Supreme Court of India is not relevant in the present case.

21. Similarly, Noticee has referred to the SEBI order in the matter of M/s *Kesar Petroproducts Limited,* I have perused the aforesaid order and observe that the violation mentioned in the said order is of the creeping acquisition whereas in the present case the alleged violation is different. In view of the same, the case referred by the noticee in relevant to the present proceedings.

22. Furthermore, Noticee has referred to the Hon'ble Securities and Appellate Tribunal order in the matter of *SEBI vs Vakrangee Holdings (P) Ltd (Appeal No. 353 of 2018)*. I have perused the aforesaid orders and observed that in the abovementioned order Hon'ble SAT while partly allowing the appeal of the appellant had directed the appellant to transfer the proceeds of the sale of the shares. The aforesaid order was not set aside by the Hon'ble SAT, hence this case is not relevant to the present proceedings.

23. In view of the foregoing, the violation of Regulation 3(3) read with 3(1) of the SAST regulation stands established.

Allegation 2- Violation of Regulation 30(1) and 30(2) read with Regulation 30(3) of SAST Regulations.

24. It was alleged in the SCN that the Noticee was required to make continual disclosures under Regulations 30(1) and 30(2) read with regulation 30(3) of SAST regulation, which the Noticee allegedly did not make.

25. Noticee has contended that they have made necessary disclosures u/r 30(1), 30(2) & 30(3) to the exchanges as well as to the target company regularly through one of the promoters viz. Siddhant Agarwal as well as off market acquisition by Talwar Steels (P) Ltd was also communicated and disclosed to the target company in timely manner. In support of the above, Noticee has submitted the letters which were sent by the Noticee to BSE. Noticee further submitted that disclosures under above mentioned regulations were repetitive and realizing that the Board has withdrawn the same w.e.f 01/04/2022. In light of above Noticee requested for dropping of the said violation which never occurred.

26. As per Regulation 30(2) of the SAST Regulations-

    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.

27. I have perused Regulation 30(2) of the SAST Regulations, wherein it is explicitly mentioned that the promoter of the target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of 31st day of March, in such target company. From the letters submitted and as per the shareholding pattern of the target company available on the BSE website, it has been observed that, Talwar being the promoter of the Target Company has not made the disclosure under Regulation 30(2) read with Regulation 30(3) of the SAST Regulations for the period from 2012-13 to 2015-16. As discussed in para 18 above, as per the scheme of amalgamation, the liability of the Talwar got transferred to the Noticee.

28. After the amalgamation of the Talwar with Noticee, shareholding of the Talwar has been transferred to the Noticee and this resulted into the acquisition of more than

25% of shares of the Target Company by the Noticee. As per Regulation 30(1) of the SAST Regulations-

Every person, who together with persons acting in concert with him, holds shares or voting rights entitling him to exercise twenty-five per cent 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.

29. As per the shareholding pattern of the target company available on the BSE website and the documents submitted by the Noticee it has been observed that the disclosures have been made under Regulation 30 for the Financial year 2016-17 to Financial Year 2019-2020, but disclosure for the financial year 2016-17 and 2017-18 has been made with a delay of 109 days and 6 days respectively. As stated above, pursuant to amalgamation, the liability of Talwar has been vested in the Noticee. In view of the foregoing, it is concluded that the violation of regulation 30(1) and 30(2) read with 30(3) of the SAST regulation stands established.

Allegation 3- Violation of Regulation 10(7) of SAST Regulations.

30. It is alleged in the SCN that, during the processing of Draft Letter of Offer filed by Zhongmin Guoen Industrial Group (UK) Limited, SEBI observed that, subsequent to the scheme of arrangement approved by the court on September 27, 2018, Talwar Steels Private Limited amalgamated into Noticee. This resulted into acquisition of more than 25% shares of the Target Company by Noticee and therefore triggered the requirement to make open offer under Regulation 3(1) read with Regulation 3(3) of SAST Regulations, however, the transaction was exempt under 10(1)(d)(iii) of SAST Regulations. Though the open offer was exempt, the Acquirer was required to make disclosure to under Regulation 10(6) and 10(7) of SAST Regulations. It is observed that the disclosure under Regulation 10(6) was made in a timely manner, however the disclosure under Regulation 10(7) was alleged to be made with a delay.

