BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/KS/AA/AO/07-13/2017-18]

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

In respect of

1. Mr. Jayanti Lal Bhandari (PAN: AAHPJ1165E)
2. Ms. Meena Jayanti Lal Bhandari (PAN: AAGPM1747E)
3. Mr. Gautam Bhandari (PAN: AEJPG7221G)
4. Ms. Geeta Gautam Bhandari (PAN: AAIPG7689P)
5. Mr. Rikabchand Bhandari (PAN: AAQPG3502R)
6. Ms. Shantidevi Rikabchand Bhandari (PAN: ABQPS2151R)
7. Mr. Varun Agarwal (PAN: AFUPA5752J)

In the matter of Arun Varun Trade and Investment Limited

FACTS OF THE CASE

1. An offer document (letter of offer) was filed by Mr. Gautam Bhandari and Mr. Jayanti Lal Bhandari to acquire up to 1,04,000 (One Lakh Four Thousand) equity shares of face value of Rs. 10/- each representing 26% of the voting equity share capital of Arun Varun Trade and Investments Limited (hereinafter referred to as **'AVTIL/ Target Company'**). The public announcement for the same was made on August 24, 2015 and the shares of the Company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as 'BSE').

2. While examining the letter of offer, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') observed that Mr. Jayantilal Bhandari, Ms.

Meena Jayanti Lal Bhandari, Mr. Gautam Bhandari, Ms. Geeta Gautam Bhandari, Mr. Rikabchand Bhandari, Ms. Shantidevi Rikabchand Bhandari and Mr. Varun Agarwal (hereinafter referred to as 'the Noticees') in the past had violated the provisions of Regulation 12 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as 'SAST Regulations,1997') and Regulation 30(2) read with Regulation 30(3) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as 'SAST Regulations, 2011').

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Prasad Jagadale was appointed as the Adjudicating Officer vide communique dated July 15, 2016 under Section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'SEBI Act') read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to inquire into and adjudge under Section 15H(ii) of the SEBI Act, the violation of Regulation 12 of the SAST Regulations, 1997) and under Section 15A(b) of the SEBI Act, the violation of Regulations 30(2) and 30(3) of the SAST Regulations, 2011 alleged to have been committed by the Noticees.

4. Pursuant to the transfer of Shri Prasad Jagadale, Shri Suresh Gupta was appointed as Adjudicating Officer. Thereafter, vide appointment order dated May 18, 2017, the proceedings were transferred to the undersigned which was intimated vide communique dated August 02, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (hereinafter referred to as "SCN") dated August 18, 2017 was issued to the Noticees under Rule 4 of the Adjudication Rules

communicating the alleged violations of the SAST Regulations, 1997 and SAST Regulations, 2011. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against them in terms of Rule 4 of the Adjudication Rules and penalty be not imposed under Section 15H(ii) and Section 15A(b) of the SEBI Act for the alleged contravention of SAST Regulations, 1997 and SAST Regulations, 2011 respectively.

6. The details in respect of violation/ non-compliance of Regulation 29(1) read with 29(3) of SAST Regulations, 2011 by the Noticee are as given below:

a) It was observed that the Noticees had collectively acquired a total of 58,000 shares representing 14.50% of the share capital of AVTIL on September 16, 2009. Upon acquisition of the aforesaid shares, the Noticees were shown as promoters or persons having control of AVTIL in the disclosures given by the company to BSE. In terms of Regulation 12 of the SAST Regulations, 1997, no acquirer shall acquire control over a target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the Regulations. It was alleged that the Regulation 12 was triggered during the above mentioned acquisition of 14.50% of the share capital of AVTIL by the Noticees. However, the Noticees allegedly did not make public announcement for open offer at the time of acquisition of the aforesaid shares. The said fact was stated in the letter of offer dated October 15, 2015 filed by Mr. Jayanti Lal Bhandari and Mr. Gautam Bhandari in the year 2015.

b) It was also alleged that the Noticees had delayed compliance with Regulations 30(2) and 30(3) of SAST Regulations, 2011 for the financial year 2011-12 as per the following table:

Table - I

Sr. No.	Regulation/sub-regulation	Relevant Year	Due date for compliance	Status of compliance
1	30(2) & 30(3) of SAST Regulations,2011	2011-2012	April 10, 2012	Disclosure made with a delay of 3 days on April 13, 2012

