BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER No.: Order/GR/PU/2021-22/15542-15550]

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:

S.No.	Noticee (s)	PAN
1	Mr. Mahendra Kumar Agrawal	ABLPA4518L
2	TCI Finance Limited	AABCT7588A
3	Mahendra Kumar Agarwal & Sons HUF	AANHM6384A
4	Bunny Investments & Finance Private Limited	AAACB8313N
5	Mahendra Investment Advisors Pvt Ltd.	AADCM9787E
6	Jubilee Commercial & Trading Private Limited	AAACJ6318D
7	Dhruv Agarwal Benefit Trust	AAATD8295N
8	Manish Agarwal Benefit Trust	AABTM5293J
9	Neera and Children Trust	AAATN4755H

In the matter of
Gati Limited.,

(The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as "the Noticees")

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1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an examination of Draft Letter of Offer of Gati Limited., (hereinafter referred to as **'the Target Company'**), a company listed on the Bombay Stock Exchange Limited., (hereinafter referred to as **'BSE'**) and National Stock Exchange Limited (hereinafter referred to as **'NSE'**). The examination was to ascertain whether there was any violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 (hereinafter referred to as '**SAST Regulations, 2011**') by erstwhile promoters of the Target Company.

2. During the examination, it was observed as under:

   a. Mr. Mahendra Kumar Agrawal, TCI Finance Limited, Mahendra Kumar Agarwal & Sons HUF, Bunny Investments & Finance Private Limited, Mahendra Investment Advisors Pvt Ltd, Jubilee Commercial & Trading Private Limited, Dhruv Agarwal Benefit Trust, Manish Agarwal Benefit Trust and Neera and Children Trust (hereinafter together referred **as "Noticees / Promoters")** were the promoters of the Target Company during the relevant time period.

   b. Further, it was observed that the "promoter/promoter group" shareholding in the Target Company was reduced by 2.85% pursuant to invocation of pledge on November 14, 2011 and was also reduced by 5.89% pursuant to invocation of pledge on September 30, 2013 and December 20, 2013, which required disclosure to be made under SAST Regulations, 2011. However, it was observed that the Noticees had failed to make disclosure to the Company and Stock Exchanges and alleged to have violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011.

   c. Also, it was observed that in between period April 01, 2014 to December 12, 2014, pursuant to the acquisition of 7.59% shareholding of the Target Company by Promoter, i.e. the gross acquisition by the promoter group along with PACs, was in excess of 5% and therefore, obligation to make "open offer" triggered on December 12, 2014 in FY 2014-15 in terms of Regulation 3(2) of the SAST Regulations. Accordingly, in terms of

Regulation 13(2)(a) of the SAST Regulations, "Public Announcement" of such acquisitions/ purchases was required to be made by the Promoter Group prior to placement of the purchase order with the stock broker to acquire the shares of Target Company beyond the stipulated thresholds. However, the Noticees have failed in making "open offer" with respect to their acquisition of shares of the Company beyond the said prescribed limit and therefore, the Noticees are alleged to have violated the provisions of Regulation 13(2)(a) read with Regulation 3(2) of the SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. Earlier, SEBI appointed Shri Amit Pradhan as the Adjudicating Officer ('**AO**') vide communication order dated May 03, 2021, under Section 19 read with Section 15-I of SEBI Act and under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter, '**Adjudication Rules**') to enquire into and adjudge under Sections 15 A(b) and 15H(ii) of the SEBI Act, 1992, the alleged violation of Regulation 13(2)(a) read with Regulation 3(2) of the SAST Regulations, 2011 and Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011, by the Noticees. Thereafter, pursuant to the transfer of Shri Amit Pradhan, the undersigned was appointed as the AO vide communique dated June 21, 2021 in the present matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. A common Show Cause Notice dated December 08, 2021 (hereinafter, "**SCN**") was issued to all the 9 entities/Noticees, under Rule 4 of the Adjudication Rules, calling them to show cause as to why an inquiry should not be held and penalty be not imposed on them under Sections 15 A(b) and 15H(ii) of the SEBI Act, 1992, for alleged violations specified in the said SCN.

5. The said SCN was duly served through SPAD upon the Noticees. In response, Mr. Mahendra Kumar Agrawal, Mahendra Kumar Agarwal & Sons HUF, Bunny Investments & Finance Private Limited, Mahendra Investment Advisors Pvt Ltd, Jubilee Commercial & Trading Private Limited, Dhruv Agarwal Benefit Trust and Manish Agarwal Benefit Trust had filed their preliminary reply in the matter vide letter dated January 12, 2022. On the same day, TCI Finance Limited, had also filed its preliminary reply in the matter, separately. Similarly, Neera and Children Trust had also filed its replies dated December 12, 2021, January 14, 2022, January 30, 2022 and February 12, 2022.

