BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER Ref. No. ORDER/ NH/KL/2023-24/26119-26133]

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

In respect of

1) **Future Corporate Resources Pvt. Ltd.**
2) **M/s Akar Estate and Finance Pvt. Ltd.**
3) **M/s Surplus Finvest Pvt. Ltd.**
4) **M/s Retail Trust**
5) **Mr. Anil Biyani**
6) **Ms. Ashni Kishore Biyani**
7) **Ms. Avni Biyani**
8) **Mr. Gopikishan Biyani**
9) **Mr. Kishore Biyani**
10) **Ms. Laxminarayan Biyani**
11) **Mr. Rakesh Biyani**
12) **Ms. Sangita Biyani**
13) **Mr. Sunil Biyani**
14) **Mr. Vijay Biyani**
15) **Mr. Vivek Biyani**

In the matter of **Praxis Home Retail Limited**

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') observed that on December 12, 2019, M/s Praxis Home Retail Limited (hereinafter referred to as '**Praxis**'/'**Company**') allotted 7,500 Compulsorily Convertible Debentures (hereinafter referred to as '**CCDs**') to one of its promoter entities viz. Future Corporate Resources Pvt. Ltd. (hereinafter referred to as **'FCRL'/'Noticee no.1'**). It is noted that Praxis is a company listed on BSE and NSE. In this regard, SEBI undertook an examination in relation to exercise of aforesaid CCDs allotted to FCRL. The following findings, *inter-alia*, were made in the examination report of SEBI:

a. Equity shares of Praxis aggregating to 30,00,000 (Thirty Lakh shares) were allotted to FCRL on February 11, 2020, pursuant to exercise of the conversion option of 3,180 CCDs by FCRL, out of the 7,500 CCDs initially allotted to it.

b. It is observed that after exercising the conversion option of 3,180 CCDs (allotment of 30,00,000 shares), the shareholding of FCRL in the Company increased from 1,16,82,558 Equity Shares (47.43%) (Quarter ending December 2019) to 1,46,82,558 Equity Shares (53.13%) registering an increase of 5.71% in shareholding as on February 11, 2020.

c. It is seen that Noticee no.1/FCRL along with the other Noticees viz. Noticee nos. 2 to 15 (hereinafter collectively referred to as '**the Noticees**') (mentioned in table below) constitute the Promoter and Promoter group entities of Praxis as disclosed under the shareholding pattern by Praxis on January 10, 2020 and on February 18, 2020 i.e. before and after the allotment of the shares pursuant to the exercise of conversion of CCDs.

d. It is noted that the aforementioned Promoter and Promoter group entities viz. the Noticees, are deemed to be 'persons acting in concert (hereinafter referred to as '**PACs**')' within the terms of the provisions of Regulation 2 (1) (q) (iv) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, (hereinafter referred to as '**SAST Regulations**').

2. In this regard, it was noted that as the increase in shareholding of FCRL in Praxis post-allotment is 5.71%, which is more than five percentage, FCRL along with the other Noticees (PACs) allegedly were required to make a public announcement of the open offer under Regulation 3 (3) r/w 3 (2) and Regulation 25 (5) of SAST Regulations.

3. However, it is alleged that the Noticee no.1/FCRL along with the other Noticees viz. Noticee nos. 2 to 15 failed to make a public announcement of an open offer in respect of

the allotment of 30,00,000 equity shares to FCRL on February 11, 2020. In view thereof, allegedly the Noticees violated the provisions of Regulation 3 (3) r/w Regulation 3 (2) and Regulation 25 (5) of SAST Regulations.

Table-1

Sl. no.	Name of the Entity in Promoter and Promoter group of Praxis (the Noticees)	Category
1.	Future Corporate Resources Pvt. Ltd. (hereinafter referred to as **‘FCRL’/‘Noticee no.1’**)	Bodies Corporate
2.	M/s. Akar Estate and Finance Pvt. Ltd. (hereinafter referred to as **‘Noticee no.2’**)	
3.	M/s. Surplus Finvest Pvt. Ltd. (hereinafter referred to as **‘Noticee no.3’**)	
4.	M/s. Retail Trust (hereinafter referred to as **‘Noticee no.4’**)	
5.	Mr. Anil Biyani (hereinafter referred to as **‘Noticee no.5’**)	Individuals / Hindu Undivided Family
6.	Ms. Ashni Kishore Biyani (hereinafter referred to as **‘Noticee no.6’**)	
7.	Ms. Avni Biyani (hereinafter referred to as **‘Noticee no.7’**)	
8.	Mr. Gopikishan Biyani (hereinafter referred to as **‘Noticee no.8’**)	
9.	Mr. Kishore Biyani (hereinafter referred to as **‘Noticee no.9’**)	
10.	Ms. Laxminarayan Biyani (hereinafter referred to as **‘Noticee no.10’**)	
11.	Mr. Rakesh Biyani (hereinafter referred to as **‘Noticee no.11’**)	
12.	Ms. Sangita Biyani (hereinafter referred to as **‘Noticee no.12’**)	
13.	Mr. Sunil Biyani	

	(hereinafter referred to as **'Noticee no.13'**)	
14.	Mr. Vijay Biyani (hereinafter referred to as **'Noticee no.14'**)	
15.	Mr. Vivek Biyani (hereinafter referred to as **'Noticee no.15'**)	

4. Therefore, SEBI initiated adjudication proceedings against the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

5. The undersigned was appointed as the Adjudicating Officer (hereinafter referred to as '**AO**') in the matter vide communique dated June 07, 2022 under Section 19 of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge the aforementioned alleged violations of the provisions of law by the Noticees, under the provisions of Section 15H (ii) of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. Show Cause Notice bearing reference no. SCN/SEBI/EAD2/NH/KL/53445/2022 dated October 19, 2022 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4(1) of the Adjudication Rules read with Section 15-I of the SEBI Act, advising Noticees to show cause as to why an inquiry should not be held against the Noticees and why penalty be not imposed on them in terms of the provisions of Section 15H (ii) of the SEBI Act for the violations alleged to have been committed by the Noticees. The relevant extract of the SCN is reproduced in *verbatim* below:

i. *It is observed that after exercising the conversion option of 3,180 CCDs, the shareholding of FCRL in the Company increased from 1,16,82,558 Equity Shares (47.43%) (Quarter ending December 2019) to 1,46,82,558 Equity Shares (53.13%) registering an increase of 5.71% in shareholding as on February 11, 2020, while the increase in total shareholding of the Promoter and Promoter group entities of Company is 4.66%.*

