

WTM/AB/CFD/DCR-1/15733/2021-22

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

PROCEEDINGS IN COMPLIANCE WITH THE DIRECTIONS OF THE HON'BLE SECURITIES APPELLATE TRIBUNAL, MUMBAI, ISSUED VIDE ORDER DATED FEBRUARY 02, 2018 IN THE MATTER OF MANOJ MITTAL & OTHERS VS. SECURITIES AND EXCHANGE BOARD OF INDIA (APPEAL NOS. 2, 11, 44 AND 128 OF 2017).

1. The Present proceedings have emanated from an order dated February 02, 2018 passed by the Hon'ble Securities Appellate Tribunal, Mumbai (Hereinafter referred to as "**SAT**"), in the matter of Manoj Mittal & Others Vs. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") in Appeal Nos. 2, 11, 44 and 128 of 2017, whereby the Hon'ble SAT directed as follows:

".....In these circumstances, we set aside the impugned communications and restore the complaints for fresh decision on merits and direct a competent officer of SEBI to dispose of the complaints on merits without being influenced by the decision of the WTM dated November 21, 2014. All contentions of all parties including the acquirer are kept open. SEBI is directed to pass fresh order on the complaints filed by the complainants as expeditiously as possible and in any event within a period of four months from today."

2. The background of the matter in which the aforesaid Order dated February 02, 2018 came to be passed by the Hon'ble SAT is as under:
 - (a) On November 6, 2007, India Star (Mauritius) Limited (hereinafter referred to as "**the Acquirer**"), a public shareholder of Global Offshore Services Limited (previously known as "Garware Offshore Services Limited") {hereinafter referred to as "**Target Company**"}, acquired 22,72,727 equity shares representing 9.54% of the paid up

equity share capital of the Target Company, through conversion of 25,00,000 Unsecured Optionally Convertible Debentures ("**the OCDs**"). This acquisition resulted in the increase in the shareholding of the Acquirer from 12.02% to 20.42% of the paid-up voting equity share capital of the Target Company, triggering Regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 ("hereinafter referred to as "**the Takeover Regulations, 1997**").

- (b) Accordingly, the Acquirer, through HSBC Securities and Capital Markets (India) Private Limited ("**the Merchant Banker**" / "**the Manager**") made an open offer vide Public Announcement dated November 07, 2007 to acquire 20% of the share capital of the Target Company. The offer opened on March 19, 2008 and closed on April 07, 2008. From the Post-offer Public Announcement made on May 26, 2008, the following was noted:

Offer Price per equity share	Rs.234.67/- including interest of Rs.4.67/-
Shares acquired in the open offer	23,98,201 shares (10.06%)
Size of the offer (20% of voting capital)	Rs.111.79 crores
Post offer shareholding of the Acquirer	72,60,928 shares (30.48%)

- (c) Three years later, one Mr. Amit Bhagvatprasad Barot filed Appeal No. 201 of 2011 before Hon'ble SAT, *inter alia*, seeking order directing SEBI to order the Manager to public offer and the Acquirer, to make fresh offer as material facts were suppressed in the letter of offer dated March 12, 2008 and if those facts were disclosed, as required under SAST Regulations 1997, appellant would have offered to sell shares of target company during the offer period specified in letter of offer dated March 12, 2008. On January 04, 2012, Hon'ble SAT, dismissed the said Appeal as withdrawn with liberty to seek appropriate remedy before SEBI.
- (d) Thereafter, Mr. Barot, through M/s. Prism Partners, Advocates, filed a representation dated January 16, 2012, *inter alia* alleging that on the basis of

information available pursuant to a press release dated August 16, 2011 in respect of launch of “IDFC-Sycamore Infrastructure Fund”, it has come to light for the first time that Sycamore Ventures was actually the beneficial owner of the equity shares held in the Target Company through the Acquirer. He further alleged that the Acquirer and the Manager to the Open Offer did not make full disclosures as required under the Takeover Regulations, 1997 and on the contrary had withheld material information, which resulted in projecting a clean image of the Acquirer because of which many investors like him took a decision not to tender their equity shares in the Open Offer. Had the Acquirer and the Manager disclosed true and correct information, which were required to be disclosed in the Letter of Offer (hereinafter also referred to as “**LOO**”), the decision of Mr. Barot would have been different. Mr. Barot referred to the disclosures made in the LOO and contended *inter alia* the following:

- (i) The Acquirer and the Manager failed to make disclosure of the material information with regard to the background of the Acquirer as required in the standard LOO format stipulated by SEBI vide Circular dated March 08, 2004.
- (ii) Sycamore Ventures, at the time of the Open Offer, was and continued to be in control of the Acquirer as evidenced by various information available on the internet. However, the fact that Sycamore Ventures was controlling the Acquirer, was not disclosed and the consequential disclosures pertaining to Sycamore Ventures including their track record, litigations etc were also avoided. In the absence of the material information on beneficial owners and persons and the group that is actually in control of the equity shares and voting rights of the Target Company, the intentions of the Acquirer and the persons in control of the Acquirer, their investment philosophy, intention to control the management and policy

decisions and whether they support the board of directors through their international experience or whether they are in joint control with the promoters were not known. In the absence of this material information, there was an intention to willfully mislead the shareholders and hence an informed decision could not have been taken on the impugned open offer made by the Acquirer.

- (iii) The correct background of one of the directors of the Acquirer i.e., Mr. Ravi Pratap Singh, was deliberately withheld. The same was with done with ulterior motives, as the LOO itself was signed by Ravi Pratap Singh as Managing Director of the Acquirer.
 - (iv) The Acquirer and its Managing Director Mr. Ravi Pratap Singh had committed a 'fraud' and had violated the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**the PFUTP Regulations**") and the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**the SEBI Act**").
- (e) In view of the above, Mr. Barot had requested SEBI *inter alia* to direct the Acquirer to make another open offer and provide an opportunity to the shareholders to take an informed decision whether to tender or not to tender their equity shares.
- (f) In the meantime, SEBI had also received several other complaints in the matter. The complaints were examined and vide letter dated June 08, 2012, addressed to the complainants including Mr. Barot, SEBI *inter alia* observed that "... .. *there appears that the acquirer has not violated any of the provisions of SEBI (SAST) Regulations, 1997 as alleged by the complainants. Hence, the question of SEBI giving any further directions to the Acquirer does not arise.*"

- (g) Mr. Barot filed an appeal before the Hon'ble SAT in Appeal No. 157 of 2012 challenging the aforesaid letter of SEBI, which was disposed of by the Hon'ble SAT vide Order dated September 03, 2013, wherein Hon'ble SAT directed as follows:

“.....22. For all the aforesaid reasons we set aside impugned order dated 8th June, 2012 and direct SEBI to reconsider complaint of appellant dated 16th January, 2012 afresh and pass appropriate orders as it deems fit. We make it clear that we have not expressed any opinion on merits of the case.....”

