BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/DS/2024-25/30523-30528]

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

In respect of

Noticee No.	Name of Entity	PAN
1	Mr. Hitesh Mohanlal Patel	AMMPP6335M
2	Ms. Bhavna Hitesh Patel	AMMPP6334L
3	Ms. Dimple Vipul Patel	ATFPP3319P
4	Mr. Vipul Mohanlal Patel	ATFPP3320C
5	Ms. Vaishali Vijay Patel	AQFPP6370H
6	Mr. Vijay Jeevan Patel	AQFPP6714P

In the matter of
Nutricircle Limited
(Noticees 1 to 6 are individually known by their respective name or Noticee no. and collectively referred to as the "Noticees")

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter being referred to as "**SEBI**") conducted examination in the matter of Nutricircle Limited (hereinafter referred to as "**Nutricircle**" / "**Target Company**"), for the alleged violation of provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as "**SEBI SAST Regulations, 2011**").

2. In view of the above, SEBI initiated adjudication proceedings under the provisions of Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992 against the Noticees for the violation of provisions of Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and

Regulation 25(5) of SEBI SAST Regulations, 2011 and Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer (**“AO”**) vide Order dated April 15, 2024, under Section 15-I of the SEBI Act, and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) to inquire into and adjudge under the provisions of Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992, the aforesaid alleged violations.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. EAD/BM/DS/15688/1/2024 dated April 30, 2024 (hereinafter referred to as “**SCN**”) was issued by the undersigned to the Noticees via Speed Post Acknowledgement Due (SPAD) and digitally signed e-mail under the provisions of Rule 4(1) of the Adjudication Rules and section 15-I of the SEBI Act, calling upon the Noticees to show cause as to why an inquiry should not be held against them for the aforesaid alleged violations of provisions of Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST Regulations, 2011 and Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011 and why penalty, if any, should not be imposed on them under Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992.

5. The allegations levelled against the Noticees are as under:
    5.1. The shares of the target company are listed on Bombay Stock Exchange Limited (BSE).
    5.2. It was observed that Mr Hitesh Mohanlal Patel (hereinafter referred to as “**Noticee 1**”, along with five persons acting in concert (PACs) listed below, did

not make open offer under SEBI SAST Regulations, 2011 and also did not make disclosures / made delayed disclosures under regulation 29(2) read with regulation 29(3) of SEBI SAST Regulations, 2011 in respect of acquisition of shares of Nutricircle Limited.

Table 1

Noticee No.	**Noticee Name**
1	Hitesh Mohanlal Patel
2	Bhavna Hitesh Patel
3	Dimple Vipul Patel
4	Vipul Mohanlal Patel
5	Vaishali Vijay Patel
6	Vijay Jeevan Patel

5.3. It was noted from the Letter of Offer dated June 07, 2023 that Noticee 1, being the acquirer and Noticees 2 to 6, being the PACs, has given a mandatory offer in the year 2023 in compliance with Regulations 3(1), 3(2) and/or 4 of the SEBI (SAST) Regulations, 2011 pursuant to a Gift declaration dated January 04, 2023 in favour of the Acquirer i.e. Shri Hitesh Mohanlal Patel. It was noted from the paragraph 3.1.5 (page 16) of the aforesaid letter of offer that at the time of making the public announcement for the said open offer in FY 2022-23, the acquirer has taken into account the past transactions where the requisite open offer was not given in terms of Regulations 3 and/or 4 of the SAST Regulations, 2011 by the acquirer and/or PACs.

5.4. The details of acquisitions made by the acquirer (Noticee 1) along with PACs (Noticees 2 to 6) for the period from FY 2014-15 to FY 2022-23, as received from the BSE, is provided below.