As per the requirements of Regulation 30(2) read with Regulation 30(3) of the SAST Regulations, 2011, the promoters of a company have to disclose their aggregate shareholding and voting rights as on March 31 in the company to the stock exchanges where the company is listed within 7 working days of the end of the financial year. In view of the same, the Noticees being the promoters of AVTIL were required to disclose their aggregate shareholding and voting rights as on March 31, 2012 to BSE by April 10, 2012. However, it was alleged that there was a delay of 3 days in making the said disclosures to BSE by the Noticees. In this respect, confirmation was received from BSE vide email dated October 16, 2015 that the said disclosure was made on April 13, 2012.

7. The SCN issued to the Noticees was delivered on August 24, 2017. Vide letter dated September 07, 2017, Mr. Jayanti Lal Bhandari, Ms. Meena Jayanti Lal Bhandari, Mr. Gautam Bhandari and Ms. Geeta Gautam Bhandari submitted a joint reply to the SCN. In the said letter, the Noticees informed that Mr. Rikabchand Bhandari, Ms. Shantidevi Rikabchand Bhandari and Mr. Varun Agarwal have deceased and as such their names from the SCN should be removed as the matter becomes infructuous in so far as they are concerned. Copies of the death certificates of Mr. Rikabchand Bhandari, Ms. Shantidevi Rikabchand Bhandari and Mr. Varun Agarwal were also submitted along with the said letter. Further, in the aforesaid letter dated September 07, 2017, the Noticees *inter-alia* made the following submissions:

“(a) On 16th September 2009, the Noticees along with the certain Deceased Noticees acquired 58,000 equity shares which were representing 14.5% of that time total share capital of AVTIL Enterprise Ltd. (formerly known Arun Varun Trade and Investments Limited) (hereinafter referred as to the said “Company”). It is pertinent to note that the said acquisition was well within the threshold limits triggering an open offer requirement as prescribed under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred as “SAST Regulations ,1997”) as the Noticees along with the Deceased Noticees did not acquire shares or voting rights (taken together with shares or voting rights, if any, held by them), which entitled them to exercise 15% or more of the voting rights in a said Company. Thus, it is humbly submitted that an open offer was not required to be made by the Noticees in relation to the acquisition of the said equity shares.

(b) Further, in response to the allegation that the said acquisition of the shares was in contravention with Regulation 12 of the SAST Regulations, 1997 wherein it is stated that no acquirer shall acquire control over the target company unless such person makes a public announcement to acquire shares in accordance with SAST Regulations, 1997. It is hereby humbly submitted that the Noticees and the Deceased Noticees at the time of acquisition of the 14.5% of the share capital of Company did not have intention to acquire control over the Company, it is pertinent to note that while the Noticees were appointed on the board of Company they were not in majority, in fact they were looking for eligible persons who can become the director of the Company but the sellers then, did not co-operate and the Noticees and the Deceased Noticees de facto came into the majority of the board of the Company.

(c) *Basis the above the Noticees de facto without exercising any kind of control passively turned into a higher number of directorship representation on the board of the Company. The Noticees seeked legal advice during that time and were informed and advised that no open offer is required to be made in relation to such a passive nature of increase in the number of the board representation. As a businessman, with very limited knowledge of complex securities law, the Noticees relied on such legal advice. It is very pertinent to note that despite having two representatives on the board, there was no effective control that Noticees could exercise on account of their shareholding being less than 15% of the total equity share capital of the Company.*

(d) *With respect to the Noticees and the Deceased Noticees being classified/ shown as promoters having control of the Company, we hereby state that we were inadvertently classified as promoters having control in the fillings made by the Company. We were informed that a Company should mandatorily have promoter and accordingly no fillings would be possible if the promoter column is left blank. Accordingly, the compliance team of the Company classified us as promoters. It is important to note here that we did not fall under the definition of the Promoter as per SAST Regulations, 1997 and were erroneously shown as promoters in the Company fillings.*

(e) *Subsequently we entered into negotiations with certain public shareholders to increase our shareholding in the Company. We were informed that in the event our shareholding crosses 25% of total share capital of the Company, we would require to give mandatory open offer as per SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ("SAST Regulations, 2011"). Further during year 2015*

Noticees entered into a share purchase agreement to further acquire 20,000 equity shares representing 5% of the total share capital of the Company. Due to which Noticees were obligated to give mandatory open offer as per provisions of SAST Regulations, 2011. The Noticees appointed the merchant banker to open offer, i.e. Aryaman Financial Services Limited. Further Noticees were than advised that on account of a) the inadvertent representation of two Noticees on the board and b) the fact that the Noticees were reflected as the promoters in stock exchange fillings, a view can be taken that an open offer ought to be made by the Noticees at an earlier point in time.