ii. *In this regard, it is noted that as the increase in shareholding of FCRL in Praxis post-allotment is 5.71%, which is more than five percentage, FCRL along with the other Noticees (PACs) were required to make a public announcement of the open offer under Regulation 3 (3) r/w 3 (2) and Regulation 25 (5) of SAST Regulations. It is further noted that BSE vide email dated February 17, 2022 and NSE vide email dated February 18, 2022 informed SEBI that the provisions of Regulation 3 (3) r/w Regulation 3 (2) of SAST Regulations were triggered in respect of the aforesaid allotment of shares and the subsequent increase in shareholding of FCRL.*

iii. *However, it is alleged that the Noticee no.1/FCRL along with the other Noticees viz. Noticee nos. 2 to 15 failed to make a public announcement of an open offer in respect of the allotment of 30,00,000 equity shares to FCRL on February 11, 2020. In view thereof, it is alleged that the Noticees violated the provisions of Regulation 3 (3) r/w Regulation 3 (2) and Regulation 25 (5) of SAST Regulations.*

7. The Noticees vide email dated November 04, 2022, requested for additional time to make submissions in reply to the SCN. In the interest of natural justice, additional time was granted to the Noticees. Thereafter, vide separate letters dated December 08, 2022, the Noticee no.1 and Noticee nos. 2 to 15, *inter-alia*, submitted the following in reply to the SCN, respectively.

Noticee no. 1 reply

i. *After exercising the conversion option of 3,180 CCDs, the shareholding of the Noticee increased from 1,16,82,558 Equity Shares (47.43%) to 1,46,82,558 Equity Shares registering an increase of 5.71% in shareholding as on February 11, 2020, while the increase in total shareholding of the Promoter and Promoter Group entities of Praxis remains to be 4.66% which is well within the overall creeping acquisition limit of 5%. This would also clearly reflect that there was no change in control of the Company.*

ii. *It may be relevant to further note that immediately upon the conversion of CCDs into equity shares, on February 12, 2020, the Noticee made a filing with the exchanges, in due compliance with Regulation 29(2) of the SAST Regulations*

SEBI has failed to note that the Noticee was already in control of the Company

iii. *The objective of the SAST Regulations is to bring to the knowledge of the shareholders of the company any change in substantial ownership of the company and to provide an exit opportunity through an open offer in case of such substantial change. It is pertinent to note that the aggregate shareholding of the promoter group is below 5% and there has been no profits made or losses avoided by the Noticee, in this regard.*

iv. *Further, as demonstrated above, the Noticee subscribed to the CCDs at a time, when the price of the equity shares was already much below the price of convertible securities (which upon conversion would result in 7075471 number of equity shares at a price of Rs.106 per share inclusive of the share premium of Rs.101 per share) to be allotted to the Noticee.*

v. *However, in the interest of ensuring availability of the funds for the smooth operation of the Company and in the interest of all stakeholders of the Company, the Noticee took a decision to continue with its investment in spite of higher price it was required to pay for the purpose of subscribing the said CCDs.*

vi. *In this regard, attention is invited to the decision of the Hon'ble Securities Appellate Tribunal in the matter of Nirvana Holdings Private Limited v Securities and Exchange Board of India wherein it was observed that in the interest of the securities market or* *for the protection of investors, SEBI can deviate from the normal rule and not require a public announcement for the open offer*

vii. *It is also pertinent to note the decision of the Hon'ble Securities Appellate Tribunal in the matter of Therm Flow Engineers Pvt. Ltd v Securities and Exchange Board of India wherein it was held that the direction to make a public offer was disproportionate when the violation of the SAST Regulations was only to the extent of 0.04%.*

viii. *Similarly, in the matter of acquisition of shares of Kaycee Industries Limited, the Hon'ble Whole Time Member of the SEBI held that since no new promoter was added in the promoter group of the target company and there was no change in the control over the target company, the acquisition in question was not detrimental of the non-promoter shareholders.*

Bona-fide conduct of the Noticee

ix. *It is respectfully submitted that the SAST Regulations permit a creeping acquisition of 5% in a financial year. It is submitted that the Noticee was under the bona--fide belief that the conversion was well within the 5% creeping acquisition limit as envisaged under the SAST Regulations. Even as the allotment took place, the existing holdings of the promoter group remained below 5%.*

x. *It is also to be noted that the Noticee was neither required to make payment of any additional amount at the time of exercise of conversion option and nor there was any additional benefit arise to Noticee by acquisition of any additional equity since Noticee along with all other promoter group was already holding more than 50% of the Company.*

xi. *Accordingly, there was no change in control of the Company due to conversion of this CCDs in favour of the Noticee, for which the Noticee also had an option available for conversion in next two financial years as per the terms of issue.*

xii. *The acquisition occurred since there was a dire need to infuse funds into the Company. Equity infusion will also help the Company to reduce dependence on debt capital and save interest cost, reducing Company's liability and strengthening the financial position of the Company.*

xiii. *The Notice has taken a rigid approach that the open offer would be in the interest of shareholders who desire an exit from the Company without appreciating the fact that management of the Company from the date of acquisition till data is the same and if* *the investors did want an exit they would have approached the regulator long back since the details of the acquisition and conversion of CCDs was in public domain*

xiv. *Till date, there is not even a single investor complaint in this regard. Thus, no harm, loss or prejudice has been caused to any of the shareholders.*

xv. *Moreover, SEBI has erred to appreciate that the Noticee, being the promoter was always in control of the Company. The Noticee, who is part of the promoter group, has held voting rights beyond 25% in the Company even before the acquisition on February 11, 2020 took place. On February 11, 2020, pursuant to the conversion of CCDs, the increase in shareholding of the promoter and promoter group of the Company is 4.66%. Thus, on aggregate basis the promoter group is well within the overall creeping requisition limit of 5%.*

xvi. *The case of the Noticee requires serious consideration. The Noticee respectfully submits that any imposition of penalty would be completely contrary to canons of securities laws and jurisprudence. It is a settled provision of law that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the act.*