6. Further, in the interest of natural justice, an opportunity of personal hearing was granted to the Noticees, on February 08, 2022 vide email dated January 28, 2022. The Authorized Representative of Noticee No.9, had sought for an adjournment vide letter dated January 30, 2022, accordingly, another opportunity of personal hearing was granted to it to appear on February 15, 2022. Subsequent to the hearing, the said Noticee had sought time till February 25, 2022 to submit its additional reply in the matter, which was granted. Similarly, the Authorized Representative of Noticee Nos.1 to 8, sought for adjournment on the said personal hearing vide e-mail dated February 04, 2022. Accordingly, another opportunity of personal hearing was granted to them vide e-mail dated February 07, 2022, to appear on February 23, 2022. Pursuant to the personal hearing to all the Noticees, their Authorized Representatives submitted a common additional submission vide letter dated February 22, 2022 forwarded vide e-mail dated February 23, 2022.

7. The summary of the replies submitted to the SCN, by the Noticees, are as under:

Reply of Mr. Mahendra Kumar Agrawal, Mahendra Kumar Agarwal & Sons HUF, Bunny Investments & Finance Private Limited, Mahendra Investment Advisors Pvt Ltd, Jubilee Commercial & Trading Private Limited, Dhruv Agarwal Benefit Trust and Manish Agarwal Benefit Trust and **dated January 12, 2022**

- With regard to allegation of non-disclosure under SAST Regulations, 2011, the Noticees stated that the requirement of giving disclosure under Regulation 29(2) in case of disposal of shares is applicable with effect from 11.09.2018, as invocation of shares in the instant case took place between the years November 14, 2011 and December 20, 2013, there is no need for the said disclosure. Further, there is no mention of disposal of shares. As per Regulation 29(4), the shares taken by lender by way of encumbrance is treated as an acquisition, which the lender has to intimate the same under the said regulations. Accordingly, the Noticee's lender IL&FS Trust Company Ltd. has given a disclosure under the said regulation on invocation of shares. Therefore, the company stands complied of Regulation 29(2) of the SAST Regulations, 2011.
- With regard to the allegation of Open offer violations, Mr. Mahendra Kumar Agrawal, Mahendra Kumar Agarwal & Sons HUF, Bunny Investments & Finance Private Limited, Mahendra Investment Advisors Pvt Ltd, Jubilee Commercial & Trading Private Limited, Dhruv Agarwal Benefit Trust and Manish Agarwal Benefit Trust, in their combined reply stated that promoter of the target company acquired 3.28% shareholding of the Target Company on December 12, 2014 which is less than the threshold limit of 5% as prescribed under Regulation 3(2) of the SAST Regulations. Further, the promoters were already in control. Therefore, no open offer was triggered under Regulation 3(2) and 4 of the SAST regulations and therefore, there was no need to file "non-app" report. Further, "non-app report was filed as Mahendra Kumar Agarwal HUF is an immediate relative (Son in law) of Mr. R. K. Bansal and "Neera and Children Trust" beneficiaries are also an immediate relatives of Mr. R. K. Bansal and inter se transfer between immediate relatives does not trigger open offer. Therefore requirement of public announcement is not applicable. Therefore, the Noticees have not violated Regulation 13 (2) read with Regulation 3 (2) of SAST Regulations.

Reply of TCI Finance Ltd. **dated January 12, 2022**

- With regard to allegation of non-disclosure under SAST Regulations, 2011, TCI Finance Ltd. stated that the requirement of giving disclosure under Regulation 29(2) in case of disposal of shares is applicable with effect from 11.09.2018, as invocation of shares in the instant case took place between the years November 14, 2011 and December 20, 2013, there is no need for the said disclosure. Further, there is no mention of disposal of shares. As per Regulation 29(4), the shares taken by lender by way of encumbrance is treated as an acquisition, which the lender has to intimate the same under the said regulations. Accordingly, the Noticee's lender IL&FS Trust Company Ltd. has given a disclosure under the said regulation on invocation of shares. Therefore, the company stands complied of Regulation 29(2) of the SAST Regulations, 2011.
- With regard to the allegation of Open offer violations, TCI Finance Ltd. stated that open offer is not triggered in its case as the gross cumulative acquisition by promoter has not crossed 5% of threshold.

Reply of Mr. Mahendra Kumar Agrawal, TCI Finance Ltd.**,** Mahendra Kumar Agarwal & Sons HUF, Bunny Investments & Finance Private Limited, Mahendra Investment Advisors Pvt Ltd, Jubilee Commercial & Trading Private Limited, Dhruv Agarwal Benefit Trust and Manish Agarwal Benefit Trust and **dated February 22, 2022**

- In addition to explaining and reiterating the points as mentioned above vide their earlier replies in the matter, the Noticees also submitted that there was no malafide intention and/ or no ignorance of law and/ or any other reason for missing out on such disclosure when the same fact was duly disclosed under another regulation (Regulation 31(2)) of the said SAST Regulations, there was no need for the Noticees to not give/ hide the declaration under Regulation 29 (2) and that the said disclosure was not given only because it was not required); We also submit that the said disclosure has no impact and/ or adverse effect on any shareholders and/ or stakeholders of the Company. The disclosures made adds credence to the genuine and bona fide intention of the Noticee and further achieves the required intention of the SAST Regulations which was to keep the Company and the stock exchanges duly informed of all transactions that result in a change of 2% of the total shareholding in the Target Company.
- It is submitted with regard to the Noticees under S. No. 5 to 9 of Table 2 at Page 6 of the SCN that the original shares held by the respective Noticees have been taken back by them on account of "reversal of invocation", accordingly the 3.26% increase in shares shall be excluded for the purpose of triggering of Open Offer under the SAST Regulations.