- (h) Thereafter, in compliance with the directions of the Hon'ble SAT, after considering various representations and submissions made by Mr. Barot, the Merchant Banker and the Acquirer as well as the information disclosed in the reply submitted to the Hon'ble SAT by the Merchant Banker and Mr. Ravi Pratap Singh, SEBI passed an Order dated November 21, 2014 whereby it observed *inter alia* the following:

- (i) The manner of control by Sycamore Management Corporation (SMC), as represented by the Acquirer and the Merchant Banker, on the Acquirer has not been disclosed in the LOO. Instead, the Acquirer and the Merchant Banker hurried their way to terminate the disclosures at the first possible stop. Therefore, the disclosure made in the LOO does not present a true and a fair representation of the persons having control over the Acquirer.
- (ii) The Acquirer and the Merchant Banker have failed to reach the standards of disclosures expected by SEBI. For the same, the Acquirer and the Merchant Banker are reprimanded and are advised to comply with disclosure requirements mandated by SEBI in its regulations and circulars, in letter and spirit.

- (iii) As regards the allegation with respect to disclosures of details of Mr. Ravi Pratap Singh, the Acquirer has complied with the requirements of SEBI Circular dated March 08, 2004 and the allegations made by Mr. Barot do not have any merit.
 - (iv) Mr. Barot had not approached SEBI with clean hands.
 - (v) Considering the facts and circumstances of the case and the observations made by SEBI in the order, a direction in the nature of ordering the Acquirer to make another public offer is not warranted.
- (i) Amit Barot did not challenge the aforesaid decision of WTM dated November 21, 2014 and the same attained finality.
- (j) After September 03, 2013 i.e. the date of passing of order by Hon'ble SAT in the Appeal No. 157 of 2012, referred above, SEBI had received several complaints from various persons, including Mr. Manoj Mittal, Mr. Anupam Dighe, Mr. Jitendra Tolia and Mr. Vijay N. Bhatt, *inter alia* requesting SEBI to direct the Acquirer to make a fresh open offer. Based on the aforesaid Order of WTM dated November 21, 2014, SEBI disposed of the complaints filed in the matter including the complaints of the said four persons.
- (k) Mr. Manoj Mittal, Mr. Anupam Dighe, Mr. Jitendra M. Tolia and Mr. Vijay N. Bhatt, filed Appeal Nos. 2, 11, 44 and 128 of 2017 before Hon'ble SAT challenging the impugned communications of SEBI disposing of their respective complaints. Hon'ble SAT vide its order dated February 02, 2018, *inter alia*, set aside the impugned communications of SEBI, restored the complaints for fresh decision on merits and directed a competent officer of SEBI to dispose of the complaints on merits without being influenced by the decision of the WTM dated November 21, 2014.

- (I) Aggrieved by the aforesaid Order dated February 02, 2018, SEBI preferred Civil Appeal Nos. 3758-3561 of 2018 before Hon'ble Supreme Court of India. The Hon'ble Supreme Court vide its order dated December 01, 2021 dismissed the appeals and directed as under:

"... .. Considering the fact that, by the impugned judgment and order, the Securities Appellate Tribunal has set aside the communications by which the complaints filed by respondents herein came to be dismissed and has restored the complaints for fresh decision on merits and has directed the competent authority of the SEBI to dispose of the complaints on merits without being bound by the order of the whole time Member (WTM) dated November 21, 2014 and that all contentions of all the parties including the acquirer are kept open, we see no reason to interfere with the impugned order pass by the Securities Appellate Tribunal.

Hence, the appeals stand dismissed....."

CONSIDERATION OF ISSUES:

3. In view of the aforesaid order dated December 01, 2021 passed by Hon'ble Supreme Court, the matter was placed before me on March 04, 2022 for giving a date of hearing to the Representors and for passing order in the matter. Accordingly, March 10, 2022 was fixed as a date of hearing for the Representors. Mr. Jitendra Tolia, Mr. Manoj Mittal and Mr. Vijay Bhatt attended the hearing on March 10, 2022. However, hearing to Mr. Anupam Dighe was again provided on March 15, 2022 as the notice of hearing for hearing to be held on March 10, 2022 could not be delivered to him. Mr. Dighe made a written submissions vide email dated March 15, 2022 and also attended the personal hearing on March 15, 2022 through web conference. Subsequent to the personal hearings, Mr. Manoj Mittal, Mr. Vijay Bhatt and Mr. Jitendra Tolia filed written submissions dated March 12, 2022, March 16, 2022 and March 17, 2022, respectively.

4. In its order dated February 02, 2018, Hon'ble SAT has directed that the complaints filed by Mr. Manoj Mittal, Mr. Anupam Dighe, Mr. Jitendra Tolia and Mr. Vijay N. Bhatt (hereinafter collectively referred to as **"the Representors"**) with SEBI in the past have been restored for a fresh decision on merit without being influenced by the decision of the WTM dated November 21, 2014. I note that the details of such complaints filed by the Representors, are as follows:

Name of the Representor	Complaints	Name of the Representor	Complaints
Mr. Jitendra Tolia	Letter dated April 29, 2014	Mr. Vijay Bhatt	Letter dated September 06, 2013
	Letter dated May 06, 2014		Letter dated October 31, 2013
	Letter dated August 30, 2016		Letter dated October 17, 2016
	Letter dated September 12, 2016		Letter dated December 08, 2016
	Letter dated September 18, 2016		-
	Letter dated September 21, 2016		-
	Letter dated October 03, 2016		-
	Letter dated October 10, 2016		-
	Letter dated October 25, 2016		-
	Letter dated April 09, 2018		-
	Letter dated March 20, 2018		-
	Letter dated December 20, 2021		-
	Letter dated February 23, 2022		-
Name of the Representor	Complaints	Name of the Representor	Complaints
Mr. Manoj Mittal	Letter dated February 15, 2016	Mr. Anupam Dighe	Letter dated April 06, 2016
	SCORES Communication dated April 04, 2016		SCORES Communication dated June 29, 2016
	Meeting dated June 16, 2016		Letter dated June 29, 2016
	Letter dated June 27, 2016		Letter dated July 29, 2016
	Letter dated July 12, 2016		Letter dated September 17, 2016
	Letter dated July 14, 2016		Letter dated March 14, 2018
	Letter dated July 20, 2016		-
	Letter dated July 21, 2016		-
	Letter dated July 22, 2016		-
	Letter dated December 21, 2021		-
	Letter dated January 21, 2022		-
	Letter dated February 21, 2022		-

5. Having examined the complaints of the Representors, I note that the main issues / grievances raised by the Representors in their complaints to SEBI in respect of the Open Offer given by the Acquirer vide LOO dated March 12, 2008 to acquire shares of the Target Company during March-April 2008 are as follows:

(a) The Acquirer and the Merchant Banker to the Open Offer did not make full disclosures regarding the persons having control over the Acquirer, as required in the standard LOO format prescribed by SEBI Circular dated March 08, 2004.

(b) The correct background of one of the directors of the Acquirer, i.e. Mr. Ravi Pratap Singh was deliberately withheld, as his association with three companies was not disclosed. Further, information about one Mr. Richard Chong, employee / office bearer of Sycamore Management Corporation (SMC) was not disclosed in the LOO.

6. I note that Representors, in their various complaints referred above, have also made various other contentions in support of their prayer for fresh open offer.

7. I note that the Takeover Regulations, 1997 were framed on the basis of the recommendation of the Report of Committee constituted under the Chairmanship of Justice P N Bhagwati, Former Chief Justice of India. In the said Report, it was recommended *inter alia* that the acquirer should be required to accept minimum of 20% shares in an open offer. Accordingly, Regulation 21(1) of the Takeover Regulations, 1997 provided that *"The public offer made by the acquirer to the shareholders of the target company shall be for a minimum twenty per cent of the voting capital of the company"*. Further, as per Regulation 21(6) of the Takeover Regulations, 1997, provided that *"Where the number of shares offered for sale by the shareholders are more than the shares agreed to be acquired by the person making the offer, such person shall accept the offers received from the shareholders on a proportional basis, ..."* Further, Regulation 19 of the Takeover Regulations, 1997 provided that *"The public announcement shall specify a date, which shall be the "specified date" for the purpose of determining the names of the shareholders to whom the letter of offer should be sent:"* I thus note that the Acquirer was obligated to acquire only a minimum of 20% shares in the open offer by sending LOO to those shareholders who held shares on the specified date and that in case of

tendering of shares beyond 20% by such eligible shareholders, the shares had to be accepted on proportionate basis by the Acquirer, subject to a maximum of 20%. Thus, it was not necessary that all shares tendered by the public shareholders of the Target Company had to be accepted in such open offer pursuant to such LOO. Furthermore, the shareholders always have the option to sell their remaining shares on the platform of the exchange, in case they are desirous of completely exiting a target company but are unable to do because of partial acceptance of their shares in an open offer. In the instant case, I note that the Public Announcement (PA) to acquire shares through an open offer was made by the Acquirer on November 07, 2007 (read with Corrigendum to the PA dated December 14, 2007, December 19, 2007 and March 10, 2008 respectively) and subsequently, the LOO dated March 12, 2008 (read with the Corrigendum to the LOO dated March 24, 2008) was issued by the Acquirer, with November 30, 2007 mentioned as the specified date. I note from the LOO that the Acquirer had made an offer to the Shareholders of the Target Company, who were shareholders on the specified date, to acquire up to 47,63,819 Equity Shares from them, representing in aggregate 20% of the expanded paid-up voting share capital of the Target Company at a price of Rs 230/-, subject to the terms and conditions mentioned in the LOO. In the LOO, it was mentioned that subject to the maximum offer size of 47,63,819 Equity Shares of the Target, the Acquirer would acquire shares tendered by the shareholders and accepted under the Offer, as per the terms and conditions as set out in the Public Announcement and the LOO. I note from the LOO that the Offer had opened on March 19, 2008 and had closed on April 07, 2008. The final Offer price was determined at Rs.234.67 which included interest of Rs.4.67. However, as against offer to acquire 47,63,819 shares (20%), only 23,98,201 shares constituting 10.06% shares were tendered by the shareholders. I also note that none of the Representors had accepted the offer of the Acquirer and did not tender any shares in the open offer pursuant to the LOO dated March 12, 2008. I note that the Acquirer had issued a Post Offer Public Announcement dated May 26, 2008, which shows that the Open Offer process was already completed by May 26, 2008 by

payment of offer price for the tendered shares. The details of the Open Offer, as appearing in the Post Offer Public Announcement dated May 26, 2008 are as follows:

"5.	<i>Offer Details</i>	
	<i>a. Date of opening of the offer:</i>	<i>March 19, 2008</i>
	<i>b. Date of closure of the offer:</i>	<i>April 07, 2008</i>

6. Details of the acquisition

Sr. No.	Item	Proposed in the Offer Document	Actuals
1.	<i>Offer price / Equity Share</i>	<i>INR 234.67/- (Includes interest of INR 4.67/-)</i>	<i>INR 234.67/- (Includes interest of INR 4.67/-)</i>
2.	<i>Share holding of acquirer (No & %) before MOU/P.A.*</i>	<i>4,862,727 (20.42%)</i>	<i>4,862,727 (20.42%)</i>
3.	<i>Shares acquired by way of MOU or market purchase (No & %)</i>	<i>N.A.</i>	<i>N.A.</i>
4.	<i>Shares acquired in the open offer (No & %)*</i>	<i>4,763,819 (20.00%)</i>	<i>2,398,201 (10.06%)</i>
5.	<i>Size of the open offer (No. of shares multiplied by offer price per share)</i>	<i>INR 111.79 crores</i>	<i>INR 56.28 crores</i>
6.	<i>Shares acquired after the P.A. but before 7 working days prior to closure date, if any. (No. & %)</i>	<i>N.A.</i>	<i>N.A.</i>