CONCLUDING SUBMISSION

a. *SEBI has clearly failed to appreciate that the Noticee was already in control of the Company.*
b. *There is no basis to array the promoter group as co-noticees in the instant case.*
c. *The acquisition of shares was pursuant to a bona-fide conduct of the Company.*
d. *No penalty is warranted against the Noticee in the facts of the present case.*

xvii. *It may also be noted that by subscribing to the CCDs, where entire subscription amount was paid at the time of subscription and as already highlighted, the only activity remained was exercising conversion option of the CCDs into equity shares. As and when the Noticee would exercise conversion option in one or more tranches within the period of 18 months from the date of allotment, which due to the fact that allotment got completed in the month of December 2019, gave the Noticee sufficient discretion to be exercised for conversion in multiple tranches within a period of 18 months from the* *date of allotment, which would spread over three financial years, and keep the creeping acquisition within the limits prescribed under regulation 3 of the Takeover Code.*

xviii. *It was an unintentional lapse that the conversion option was exercised for 3180 CCDs resulting in the creeping acquisition of shares in excess of the creeping limits marginally over what is prescribed for each of the acquirer however the creeping acquisition of the promoters combined holding remained within the limits specified under regulation 3 of the Code.*

xix. *In view of the foregoing, applying the adjudicatory framework to the Noticee as is evident from the material on record, it would follow that there is no case at all to be made against the Noticee. We respectfully request that the proceedings against the Noticee be disposed of without any adverse finding or imposition of penalty.*

<u>Noticee 2-15 reply</u>

i. *Immediately upon the conversion of CCDs into equity shares, on February 12, 2020, FCRPL made a filing with the exchanges, in due compliance with Regulation 29(2) of the SAST Regulations*

ii. *The Noticees were not even parties to have acquired shares in the present case. As such to draw any fallacious conclusion on their role is completely misplaced and on this ground alone*

<u>No basis to array the Promoter Group as co Noticees in the instant case</u>

iii. *SCN records that the Noticees are deemed to be persons acting in concert merely on the basis that they constitute the promoter and promoter group entities of the Company. However, there is no material on record to demonstrate a common objective or common purpose of the acquisition.*

iv. *Further, it should be noted that the Noticees have not acquired a single CCD or equity share of the Company*

v. *The decision of the Hon'ble Supreme Court of India in the matter of Daiichi Sankyo Company Ltd v Jayaram Chigurupati and Ors. wherein it was observed that the concept of persons acting in concert is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design,* *by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition of substantial acquisition of shares etc. of the target company*

vi. *In the matter of Nikhil Mansukhani v Securities and Exchange Board of India, the Hon'ble Securities Appellate Tribunal observed that in the absence of a shared common objective or purpose, the idea of the two groups acting in concert becomes meaningless*

vii. *A promoter cannot be considered an acquirer without acquiring the shares of the target company. The same was observed by the Hon'ble Securities Appellate Tribunal in the matter of Mr. Naagraj Ganeshmal Jain & Ors. Vs Shri P. Sri Sai Ram Adjudicating Officer Securities & Exchange Board of India, wherein it was observed that "A promoter could be considered as an acquirer or not would depend on the question as to whether he is a person who acquires or agrees to acquire shares etc."*

<u>Failure to establish that the Promoter and Promoter Group were acting in concert</u>

viii. *It is humbly reiterated that even if a case is made out against the FCRPL, the Notice fails to establish that the promoter and the promoter group were acting in concert.*

ix. *There was no meeting of minds between FCRPL and the Noticees, who are part of the promoter and the promoter group. Thus, the concept of 'persons acting in concert' has been misapplied in the instant matter. The very fact that the expressions 'acquirer' and 'promoter' have been separately defined in the SAST Regulations, would show that the two concepts are exclusive of each other, that the same person cannot be an acquirer and promoter at the same time, i.e. either he is an acquirer aspiring for control of the target company or a promoter already in control. Therefore, whether the person is an acquirer or promoter at any given point of time, is a question of facts and circumstances of each case.*

x. *It is submitted that a person classified as 'promoter and the promoter group' does not automatically proved to be a person acting in concert unless it is proved that there is meeting of minds with the acquirer*

xi. *Attention is invited to the decision of the Hon'ble Securities Appellate Tribunal in the case of Modipon Limited v Securities and Exchange Board of India & Ors. this wherein it has been held that the promoters need not be an acquirer automatically. The conduct of the parties will have to be taken into consideration.*

xii. *In the present case, the Notice has failed to consider the fact that the Noticees have not participated in the acquisition in question. There is no communication to show that the Noticees were acting in concert with FCRPL for the purpose of acquisition in question.*

SEBI has failed to note that the Noticees were already in control of the Company

xiii. *It is respectfully submitted that the SAST Regulations permit a creeping acquisition of 5% in a financial year. Even as the allotment took place, the existing holdings of the promoter group remained below 5% as is evident even from the table above.*

xiv. *Thus, the increase in total shareholding of the Promoter and Promoter Group entities of the Company remains to be 4.66% which is well within the overall creeping acquisition limit of 5%. The objective of the SAST Regulations is to bring to the knowledge of the shareholders of the Company any change in substantial ownership of the company and to provide an exit opportunity through an open offer in case of such substantial change.*

xv. *It is pertinent to note that the aggregate shareholding of the promoter group is below 5% and there has been no profits made or losses avoided by the Noticees, in this regard. The Notice, in the present case is contrary to the objective of Regulation 3 of the SAST Regulations, which is to ensure that an exit option is provided to the existing shareholders once any person, whether individually, or along with any another person acting in concert with each other, acquires control.*

xvi. *The acquisition if results in change in degree of control over the management of the company requires the exit option to be given to the existing shareholders. In the present case, there has not been any change in the degree of control that can be exercised by the Noticees.*

xvii. *In this regard, attention is invited to the decision of the Hon'ble Securities Appellate Tribunal in the matter of Nirvana Holdings Private Limited v Securities and Exchange Board of India wherein it was observed that in the interest of the securities market or for the protection of investors, SEBI can deviate from the normal rule and not require a public announcement for the open offer.*

xviii. *It is also pertinent to note the decision of the Hon'ble Securities Appellate Tribunal in the matter of Therm Flow Engineers Pvt. Ltd v Securities and Exchange Board of India* *wherein it was held that the direction to make a public offer was disproportionate when the violation of the SAST Regulations was only to the extent of 0.04%*

xix. *Similarly, in the matter of acquisition of shares of Kaycee Industries Limited, the Hon'ble Whole Time Member of the SEBI held that since no new promoter was added in the promoter group of the target company and there was no change in the control over the target company, the acquisition in question was not detrimental of the non-promoter shareholders. Therefore, in view of the above, it is respectfully submitted that SEBI has erred in taking a narrow and restrictive approach to dealing with a breach of an open offer obligation*

No case made out for imposition of monetary penalty

xx. *It is submitted that since no contravention has been made out, there cannot be imposition of any penalty on the Noticees. It is trite law that when a person is not acting in concert and no acquisition has been made by that person, there can be no penalty on that person. In this regard, attention is invited to the order of the Hon'ble Securities Appellate Tribunal in the matter of Nikhil Mansukhani v Securities and Exchange Board of India, wherein the Hon'ble Tribunal quashed the order of the Adjudicating Officer, SEBI imposing a penalty of 10 crore*

xxi. *Further, it is a settled provision of law that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the act.*