31. Noticee had contended that the SCN itself indicates the open offer post the amalgamation of the acquirer i.e erstwhile Talwar Steels (P) Limited with the

Noticee was exempted under 10(1)(d)(iii) of SAST Regulations. It was only that they were required to make disclosure under Regulation 10(6) and 10(7) of SAST Regulations. Noticee submitted that the SCN further indicates that they had made the disclosure under the Regulation 10(6) in a timely manner and even the disclosure under Regulation 10(7) was made but with delay. As soon they came to know about the need of filing exemption u/r 10(7) they immediately filed the same with requisite fees to the Board without waiting. This clearly signifies their bona-fide and that they never intended to breach the requirements of law. Hence, Noticee submitted that the delay may be considered merely as inadvertent technical lapse without any adverse inferences and the charges be dropped against.

32. I observe from the records that the scheme of arrangement had been approved by the court on September 27, 2018, this resulted into acquisition of more than 25% shares of the Target Company by Noticee, and as per the regulation 10(7) of the SAST regulation the Noticees were obliged to submit the report with SEBI within 21 working days of the date of acquisition for exemption under Regulation 10(1)(d)(iii) of the SAST regulation. However, the Noticees submitted the report under Regulation 10(7) of the SAST Regulation on 13th July, 2020 i.e. after delay of 621 days. Since, the Noticee had not filed the report within a timeline prescribed under regulation 10(7), therefore, the contention of the noticees is not tenable.

33. In view of the foregoing, it is concluded that Noticee is in violation of Regulation of Regulation 10(7) of SAST Regulation.

ISSUE II: Does the violation, if any, on part of the Noticee attract penalty under Section for 15H(ii), 15A(a) and 15A(b) of SEBI Act.

34. In view of the violations as established, I would refer to Judgment of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}, in which Hon'ble Supreme Court 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 Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.............."

35. In this regard, I place reliance on the order of the Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 order dated October 14, 2014), wherein Hon'ble SAT held that:

"……….. obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation."

36. Thus, I am of the view that it is a fit case for penalty under section 15H(ii), 15A(a) and 15A(b) of the SEBI Act, which reads as given below:

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,—

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

he shall be liable to a penalty [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher].

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(a) to furnish any document, return or report to the Board, fails to furnish the same [or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [a penalty [which shall not be 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]];

(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 [or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [a penalty [which shall not be 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]];

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

37. While determining the quantum of penalty under sections 15H(ii), 15A(a) and 15A(b) of the SEBI Act, 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."

38. I observe, that the material available on record does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticees. In this case, from the material available on record, any quantifiable gain or unfair advantage accrued to the Noticees or the extent of loss suffered by the investors as a result of the default cannot be computed. However, I note that losing an exit opportunity by the shareholders at the right time as a result of the failure on the part of the Noticees to make the public announcement within the stipulated time period prescribed under the Takeover Regulations, is a loss to the investor.

39. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act as stated above. The main objective of the SAST Regulations is to afford fair treatment for shareholders who are affected by any change in shareholdings. The Regulation

also seeks to achieve fair treatment by inter alia mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of the SAST Regulations is investor protection. Further the disclosure as required under the SAST Regulations are of significant importance from the point of view of the Regulators also.

ORDER

40. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, the purpose of SEBI SAST Regulations, 2011, taking note of Section 15H(ii), 15A(a) and 15A(b) of the SEBI Act, and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15H(ii), 15A(a) and 15A(b) of the SEBI Act, 1992 on the Noticee:

Name of entity	**Provisions violated**	**Penalty (Rs.)**
Patriarch Developers Private Limited (PAN: AACCP7052Q)	(i) Regulation 3(3) read with 3(1) of SEBI (SAST) Regulations, 2011 (ii) Regulation 10(7) of SEBI (SAST) Regulations, 2011 (iii) Regulation 30(1) & 30(2) read with 30(3) of SAST Regulations, 2011	10,00,000/- (Rupees Ten Lakh Only) 2,00,000/- (Rupees Two Lakh Only) 1,00,000/- (Rupees One Lakh Only)
	Total -	13,00,000/- (Rupees Thirteen Lakh Only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

41. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

42. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C/7, "G" Block BKC, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee shall also provide the following details while forwarding DD / payment information:

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)	

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

44. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee VKA Enterprises Private Limited (Earlier Known as Patriarch Developers Private Limited) and also to the Securities and Exchange Board of India.

Place: Mumbai **BARNALI MUKHERJEE**

Date: July 29, 2022 **ADJUDICATING OFFICER**