7.	Post offer share holding of acquirer (No. & %) (2+3+4+6)*	9,626,546 (40.42%)		7,260,928 (30.48%)	
8.	Pre and Post Offer shareholding of the Public*	Pre Offer	Post Offer	Pre Offer	Post Offer
		49.79%	29.79%	49.79%	39.72%

* Percentage figures calculated on the basis of total voting rights of the Target as on date of PA as per 21(5) of SEBI (SAST) Regulations

7. Status of the Escrow Account, whether released or not: Not yet released

8. Payment of Interest to the shareholders, if any: Rs.4.67/- per equity share

9. Status of investor complaints received, if any: No investor complaints are pending as on date

Issued by the MANAGER TO THE OFFER on behalf of the Acquirer"

8. I note that as per the information obtained from the RTA, none of the Representors had tendered any share in the Open Offer pursuant to the LOO dated March 12, 2008. In this regard, I note that the provisions of Section 35 of the Companies Act, 2013 (previously Section 62 of the Companies Act, 1956) provide for civil liability, through a competent civil court, of certain persons in case of misstatements in prospectus. Under the said provision, in case of material misstatement in the prospectus, only those persons who had subscribed to shares or debentures on the faith of the prospectus can seek compensation from a competent civil court for any loss or damage which he may have sustained by reason of any such misstatement in the prospectus. I note that the said remedy is available to a person who subscribes to the shares or debentures by relying on any mis-statement in the prospectus. Such remedy is not available to a person who did not subscribe to the shares/debentures in the first place. Such persons cannot claim compensation on the ground that had there been no mis-statement in the Prospectus, he would have subscribed to the shares. An analogous situation exists in this case. I note that the Representors had

not tendered any share in the Open Offer pursuant to the offer document, i.e. LOO dated March 12, 2008 issued by the Acquirer to all the shareholders holding shares on the specified date and hence no transaction was there between the Acquirer and the Representors based on LOO dated March 12, 2008, entitling the Representors to make plea for fresh open offer. I note that the Representors not only not tendered their shares relying on LOO but also did not raise any objection to the alleged mis-statement in the LOO dated March 12, 2008 and also when the Acquirer issued the Post Offer Public Announcement dated May 26, 2008 announcing the completion of the open offer and completed the open offer process.

9. Apart from the above, I note that the earliest complaint filed by any of the Representor in this matter is from Mr. Vijay Bhatt which is dated September 06, 2013, which is after a lapse of more than 5 years since the issue of LOO or the completion of the Open Offer on May 26, 2008. As per the information obtained from the Bigshare Services Pvt. Ltd., the Registrar to the Offer (RTA), Mr. Vijay Bhatt was holding 19,600 shares of the Target Company on the specified date. Mr. Jitendra Tolia had submitted his complaint for the first time vide letter dated April 29, 2014, which is after a lapse of almost six years since the issue of LOO or the completion of Open Offer. As per information from RTA, Mr. Jitendra Tolia held 240 shares of the Target Company on the specified date. Further, Mr. Manoj Mittal and Mr. Anupam Dighe had submitted their complaints for the first time vide letters dated February 15, 2016 and April 06, 2016 respectively, which is after a lapse of almost 8 years since the issue of LOO or the completion of the Open Offer on May 26, 2008. I note that as per the information from RTA, while Mr. Manoj Mittal held 7,36,000 shares as on the specified date, Mr. Anupam Dighe was not even a shareholder of the Target Company on the specified date. I note that the publicly available data on BSE of open/high/low/closing price of the scrip of the Target Company shows the following month-wise price of the scrip for the period from November 2007 to December 2016:

Dates	Open	High	Low	Close
Nov-07	228	260	189.7	239
Dec-07	251.35	310	233	254.75
Jan-08	263	272	170	212.45
Feb-08	210.65	224.9	200.1	211.5
Mar-08	210.8	215.9	200.55	206.75
Apr-08	208	279.9	185.15	255.65
May-08	263	265	220.1	226.8
Jun-08	222.5	226	145	148.4
Jul-08	145	210	134.9	185.2
Aug-08	184	216	174.05	183.65
Sep-08	182.05	215	147	176.9
Oct-08	166.1	168.2	82	99.35
Nov-08	97.15	116	79	80.1
Dec-08	76.3	91.45	67	75.7
Jan-09	77.65	85	60.1	64.65
Feb-09	65	74.9	57.3	61.9
Mar-09	63.5	68	52	64.9
Apr-09	63.25	115	63.2	100.7
May-09	93.5	153.55	93.5	146.15
Jun-09	149.95	186.3	138.85	148.35
Jul-09	145	166.95	122.3	153.75
Aug-09	150	199	138.45	190.05
Sep-09	186	190	161.2	163.5
Oct-09	166	182.3	143.1	143.35
Nov-09	140.25	179.45	130.45	174.1
Dec-09	174.9	197.95	166	169.7
Jan-10	173	230.4	170.35	196.65
Feb-10	195.5	211.9	177.1	191.35
Mar-10	193	204.7	158.6	164.1
Apr-10	166	185.75	161.2	164.35
May-10	165.6	165.6	128.3	142.3
Jun-10	141.1	145.95	132.2	136.6
Jul-10	136.9	142	123.25	126.3
Aug-10	126	159.5	112.3	114.9
Sep-10	115.5	140.95	115.25	129.3
Oct-10	134.8	151.8	127.15	131.05
Nov-10	134.1	185.4	115.25	157.95
Dec-10	158	177.7	132.5	150.55
Jan-11	154.7	155.9	109	114.8
Feb-11	114	124	102	109.7
Mar-11	107.5	121.5	102	115.6