CONCLUDING SUBMISSION

i. *Sebi has clearly failed to appreciate that there is no basis for the Noticees to be arrayed as co- Noticees in the present case especially when there is no acquisition of shares by them.*

ii. *The Notice fails to establish that the Promoter and Promoter Group were acting in concert.*

iii. *SEBI also fails to note that the Noticees were already in control of the Company. Therefore, to allege violation of Takeover Regulations is against the settled principles of law.*

iv. *No penalty is warranted against the Noticees in the facts of the present case.*

8. In the interest of natural justice, the Noticees were provided with an opportunity of personal hearing before the undersigned on March 10, 2023. Ms. Shruti Rajan, Mr. Vivek Shah and Ms. Drishti Kapadia from Trilegal appeared as the Authorised Representatives ('ARs') on behalf of the Noticees on the stipulated date of hearing. During the course of hearing, the ARs reiterated the earlier submissions made by the Noticees in their reply to the SCN vide letters dated December 08, 2022.

9. During the hearing, the Noticees sought additional time to make further submissions, which was granted and thereafter, the Noticees vide email dated March 16, 2023, *inter-alia*, made the following submissions in the matter:

THE CHARGES AGAINST FCRPL AND THE OTHER NOTICEES CANNOT CO-EXIST

i. It has been alleged in the Notice that the Noticees have violated the provisions of Regulation 3(3) read with Regulation 3(2) and Regulation 25(5) of the SAST Regulations i.e., the Noticees have failed to have made an open offer in respect of FCRPL's acquisition of shares of Praxis Home Retail Limited ("Company").

ii. To level an allegation under Regulation 3(2), SEBI is required to take into consideration a collective increase in the shareholding of the acquirer together with persons acting in concert with such acquirer which, in the instant case, is well within the overall creeping acquisition limit of 5% and hence such a charge cannot be levelled in the first instance.

iii. It is relevant to consider that the persons acting in concert presumption exists under the law and SEBI ought to evaluate persons acting in concert for every transaction on a case-to-case basis. It has been held by the Hon'ble Securities Appellate Tribunal in the case of Modipon Limited v Securities and Exchange Board of India & Ors.1 that the promoters need not be an acquirer automatically.

iv. It may also be pertinent to note here the decision of the Hon'ble Supreme Court of India in the matter of Daiichi Sankyo Company Ltd v Jayaram Chigurupati and Ors. wherein it was observed that the concept of persons acting in concert is not about a fortuitous relationship *coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition of substantial acquisition of shares etc. of the target company.*

v. *In light of the above, an allegation under Regulation 3(2) of the SAST cannot be sustained since the total increase in the shareholding of the promoter and promoter group entities of the Company is well within the overall creeping acquisition limit of 5% and neither are the Other Noticees persons acting in concert.*

vi. *FCRPL had exercised the option to convert 3,180 CCDs pursuant to which 30,00,000 equity shares were allotted to FCRPL on the Conversion Date. This conversion took place at a conversion price of INR 106 ("Conversion Price") per equity share comprising of a premium of INR 101 per share. In this regard, it is relevant to note that as on the date of subscription i.e., December 12, 2019, the volume weighted average price was Rs 61.40/- and as on the date of Annual General Meeting i.e., October 30, 2019, the volume weighted average price was Rs 66.36/-. The price of the equity shares of the Company on the Conversion Date was also significantly lower than the Conversion Price.*

vii. *It is pertinent to note that the object of issuing the CCDs was to utilize the consideration for the purpose of financing long-term working capital requirements, general corporate purposes, capital expenditure requirements and fostering the growth trajectory of the Company and for repayment of the ad-hoc loans. Therefore, in the interest of ensuring availability of the funds for the smooth operation of the Company and in the interest of all stakeholders of the Company, FCRPL took a decision to continue with its investment in spite of the higher price it was required to pay for the purpose of subscribing the said CCDs.*

viii. *It also may be noted that the CCD allotment was completed in December 2019 and as per the terms of the issuance, FCRPL had option for conversion of the CCDs in one or more tranches on or before June 2021, which means that FCRPL had option to opt for conversion of CCDs at least in three tranches, where each tranches would fall in a different financial* *year and each of such conversion option would result in less than 5% creeping acquisition in each of three financial years.*

ix. *As a result, on the Conversion Date, after exercising the conversion option of 3180 CCDs, FCRPL's shareholding inadvertently increased to 5.71%. The intention of FCRPL was always to be well within the overall creeping acquisition limit of 5% and crossing the said threshold was purely unintentional. The same is also evident from the fact, that on subsequent conversions on January 16, 2021 FCRPL ensured that the conversion option is exercised for so many less number of shares as would compensate the excess shares acquired in the first tranche and accordingly the overall incremental acquisition in this tranche was 4.24% for FCRPL and for all promoters holding was at 3.46% and lastly in the last conversion option which was on May 27, 2021, the CCD's converted were well within the creeping acquisition limit of 5%.*

x. *If it was FCRPL's intention to acquire additional shares, FCRPL could have purchased these shares from the open market itself, by which it would not be required to pay any premium. It is humbly submitted that SEBI ought to consider and appreciate the reason for acquisition of shares by FCRPL which was in the sole interest of the stakeholders of the Company. It may also be submitted that the technical and venial breach in the instant case does not warrant an imposition of a penalty under Regulation 3(3) of the SAST Regulations. It is a settled provision of law that even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the act.*

xi. *The conduct of FCRPL also needs to be considered. It is relevant to note that immediately upon the conversion of CCDs into equity shares, on February 12, 2020, FCRPL made a filing with the Stock Exchanges, in due compliance, with Regulation 29(2) of SAST Regulation. The conduct of the FCRPL can also be gauged from the fact that FCRPL had suo moto voluntarily also filed a Settlement Application dated July 15, 2020 with SEBI, pursuant to which SEBI carried out their investigation in the matter. As such, the conduct* *of FCRPL was bona fide and was only in the interest of the smooth functioning of the Company.*

xii. *It is also submitted that, even the factors in terms of Section 15J are not satisfied in the instant case. In other words, no investor or market participant has been defrauded, no unlawful or disproportionate gains have been made or losses have been avoided illegally. Further, the Notice itself also does not indicate that there was any repetitive default. Additionally, there is also no case of any loss having been caused to anyone by the Noticee on account of the acquisition in question, whether intentionally or otherwise.*

xiii. *Without prejudice to above, it may be further submitted that even if there has been a violation, the same is a technical violation and does not warrant any imposition of monetary penalty. It is further submitted that in any event the Ld. AO decides to impose monetary penalty, the same should be jointly and severally as held by the Hon'ble Securities Appellate Tribunal in the matter of Gopalkrishnan Raman & ors. v SEBI.*

10. The Noticees were granted sufficient opportunities to make submissions in reply to the SCN, of personal hearing and to make additional submissions post hearing. Thus, the principles of natural justice were adhered to.