Table 2

Particulars	Total Shares held by acquirer and PACs (Opening for the year + Acquired during the year)	Paid-up capital in the mentioned financial year	Percentage	Whether Open offer triggered as per Regulation 3 and 4 of SAST Regulations, 2011
FY 2014-15	91,768	54,35,600	1.69%	-
FY 2015-16	58,568	54,35,600	1.08%	-
FY 2016-17	33,067	2,71,780	12.17%	-
FY 2017-18	55,054	2,71,780	20.26%	-
FY 2018-19	86,124	2,71,780	31.69%	**Yes**
FY 2019-20	86,124	2,71,780	31.69%	-
FY 2020-21	1,45,762	2,71,780	53.63%	**Yes**
FY 2021-22	1,33,990	2,71,780	49.30%	-
FY 2022-23	1,33,401	2,71,780	49.08%	-

5.5. From the table – 2 above, it was observed that the Noticees had acquired approximately 11.43% of the paid up shares of the target company in FY 2018-19, resulting in total shareholding of the Noticees in the target company to 31.69%, i.e. more than 25%. It was also observed that no open offer was made by the Noticees, as required to be made in terms of Regulation 3(1) of the SAST Regulations, 2011, within the time specified in Regulation 13 of the SAST Regulations, 2011.

5.6. From the Letter of Offer dated June 07, 2023, it was observed that at the time of making the public announcement for the said open offer in FY 2022-23, the Noticees have taken into account the past transactions where the requisite open offer was not given in terms of Regulatins 3 and/or 4 read with Regulation 13 and 25(5) of SAST Regulations, 2011, by the acquirer and/or PACs.

5.7. From the combined reading of letter of offer dated June 07, 2023 and table – 2 provided above, it was observed that the Noticees had not made timely open offers upon triggering of the events in FY 2013-14, FY 2018-19 and FY 2020-21 respectively.

5.8. From Chapter 6 – Offer Price and Financial Arrangements – in the letter of offer dated June 07, 223, it was observed that the offer price was calculated after considering the interest in accordance with Regulation 18(11A) of SAST Regulations, 2011. Thus, it was observed that the Noticees had made delayed compliance with the requirements of open offer obligations under SAST Regulations, 2011.

5.9. Thus, it was alleged that the Noticees have violated the provisions of Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SAST Regulations, 2011.

Non-Disclosures and Delayed-Disclosures

5.10. Details of non-compliance / delayed compliances of provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 as observed on the part of the Acquirer and PACs of the Target Company were provided in the chapter 4 of the letter of offer dated June 07, 2023. The relevant details are provided in the table below.

Table 3

Name of the Acquirer / PAC	Regulation	Financial year	Date of transaction	Pre transaction	Post transaction shareholding %	% of change in shareholding	Due date of Compliance **	Actual date of Compliance	Status of compliance	Delay in no. of days
Hitesh Mohanlal Patel along with PACs	29(2)	2012-13	The Acquirer along with PACs has entered into series of transaction during the period. However, necessary information with respect to these transactions is not available.				Not Filed*	Not Filed*	Not Filed*	-

Name of the Acquirer / PAC	Regulation	Financial year	Date of transaction	Pre transaction	Post transaction shareholding %	% of change in shareholding	Due date of Compliance **	Actual date of Compliance	Status of compliance	Delay in no. of days
Hitesh Mohanlal Patel along with PACs	29(2)	2013-14	The Acquirer along with PACs has entered into series of transaction during the period. However, necessary information with respect to these transactions is not available.				Not Filed*	Not Filed*	Not Filed*	-
Hitesh Mohanlal Patel along With PACs	29(2)	2014-15	The Acquirer along with PACs has entered into series of transaction during the period. However, necessary information with respect to these transactions is not available.				Not Filed*	Not Filed*	Not Filed*	-
Dimple Vipul Patel	29(2)	2017-18	June 12, 2017 and November 28, 2017.	6.22%	20.26%	14.04%	Not Filed	Not Filed	Not complied	Not filed
Dimple Vipul Patel	29(2)	2018-19	June 25, 2018	20.26%	23.15%	2.89%	June 27, 2018	January 19, 2023	Delayed disclosure	1667 days
Bhavna Hitesh Patel	29(2)	2018-19	July 12, 2018 - July 23, 2018	23.15%	25.60%	2.45%	July 25, 2018	August 20, 2018	Delayed disclosure	26 days
Bhavna Hitesh Patel	29(2)		July 24, 2018	25.60%	27.64%	2.04%	July 26, 2018	August 20, 2018	Delayed disclosure	25 days
Bhavna Hitesh Patel	29(2)		July 25, 2018	27.64%	29.87%	2.23%	July 27, 2018	August 20, 2018	Delayed disclosure	24 days
Hitesh Mohanlal Patel	29(2)	2020-21	July 31, 2018 – July 06, 2020	29.87%	33.72%	3.86%	July 08, 2020	January 19, 2023	Delayed disclosure	925 days