Apr-11	114.2	142.5	114.2	128.35
May-11	128.8	134.6	108.3	115.55
Jun-11	117.9	126.9	107	111.6
Jul-11	115.5	131.95	105	108.3
Aug-11	109.1	113.3	86.15	107.6
Sep-11	111.75	111.75	83.5	84.45
Oct-11	85.45	86	76.9	78.9
Nov-11	80.6	87.5	63	63.45
Dec-11	64.1	78	63	71.85
Jan-12	72.35	78.75	62.05	71.05
Feb-12	72.25	97.3	70	78.7
Mar-12	77.35	87.2	64.55	66.75
Apr-12	68	72	64.1	65.95
May-12	60	82.35	60	69.05
Jun-12	72.5	86.65	68.55	74.8
Jul-12	76.2	84.5	69	71.35
Aug-12	73.35	78.5	68.6	70.85
Sep-12	71.7	79	69.55	77.6
Oct-12	78.9	83.2	68	68.35
Nov-12	68.8	74.9	67.4	68.35
Dec-12	68.6	71.8	66.1	66.85
Jan-13	67	72.9	59.05	61.3
Feb-13	60.55	65.7	57	58.6
Mar-13	59.5	62.8	53.55	58.75
Apr-13	59.95	94	56.6	76.2
May-13	77	94.4	68.8	75.85
Jun-13	79.65	79.65	60.05	62.05
Jul-13	64.35	77	60	63.3
Aug-13	61.15	70.5	50.7	58
Sep-13	59.95	63.05	53.85	54.15
Oct-13	57.2	57.85	44.3	48.05
Nov-13	48	69.1	48	69.1
Dec-13	72	107.35	60.05	107.35
Jan-14	112.6	126.7	94	117.5
Feb-14	118	234.95	115.9	230.15
Mar-14	232	304.95	211.05	288.9
Apr-14	295.6	353.95	277	310.25
May-14	317.5	351	260.05	335.45
Jun-14	349.9	380	314	366.6
Jul-14	371	513.95	358.5	473.1
Aug-14	446	574.35	440.25	450.75
Sep-14	450	495.05	398.15	440.1

Oct-14	437.9	504	437.1	483.2
Nov-14	482	633.7	482	620.9
Dec-14	612	678.9	495	665.9
Jan-15	672.9	848	672	835.8
Feb-15	843	864.9	799	802.25
Mar-15	810.75	824	480	644.25
Apr-15	650	724.5	495.05	524.25
May-15	527	678	524.15	666.75
Jun-15	674.95	698.4	549	561.05
Jul-15	565.5	669.5	550	616.45
Aug-15	612	633.7	475	579.05
Sep-15	573.9	669.6	566	660.45
Oct-15	664	704.8	376.05	394
Nov-15	404	411.95	345.7	351
Dec-15	364.9	384.85	332.25	334.4
Jan-16	339.95	359	280.5	335.9
Feb-16	342	343.4	258.05	263.6
Mar-16	270	298	175	182.5
Apr-16	183	205	174	176.85
May-16	175.35	188	155.4	170.2
Jun-16	175	175	127	139.35
Jul-16	144.65	169.7	133.35	134.15
Aug-16	135	174	115	130.8
Sep-16	132.15	149.4	122	122.65
Oct-16	125.05	143.5	119.7	125.55
Nov-16	124.2	127.4	91.1	119.5
Dec-16	123	131.4	51.1	56.9

From the above Table, it can be noted that the price of the scrip of the Target Company fluctuated between a minimum of Rs.44.3 in the month of October 2013 to a maximum of Rs.864.9 in the month of February 2015. I note that Mr. Vijay Bhatt had made his first complaint to SEBI only when the price of the scrip was around Rs.60 in September 2013. Mr. Jitendra Tolia submitted first complaint vide letter dated April 29, 2014 and followed it with a letter dated May 06, 2014, during which period, the daily closing price fell from Rs.314.65 on April 29, 2014 to Rs.300.45 on May 06, 2014. However, since the scrip price started showing an upward trend in subsequent months and reached a high of Rs.864.9 on February 03, 2015, he did

not file any further complaint until August 30, 2016, when the daily closing price had fallen to around Rs.130. Throughout 2015, the scrip was trading at prices much higher than the Open Offer price and the lowest daily closing price during that year was Rs.332.25, which was recorded on December 31, 2015. Mr. Manoj Mittal and Mr. Anupam Dighe filed their complaint for the first time only on February 15, 2016 and April 06, 2016, respectively, when price of the scrip started falling, as can be seen in the above Table. I note that immediately after the passing of SEBI Order dated November 21, 2014 vide which the request for fresh open offer was rejected by SEBI, on November 24, 2014, the closing price of the scrip was Rs.586.10. The scrip had constantly risen thereafter and had reached a high of Rs.864.9 on February 03, 2015. Throughout 2015, the scrip was trading at prices much higher than the Open Offer price. This shows that even after closure of the Open Offer process on May 26, 2008 and also after SEBI Order dated November 21, 2014 rejecting the plea for fresh open offer was passed, sufficient opportunity was available to the Representors to sell their shares on the platform of the exchange and make an exit from the Company at prices much higher than the open offer price. I also note from the submissions of the Target Company made vide letter dated December 14, 2016 that Mr. Manoj Mittal, Mr. Jitendra Tolia and Mr. Anupam Dighe had traded in the scrip of the Target Company in the past. I thus find that only during the phases in 2013, 2014 and 2016 when the share price was falling that the Representors approached SEBI with a plea for directing a fresh open offer. In view of the observations and findings in para 7, 8 and 9 above, I find that the Representors' prayer for a fresh open offer is not tenable in the facts and circumstances of the case.

10. The Representors had not tendered shares during the offer period based on LOO dated March 12, 2008 and also did not object to the Post Offer Public Announcement dated May 26, 2008. I note that besides the discussion stated in para 7, 8 and 9 above, the prayer by the Representors for fresh open offer is untenable, unwarranted

and impractical in the facts and circumstances of the case, *inter alia* as discussed hereunder.

- (a) The Representors have contended that there was a mis-statement in the LOO since Acquirer had not disclosed that SMC was the actual person in control of the Acquirer. In this regard, I note that at the time of the Open Offer given by the Acquirer, the Acquirer was required to disclose certain information in the LOO for which a format was prescribed vide SEBI Circular dated March 08, 2004. Clause 4 of the said "Format of the Standard Letter of Offer" prescribed the following information to be disclosed:

"4 BACKGROUND OF THE ACQUIRER (INCLUDING PACs, IF ANY) (In case, the open offer is for the change in control of the Target Company or is an offer where the offer price is payable in terms of exchange of securities, details under this heading shall be given as per Annexure I. In all other cases, the following details shall be furnished)

4.1 If acquirer(s) (including PACs) is a company

4.1.1 Name, address (registered and corporate office) and phone no. of the company(ies).

4.1.2 The relationship, if any, existing between them

4.1.3 Salient features of the agreement, if any, entered between them with regard to the offer/ acquisition of shares.

4.1.4 Brief History & Major areas of operations.

4.1.5 Identity of the promoters and /or persons having control over such companies and the group, if any, to which such companies belong to.