11. It is also noted that vide emails dated December 27, 2022, the Noticees informed that they filed application for settlement in terms of the provisions of SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as 'Settlement Regulations') in the instant matter. In this regard, it is noted that the settlement applications filed by the Noticees were returned by the concerned department of SEBI vide letter dated February 13, 2023, advising the Noticees to pay the GST on the settlement application fee. However, vide email dated March 16, 2023 the Noticees, inter-alia, submitted the following:

"Kindly note the Noticees are not inclined to resubmit the Revised Settlement Applications pursuant to the SEBI letter vide which the Settlement Applications were returned."

12. Consequently, adjudication proceedings in the instant matter were revived thereafter.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the allegations leveled against the Noticees in the SCN, the replies of the Noticees and also the documents/evidence available on record. The issues that arise for consideration in the present case are:

   I. Whether the shareholding of Noticee no.1/FCRL in Praxis post conversion of CCDs increased more than five percentage? If so, whether FCRL along with the other Noticees (PACs) were required to make a public announcement of the open offer under Regulation 3 (3) r/w 3 (2) and Regulation 25 (5) of SAST Regulations?

   II. Whether the Noticees failed to make a public announcement of the open offer and thereby violated provisions of Regulation 3 (3) r/w 3 (2) and Regulation 25 (5) of SAST Regulations?

   III. If answer to the aforesaid issues is in affirmative, whether the said violations would attract monetary penalty on the Noticees under the provisions of the Section 15H (ii) of SEBI Act?

   IV. If yes, what should be the quantum of monetary penalty?

ISSUE I:- Whether the shareholding of Noticee no.1/FCRL in Praxis post conversion of CCDs increased more than five percentage? If so, whether FCRL along with the other Noticees (PACs) were required to make a public

announcement of the open offer under Regulation 3 (3) r/w 3 (2) and Regulation 25 (5) of SAST Regulations?

ISSUE II. Whether the Noticees failed to make a public announcement of the open offer and thereby violated provisions of Regulation 3 (3) r/w 3 (2) and Regulation 25 (5) of SAST Regulations?

14. The relevant details regarding the change in shareholding of the FCRL and the Promoter Group (the Noticees), after the allotment of 30,00,000 shares (pursuant to conversion of 3,180 CCDs) of Praxis to FCRL on February 11, 2020 are given in the table below:

Table-2

	No. of shares held pre-allotment	Shareholding percentage pre-allotment (A)	No. of shares held post-allotment	Shareholding percentage post-allotment (B)	Difference in shareholding percentage post and pre allotment (B) – (A)
Noticee no.1/FCRL	1,16,82,558	**47.43%**	1,46,82,558	**53.13%**	**5.71%**
Total shareholding of company	2,46,33,208 (pre-allotment)		2,76,33,208 (post-allotment)		

15. As seen from the table above, it is observed that the shareholding of Noticee no.1/FCRL in Praxis post conversion of CCDs increased by 5.71%, which is more than five percentage. In this regard I note that:

a. The said fact of conversion of CCDs by Noticee no.1 and subsequent increase of 5.71% shareholding of Noticee no.1 in Praxis, has not been disputed by the Noticees.

b. The fact that the Noticees being the Promoter and Promoter group entities of Praxis, before and after the allotment of aforesaid shares has also not been disputed by the Noticees (the same is ascertained from the shareholding pattern disclosed by Praxis on January 10, 2020 and on February 18, 2020).

c. Further, it is also an admitted fact that the Noticees have not made a public announcement of the open offer in respect of the aforementioned increase in shareholding of Noticee no.1, under Regulation 3 (3) r/w 3 (2) and Regulation 25 (5) of SAST Regulations, till date.

16. It is also relevant to mention that BSE vide email dated February 17, 2022 and NSE vide email dated February 18, 2022 informed SEBI that the provisions of Regulation 3 (3) r/w Regulation 3 (2) of SAST Regulations were triggered in respect of the aforesaid allotment of shares and the subsequent increase in shareholding of Noticee no.1 in Praxis.

17. Before delving into the question i.e. whether the Noticees were mandated to make public announcement of open offer in this regard, it is pertinent to reproduce the relevant provisions of the SAST regulations:

Definitions.

2. (1) In these regulations, unless the context otherwise requires, the terms defined herein shall bear the meanings assigned to them below, and their cognate expressions and variations shall be construed accordingly,—

(a) "**acquirer**" means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company;

(b) “**acquisition**” means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company;

..

(e) “**control**” includes the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or shareholders agreements or voting agreements or in any other manner:

(f) “**convertible security**” means a security which is convertible into or ex-changeable with equity shares of the issuer at a later date, with or without the option of the holder of the security, and includes convertible debt instruments and convertible preference shares;

..

(q) “**persons acting in concert**” means,—

(1) persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.

(2) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,—

(iv) promoters and members of the promoter group;

18. Further, the text of the provisions of the SAST Regulations, allegedly violated by the Noticees, are given below:

“Substantial acquisition of shares or voting rights.

3(2) ***No acquirer****, who together with persons acting in concert with him, has acquired and holds in a accordance with these regulations shares or voting rights in a target company entitling them* ***to exercise twenty-five per cent or more*** *of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year* ***additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer*** *for acquiring shares of such target company in accordance with these regulations.*

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

“Obligations of the acquirer

25 (5) The acquirer and persons acting in concert with him ***shall be jointly and severally responsible*** *for fulfilment of applicable obligations under these regulations.*

(Emphasis added)

19. It is an admitted fact that Noticee no.1 was holding 47.43% shareholding in Praxis, which is more than 25%. It is also an undisputed fact that the individual shareholding of Noticee no.1 in Praxis increased to 53.13% i.e. more than the stipulated threshold of 5%, pursuant to allotment of shares (after conversion of CCDs) on February 11, 2020. Further, the shareholding of Noticee no.1 with other Noticees i.e. shareholding of promoter and promoter group was 57.08% before the allotment of shares. It is noted that in the instant case, all the fifteen Noticees have been disclosed as promoter group entities of Praxis during the relevant period. Further, I note that the Noticee no.1 and Noticee nos. 2 to 15 have not disputed the fact that they are the '*Promoter and Promoter group*' of Praxis. In this regard, I note that the Noticees being Promoter and Promoter group entities of Praxis make them *'deemed to be persons acting in concert (PAC)'* in terms of Regulation 2 (1) (q) (2) (iv) of the SAST Regulations (provisions were reproduced in previous paragraphs). The aforesaid facts clearly fall within the ambit of the mandated provisions/thresholds stipulated under Regulation 3 (2) of SAST Regulations mentioned above.