5.11. From the above table, following alleged violations of provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 were observed.

5.11.1. Noticees 1 to 6 – Non disclosures in FY 2012-13, FY 2013-14 and FY 2014-15.

5.11.2. Noticee 1 – Delayed disclosure in one instance in FY 2020-21, with a delay of 925 days.

5.11.3. Noticee 2 – Delayed disclosures in FY 2018-19 with a delay ranging from 24-26 days.

5.11.4. Noticee 3 – Non disclosure in 2017-18 and one instance of delayed disclosures in 2018-19, with a delay of 1667 days.

5.12. Thus, it was alleged that the Noticees have violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011, by not making disclosures and making delayed disclosures.

6. Vide email dated May 29, 2024, the Noticees requested for time till June 15, 2024 to submit replies to the SCN and permission to appear before the undersigned. Vide email dated May 29, 2024, the Noticees were advised to submit their replies by June 15, 2024. Vide letter dated May 31, 2024, hearing notice was issued to the Noticees to provide opportunity of personal hearing in the interest of natural justice. The Noticees were advised to appear before the undersigned on June 19, 2024. The Noticees submitted their common reply to the SCN vide email dated June 18, 2024.

7. The submissions made by the Noticees, vide email dated June 18, 2024 are summarized as under:

7.1. *Noticee 1 realised that his holdings in the target company exceeded the threshold limits under Regulation 2 and 4 of the SEBI SAST Regulations, 2011, and later he was informed by the merchant banker with respect to the delay in making the open offer. The merchant banker has calculated the offer price, after taking into account all the events, starting from the first event, when Noticee 1 was required to make the open offer. The Price, though calculated for the open offer, was in accordance with the regulations and as per the parameters as per the guidelines of the Apex Court as per SEBI Vs. Clariant*

International Limited. However, Noticee 1 has offered double the price in the open offer, to ensure that no person should suffer on account of delayed open offer.

7.2. *Further, Noticee 1 has acquired the shares and continued with value creation in the company with proper compliance of the SEBI Act and other regulations as mandated under it.*

7.3. *None of the Shareholders suffered due to the delay in making the open offer. The Stock price was always much more than the price as required to be calculated under SEBI SAST 2011 for compliance of regulation 3 &4. Hence the proposed proceedings now is illegal and bad in law.*

7.4. *During the period from FY 2014-15 to FY 2022-23, mainly the Noticee 1 had acquired the shares. During the Lockdown period of 20-21, because of severe personal financial issues, Noticee 1 sold some shares.*

7.5. *The delay from the Noticees was honest human error. However, SEBI never guided the Noticee 1 or acted against him in this regard. SEBI has acted upon the matter only after he made the open offer.*

7.6. *The allegation of non-compliance with regulation 13 and 25(5) of SEBI SAST Regulations, 2011 are time barred and not as per the spirit of the securities market. Further, the Noticee has already complied with it now.*

7.7. *The shares of the target company are thinly traded in the stock exchange and there were no investor complaints.*

7.8. *The provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations, 2011 have been duly complied with. The delayed disclosures were made on the Noticees being made aware by the Merchant Banker. There has not been any complaint from the stakeholders.*

7.9. *There has been an inordinate delay in issuing of the SCN.*

8. The Noticees (i.e. Noticees 1 to 6) appeared for the scheduled hearing through their common authorized representative (**AR**) on June 19, 2024 through video-

conferencing mode. The AR reiterated the submissions already made vide letter dated June 18, 2024, and requested for time till June 24, 2024 to make additional submissions, which was granted by the undersigned.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

9. After perusal of the material available on record, I have the following issues for consideration.

   ISSUE I: Whether Noticees 1 to 6 have violated the provisions of Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST Regulations, 2011?