Reply of Neera and Children Trust dated **January 14, 2022**

- The present SCN is issued after a gap of more than 10 years from the date of alleged violations as stated in the SCN. A common SCN is issued wherein the allegation and violation as alleged against it is different compared to others. Hence, great prejudice is caused to it by issuance of a common Show Cause Notice.
- With regards to the allegation of non-disclosure under regulation 29(2) read with Regulation 29(3) of the SAST, the Noticee stated that it is not promoter of Gati Ltd. during the said period. Therefore, the requirement to make disclosure does not arise.
- With regards to the allegation of not making open offer the Noticee stated that 11,29,995 shares of Gati Ltd (which is alleged to have triggered the open offer) was received from late Mr. R.K. Bansal who was father of Neera Agarwal, trustee of Neera and Children Trust and grandfather of the beneficiaries of the Trust. The said shares were received pursuant to Lok Adalat Order dated 04.07.2014 and were not acquired from the market or exchange platform or otherwise. Hence, open offer was not triggered under Regulation 13(2)(a) r.w. Regulation 3(2) of SAST Regulations. Further as mentioned in the SCN, the promoter group applied for "Non-App".
- The Noticee also requested for inspection of certain documents.

Vide reply dated January 30, 2022, Neera and Children Trust once again requested for inspection of certain documents and also sought time to file its reply in the matter.

Reply of Neera and Children Trust dated February 12, 2022

- In addition to explaining and reiterating the points as mentioned above vide their earlier replies in the matter, the Noticee also stated that its name is also not included under Table 1 in Para 2(A)(a) of the SCN. So, the question of not making disclosure under Regulation 29(2) r.w. Regulation 29(3) of SAST Regulations does not arise.

- The notice also stated that no monetary consideration was given for the shares received from Mr. R. K. Bansal.

Vide reply dated February 20, 2022, Neera and Children Trust explained and reiterated the points as mentioned above vide its earlier replies in the matter.

ISSUES FOR CONSIDERATION AND FINDINGS

8. I have carefully perused the submissions made by the Noticees and documents available on record, and the issues that arise for consideration in the present case are:
   a. *Whether the Noticees have violated the provisions of Regulation 13(2)(a) read with Regulation 3(2) and Regulation 29(2) read with Regulation 29(3) of the SAST Regulations, 2011?*
   b. *Does the violation, if any, on the part of the Noticees attract monetary penalty under Sections 15 A(b) and 15 H(ii) of the SEBI Act?*
   c. *If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15 J of the SEBI Act?*
9. Before moving forward, it is pertinent to refer to the relevant provisions of SAST Regulations 2011, which reads as under:

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 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:*

Provided that such acquirer shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to the acquisition above the maximum permissible non-public shareholding.

Explanation.— For purposes of determining the quantum of acquisition of additional voting rights under this sub-regulation,—

(i) *gross acquisitions alone shall be taken into account regardless of any intermittent fall in shareholding or voting rights whether owing to disposal of shares held or dilution of voting rights owing to fresh issue of shares by the target company.*

(ii) *in the case of acquisition of shares by way of issue of new shares by the target company or where the target company has made an issue of new shares in any given financial year, the difference between the pre-allotment and the post-allotment percentage voting rights shall be regarded as the quantum of additional acquisition.*

Timing

13(2) *Such public announcement,—*

(a) in the case of market purchases, shall be made prior to placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds;

Disclosure of acquisition and disposal.

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

Prior to Amendment dated 26.03.2013, Regulation 29(2) read as follows:

"Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified."

29(3) The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—

(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

CONSIDERATION OF ISSUES

A. Allegations of Non-Disclosure under SAST Regulations:

10. I note that, during the examination, it was inter-alia observed the followings:

a) The manager to the Draft Letter of Offer viz. Inga Ventures Pvt. Ltd. **("IVPL")** had disclosed the following in the **"promoters shareholding built-up":**

Table 1

<table>
<tr><th>Date</th><th>Name of promoter</th><th>Transaction</th><th>No. of shares</th><th>Compliance with SAST</th></tr>
<tr><td>14.11.2011</td><td>Bunny Investments & Finance Pvt. Ltd.</td><td>Pledge invocation-disposal</td><td>13,12,580 (1.52%)</td><td rowspan="5">Promoters complied with Regulation 31(2) of the SAST Regulations but not complied with Regulations 29(2) of the SAST Regulations</td></tr>
<tr><td>14.11.2011</td><td>Dhruv Agarwal Benefit Trust</td><td>Pledge invocation-disposal</td><td>1,10,000 (0.13%)</td></tr>
<tr><td>14.11.2011</td><td>Mahendra Investment Advisors Pvt. Ltd.</td><td>Pledge invocation-disposal</td><td>10,40,000 (1.20%)</td></tr>
<tr><td>30.09.2013</td><td>Dhruv Agarwal Benefit Trust</td><td>Pledge invocation-disposal</td><td>16,00,000 (1.85%)</td></tr>
<tr><td>20.12.2013</td><td>TCI Finance Ltd.</td><td>Pledge invocation-disposal</td><td>35,00,000 (4.04%)</td></tr>
</table>

a) The shareholding of Promoters of the Company was reduced pursuant to the invocation of pledge on their shares of the Target Company, as noted from the table above.