20. I note that the Noticees, in their reply, have submitted various grounds for consideration in this regard. I record my findings and observations on the submissions of the Noticees in the following paragraphs.

A. No basis to array the Promoter Group i.e. Noticee no. 2 to 15 as co-noticees

21. The Noticees nos. 2 to 15 contended that there is no material on record to demonstrate a common objective or common purpose of the acquisition. Further, Noticees submitted that there was no meeting of minds or communication between Noticee no.1 and all other Noticees, who are part of the promoter and the promoter group. Further, the Noticees nos. 2 to 15 contended that a person classified as 'promoter and the promoter group'

does not automatically prove to be a ‘person acting in concert’ unless it is proved that there is meeting of minds with the acquirer. In this regard, the Noticees nos. 2 to 15 have cited judgements of the Hon’ble Supreme Court of India in the matter of Daiichi Sankyo Company Ltd v Jayaram Chigurupati and Ors., the Hon’ble Securities Appellate Tribunal in the matters of Nikhil Mansukhani vs SEBI, Mr. Naagraj Ganeshmal Jain & Ors. vs SEBI, Modipon Limited vs SEBI and SBEC System (India) Ltd. vs SEBI.

22. I note that the cases of Daiichi Sankyo Company Ltd v Jayaram Chigurupati and Ors., Nikhil Mansukhani v. SEBI, Mr. Naagraj Ganeshmal Jain & Ors. v. SEBI and Modipon Limited v. SEBI relied on by the Noticees operate within a factual matrix different from the matter before me. The said judgements refer to the provisions of erstwhile SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as ‘SAST Regulations, 1997’), whereas, the instant matter deal with the alleged violations of SAST Regulations, 2011 which has the explicit provisions of ‘deeming to be PAC’ under Regulation 2 (1) (q) (2) (iv). In this context, I find it pertinent to refer to the following judgment of Hon’ble Securities and Appellate Tribunal (SAT) in the matter of Trishla Jain & Ors. Vs SEBI (Appeal no. 457 of 2020) which, *inter-alia*, held that:

> *..“6. Before us, there is no denial regarding acquisition and / or disposal of shares by the other promoters (except appellant Anand Kumar Jain) causing breach of the provisions of the Regulation 3(2) of the SAST Regulations.*
>
> *7. The submissions of the appellants however are that neither they were acting in concert with the promoters who had acquired or disposed the shares nor they were promoters during the relevant period…*

It was further submitted that merely because a person is a promoter does not mean that he would be a person acting in concert and, therefore, on this ground also they wanted that the orders be set aside.

..

9. Having heard the learned counsel for both the sides, in our view, ***both the appeals are liable to be dismissed*** *for the following reasons :-*

10. The definition of person acting in concert as detailed (supra) would show that ***the promoters and members of the promoter group are deemed to be person acting in concert with other persons within the same category unless the contrary is established***.

The facts however remain that during the entire period they were disclosed as promoters / promoter group and one of the appellants having actively traded in the shares of FIRL during the period did not raise objection at any time.

12. The learned counsel for the appellants had relied on two judgments in the matter of ***Daiichi Sankyo Co. Ltd. vs. Jayaram Chigurupati and Ors. Civil Appeal No. 7148 of 2009 and Metex Marketing Pvt. Ltd. vs. SEBI***

13. The case of ***Daiichi Sankyo Co. Ltd. (supra) was based on the SAST Regulations, 1997 wherein the deeming fiction of promoter being an acting in concert was not present.*** *The Hon'ble Supreme Court, therefore, held that in each and every case a promoter simpliciter need not be an acquirer and person acting in concert automatically.*

The reading of the present definition of the person acting in concert in SAST Regulations, 2011 would show that a ***promoter would be deemed to be a person acting in concert unless otherwise proved. Thus, a presumption would arise against the promoter that he was a person acting in concert when other***

***promoters traded in the shares of the company**. On facts, however, the said promoters can successfully show that his objective was not in concert with other promotes. Here, in the present case, except a bald assertion that the appellants were not promoters, there is nothing on record to show that they were not promoters. **Therefore, they were the promoters. Therefore, it will have to be presumed that they were acting in concert**. Since there is no material to rebut the said presumption, the case of the appellants cannot be accepted.*

(Emphasis added)

B. A promoter cannot be considered as an acquirer without acquiring the shares of the target company

C. No breach of 5% threshold

23. Further the Noticee cited the case of SBEC System v. SEBI and *inter-alia*, submitted the following:

“

39…

In this regard, attention is invited to the decision of Hon’ble Securities Appellate Tribunal in the matter of SBEC Systems (India) Ltd v Securities & Exchange Board of India , wherein it was observed that:

“11…Thus, though a presumption that the promoters would be persons acting in concert can be raised the same can be rebutted either by positive evidence or by negative facts discernible through the conduct of the parties. The fact that the appellant Company did not participate in acquisition of additional shares by two of the other appellants, the fact that there is no resolution passed by the present appellant and fact that there is no communication on record from the appellant Company would

show that present appellant Company cannot be termed as person acting in concert. The present appeal will have to be allowed…

13. The impugned order however would show that as all the present appellants are the promoters of the appellant Company, by invoking the principle of presumption the order came to be passed against all the present appellants also. The above fact however would clearly show that acquisition of the shares by Appellant nos.5 & 6 was their individual action forced by the circumstances and as such Appellant nos.1 to 4 in Appeal no.444 of 2018 cannot be called as persons acting in concert with the rest of the appellants."

40. Therefore, the Notice clearly fails to establish that the Noticees classified as 'promoter and the promoter group' are persons acting in concert and the Notice ought to be quashed on this ground alone…"

24. The Noticee nos. 2 to 15 also contended that the overall change in shareholding of PAC post allotment of shares on February 11, 2020 is 4.66% and is less than the stipulated threshold of 5% stipulated in Regulation 3 (2) of SAST Regulations. Further, the Noticee nos. 2 to 15 have submitted that a promoter cannot be considered an acquirer without acquiring the shares of the target company. Therefore, Noticee nos. 2 to 15 submitted that the violations cannot be alleged upon them.