   ISSUE II: Whether Noticees 1 to 6 have violated the provisions of Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011?

   ISSUE III: Does the violation, if any, on part of the Noticees attract penalty under Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992?

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

10. Before moving forward it is pertinent to refer to the relevant provisions of SEBI Act, 1992 and SEBI SAST Regulations, 2011 which read as under:

    SEBI Act, 1992

    Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

    ***12A**. No person shall directly or indirectly—*

    (a) ..

    ..

(f) acquire control of any company or securities more than the percentage of equity share capital of a company whose securities are listed or proposed to be listed on a recognised stock exchange in contravention of the regulations made under this Act.

<u>SEBI SAST Regulations, 2011</u>

<u>Substantial acquisition of shares or voting rights</u>.

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

(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:

[1][Provided that the acquisition beyond five per cent but up to ten per cent of the voting rights in the target company shall be permitted for the financial year 2020-21 only in respect of acquisition by a promoter pursuant to preferential issue of equity shares by the target company.]

[1] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2020, w.e.f.16-06-2020.

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.

[2][Provided further that, acquisition pursuant to a resolution plan approved under section 31 of the Insolvency and Bankruptcy Code, 2016 [No. 31 of 2016] shall be exempt from the obligation under the proviso to the sub-regulation (2) of regulation 3.]

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 issueof 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 .

(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.

[2] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2018, w.e.f.31-05-2018

Acquisition of control.

4. Irrespective of acquisition or holding of shares or voting rights in a target company, no acquirer shall acquire, directly or indirectly, control over such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.

Timing.

13.(1)The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.

(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;

(b) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon converting convertible securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company shall be made on the same day as the date of exercise of the option to convert such securities into shares of the target company;

(c)pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion shall be made on the second working day preceding the scheduled date of conversion of such securities into shares of the target company;

(d)pursuant to a disinvestment shall be made on the same day as the date of executing the agreement for acquisition of shares or voting rights in or control over the target company;

(e)in the case of indirect acquisition of shares or voting rights in, or control over the target company where none of the parameters referred to in sub-regulation (2) of regulation 5 are met, may be made at any time within four working days from the

earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(f) in the case of indirect acquisition of shares or voting rights in, or control over the target company where any of the parameters referred to in sub-regulation (2) of regulation 5 are met shall be made on the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(g)pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which the board of directors of the target company authorises such preferential issue.;

(h)the public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under regulation 10, shall be made not later than the ninetieth day from the date of closure of the buy-back offer by the target company.;

(i)the public announcement pursuant to any acquisition of shares or voting rights in or control over the target company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer, shall be made not later than two workingdays from the date of receipt of intimation of having acquired such title.

(2A) Notwithstanding anything contained in sub-regulation (2), a public announcement referred to in regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of,-

(i)an agreement and any one or more modes of acquisition referred to in sub-regulation (2) of regulation 13, or

(ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13,

shall be made on the date of first such acquisition, provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.

(3)The public announcement made under regulation 6 shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.

(4)Pursuant to the public announcement made under sub-regulation (1) and sub-regulation (3), a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with regulation 14 and regulation 15, not later than five working days of the public announcement:

Provided that the detailed public statement pursuant to a public announcement made under clause (e) of sub-regulation (2) shall be made not later than five working days of the completion of the primary acquisition of shares or voting rights in, or control over the company or entity holding shares or voting rights in, or control over the target company.

Explanation.—It is clarified that in the event the acquirer does not succeed in acquiring the ability to exercise or direct the exercise of voting rights in, or control over the target company, the acquirer shall not be required to make a detailed public statement of an open offer for acquiring shares under these regulations.

Obligations of the acquirer.

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

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.*

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 [or the disposal][3] 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.