b) In terms of Regulation 31(2) of the SAST Regulations, in the event of invocation of pledge of shares creates obligation upon the promoter of every target company to make disclosure to the Target Company and Stock Exchanges within 7 days of the event. With regard to the said invocation of shares, it was observed that IVPL informed that the Promoters of the Target Company had made the relevant disclosure under Regulation 31(2) of the SAST Regulations, 2011.

c) Further, pursuant to the decrease in the shareholding of Promoters due to the said invocation of pledge on their shares of the Target Company, in terms of Regulation 29(2) of the SAST Regulations, "*any person or acquirer, who together with persons acting in concert with him, holds shares or voting rights of five per cent or more in a target company, shall disclose the change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation, if such change exceeds two per cent of total shareholding or voting rights in the target company, even if such change results in shareholding falling below five per cent*". Also in terms of Regulation 29(3) of the SAST Regulations, the said disclosures required under sub-regulation (1) and sub-regulation (2) shall be made to the Target Company and Stock Exchanges within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company. In this regard, it was observed that, IVPL informed that the Promoters had not made disclosure under Regulation 29(2) of the SAST Regulations.

d) Further, it was observed that BSE vide email dated March 08, 2021, informed that it had not received any disclosures under Regulation 29(2) of the SAST Regulations from the promoters of the Target Company with respect to change in shareholding pursuant to aforesaid transactions.

11. In this regard, I note that Noticee No.9 has contended that it was not the promoter of Gati Ltd. during the said period. Further, it also contended that its name was also not included in Table 1 in Para 2(A)(a) of the SCN. It is therefore, the requirement to make disclosure by it did not arise. In respect of the said contention, I note from Table 1 above that the invocation of pledge was done by Noticee No. 2, 4, 5 and 7 between the years November 14, 2011 and December 20, 2013. Further, I also note from the promoter shareholding of

the target company that Noticee No.9 started holding shares only from the Financial Year 2014-2015. Therefore, it is noted that the Noticee No.9 was neither a promoter nor a part of the promoter group at the relevant point of time of invocation of pledge. Considering the above said facts, I find that, the Noticee No.9 cannot be said to have violated Regulation 29(2) of the SAST Regulations read with 29(3) of the SAST Regulations and monetary penalty may not be warranted with regards to the same.

12. In respect of remaining 8 Noticees, with regard to the allegation of non-disclosure under Regulation 29(2) of the SAST Regulations, they have stated that, the requirement of giving disclosure under Regulation 29(2) in case of disposal of shares was applicable with effect from 11.09.2018. It is therefore, in the present matter, as invocation of shares took place between the years November 14, 2011 and December 20, 2013, the need for disclosure did not arise.

13. Besides the above, they have also stated that there was no mention of disposal of shares in Regulation 29 (3) prior to the 2018 amendment of SAST Regulations. And also as per Regulation 29(4), the shares taken by lender by way of encumbrance are to be treated as an acquisition, for which the lender has to disclose/intimate under the said Regulations. Accordingly, in the present case the lender i.e. IL&FS Trust Company Ltd. had given a disclosure under the said Regulation upon invocation of shares by it. Therefore, the Regulation 29(2) of the SAST Regulations, 2011, stands complied with.

14. Further, the said 8 Noticees have submitted that there was no malafide intention and/ or no ignorance of law and/ or any other reason for missing out on such disclosure when the same fact was duly disclosed under another Regulation (Regulation 31(2)) of the said SAST Regulations, there was no need to not give/ hide the declaration under Regulation 29 (2)

and that the said disclosure was not given only because it was not required. Besides they have also submitted that the said disclosure had no impact and/ or adverse effect on any shareholders and/ or stakeholders of the Company and the disclosures adds credence to their genuine and bona fide intention. Further, they have also stated that it achieves the required intention of the SAST Regulations which was to keep the Company and the stock exchanges duly informed of all transactions that result in a change of 2% of the total shareholding in the Target Company.

15. In light of the above contentions, I note that the invocation of pledge was done on November 14, 2011, September 30, 2013 and December 20, 2013 for which the 8 Noticees have made a disclosure under Regulation 31(2) of the SAST Regulations. Further, it is also noted that, invocation of pledge, tantamount to disposal of shares. This apart, I also find that at the time of the said disposal of shares, they were only required to make disclosures under Regulation 31(2) of the SAST Regulations, as the requirement to make disclosures with respect to disposal of shares under Regulation 29(2) of the SAST Regulations, was incorporated during the September 2018 amendment of the SAST Regulations. In this connection, I find that the disclosure made by the said 8 Noticees under Regulation 31(2) of the SAST Regulations achieves the required intention of keeping investors informed about the change in the shareholding of the target company. Besides, I would like to rely upon the observation of the Hon'ble SAT vide its order dated July 02, 2019, in the case of **Murali Srinivasan Venkatraman and others vs. SEBI**, wherein Hon'ble SAT observed that in case of selling of shares, entities cannot be penalized for alleged violations of Regulations 29(2) read with 29(3) of SEBI SAST Regulations 2011. Therefore, in view of the above and considering the observations of the Hon'ble SAT's aforesaid order, I find that penalty may not be warranted on the 8 Noticees i.e. Mr. Mahendra Kumar Agrawal, TCI Finance Ltd., Mahendra Kumar Agarwal & Sons HUF, Bunny Investments & Finance