4.1.6 Confirm and disclose as to whether the applicable provisions of chapter II of SEBI Takeover Regulations

has been complied with by acquirer/ PACs within the time specified in the Regulations. Delay or non-compliance

with these provisions if any, may be disclosed in the letter of offer. Further the extent of compliance by the

acquirers/ PACs with the applicable provisions of chapter II should be furnished under a separate annexure to

SEBI along with the draft letter of offer as per the format at Annexure III of the standard letter of offer.

4.1.7 Names and residential addresses of Board of directors of acquirer(s).

Confirm whether any of such director(s) is already on the Board of Directors of Target Company.

If so, disclosures

in terms of Regulation 22(9).

4.1.8 Details of the experience, qualifications, date of appointment of the Board of Directors.

....."

I note from the LOO issued by the Acquirer that the Acquirer has made the following disclosures regarding its background:

3. BACKGROUND OF THE ACQUIRER - M/s. IndiaSTAR (Mauritius) Limited ("Acquirer")

a) The Acquirer, indiaSTAR (Mauritius) Ltd., is a privately held limited liability company incorporated on February 17, 2006 (Registration Number 61002) in the Republic of Mauritius under the (Mauritius) Companies Act, 2001 with its registered office at Level 3, Alexander House, 35 Cyber city, Ebene, Mauritius. Tel: +230 403 0800. The Acquirer does not have a separate corporate office.

b) The Acquirer is a wholly owned subsidiary of indiaSTAR Fund, L.P., a limited partnership established by a Limited Partnership Agreement dated December 5, 2005 under the Limited Partnership laws of Cayman Islands, having its registered office at c/o Trident Trust Company (Cayman) Ltd., P.O. Box 847 GT, One Capital Place, George Town, Grand Cayman, Cayman Islands. Tel: +345 949 0800; Fax: +345 949 0881; Email: gmclaughlin@tridenttrust.com. indiaSTAR Fund, L.P. owns 3,70,50,001 (three crore, seventy lakhs ,fifty thousand and one) shares, as of limited review financial on September 28, 2007 representing 100% (one hundred percent) of the issued and outstanding shares of the Acquirer. Further as of limited review financial dated November 6, 2007 indiaSTAR Fund, L.P. owns 6,86,50,001 (six crore, eighty six lakhs ,fifty thousand and one) shares, representing 100% (one hundred percent) of the issued and outstanding shares of the Acquirer. The principal purpose of indiaSTAR Fund, L.P. is to invest in equity, equity linked and equity related investments in growth companies with significant interest in the Indian 9 GARWARE OFFSHORE SERVICES LIMITED subcontinent. The Acquirer acts as an investment holding company for indiaSTAR Fund L.P. for all investments undertaken by indiaSTAR Fund, L.P.

c) The Acquirer is an India-focused investment company that primarily provides growth capital to mid-market companies in India. To date, the Acquirer has consummated investments in (i) Radha Madhav Corporation Limited, (ii) Surana Industries Limited, (iii) IOL Chemicals and

Pharmaceuticals Limited, and (iv) KEW Industries Limited, in addition to its existing investment in the Target. The above-mentioned investments excepted, the Acquirer has no other existing business in India. Further, the Acquirer has not promoted any company in India. Outside of India, the Acquirer has established SV India I Ltd, a wholly owned subsidiary in Mauritius (the “Subsidiary”). The Subsidiary is only intended to be an investment holding company and as on date of the PA, the Subsidiary has not made any investments and has not conducted any business.

d) The Acquirer confirms that it has complied with the provisions of Chapter II of the SEBI (SAST) Regulations within the time specified in the SEBI (SAST) Regulations.

e) Shareholding pattern of the Acquirer, as on the date of the PA, is as under:

<i>Sl. No.</i>	<i>Shareholder's category</i>	<i>No. and percentage of shares held</i>
<i>1.</i>	<i>Promoters</i>	<i>68,650,001 ordinary shares of face value USD 1, 100%</i>
<i>2.</i>	<i>FII/Mutual Funds/FIs/Banks</i>	<i>Nil</i>
<i>3.</i>	<i>Public</i>	<i>Nil</i>
	<i>Total paid up capital</i>	<i>68,650,001 ordinary shares of face value USD 1, 100%</i>

... ..

... ..

h) The Acquirer is a privately held limited liability company and is not listed on any stock exchange. The Acquirer is a wholly owned subsidiary of indiaSTAR Fund, L.P., a limited partnership.”

I note that Clause 4.1.5 of the “Format of the Standard Letter of Offer” prescribed vide SEBI Circular dated March 08, 2004 requires an acquirer to disclose the “*Identity of the promoters and /or persons having control over such companies and the group, if any, to which such companies belong to*”. In this regard, I note that in the LOO, the Acquirer was described as a privately held limited liability company which is a wholly owned subsidiary of IndiaSTAR FUND L.P., a limited partnership established by a Limited Partnership Agreement dated December 05, 2005 under the Limited Partnership laws of Cayman Islands. The Representors have contended that the

disclosure made in the LOO regarding the person in control of the Acquirer was not correct as the actual person in control of the Acquirer was Sycamore Management Corporation (SMC), a US based entity. In this regard, from the submissions / information disclosed by the Acquirer, the Merchant Banker and Mr. Ravi Pratap Singh, as recorded in paras 7 to 10 of the SEBI Order dated November 21, 2014, I note the following regarding the holding structure of the Acquirer:

- "IndiaStar Fund L P is professionally managed broad based investment fund registering in the Cayman Islands as an exempted limited partnership which invests in growth companies with potential for significant value appreciation utilizing a private equity discipline. IndiaStar Partner LP is registered as the General Partner of the IndiaSTAR Fund LP. In addition, IndiaSTAR Fund LP has 38 limited partners, comprised of the institutions, insurance companies, trusts and foundations and high net worth foreign individuals who are investors and are principally based in the US and Japan. IndiaSTAR FUND LP therefore serves as the pooling investment vehicle for such investors, seeking to invest in a professionally managed investment fund. The primary objective of the IndiaSTAR Fund LP is to make investments into lucrative portfolio companies through various special purpose vehicles such as the Acquirer, in order to derive monetary benefits for its 38 limited partners. Thus, it is the 38 limited partners of ISLP whose money has been pooled for investment and are the principal beneficiaries of the investments that are made, primarily using the funds contributed by these 38 limited partners, through Acquirer.
- The Agreement of Limited Partnership between Indiastar Partners LP as the General Partner and 38 limited partners of IndiaSTAR Fund LP states that *"The limited partners shall take no part in the control or management of the business or affairs of the Partnership nor shall the limited partners have any authority to act for or on behalf of the Partnership or otherwise in respect of Partnership matters"*. Accordingly, IndiaSTAR Partners LP, as the General

Partner of IndiaSTAR Fund LP, has complete authority and responsibility for the management of IndiaSTAR Fund LP.