(f) Being law abiding citizens and with a sole objective being in full compliance in letter and spirit of law, the Noticees pro-actively on their own agreed to provide an open offer at a value that in all fairness includes the interest element commencing from the 1st day on which such open offer could have alleged to have been made. It is worthwhile to note that a valuation certification was been obtained from BDVM & Co Chartered Accountants which reflected fair of the equity share as on date of earlier acquired equity shares to INR 491.20/- per equity share. Further on such value fair of equity share, interest was calculated at the rate of 10% p.a. which amounts to INR 291.76/- per share and sum up on fair value and interest element amounts to INR 782.96/-. The open offer price of INR 782.96/- was also more than the each of the a) Last negotiated price amounts to INR 350/- per equity share, b) volume-weighted average price paid or payable for any acquisition during the 52 weeks immediately preceding the date of public announcement as stated in open offer letter is INR 85/- per equity share, c) highest price paid or payable for any acquisition during the 26 weeks immediately preceding the date of public announcement as stated in open offer letter is INR 85/- per equity share,

and d) book value per equity share 635.39/-. Accordingly after considering the fair value, interest component, book value and other relevant price the offer made by the Noticees was for a value of INR 783/- per equity share, which was significantly higher than the ruling market price at that time. Reference is drawn to the disclosure made under the open offer letter dated 15th October, 2015 wherein the Noticees suo moto agreed to make an open offer at a more than adequate value despite the fact that the original acquisition of 14.5% was at INR 10/- per equity share and the subsequent acquisition at a negotiated price of INR 350/- per equity share. Below quoted is the relevant clause from the open offer letter.

(g) "Further during the financial year 2009-10, Mr. Gautam Bhandari and Mr. Jayantilal Bhandari, along with other family members, have acquired 58,000 Equity Shares representing 14.5% of the then equity and voting share capital of the Target Company as at price of Rs. 10/- per share from the erstwhile Promoter Group of the Target Company. Mr. Gautam Bhandari & Mr. Jayantilal Bhandari, along with other family members, are being shown as part of the Promoter Group of the Target Company under clause 35 of the Listing agreement, as filed with the Stock Exchange, i.e., BSE Limited from the quarter ended March 2010 till date. However no Open Offer was given at that pursuant to SEBI (SAST) Regulations, 1997. Hence the Offer price has been re-calculated (with applicable interest) based on this transaction, assuming the triggering point as acquisition date of shares & control of the Target Company. SEBI may initiate appropriate action against the existing promoter group for delay in making Open Offer."

Quoted

(h) *It is important to note that the interest was calculated on the value for the subsequent transaction and not based on the original acquisition price of INR 10/-. But on the fair value of the earlier acquired share and adding interest element on the said fair value. Despite being advised that an interest of INR 10/- would be the right full value for open offer, the Noticees decided to provide exit opportunity to the shareholders at an enhanced value amounting to INR 783/- per equity share. The draft letter of offer for open offer was submitted to Securities Exchange Board of India and due comments were incorporated in the letter of offer. Securities Exchange Board of India also approved letter of offer which includes this disclosure vide letter dated 9th October, 2015 It is pertinent to note here that the promoters of the Company understand the essence and importance of providing exit opportunity through open offer for an adequate consideration.*

(i) *We hereby reiterate that the Noticees are law abiding citizens and have always intended to be on the right side of the law, which is exemplified by the act of the providing an open offer at an adequate value immediately on becoming aware of a potential view arising out of an inadvertent representation on board and classification as promoters. Accordingly, the Noticees hereby humbly submit that there has been no default in compliance with the spirit of SAST Regulations, 1997. The technical delay arising out of an alternate view is also more than adequately ratified by providing a subsequent open offer. We humbly request you to consider each of the above facts and take suitable note.*