Private Limited, Mahendra Investment Advisors Pvt Ltd, Jubilee Commercial & Trading Private Limited, Dhruv Agarwal Benefit Trust and Manish Agarwal Benefit Trust, in the present case for the alleged violation of Regulation 29(2) read with Regulation 29 (3) of the SAST Regulations.

B. Open offer violations:

16. In respect of open offer violations, I note that during the examination it was observed *inter alia* the followings:

a) On December 16, 2014, promoters of Target Company filed a "non-app" report with SEBI under Regulation 10(1)(a)(i) read with Regulation 10(7) of the SAST Regulations pursuant to acquisition of 28,62,488 (3.28%) shares of the Target Company from Mr. R.K. Bansal on December 12, 2014. After the aforesaid acquisition of shares of the Target Company, promoters shareholding in the Target Company was increased from 3,32,66,113 (38.03%) shares to 3,61,28,601 (41.30%) shares.

b) Further, it was observed that in terms of Regulation 10(1)(a)(i) of the SAST Regulations, an acquirer is automatically exempted from obligation to make an open offer under Regulation 3 and 4 of the SAST Regulations, wherein, acquisition of shares of the Target Company triggered due to inter se transfer of shares amongst qualifying person being 'immediate relatives'.

c) It was also observed that as the promoter group shareholding in Target Company was above 25%, the provision of the Regulation 3(2) of the SAST Regulations was applicable on promoter group of the Target Company in case of 'acquisition of shares' or the provision of the Regulation 4 of the SAST Regulations will be applicable upon them in case of 'acquisition of control'. Further, in terms of Regulation 3(2) of the SAST

Regulations, any acquisition of more than 5% shares of the Target Company in a financial year attracts obligation to make open offer.

d) Details of the sale/buy transactions by promoters of the Target Company in FY 2014 - 15 is as under:

Table 2

Sr. No.	Date	Name of promoter	Transaction details		Post transaction shareholding of promoter group	Gross cumulative acquisition (in %)
			Buy	Sale		
Opening balance of promoters shareholding at the start of FY 2014-15					3,32,58,430 (38.11%)	-
1	01.04.2014	Neera & Children Trust	6,00,000 (0.69%)	-	3,38,58,430 (38.80%)	0.69
2	01.04.2014	Mahendra Investment Advisors Pvt Ltd	-	43,29,114 (4.96%)	2,95,29,316 (33.84%)	0.69
3	04.04.2014	Mahendra Kumar Agarwal HUF	6,00,000 (0.69%)	-	3,01,29,316 (34.53%)	1.38
4	04.04.2014	Mahendra Kumar Agarwal	3,00,000 (0.34%)	-	3,04,29,316 (34.87%)	1.72
5	08.08.2014	Mahendra Kumar Agarwal HUF	1,90,000 (0.22%)	-	3,06,19,316 (35.09%)	1.94
6	08.08.2014	Dhruv Agarwal Benefit Trust	8,69,300 (1.00%)	-	3,14,88,616 (36.08%)	2.93
7	08.08.2014	Manish Agarwal Benefit Trust	8,68,642 (1.00%)	-	3,23,57,258 (37.08%)	3.93
8	08.08.2014	TCI Finance Limited	4,08,855 (0.47%)	-	3,27,66,113 (37.55%)	4.40
9	18.09.2014	Manish Agarwal Benefit Trust	5,00,000 (0.57%)	-	3,32,66,113 (38.12%)	4.97
10	12.12.2014	Mahendra Kumar Agarwal HUF	11,54,995 (1.32%)	-	3,44,21,108 (39.44%)	6.29
11	12.12.2014	Neera & Children Trust	11,29,995 (1.29%)		3,55,51,103 (40.73%)	7.59
12	12.12.2014	Mahendra Kumar Agarwal	5,77,498 (0.66%)	-	3,49,98,606 (41.40%)	8.25

e) From the above table it was observed that promoters of the Target Company acquired 3.28% shareholding of the Target Company on December 12, 2014, which was less than the threshold of 5% as prescribed under Regulation 3(2) of the SAST Regulations. Further, the promoters of the Target Company were already in control. Therefore, it was found that no "open offer" was triggered under Regulations 3(2) and 4 of the SAST Regulations and therefore, there was no need of filing "non-app" report under Regulation 10(1)(a)(i) read with Regulation 10(7) of the SAST Regulations by the promoters of the Target Company. It was also observed that the aforesaid "non-app" report filed was incorrect, as the acquirer, 'Mahendra Kumar Agarwal HUF' and 'Neera and Children Trust' were not immediate relatives in terms of definition of "immediate relatives" provided under Regulation 2(1)(l) of the SAST Regulations.