- The sole general partner of IndiaSTAR Partners LP is Sycamore Management Corporation (SMC), a limited liability company incorporated in 1995 under the laws of the State of Delaware. It is a professional investment management company, having address at 845 Alexander Road, Princeton, NJ 08540, USA.
- IndiaSTAR Fund LP is professionally administered and advised by SMC. Pursuant to an investment advisory agreement dated March 13, 2006, SMC was appointed as the investment advisor to IndiaStar Fund LP by IndiaSTAR Partners LP, the General partner of IndiaSTAR FUND LP. Apart from providing advisory services to IndiaSTAR Fund LP, SMC is an independent professional management company.

I note that the holding entity of the Acquirer i.e. IndiaSTAR Fund LP, was acting as a pooling investment vehicle for its 38 limited partners. Further, it is clear from the Agreement of Limited Partnership between Indiastar Partners LP as the General Partner and 38 limited partners of IndiaSTAR Fund LP that the 38 limited partners who contributed funds had no control or the managerial rights in IndiaSTAR Fund LP and the fund of the 38 limited partners was to be professionally managed by its general partner, IndiaSTAR Partnerships LP, which in turn had appointed SMC, its sole general partner, as the investment advisor to IndiaStar Fund LP, pursuant to an investment advisory agreement dated March 13, 2006. Thus, it is noted that SMC was only handling IndiaSTAR Fund LP in the capacity of a professional investment advisor. Thus, in the facts and circumstances of the case and the contention that SMC was in control of the Acquirer is not tenable. Thus, in the facts and circumstances of the case, disclosure made by the Acquirer in the LOO regarding the person in control of the Acquirer was sufficient to discharge the disclosure obligation under Clause 4.1.5 of the SEBI Circular dated March 08, 2004.

- (b) I note that while the Acquirer had disclosed Mr. Ravi Pratap Singh's past associations with various companies, however, association of Mr. Singh with Sera Nova Inc., Silverline Technologies Ltd. and Dahava Resources Ltd. was not disclosed in the LOO. I note that Clause 4.1.8 of the SEBI Circular dated March 08, 2004 provides for disclosing "*Details of the experience, qualifications, date of appointment of the Board of Directors.*" In this regard, I note that in terms of Clause 4.1.8 of SEBI Circular dated March 08, 2004, there is no specific requirement to disclose about the past association of a director of acquirer with all the companies with which he had been associated. The requirement of disclosure of such association is being interpreted by the Representors from the expression "details of the experience" used in Clause 4.1.8. of the said Circular. I find that when the word "experience" is used, then it implies "experience" relevant to the context for which it is being used. I find that the "details of experience" does not mean that each and every association be disclosed and that the non-disclosure of association with the other 3 entities is not that material so as to warrant a fresh open offer. As observed above, the Representors did not tender their shares in the open offer pursuant to the LOO dated March 12, 2008, nor did they object to the Post Offer Public Announcement dated May 26, 2008. Further, they had submitted their complaints only after a lapse of 5 to 8 years since the issue of LOO or the completion of open offer process.
- (c) I further note that the Representors have contended that information about one Richard Chong, who was an employee / office bearer / partner of SMC and who had been indicted of money laundering charges in a report of the United States Senate's Permanent Subcommittee of Investigations, was not disclosed by the Acquirer. In this regard, I note that Mr. Richard Chong was not a director of the Acquirer. Even if it is taken that Mr. Richard Chong was an employee / office bearer / partner of SMC, as alleged by the Representors, I note that Clauses 4.1.7 and 4.1.8 of the SEBI Circular dated March 08, 2004 require disclosures of details of board of directors only of

Acquirer and not any other person. Since, Mr. Richard Chong was not a director of the Acquirer, there was no requirement to make disclosures about him in the Letter of Offer. Even further, the report of the US Senate which has been referred to by the Representors in support of their contentions, is dated July 17, 2008 which is after the issue of LOO dated March 12, 2008 and the completion of the open offer by the Acquirer on May 26, 2008 (date of Post Offer Public Announcement). Considering the same, I find that the allegation of non-disclosure pertaining to the background of Mr. Richard Chong, made by the Representors, is not tenable.

- (d) The Representors have argued that the Acquirer had acquired control over the Target Company due to its shareholding in the Target Company and that there was an agreement between the promoters of the Target Company and the Acquirers. In this regard, I note that the concerned open offer by the Acquirer was under Regulation 10 of the Takeover Regulations, 1997, which did not involve change of control in the Target Company. The Acquirer in Clause 2.1 (a) of the Letter of Offer has stated that *“The Offer is being made pursuant to and in compliance with, the provisions of Regulation 10 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 and subsequent amendments thereto. The Acquirer does not have any representation on the Board of Directors of the Target and does not intend to appoint its representative on the Board of Directors of the Target in the future. Further there are no agreements/ arrangements executed by and between the Acquirer and the Target in relation to the shares held/ acquired by the Acquirer in the Target. Furthermore, the Acquirer’s stake in the Target is in the nature of an investment and not with the intent to control the management or policy decisions of the Target. In the event that at a later date the Acquirer acquires control in the Target, the Acquirer shall make an open offer pursuant to and in terms of Regulation 12 of the SEBI (SAST) Regulations.”* Further, in Clause 2.1 (i) of the Letter of Offer, the Acquirer had stated that *“The Acquirer does not propose to make any change in the Board of Directors of the Target after the Offer.”* It is clear from the