25. In this context, I note that the provisions of Regulation 3 (3) of SAST Regulations clearly mention that irrespective of, whether there is a change in the aggregate shareholding with *persons acting in concert (*PAC), even if the change in the individual shareholding of such person acquiring shares exceeds the stipulated thresholds, it shall be attracting the obligation to make an open offer. In this context, reference is made to order of Hon'ble SAT in Trishla Jain (supra) which, *inter-alia*, held as under:

"On facts, however, the said promoters can successfully show that his objective was not in concert with other promotes. Here, in the present case, except a bald assertion that the appellants were not promoters, there is nothing on record to show that they were not promoters. ***Therefore, they were the promoters. Therefore, it will have to be presumed that they were acting in concert****.* ***Since there is no material to rebut the said presumption, the case of the appellants cannot be accepted****."*
(Emphasis Supplied)

26. Hence, the contentions made by the Noticees in this regard cannot be accepted.

D. No change in control

27. The Noticees also submitted that the violations cannot be alleged upon them as there was no change in degree of control over the management of the target company.

28. In the case at hand, I observe that there was nothing on record to show the change in control of Praxis in the instant matter. Further, I note that change in control is not the only condition, for making the public announcement of an open offer as per SAST Regulations. Further, on perusal of the provisions of Regulations 3(2) and 3 (3) of SAST Regulations, it can be noted that the said Regulations clearly cast an obligation of making open offer once the acquisition of shares breaches a threshold of 5%, as mentioned therein. In this context it is relevant to mention that the Hon'ble Securities and Appellate Tribunal, *inter-alia*, held the following:

a. in the matter of Mr. Ajay Anand & Ors. Vs SEBI (Appeal no. 501 of 2019), it was *inter-alia*, held that:

5. Having heard the authorized representative for the appellants and the learned counsel for the respondent we find that ***admittedly no public announcement***

was made by the appellants under Regulation 13(1) for the triggered acquisition under Regulation 3(2) of the SAST Regulations*, 2011. Therefore, for such violation the penalty for nondisclosure of acquisition of shares under Section 15H(ii) becomes applicable.*

6. The AO found that though the shareholding prescribed in law was triggered by the ***conversion of the warrants into shares there was no change in the control of the Company****. Further when the acquisition was triggered the Company was going through restructuring of its capital and capital infusion to address financial distress of the Company. These factors were duly considered by the AO under 15J while considering the quantum of penalty.*

7. In the instant case a penalty of Rs. 10 lakh has been imposed which is the minimum penalty prescribed under Section 15 H. In our view the AO considered all the factors and considering the financial distress of the Company etc. has only imposed the minimum penalty which we do not find it erroneous or excessive. Consequently, ***the appeal lacks merit and is dismissed****."*

(Emphasis added)

b. in the matter of P B Jain Investment Pvt Ltd & Ors. Vs SEBI (Appeal no. 169 of 2013) it was, *inter-alia*, held that:

21. .. Consequent to conversion of those warrants during the financial year 2011-12 their voting rights in the target company increased from 50.23% (as on March 31, 2011 and just prior to conversion of warrants on December 19, 2011) to 62.92% during the financial year 2011-12.

22. It is, therefore, December 19, 2011 on which date the appellants have attracted ***the provisions of Regulation 3(2) of the Takeover Regulations, 2011 and have consequently incurred an obligation to make a combined public announcement to acquire shares of the target company as per law. Therefore, we do not find any fault with the impugned order*** *dated July 8, 2013 passed by the learned WTM.*

23. Similarly, it is evident from the records that appellant no. 1 i.e. P. B. Jain Investment Pvt. Ltd. and appellant no. 2 i.e. Nakoda Syntex, Pvt. Ltd. are part and parcel of the same promoter group consisting of twelve appellants. ***They formed a homogenous class and hence are persons acting in concert*** *under Regulation 2(1)(q)(2)(iv) of the Takeover Regulations, 2011.*

(Emphasis added)

29. In view the above, the contentions of the Noticees cannot be accepted.

30. Based on the discussions made above in the previous paragraphs, perusal of the relevant provisions of Regulations 3 (2), 3 (3) r/w Regulation 25 (5) of SAST Regulations and the judgments of Hon'ble Supreme Court of India and Hon'ble Securities and Appellate Tribunal as mentioned above, I note that an obligation is cast on the Noticees (Noticee no.1 along with Noticee nos. 2 to 15 acting as PACs) to make public announcement of open offer, in the instant matter. In view thereof, I hold that the Noticee no.1 along with Noticee nos. 2 to 15 (PACs) were required to make a public announcement of open offer, pursuant to allotment of 30,00,000 shares (conversion of CCDs) to Noticee no.1 on February 11, 2020.

31. It is an admitted fact that the Noticees did not make public announcement of the open offer, till date, in the instant matter. Therefore, I hold that the allegation that the Noticees violated the provisions of Regulations 3 (2), 3 (3) r/w Regulation 25 (5) of SAST Regulations, stands established.

ISSUE III. If answer to the aforesaid issues is in affirmative, whether the said violations would attract monetary penalty on the Noticees under the provisions of the Section 15H (ii) of SEBI Act?

32. The Noticees submitted that the object of issuing CCDs by Praxis was to utilize the consideration for the purpose of, financing long-term working capital requirements, general corporate purposes, capital expenditure requirements etc. Further, Noticees claimed that in the interest of all stakeholders of the Company, the Noticee no.1 took a decision to continue with its investment in spite of higher price it was required to pay for the purpose of subscribing the said CCDs. In this context, Noticees claimed that not making the public announcement in the instant matter is a technical or venial breach of the provisions of the act and submitted that imposition of penalty is not warranted.

33. In this context, I hold that an open offer is an offer made by the acquirer to the shareholders of the target company inviting them to tender their shares in the target company at a particular price. One of the purposes of obligations in respect of open offer is to provide an exit option to the shareholders other than the promoters of the target company. It is pertinent to quote the following relevant extracts of Report of the Takeover Regulations Advisory Committee dated July 19, 2010 under Chairmanship of Mr. C. Achuthan:

"12. It is important to restate the fundamental objectives of the Proposed Takeover Regulations. These are:

…

d. To provide each shareholder an opportunity to exit his investment in the target company when a substantial acquisition of shares in, or takeover of a target company takes place, on terms that are not inferior to the terms on which substantial shareholders exit their investment"

34. Therefore, it is an inalienable right of such shareholders of the target company to have an exit option in the circumstances mentioned in the SAST Regulations.