f) Further, from the above table, it was further observed that the net increase in the Promoter's shareholding in the Target Company during the FY 2014-15 was 3.29% (from 38.11% to 41.40%), however, the gross cumulative acquisition by promoters crossed 5% of threshold on December 12, 2014. Accordingly in terms of Regulation 3(2) of the SAST Regulation, open offer was triggered when acquirer along with PACs, who are holding more than 25% of the paid-up capital of the Target Company, acquires 5% or more shares in a financial year. For the purpose of determining quantum of acquisition, gross acquisition needs to be taken into account regardless of intermittent fall in shareholding due to disposal of shares.

g) In view of above an 'open offer' in the concerned matter was triggered on December 12, 2014, when Mahendra Kumar Agarwal HUF and Neera and Children Trust, acquired 11,54,995 (1.35%) shares and 11,29,995 (1.29%) shares in the Target Company.

h) Further, another acquisition of shares of 5,77,498 (0.66%) shares on same day by Mr. Mahendra Kumar Agarwal has not been considered as acquisition, as the acquirer, Mr. Mahendra Kumar Agarwal is son-in-law of transferor Mr. R.K. Bansal and, therefore, same was inter se transfer of shares between "immediate relatives".

i) In terms of Regulation 3(2) of the SAST Regulations, open offer is triggered when the acquirer along with PACs, who are holding more than 25% of the paid-up capital of Target Company, acquires 5% or more shares in a financial year. For the purpose of determining quantum of acquisition, gross acquisition needs to be taken into account regardless of intermittent fall in shareholding due to disposal of shares. However, in the present case, it was observed that the Promoter Group i.e. the Noticees have failed to make “open offer” with respect to their acquisition of shares of the Company beyond a prescribed threshold and are alleged to have violated the provisions of Regulation 13(2)(a) read with Regulation 3(2) of the SAST Regulations.

17. With regard to the allegation of not making open offer, the Noticee No. 9, contended that 11,29,995 shares of Gati Ltd (which is alleged to have triggered the open offer) was received from late Mr. R.K. Bansal who was the father of Neera Agarwal, trustee of Neera and Children Trust and the grandfather of the beneficiaries of the Trust. Further, it stated that the said shares were received pursuant to Lok Adalat Order dated 04.07.2014 and were not acquired from the market or exchange platform or otherwise. It also stated that, no monetary consideration was given for the shares received from Mr. R. K. Bansal and hence, open offer was not triggered under Regulation 13(2)(a) read with Regulation 3(2) of SAST Regulations in addition to the promoter group applying for "Non-App".

18. Also, the Noticee No. 2, stated that open offer is not triggered in its case as the gross cumulative acquisition by promoter has not crossed 5% of threshold. Further, Noticee Nos. 1, 3, 4, 5, 6, 7 and 8, in their combined reply, stated that the promoters of the target company acquired 3.28% shareholding of the Target Company on December 12, 2014, which is less than the threshold limit of 5% as prescribed under Regulation 3(2) of the SAST Regulations. Further, they stated that as the promoters were already in control, no open offer was triggered under Regulation 3(2) and 4 of the SAST Regulations and therefore, there was no need to file “non-app” report. Further, they also submitted that the “non-app report was filed as Mahendra Kumar Agarwal HUF is an immediate relative (Son in law) of Mr. R. K. Bansal and “Neera and Children Trust” beneficiaries are also an immediate relatives of Mr.

R. K. Bansal and inter se transfer between immediate relatives does not trigger open offer and therefore the requirement of public announcement is not applicable.

19. Further, with regard to the Noticees, Mahendra Kumar Agarwal HUF, Dhruv Agarwal Benefit Trust, Manish Agarwal Benefit Trust and TCI Finance Limited, they have submitted that the original shares held by the aforesaid Noticees have been taken back by them on account of "reversal of invocation", accordingly the 3.26% increase in shares shall be excluded for the purpose of triggering of Open Offer under the SAST Regulations. Therefore, they have contended that they have not violated Regulation 13 (2) read with Regulation 3 (2) of SAST Regulations.

20. With regards to the above contentions of the Noticees, from Table 2 at para 16 (d) above I note that the promoter shareholding in the company increased from 38.12% to 41.40% which amounts to 3.29% during the financial year 2014-15, however, the gross cumulative acquisition crossed 5% due to the three acquisitions made by Noticee No. 1, 3 and 9 on December 12, 2014. Further, I note that all the said three acquisitions were from Mr. R. K. Bansal, father of Neera Agarwal, from Neera and Children Trust and father in law of Mahendra Kumar Agarwal. I also note that on December 16, 2014, promoters of Target Company filed a non-app report with SEBI under Regulation 10(1)(a)(i) read with Regulation 10(7) pursuant to acquisition of 28,62,488 (3.28%) shares by them from Mr. R.K. Bansal on December 12, 2014, as Regulation 10(1)(a)(i) of SAST 2011 gives automatic exemption to acquirers from obligation to make an open offer under Regulation 3 and 4 of the SAST Regulations, triggered due to inter-se transfer of shares amongst qualifying person being immediate relatives.