(j) *It is most pertinent to note that in the present case, by voluntarily offering interest to the shareholders there is no element of wilful disobedience. In these presents reliance is placed on the following case law:*

In the case of Clariant International V/s SEBI (AIR 2004 SC 4236) the Supreme Court had laid down that minimum 9% nominal interest to be paid in order to compensate the losses that the shareholder or investors suffer as a result of any default in public offer. In the said case, the appellant had already included the interest of 10% on account of delay. The judgement of Clariant International was upheld by Securities Appellate Tribunal in the case of Sterling International Limited vs. SEBI (decided on 05.09.2005) where it was further added that regarding penalties and offence under regulation 15, that;

"A perusal of the various sub-sections of Section 15 would indicate without any doubt that the penalties by their very name are penal in nature. If the penalties are penal in nature then there must be an element of wilful default or wilful disobedience of the SAST Regulations, 1997. Mere erroneous interpretation of regulations cannot give rise to adjudication proceedings. It must be wilful and deliberate defiance of the SAST Regulations, 1997. The concept of strict liability can have no application in such matters which ultimately can lead to criminal prosecution as well. We say that there should be wilful disobedience as a necessary ingredient of any adjudication proceedings under Chapter VI A because the person against whom adjudication proceedings are commenced can also be prosecuted under Section 24 of the Act, which may end in a term of imprisonment which may extend to 10 years or with a fine of Rs. 25 crore or with both." (Para 18,19).

(k) In this case, there is no wilful disobedience, in fact, the Appellant has, of his own accord included the provision of payment of interest to the

shareholders, and carries a clean record regarding compliance with the provisions.

(l) Accordingly, we request you to consider the spirit of our compliance arising out of our pro-active and bona fide behaviour and treat this matter with leniency as the essence of providing exit opportunity through acquisition for adequate consideration has been fully complied with.

(m) In addition to the above we would also like to highlight that after obtaining control by the Noticees the said Company's performance and compliance status has been turned around by the excellent management of the promoters of the Company from suspended Company to fully compliant listed Company.

(n) It is also pertinent to note that the ever since the Noticees came into the control of the Company, they have diligently worked towards the benefit of the Company. Due to such diligent efforts of the Noticees the Company started performing well. The Noticees were responsible for turning around the Company. The negative net worth of the Company became positive during the tenure of the Noticees control.

(o) Thus, it apparent that, by the Noticees by voluntarily offering interest at the rate of 10% to the shareholder did not wilfully disobey any regulations of SAST Regulations, 1997 and due diligent efforts of the Noticees the Company has started performing well which has benefited the investors. In lights of the same no further inquiry should be held against us, in terms of rule 4 of adjudication rules read with section 15-I of the SEBI Act no penalty should be imposed on us under the provisions of section 15H (ii) and 15A (b) of the SEBI Act.

(p) *Further, in response to the alleged violations of Regulation 30(2) read with Regulation 30(3) of the Substantial Acquisition of Shares and Takeovers Regulations 2011 (hereinafter referred as "SAST Regulations, 2011") we state that a mere delay of 3 (three) days to disclose the aggregate shareholding and the voting rights as on March 31 in the Company was solely due to certain travel plans involving persons responsible for making this fillings and technical reasons and such inadvertent delay has caused no loss to the investors.*

(q) *It is also pertinent to note that such inadvertent delay has caused no economic benefit to the Company or the management or any investors. There is nothing on records placed which proves that an unfair advantage or dis appropriate gains has come to the Noticees or any loss is caused to the investors as a result of such delay. In lights of the reasons mentioned above, the inadvertent delay of mere 3 (three) days should be condoned."*

8. The Noticees also sought a personal hearing in the matter. In the interest of natural justice, an opportunity of hearing was provided to the Noticees on September 20, 2017 vide hearing notice dated September 12, 2017. The Noticees vide their letter dated September 15, 2017, requested for an adjournment of hearing scheduled on September 20, 2017. In view of the same, the Noticees were granted an opportunity of hearing before the undersigned on September 25, 2017. However, vide email dated September 25, 2017, the Noticees again requested for the adjournment of the hearing due to unexpected sickness of their authorized representative. In view of the same, the Noticees were given another opportunity of hearing on September 28, 2017 vide email dated September 25, 2017. Mr. Umesh Lakhani, Company Secretary and Mr.