FINDINGS

11. Before moving forward, I note that the Noticees have raised preliminary issue of inordinate delay in the present proceedings, which ought to be addressed, before proceeding with the merits of the matter. Noticees have contended that there has been inordinate delay on part of SEBI in the issuance of the SCN. It was observed from the letter of offer dated June 07, 2023 that the Noticees were in possible violation of the provisions of SEBI SAST Regulations, 2011. Thereafter, examination was conducted in the matter. Meanwhile, Noticee 1 had also applied for suo-moto settlement of non-compliance with SEBI SAST Regulations, 2011, which was later rejected. Upon completion of the examination on March 26, 2024, adjudication proceedings were initiated and the undersigned was appointed as the Adjudicating Officer on April 15, 2024 and thereafter, the show cause notice dated April 30, 2024 was issued to the Noticees. Thus, no such delay has occurred in the issuance of the SCN, in the way it has been contended in their submissions.

[3] *Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018, w.e.f.11-09-2018.*

12. Further, I would like to rely upon the judgement 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.................."

13. I also note that all the references which have been made in the SCN are either available on the website of the SEBI (i.e. Letter of Offer) or received from the Noticees themselves. Further, the Noticees have also not mentioned how they are prejudiced despite being aware of the actions initiated against them by SEBI.

14. Now, I proceed to deal with the merits of the matter

ISSUE I. Whether Noticees 1 to 6 have violated the provisions of Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST Regulations, 2011?

15. I note that the Noticees have been alleged to have violated the provisions of Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST

Regulations, 2011 - by making delayed compliance with the open offer obligations under the said regulations.

16. It was observed from the letter of offer dated June 07, 2023 that Noticee 1 (being the acquirer), along with Noticees 2 to 6, being the persons acting in concert, did not make open offer which were triggered during the financial years 2013-14, 2018-19 and 2020-21. Excerpts from the aforesaid letter of offer are provided below.

3.1.5 Transactions which triggered the Open Offer obligations in the past:

The Acquirer, along with the PACs has acquired control/shares of the Target Company which has triggered open offer in the past. However, no open offer was given at that time pursuant to SEBI (SAST) Regulations. The details of the events of the past which has triggered open offer is as under:

a. During the Financial year 2013-14 ("first triggering event"), Acquirer had exercised control over the Target Company pursuant to their acquisition of Equity shares in excess of 25% of the Voting Share Capital of the Target Company (on a gross basis) along with the PACs and also the Acquirer was appointed as the Managing Director of the Target Company. The Acquirer along with the PACs had therefore triggered an open offer under Regulations 3(1) and Regulation 4 of the SEBI (SAST) Regulations, 2011.

b. During the Financial year 2018-19 ("second triggering event"), Acquirer along with PACs acquired the Equity Shares of the Target Company in series of the transaction from June 25, 2018, till August 10, 2018, pursuant to which they had collectively triggered an open offer under Regulation 3(1) of the SEBI (SAST), 2011.

c. During the Financial year 2020-21 ("third triggering event"), Acquirer along with PACs acquired the Equity Shares of the Target Company in series of transactions from June 06, 2020 till March 31, 2021, pursuant to which they had collectively triggered an open offer under Regulation 3(2) of the SEBI (SAST), 2011.

Notes: The Offer price has been calculated based on these transactions, assuming the triggering point as the acquisition date of shares & control of the Target Company. Hence the Open Offer is considered under Regulations 3(1), 3(2) and 4 of SEBI (SAST) Regulations, 2011.

17. In this regard, the Noticees have admitted that the open offer obligations were triggered in the past, to which they were made aware by the merchant banker in 2022-23. Upon being informed with respect to the open offer requirements, Noticee 1 offered to purchase the equity shares of the target company after taking into account the previous three open offer requirements and considering the interest formula, as was devised in the case of Clariant Industries by the Hon'ble Supreme Court. Further, the open offer was made in 2023 at ₹180 per equity share, which was almost double of the price at which Noticee 1 was required to offer as per the aforesaid formula.