21. Therefore, the acquisition of 5,77,498 (0.66%) shares on same day has not been considered as acquisition, as the acquirer, Mr. Mahendra Kumar Agarwal is son-in-law of transferor

Mr. R.K. Bansal and, therefore, same was *inter se* transfer of shares between "immediate relatives". However, Mahendra Kumar Agarwal HUF and Neera and Children Trust are not immediate relatives as per definition of immediate relatives provided under Reg. 2(1)(l) of SAST 2011, as the definition is clear and not inclusive of any HUF or Trust of the said immediate relatives. Therefore, the argument of Noticce No.9 and the other Noticees that the transfer of shares from Mr. R. K. Bansal to Mahendra Kumar Agarwal HUF and Neera and Children Trust is *inter se* transfer between immediate relatives which does not trigger open offer is without any merit. Further, the Noticee's submission with regard to the Noticees Mahendra Kumar Agarwal HUF, Dhruv Agarwal Benefit Trust, Manish Agarwal Benefit Trust and TCI Finance Limited, that the original shares held by the respective Noticees have been taken back by them on account of "reversal of invocation", accordingly the 3.26% increase in shares shall be excluded for the purpose of triggering of Open Offer under the SAST Regulations, cannot be accepted as the shares were acquired on the exchange platform and resulting in the increase of 3.26% of shareholding during 08.08.2014 and 18.09.2014. Further, as per Regulation 3(2) of the SAST Regulations, open offer is triggered when the acquirer along with PACs, who are holding more than 25% of the paid-up capital of Target Company, acquires 5% or more shares in a financial year and public announcement has to be done, which the Noticees have failed to do, thereby violating Regulation 13 (2) (a) read with Regulation 3(2) of the SAST Regulations.

22. Noticee No.9 had also stated that SCN is issued after a gap of more than 10 years from the date of alleged violations as stated in the SCN. Further, it submitted that a common SCN is issued wherein the allegation and violation as alleged against it is different compared to others, hence, great prejudice is caused to it by issuance of a common Show Cause Notice. With regard to the contention of delay, I would like to rely upon the judgment of Hon'ble

SAT in the case of ***Ravi Mohan & Ors. vs. SEBI*** (SAT Appeal No. 97 of 2014, DoD 16/12/2015) wherein it was held that : -

".....Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no.114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...." In this context I find it relevant to refer to the order passed by Hon'ble SAT in the case of ***Metex Marketing Pvt. Ltd. vs. SEBI*** (order dated June 4, 2019) wherein Hon'ble SAT held that: *"This Tribunal has consistently held that in the absence of any specific provision in the SEBI Act or in the Takeover Regulations, the fact that there was a delay on the part of SEBI in initiating proceedings for violation of any provision of the Act cannot be a ground to quash the penalty imposed for such violation."*.

23. I also refer to the judgment of the Hon'ble SAT in ***Pooja Vinay Jain Vs SEBI*** [SAT Appeal No. 152 of 2019], wherein it has *inter alia* been held as under:

"11. On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Rakesh Kathotia and Ors. vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019]. Paragraph No. 7 of the case of Ashok Rupani Judgment is as under :-

*"7. In **Mr.** Rakesh Kathotia & Ors. vs. SEBI (Appeal No. 07 of 2016 decided by this Tribunal on 27.05.2019) proceedings were quashed on account of inordinate delay. The said decision is squarely applicable to the instant case. For facility, the relevant paragraph of the order is extracted hereunder:*

"23. It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR 6 (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case. This proposition of law has been consistently reiterated by the Supreme Court in Bhavnagar University v. Palitana Sugar Mill (2004) Vol.12 SCC 670, State of Punjab vs. Bhatinda District Coop. Milk P. Union Ltd (2007) Vol.11 SCC 363 and Joint Collector Ranga Reddy Dist. & Anr. vs. D. Narsing Rao & Ors. (2015) Vol. 3 SCC 695. The Supreme Court recently in the case of Adjudicating Officer, SEBI vs. Bhavesh Pabari (2019) SCC Online SC 294 held:

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.

In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same. Further, as explained by the learned *counsel for the respondent as recorded in paragraph No. 6.4 above, large numbers of entities and transactions were analyzed by SEBI which took some time."*

24. In view of what has been stated herein above, I hold that the time taken in the initiation of the present proceedings, in no way has caused any prejudice to the interests of the Noticee No. 9. Further, delay in initiating the proceedings itself should not be a ground for discharging the Noticee.

25. As regards the contention of causing great prejudice to the Noticee 9 by issuance of a common Show Cause Notice, I note that since the Noticee is a part of the Promoter group and the charges of open offer violation by the promoter group is also alleged along with disclosure related violation, a common show cause notice was issued to it. Therefore, the contention of the Noticee No. 9 in this regard is without any merit.