Karan Thakker, Advocate [LLB (G)] appeared as the Authorized Representatives ("ARs") on behalf of the Noticees in the hearing on September 28, 2017 and reiterated the submissions given by the Noticees in their reply to the SCN. No further hearing was sought by the ARs in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

9. I have carefully perused the written submissions of the Noticee and the documents available on record. The issues that arise for consideration in the present case are :

   a) Whether the Noticees had violated the provisions of Regulation 12 of the SAST Regulations, 1997 and Regulation 30(2) read with Regulation 30(3) of the SAST Regulations, 2011?

   b) Does the violations, if any, attract monetary penalty under Section 15H(ii) and 15A(b) of the SEBI Act?

   c) If yes, what should be the quantum of penalty?

10. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 1997 and SAST Regulations, 2011 which read as under:-

SAST REGULATIONS, 1997
Acquisition of control over a company

12. Irrespective of whether or not there has been any acquisition of shares or voting rights in a company, no acquirer shall acquire control over the target company, unless such person makes a public announcement to acquire shares and acquires such shares in accordance with the regulations:

…

SAST REGULATIONS, 2011
Continual disclosures.

30 (1) ….

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

(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to —(a) every stock exchange where the shares of the target company are listed; and (b) the target company at its registered office.

FINDINGS

11. Upon perusal of submissions of the Noticees and documents available on record, I find that the Noticees acquired 58,000 equity shares representing 14.50% of the share capital of the Target Company on September 16, 2009. Subsequently, the Noticees were being shown as promoters / persons having control of the company in the disclosures made by the Target Company to BSE. As the Noticees were shown to be in control of the Target Company, it was alleged that the Noticees were required to make a public announcement for an open offer under Regulation 12 of the SAST Regulations, 1997. Further, it was also alleged that the Noticees had made a delay of 3 days in making yearly disclosures for the year 2011-12 under Regulation 30(2) read with Regulation 30(3) of SAST Regulations, 2011 to BSE.

12. I note that the Noticees in their reply dated September 07, 2017 have informed that Mr. Rikabchand Bhandari, Ms. Shantidevi Rikabchand Bhandari and Mr. Varun Agarwal have deceased. The Noticees have also submitted copies of the death certificates of Mr. Rikabchand Bhandari, Ms. Shantidevi Rikabchand Bhandari and Mr. Varun Agarwal. It is noted from the death certificate of Mr. Varun Agarwal that the date of death was April 30, 2007 which was before the acquisition of the aforesaid shares in the Target Company. Here, I note that in

Girijandini vs. Bijendra Narain (AIR 1967 SC 2110), the Hon'ble Supreme Court, *inter-alia*, observed that in case of personal action, i.e., the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives, and in such cases, the maxim *actio personalis moritur cum persona* (personal action dies with the death of the person) would apply.

13. In view of the above, the adjudication proceeding against Mr. Rikabchand Bhandari, Ms. Shantidevi Rikabchand Bhandari and Mr. Varun Agarwal is liable to be abated without going into the merits of the case. The matter in respect of late Mr. Rikabchand Bhandari, Ms. Shantidevi Rikabchand Bhandari and Mr. Varun Agarwal is accordingly disposed of.

14. In respect of the other Noticees viz. Mr. Jayanti Lal Bhandari, Ms. Meena Jayanti Lal Bhandari, Mr. Gautam Bhandari and Ms. Geeta Gautam Bhandari, I note that they have stated in their reply that they did not acquire shares or voting rights which entitled them to exercise 15% or more of the voting rights in the Target Company and as such, an open offer was not required to be made by the Noticees in relation to the acquisition of the said equity shares. I also note that the adjudication proceedings have been initiated against the Noticees for alleged violation of Regulation 12 of the SAST Regulations, 1997 which pertains to the control aspect of the acquisition and not with the threshold of the shareholding. In view of the same, the said contention of the Noticees is irrelevant.