18. I note that the Noticees were required to make open offer in terms of Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST Regulations, 2011, during the financial years 2013-14, 2018-19 and 2020-21. However, the open offers were not made in these financial years, and the open offer made in the year 2023 was made as a delayed compliance with the aforesaid provisions of SEBI SAST Regulations, 2011. The information with respect to the triggering events and the delay in making the open offer is also stated in the letter of offer dated June 07, 2023. Noticees have also admitted that they were required to make open offers previously, but the same could not be made as they were not aware about the regulatory provisions.

19. I also note from the letter of offer dated June 07, 2023, that open offer has been made for 70663 fully paid up equity shares, representing 26% of the voting share capital of the target company at a cash price of ₹180 per share. It is further

mentioned in the aforesaid letter of offer that the highest price as per Regulation 8 of SEBI (SAST) Regulations, 2011, including interest computed in accordance with Regulation 18(11A) is ₹ 108.16.

20. Hon'ble Securities Appellate Tribunal, in its order dated September 8, 2011 in the matter of Nirvana Holdings Pvt. Ltd. v SEBI (Appeal no. 31 of 2011) 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. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly."*

21. I observe that although the Noticees made the open offer subsequently in the year 2023, it was done with a delay ranging from approximately three to ten years. Thus, there has been considerable delay in making the open offer. Obligations like making open offer cannot be taken lightly and it was essential that the same was done within the given time, thus giving timely exit to the investors. Thus, the acquisition of shares in the target company was not made in compliance with the SEBI SAST Regulations, 2011. Therefore, I find that the Noticees have violated the provisions of Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST Regulations, 2011.

ISSUE II: Whether Noticees 1 to 6 have violated the provisions of Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011?

22. I note from the available records that the Noticee 1 being the acquirer and Noticees 2 to 6 being the persons acting concert (PACs) had given a mandatory open offer in the year 2023.

23. As per regulation 29(2) of the SEBI SAST Regulations, 2011, any person, who together with PACs, holds five percent or more shares in a target company, shall disclose the number of shares and change in shareholding, even if such change results in shareholding falling below five percent, if there has been change in such holdings from the last disclosure made under regulation 29(1) or under regulation 29(2); and such change exceeds two per cent of total shareholding in the target company, in the prescribed form.

24. As per regulation 29(3) of the SEBI SAST Regulations, 2011, the disclosures to be made under regulation 29(2) shall be made within two working days of the receipt of intimation of allotment of shares or the acquisition or the disposal of shares in the target company to the stock exchanges where the target company is listed and also to the target company at its registered office.

<u>Non-Disclosures</u>

25. Details of non-compliance of provisions of Regulation 29(2) read with 29(3) of SAST Regulations, 2011 as observed on the part of the Acquirer and PACs of the Target Company were provided in the chapter 4 of the letter of offer dated June 07, 2023. The excerpts from the letter of offer are provided in table - 4 below.

<u>Table – 4</u>

Name of the Acquirer / PAC	Financial year	Date of transaction	Pre transaction shareholding %	Post transaction shareholding %	% of change in shareholding
Hitesh Mohanlal Patel along with PACs	2012-13	The Acquirer along with PACs has entered into series of transaction during the period. However, necessary information with respect to these transactions is not available.			

Name of the Acquirer / PAC	Financial year	Date of transaction	Pre transaction shareholding %	Post transaction shareholding %	% of change in shareholding
Hitesh Mohanlal Patel along with PACs	2013-14	The Acquirer along with PACs has entered into series of transaction during the period. However, necessary information with respect to these transactions is not available.			
Hitesh Mohanlal Patel along With PACs	2014-15	The Acquirer along with PACs has entered into series of transaction during the period. However, necessary information with respect to these transactions is not available.			
Dimple Vipul Patel (Noticee 3)	2017-18	June 12, 2017 and November 28, 2017.	6.22%	20.26%	14.04%

26. From table-4 above, I note that disclosures were not made by Noticee 1, along with Noticees 2 to 6, being the PACS, for the changes in shareholding in the FY 2012-13, FY 2013-14 and FY 2014-15.