35. Further, the contentions of the Noticees that the violations are technical in nature and no investor complaint was raised in respect of not making the public announcement of the open offer in the instant matter, also cannot be accepted. In this context, it is pertinent to refer to the following judgements of Hon'ble Securities and Appellate Tribunal:

a. in the matter of Mrs. Komal Nahata vs SEBI (Appeal no. 5 of 2014), it was *inter-alia*, held that:

"12.

Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit ***because firstly penalty for non compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."***

b. in the matter of Mega Resources Limited. vs SEBI (Appeal no. 438 of 2015), it was *inter-alia*, held that:

10..

the appellant vide letter dated June 14, 2014 submitted that the violation was ***unintentional and had occurred due to lack of proper interpretation of the erstwhile regulations****. The appellant also requested SEBI not to levy any* *penalty as the violation was technical in nature and without any mala fide intention as there was no change in control.*

22.

.. It is submitted that the provisions relating to making of an open offer and disclosures are mandatory provisions and penalty is leviable once it is shown that there has been a failure to make disclosure or when there is breach of the Regulation 11(1). The respondent relied on the decision of this Tribunal in Komal Nahata Vs. SEBI [Appeal No. 5/2014] decided on 27.01.2014 wherein it is held that the ***"argument that no investor has suffered on account of non disclosure*** *and that the Adjudicating Officer has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992,* ***is without any merit because the penalty for non compliance of SAST Regulations is not dependent upon the investors actually suffering on account of such non disclosures****.*

34..

… It is admitted by the appellant that the non compliance with the disclosure requirements in respect of acquisition of shares and failure to make an open offer to the shareholders of the Company was due to lack of awareness of the erstwhile regulations on the part of the Appellant and purely unintentional and without any malafide intentions. ***It is trite law that ignorance of law will not excuse the appellant to escape the liability of violating the law nor ever absolve the wrongdoer of his crime or misconduct. This argument of the appellant, therefore, fails in our opinion****.*

(Emphasis supplied)

c. in the matter of G P Shah Investment Private Limited. vs SEBI (Appeal no. 396 of 2019 and Appeal no. 315 of 2019), it was *inter-alia*, held that:

..

5. This Tribunal held that the date on which the appellants acquired the shares triggered the provisions of Regulation 3(2) of the SAST Regulations, 2011 and consequently incurred an obligation to make a combined public announcement to acquire the shares of the target company.

..

10. Considering the aforesaid and the admitted violations, we do not find any error in the imposition of penalty imposed by the AO though, under Section 15HB a maximum penalty of 25 crores or three times the amount of profits could have been imposed. In view of the aforesaid, we do not find any merit in the appeal and the same is dismissed with no order as to costs."

36. In view of the above and as the charges levelled against the Noticees in the SCN have been established as seen from the previous paragraphs, I hold that the Noticees are liable for imposition of monetary penalty under Section 15H (ii) of SEBI Act. I refer to the text of the said provisions, which is reproduced below:

SEBI Act

PENALTIES AND ADJUDICATION

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; or

……….

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

ISSUE IV. If yes, what should be the quantum of monetary penalty?

37. While determining the quantum of penalty under Section 15H (ii) of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules, which read as under:

SEBI Act

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.

38. I note that the amount of disproportionate gains or unfair advantage made by the Noticees, have not been brought out in the examination report. As regards the repetitive nature of the default, I find that there is nothing on record to indicate any past violations committed by the Noticees. However, it can said that loss of opportunity has been caused to the investors/shareholders of the target company in the present case due to the denial of an exit opportunity by not making the open offer by Noticee no.1 along with the other Noticees. It is also noteworthy that the non-compliance with open offer requirements in the instant case is a continuing violation, which has continued till date. In this connection, I refer to the order dated September 8, 2011 in the matter of Nirvana Holdings Pvt. Ltd.

vs SEBI by Hon’ble Securities Appellate Tribunal wherein, it was *inter-alia*, held that "*The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover..*”

39. The Noticees further submitted that in case penalty has to be imposed on the Noticees, it should be jointly and severally on the Noticees and cited case of Gopalkrishnan Raman & ors. vs SEBI (Appeal no. 281 of 2014). I note that the aforementioned case cited by the Noticees refer to the provisions of ‘yearly shareholding disclosures’ by Promoter group, whereas, the instant matter refers to the provisions of making a public announcement of open offer. I further note that in the instant case, the obligation to make an open offer was triggered by the acquisition of shares by Noticee no.1. However, the provisions of Regulation 25 (5) mandate that the acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfilment of applicable obligations under SAST Regulations. Hence, I hold that monetary penalties need to be imposed on Noticee no.1 individually and Noticee nos. 2 to 15 jointly and severally.

<u>ORDER</u>

40. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs 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 the following penalties on the Noticees under Section 15H (ii) of the SEBI Act for the violation of the provisions mentioned hereunder:

Table-3

Sl. No.	**Noticee**	**Penalty**	**Violations**	**Penal Provisions**
1.	Future Corporate Resources Pvt. Ltd.	Rs. 10,00,000 /- (Rupees Ten Lakhs only)	Regulation 3 (3) and 3 (2) r/w Regulation 25 (5) of SAST Regulations	Section 15H (ii) of the SEBI Act
2.	M/s Akar Estate and Finance Pvt. Ltd.	Rs. 10,00,000 /- (Rupees Ten Lakhs only) to be paid jointly and severally		
3.	M/s Surplus Finvest Pvt. Ltd.			
4.	M/s Retail Trust			
5.	Mr. Anil Biyani			
6.	Ms. Ashni Kishore Biyani			
7.	Ms. Avni Biyani			
8.	Mr. Gopikishan Biyani			
9.	Mr. Kishore Biyani			
10.	Ms. Laxminarayan Biyani			
11.	Mr. Rakesh Biyani			
12.	Ms. Sangita Biyani			
13.	Mr. Sunil Biyani			
14	Mr. Vijay Biyani			
15.	Mr. Vivek Biyani			

I am of the view that the penalty imposed on the Noticees as mentioned above is commensurate with the violations committed by the Noticees.

41. Noticees shall remit / pay the said total amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of "SEBI- *Penalties Remittable to Government of India*", payable at Mumbai, or by following the path at SEBI website www.sebi.gov.in, ENFORCEMENT > Orders > Orders of AO > PAY NOW; OR by using the web link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html. In case of any difficulties in payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in.

42. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD1-DRA-III, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

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

43. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: April 28, 2023 **N HARIHARAN**

Place: Mumbai **ADJUDICATING OFFICER**