15. The Noticees in their reply have further stated that they did not have intention to acquire control over the Target Company at the time of acquisition of the 14.5% of the share capital of the Target Company. Further, they have also stated that when the Noticees were appointed on the board of the Target

Company they were not in majority and they were looking for eligible persons who can become the director of the Company. But the sellers did not co-operate and the Noticees and the Deceased Noticees de facto came into the majority of the board of the Target Company. Here, I note that Regulation 12 of the SAST Regulations, 1997 states that if control is acquired the acquirer has to make a public announcement for acquiring shares in an open offer. In view of the same, the contention of the Noticees that they came into majority on the Board of the Target Company passively and hence no open offer was to be made is not acceptable.

16. I observe that the Noticees in their reply have claimed that they were inadvertently classified as promoters having control in the fillings made by the Company to BSE and that they did not fall under the definition of the Promoter as per SAST Regulations, 1997. I also note that two of the Noticees viz. Mr. Gautam Bhandari and Mr. Jayanti Lal Bhandari during the year 2015 had entered into a share purchase agreement to further acquire 20,000 equity shares representing 5% of the total share capital of the Company and had made an open offer at a price which was inclusive of interest at the rate of 10% from the date of acquisition of 14.50% shares in year 2009. In this respect, the following disclosure was made in the letter of offer:

"*Further during the financial year 2009-10, Mr. Gautam Bhandari and Mr. Jayantilal Bhandari, along with other family members, have acquired 58,000 Equity Shares representing 14.5% of the then equity and voting share capital of the Target Company as at price of Rs. 10/- per share from the erstwhile Promoter Group of the Target Company. Mr. Gautam Bhandari & Mr. Jayantilal Bhandari, along with other family members, are being shown as part of the Promoter Group of the Target Company under clause 35 of the Listing agreement, as filed with the Stock Exchange,i.e., BSE Limited from the quarter* *ended March 2010 till date. However no Open Offer was given at that pursuant to SEBI (SAST) Regulations, 1997. Hence the Offer price has been re-calculated (with applicable interest) based on this transaction, assuming the triggering point as acquisition date of shares & control of the Target Company. SEBI may initiate appropriate action against the existing promoter group for delay in making Open Offer."*

17. I note that Regulation 2(1)(h) of the SAST Regulations, 1997, *inter-alia*, defines a "promoter" as any person who is in control of the target company or any person named as promoter in any offer document of the target company or any shareholding pattern filed by the target company with the stock exchanges pursuant to the Listing Agreement, whichever is later. As the Noticees were in majority on the Board of the Target Company and they have been shown as promoters or persons having control of the Target Company in exchange filings, I find that the Noticees were indeed in control of the Target Company and were required to the make a public announcement to acquire shares at the time of acquisition of the aforesaid 14.50% of the shares of the Target Company. The said fact has been accepted in the letter of offer filed in year 2015 by two of the Noticees viz. Mr. Gautam Bhandari and Mr. Jayanti Lal Bhandari.

18. The Noticees in their defence have quoted that observations of Securities Appellate Tribunal in the case of Sterling International Limited vs. SEBI (decided on September 05, 2005) where it was further added that regarding penalties and offence under regulation 15, that; *"A perusal of the various sub-sections of Section 15 would indicate without any doubt that the penalties by their very name are penal in nature. If the penalties are penal in nature then there must be an element of wilful default or wilful disobedience of the SAST Regulations, 1997. Mere erroneous interpretation of regulations cannot give rise to adjudication proceedings. It must be wilful and deliberate defiance of the*

SAST Regulations, 1997. The concept of strict liability can have no application in such matters which ultimately can lead to criminal prosecution as well. We say that there should be wilful disobedience as a necessary ingredient of any adjudication proceedings under Chapter VI A because the person against whom adjudication proceedings are commenced can also be prosecuted under Section 24 of the Act, which may end in a term of imprisonment which may extend to 10 years or with a fine of Rs. 25 crore or with both."