27. I also note that Noticee 3 had acquired 14.04% of the total paid up equity shares in the target company in FY 2017-18. Before the acquisition of these shares, she was holding 6.22% of the paid up equity shares of the target company, i.e. more than 5% equity shares in the target company. Thus, she was required to make disclosures with respect to all the acquisitions above 2% of the total paid up capital of the target company. However, no disclosures were made by Noticee 3.

Delayed Disclosures

28. I also note the following instances of delayed disclosures by the Noticees.

Table - 5

Name of the Acquirer / PAC	Noticee No.	Financial year	Date of transaction	Pre transaction shareholding %	Post transaction shareholding %	% of change in shareholding	Due date of Compliance	Actual date of Compliance	Delay in no. of day
Dimple Vipul Patel	3	2018-19	June 25, 2018	20.26%	23.15%	2.89%	June 27, 2018	January 19, 2023	1667 days
Bhavna Hitesh Patel	2	2018-19	July 12, 2018 - July 23, 2018	23.15%	25.60%	2.45%	July 25, 2018	August 20, 2018	26 days
Bhavna Hitesh Patel	2		July 24, 2018	25.60%	27.64%	2.04%	July 26, 2018	August 20, 2018	25 days
Bhavna Hitesh Patel	2		July 25, 2018	27.64%	29.87%	2.23%	July 27, 2018	August 20, 2018	24 days
Hitesh Mohanlal Patel	1	2020-21	July 31, 2018 – July 06, 2020	29.87%	33.72%	3.86%	July 08, 2020	January 19, 2023	925 days

29. From table – 5 above, I note that Noticee 3 had acquired 2.89% equity shares in the target company on June 25, 2018, which resulted in her total shareholding increase to 23.15%. As she was already holding 20.26% of the equity shares in the target company, she was required to disclose her acquisition of 2.89% of paid up equity shares by June 27, 2018, in terms of Regulation 29(2) read with Regulation 29(3) of the SEBI SAST Regulations, 2011. However, the disclosures were made by Noticee 3 on January 19, 2023, i.e. with a delay of 1667 days.

30. Noticee 2 also made delayed disclosures, as required under Regulation 29(2) read with Regulation 29(3) of the SEBI SAST Regulations, 2011, in three instance in FY 2018-19, with a delay of 24-26 days. Noticee 1 also made delayed disclosures in one instance in FY 2020-21 with a delay of 925 days.

31. In this regard, the Noticees have submitted that none of the investors / shareholders have complained or have incurred losses due to the non-disclosures

and delayed disclosures of the Noticees under Regulation 29(2) read with Regulation 29(3) of the SEBI SAST Regulations, 2011. In this regard, I note that the allegation is not of causing losses to the investors, but of not disclosing information to the Exchanges as required under SEBI SAST Regulations, 2011.

32. As regards the Noticees' contention that the non-disclosures and delayed disclosures were honest human error, and not intended, I note the observation made by SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI, decided on 30.09.2014, that *"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay.."*. In view of the same, I am not inclined to accept said contention of the Noticees.

33. I am of the view that the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed via disclosures so that the investing public will come to know of the position enabling them to continue on with or exit from the company. Further, timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Further, Hon'ble Securities Appellate Tribunal ('SAT') in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI(Appeal No. 209 of 2014 order dated August 11, 2014), has also held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*."

34. I also note that in Appeal No. 66 of 2003 – Milan Mahendra Securities Pvt. Ltd. Vs. SEBI – the Hon'ble Securities Appellate Tribunal (SAT) has observed that, *"the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market*".

35. Further, Hon'ble SAT in its judgement dated October 14, 2014 in the matter of Virendrakumar Jayantilal Patel vs. SEBI(Appeal No. 299 of 2014), has held that *".......... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation."*

36. In view of the aforesaid, I find that the Noticees have also violated the provisions of Regulation 29(2) read with Regulation 29(3) of the SEBI SAST Regulations, 2011.

ISSUE III: Does the violation, if any, on part of the Noticees attract penalty under Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992?