26. Further, the Noticee No. 9, had sought for inspection of certain documents. With regard to the same, it is observed that the Hon'ble SAT in the matter of **Anant R Sathe Vs. SEBI** (Appeal No. 150 of 2020) vide Order dated July 17, 2020, reaffirmed the principle elucidated in the judgment of Shruti Vora's case, which has been reproduced herein above and held that: "*the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence*". In this regard, it is noted that all the relevant and relied upon information and records in respect of Noticee No. 9 were already provided to it in the SCN, wherein inter-alia allegation is made in respect of it. The Noticee No. 9, was also provided an opportunity to attend personal hearing and offer its explanations. Therefore, there is no prejudice caused to it on this ground of non-availability of information to defend the case. I note that the principles of natural justice have been complied with and the Noticee's request in this regard are without merits.

27. Therefore, I find that the Noticees have not made the open offer pursuant to acquisition of shares which have contravened the aforesaid provisions of SAST 2011. Based on the aforesaid findings, I conclude that the Noticees have violated the provisions of Regulation 13 (2) (a) read with Regulation 3(2) of the SAST Regulations, 2011.

The next issue for consideration is whether the the violation, if any, on the part of the Noticees attracts monetary penalty under Section 15 H(ii) of the SEBI Act, 1992.

28. I further note that Hon'ble Supreme Court of India, in the matter of **Chairman, SEBI vs. Shriram Mutual Fund** {[2006] 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. ………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

29. In view of the foregoing, I am convinced that the failure of the Noticees in making public announcement attracts monetary penalty under Section 15H(ii) of SEBI Act for violation of Regulation 13 (2) (a) read with Regulation 3(2) of the SAST Regulations, 2011. The provisions of Section 15H(ii) of the SEBI Act, 1992 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; 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.*

30. While determining the quantum of penalty under Section 15H(ii) 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.

31. I note that the calculation of offer price is stipulated in Regulation 8(2) of SAST Regulations. In the present case, the relevant data pertaining to parameters specified in Regulations 8(2) (a) to (c) is not available on records before me. Therefore, the basis for determining the offer price for the instant case is considered as per Regulation 8 (2)(d) of SAST Regulations. The parameters under regulation 8 (2) (d) are as under:

"*(2) In the case of direct acquisition of shares or voting rights in, or control over the target company, and indirect acquisition of shares or voting rights in, or control over the target company where the parameters referred to in sub-regulation (2) of regulation 5 are met, the offer price shall be the highest of*, -

(a)….

…..

(d) the volume – weighted average market price of such shares for a period of sixty trading days immediately preceding the date of the public announcement as traded on stock exchange where the maximum volume of trading in the shares of the target company are recorded during such period, provided such shares are frequently traded;"

32. Accordingly, based on the aforesaid parameters, the minimum offer price would have been Rs.223.05 per share. On this basis, the total consideration of the offer would have been Rs.5,06,07,66,700.49/-, i.e., 2,26,88,663 shares X Rs.223.05 per share. Further, the fact remains that had the appellants made a public announcement to acquire shares of SAL, the shareholders of SAL would have got an opportunity/option to tender their shares pursuant to such an open offer and exit from the company at a price to be determined under the SAST Regulations. This opportunity/option was denied to them.

33. I find that the market price on NSE as on December 12, 2014 was Rs. 269.70 (close price). As the market price during the aforesaid period was higher than the offer price arrived at in terms of Regulation 8 (2)(d) of SAST Regulations, it cannot be said that there was any loss caused to the investors. There was only an opportunity loss to the shareholders at large inasmuch as the Noticees denied an exit opportunity to the shareholders through the open offer process which was legitimately due to them.

34. By not having complied with the mandatory requirement of the SAST Regulations, the Noticees have also avoided the expenditure which otherwise they would have incurred towards cost of engaging the services of a Merchant Banker, making a public announcement in newspapers, filing of offer documents with SEBI, dispatch of offer documents to the eligible shareholders, etc. To this extent, it can be said that the Noticees have earned disproportionate gain or unfair advantage.

35. Further, with the acquisition of (11, 54, 995 + 11,29,995) 22,84,990 shares/voting rights, the gross cumulative acquisition by promoters crossed 5% of threshold on December 12, 2014 and have failed to make "open offer" with respect to their acquisition of shares of the Company beyond a prescribed threshold and are alleged to have violated the provisions of Regulation 13(2)(a) read with Regulation 3(2) of the SAST Regulations. Further, it is noted that the said acquisition of shares by the Noticees had not impacted the exit options provided to the shareholders as there was no change in control; also the Noticees have applied for exemption under Regulation 10(1)(a)(i) read with Regulation 10(7) of the SAST Regulations stating 'inter-se' transfer, pursuant to acquisition of the said shares. I also note that no prior default of the Noticees are available on record.

ORDER

36. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15J of the SEBI Act and in exercise of power conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of **Rs. 10,00,000/-** (**Rupees Ten Lakhs only**) under Section 15H (ii) of the SEBI Act, 1992. The Noticees shall be liable to pay the penalty jointly and severally.

37. In the facts and circumstances of the case, I am of the view that the said penalty is commensurate with the default committed by the Noticees.

38. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available

on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

39. The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to "The Division Chief (Enforcement Department -DRA-4), the Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4 –A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

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

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

Date : March 24, 2022 **G. Ramar**

Place : Mumbai **Adjudicating Officer**