above that even though the Acquirer had proposed to acquire equity shares up to 40.42% of the total paid up capital of the Target Company (assuming full acceptance of the open offer), the management and control of the Target Company was to continue with the promoters of the Target Company. I note that the Post Offer shareholding of the Acquirer was 30.48% as against 40.42% which was proposed to be acquired as per the LOO. In fact, as per the submissions dated October 21, 2016 of the Target Company, the Acquirer had not appointed any director on the Board of the Target Company, nor was it involved in the policy decisions of the Target Company. Further, as mentioned above, though the Representors have alleged existence of an Agreement between the promoters of the Target Company and the Acquirer, they have failed to produce any evidence of the same. Apart from the above, I note that while the Open Offer was made in 2008, the first complaint from any of the Representors was received by SEBI only in September 2013, which is after a gap of 5 years from the completion of the Open Offer. If the Representors had any concern about the Acquirers gaining control of the Target Company pursuant to the open offer, they should have raised objection way back in 2008 itself, to the LOO or the Post Offer Public Announcement dated May 26, 2008. The belated plea of the Representors only appears to be an afterthought. Considering these, I find the Representors' abovementioned contentions to be untenable.

- (e) I note from the information obtained from the website of Corporate and Business Registration Department, Mauritius, that the current status of the Acquirer is being shown as "Defunct". Since the Representors did not tender their shares in the open offer pursuant to the LOO dated March 12, 2008, did not object to the Post Offer Public Announcement dated May 26, 2008, submitted their complaints only after a lapse of 5 to 8 years since the completion of open offer process and since the Acquirer has already become defunct, any direction to the Acquirer for giving a fresh open offer or to purchase the shares of the Representors is untenable in law as well as facts, as discussed in previous paras, and it is also not tenable not only due to the

enormous delay but also due the Acquirer's winding up / becoming defunct, for which reliance is placed on the judgment of the Hon'ble Allahabad High Court in the case of *Shiromani Sugar Mills Ltd. vs. Debi Prasad* [AIR 1950 All 508].

- (f) I note that the Representors have argued that a direction for fresh open offer may be issued to either SMC or to the merchant banker or the promoters of the Target Company. The prayer of the Representors is untenable in law as well as facts, as these entities did not issue any LOO, besides other reasons as stated in paras 7 to 10 above. Thus, neither the Merchant Banker, nor the Target Company or its promoters or shareholders of the Target Company (which would include the Representors) are obligated to make fresh open offer as they did not issue any LOO, besides other reasons, as stated in paras 7 to 10 above. The Representors have also prayed for giving money from SEBI Investor Protection Fund (IPEF) in terms of Regulation 5(3) of the SEBI (Investor Protection and Education Fund) Regulations, 2009 (hereinafter referred to as "**IPEF Regulations**"). However, as discussed in paras 7 to 10 above, there is no ground to warrant any fresh open offer and thus the question of payment from IPEF does not arise at all. Even otherwise, IPEF is not meant for payment for such purposes.

11. The Representors, as part of their contentions against the Acquirer, have also raised the issue that since the Acquirer and its holding company were incorporated outside India, it needed to obtain registration from SEBI as an Foreign Institutional Investor (FII) under the provisions of SEBI (Foreign Institutional Investors) Regulations, 1995 (*since repealed*). In this regard, I note that at the relevant time, foreign incorporated entities could make investments either through Foreign Direct Investment (FDI) or Foreign Portfolio Investment (FPI) route. I note that as per the information provided by Hongkong Shanghai Banking Corporation (HSBC), the Acquirer, IndiaSTAR (Mauritius) Limited had an FDI account (NSDL Client ID 10587123) which was opened on June 15, 2006. I further note from a copy of RBI's letter dated December 17, 2007 wherein RBI had conveyed that it had no objection to the Acquirer acquiring

up to 47,07,799 shares of Garware Offshore Services Limited through open offer in accordance with the Takeover Regulations, 1997. I note that the RBI had further issued another letter dated April 01, 2008 whereby the number of shares to be acquired by the Acquirer in the open offer was revised to 47,63,819. Thus, the Acquirer had already obtained the approval of the RBI in respect of its purchase of shares in the open offer. It is further noted from the transaction statement of the said account as received from HSBC that 23,12,364 shares were credited to the said FDI account on July 16, 2018 and 85,837 shares were credited on July 22, 2008 in the FDI said account, which comes to a total of 23,98,201 shares which is exactly equal to the number of shares acquired in the Open Offer by the Acquirer pursuant to the LOO. It is also important to note that in the Letter of Offer, under para 9 (page 51-52), the Acquirer had mentioned the list of material documents which were available for inspection at the office of the Manager to the Offer. The list of such documents included at point I) “copies of the applications made to the RBI and, in case the approval from RBI is received prior to the Offer Closing Date.” Thus, it is clear that the said investment was in the form of FDI. Considering the same, I find that the contention raised by the Representors that the Acquirer was not registered with SEBI as an FII is untenable.

12. Additionally, Mr. Jitendra Tolia has also raised a contention that the resident directors of the Acquirer are also Auditors of the Acquirer, which is not permissible under the provisions of the Companies Act, 2001 of the Republic of Mauritius and the Companies Act, 1956 of India and therefore, Auditor’s certificate could not be said to reflect true and fair view of Financial Statements of the Acquirer. In this regard, I note that the said Representor ought to have raised the contention about the Auditor before the competent authority in Mauritius.
13. I note that apart from the issues already dealt above, the Representors have also raised certain other issues which are issues of governance related to the Target

Company which are not having any connection with the LOO or the event of open offer given by the Acquirer in 2008. Since, the instant matter is concerned entirely with the issue of open offer by the Acquirer which was completed in May 2008, the above issues raised by the Representors do not have any bearing on the issue at hand and cannot be entertained in the current proceedings. The concerned department of SEBI may take note of these issues and examine them, if so warranted, in accordance with law.

DIRECTION –

14. In view of the above, I, in exercise of powers conferred under Section 11B read with Section 19 of the SEBI Act, 1992, hereby dispose of the complaints of the Representors without any directions.
15. The order comes into force with immediate effect. A copy of this order shall be served on the Representors.

Sd/-

PLACE: Mumbai

ANANTA BARUA

DATE: March 31, 2022

WHOLE TIME MEMBER

SECURITIES AND EXCHANGE BOARD OF INDIA