37. The provisions of Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992 read as under:

<u>Penalties and Adjudication</u>

<u>Penalty for failure to furnish information, return, etc.</u>

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

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

<u>Penalty for non-disclosure of acquisition of shares and takeovers.</u>

***15H**. If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*

(i) ..

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

(iii) ..

(iv) ..

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.

38. The Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361} has held that:

    "In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant..............."

39. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation.

40. Hence, in view of the violation of provisions of Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST Regulations, 2011 and Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011, as detailed above, I am convinced that it is a fit case for imposition of penalty under Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992.

ISSUE IV: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

41. While determining the quantum of penalty under Section 15A(b) and Section 15H(ii) of the SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act, 1992, which reads as under:

15J -Factors to be taken into account by the adjudicating officer

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

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

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

(c) the repetitive nature of the default.

42. The main objective of SEBI SAST Regulations, 2011 is to afford fair treatment for shareholders who are affected by the change in shareholdings. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decisions. Thus, the cornerstone of such provisions is investor protection. Further these timely disclosures are of significant importance from the point of view of the Regulators also.

43. Further, while the Noticees have submitted that Noticee 1 had made an open offer in 2023, at a price, which is greater than the price after including the interest from

the date of acquisition to the date of actual payment, I am of the view that by not making the mandatory open offer within the stipulated time period specified under the SEBI SAST Regulations, 2011, the Noticee has violated the statutory requirement of the law. The contention that the investors have been compensated by the Noticees by paying interest for the delayed open offer cannot be a valid ground to escape liability. However, I have considered the submission as a mitigating factor while arriving at the quantity of penalty on the Noticees.

44. I find that the Noticees 1 to 6 have violated the provisions of Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST Regulations, 2011 and Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011.

45. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticees. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticees, nor has it been alleged by the SEBI. Further, as per the available records, it is observed that Noticees have not been penalised earlier for any of the aforesaid violations.

ORDER

46. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees and also the factors mentioned in Section 15J of the SEBI Act, 1992, and also taking into account judgment of the Hon’ble Supreme Court in SEBI vs. Bhavesh Pabari (2019) 5 SCC 90, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act and Rule 5 of the Adjudication Rules, hereby impose following penalty upon the Noticees.

Name of Noticees	Violation provisions	Penal Provisions	Penalty
1. Mr. Hitesh Mohanlal Patel 2. Ms. Bhavna Hitesh Patel 3. Ms. Dimple Vipul Patel 4. Mr. Vipul Mohanlal Patel 5. Ms. Vaishali Vijay Patel 6. Mr. Vijay Jeevan Patel	Section 12A(f) of SEBI Act, 1992 read with Regulations 3(1), 3(2), 3(3) and Regulation 4 read with Regulation 13 and Regulation 25(5) of SEBI SAST Regulations, 2011	Section 15H(ii) of the SEBI Act, 1992	₹ 10,00,000/- (Rupees Ten Lakh only) to be paid jointly and severally
Mr. Hitesh Mohanlal Patel (Noticee 1)	Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011	Section 15A(b) of the SEBI Act, 1992	₹ 1,00,000/- (Rupees One Lakh only)
Ms. Bhavna Hitesh Patel (Noticee 2)			₹ 1,00,000/- (Rupees One Lakh only)
Ms. Dimple Vipul Patel (Noticee 3)			₹ 2,00,000/- (Rupees Two Lakh only)
1. Mr. Hitesh Mohanlal Patel 2. Ms. Bhavna Hitesh Patel 3. Ms. Dimple Vipul Patel 4. Mr. Vipul Mohanlal Patel 5. Ms. Vaishali Vijay Patel 6. Mr. Vijay Jeevan Patel	Regulation 29(2) read with Regulation 29(3) of SEBI SAST Regulations, 2011	Section 15A(b) of the SEBI Act, 1992	₹ 3,00,000/- (Rupees Three Lakh only) to be paid jointly and severally

47. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

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

49. 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.

Place: Mumbai **BARNALI MUKHERJEE**

Date: June 25, 2024 **ADJUDICATING OFFICER**