19. In this respect, I refer to the observations of the Hon'ble Supreme Court in the matter of SEBI Vs. Shriram Mutual Fund [2006] 68 SCL 216(SC) 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....*" Further, in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed that "*Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*". Further, in the matter of Akriti Global Traders Ltd. vs. SEBI (Appeal No. 78 of 2014 vide order dated September 30, 2014), Hon'ble SAT observed that "*Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay".*

20. In view of the foregoing, I am inclined to take a view that the violation of Regulation 12 of SAST Regulations, 1977 is established against the Noticees

which attracts penalty under Section 15H(ii) of the SEBI Act. The provisions of Section 15H(ii) of the SEBI Act read as under-

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 of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher "

 # Section 15H(ii) as existing at the time of commission of alleged violation

21. Further, in respect of the allegation regarding the delay in respect of disclosures under Regulation 30(2) read with Regulation 30(3) of the SAST Regulations, 2011, the Noticees have submitted that the delay was solely due to certain travel plans involving persons responsible for making this fillings and technical reasons and there is nothing on records placed which proves that an unfair advantage or dis appropriate gains has come to the Noticees or any loss is caused to the investors as a result of such delay. I observe that the Noticees have admitted the fact of delay in filing the disclosures to BSE. In this reference, I would like to refer to the observations of Hon'ble SAT in the matter of Virendrakumar Jayantilal Patel vs. SEBI (Appeal No. 299 of 2014 vide order dated October 14, 2014), wherein it was 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. Similarly argument that the failure to make disclosures within the stipulated time, was unintentional, technical or inadvertent and that no gain or unfair*

advantage has accrued to the appellant, is also without any merit, because, all these factors are mitigating factors and these factors do not obliterate the obligation to make disclosures." In view of the same, I find that the violations of Regulations 30(2) read with Regulation 30(3) of SAST Regulations, 2011 is established against the Noticees which attract penalty under Section 15A(b) of the SEBI Act. The provision of Section 15A(b) of the SEBI Act read as under-

Penalty for failure to furnish information, return, etc.
#***15A.*** *If any person, who is required under this Act or any rules or regulations made thereunder,—*
…

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

 # Section 15A(b) as existing at the time of commission of alleged violation

22. While determining the quantum of penalty under Section 15H(ii) and Section 15A(b) of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act which reads as under:-

Factors to be taken into account by the adjudicating officer.

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

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

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

(c) the repetitive nature of the default.

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

23. In view of the charges as established, the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15J of the SEBI Act stated as above. No quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further, no monetary loss to investors has been brought on record and it may not be possible to ascertain the exact monetary loss, if any, to the investors on account of default by the Noticees. I also note from the documents available on record that the violations reported are not of repetitive nature. I take note of the fact that the Noticees have made the open offer in the year 2015 at a price which was inclusive of interest at 10% which was calculated from the date of acquisition of shares of the Target Company in the year 2009. It may also be worth noting that the objective of the SAST Regulations is to afford fair treatment for shareholders who are affected by the change in control. Further, the purpose of an open offer is to provide an exit option to the existing shareholders of the target company on account of the change in control or substantial acquisition of shares occurring in the target company. The Regulations seek 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 in control. Correct and timely disclosure requirements are the hallmark of the SAST Regulations, 2011 and are an essential part of the proper functioning of the

securities market; failure to make disclosures on time results in preventing investors from taking well-informed decisions.

24. In view of the above, I am satisfied that the present case warrants imposition of penalty as per the provisions of section 15H(ii) and Section 15A(b) of the SEBI Act.

ORDER

25. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 5,00,000/- (Rupees Five Lakh only) on the Noticees viz. Mr. Jayanti Lal Bhandari, Ms. Meena Jayanti Lal Bhandari, Mr. Gautam Bhandari and Ms. Geeta Gautam Bhandari under the provisions of Section 15H(ii) and Section 15A(b) of the SEBI Act. The amount of the penalty shall be payable jointly and severally by the Noticees. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

26. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order.

27. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department, Securities and Exchange Board of

India, SEBI Bhavan, Plot No. C –4 A, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.”

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

28. The adjudication proceeding against Mr. Rikabchand Bhandari, Ms. Shantidevi Rikabchand Bhandari and Mr. Varun Agarwal is disposed of as the said persons have passed away.

29. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Mr. Jayanti Lal Bhandari, Ms. Meena Jayanti Lal Bhandari, Mr. Gautam Bhandari and Ms. Geeta Gautam Bhandari and also to the Securities and Exchange Board of India.

Date: October 03, 2017 **K SARAVANAN**

Place: Mumbai **GENERAL MANAGER &**

ADJUDICATING OFFICER