BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. EAD/SR/SJ/AO/41-50/2017-18]

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

In respect of

Sr. No.	Name of the Entity	PAN	Order No.
1	Ms. Sangita Sethi	AERPS2183R	EAD/SR/SJ/AO/41/2017-18
2	Sanjay B Sethi HUF	AANHS4504C	EAD/SR/SJ/AO/42/2017-18
3	Ms. Soniya Sethi	AERPS2182Q	EAD/SR/SJ/AO/43/2017-18
4	Sudhir B Sethi HUF	AANHS4505D	EAD/SR/SJ/AO/44/2017-18
5	Mr. Sudhir Sethi	ALLPS5223K	EAD/SR/SJ/AO/45/2017-18
6	Mr. Sohil Sethi	AUAPS1786M	EAD/SR/SJ/AO/46/2017-18
7	Mr. Babulal Sethi	AFBPS4762D	EAD/SR/SJ/AO/47/2017-18
8	Tara Sethi (Tara HUF)	ASAPS8013M	EAD/SR/SJ/AO/48/2017-18
9	Babulal Sethi HUF	AAFHB1551A	EAD/SR/SJ/AO/49/2017-18
10	Mr. Sanjay Sethi	ALLPS5222J	EAD/SR/SJ/AO/50/2017-18

In the matter of Beryl Securities Limited.

BACKGROUND

1. A Department (hereinafter referred to as '**OD**') of the Securities and Exchange Board of India (hereinafter referred to as **'SEBI'**) conducted an examination for the period June 01, 2013 to September 30, 2013 in respect of dealings in the shares of Beryl Securities Limited (hereinafter referred to as **'BSL' / 'Target Company'**) which is listed on Bombay Stock Exchange Limited (hereinafter referred to as '**BSE**'). As per the shareholding pattern of the Target Company disclosed to BSE, as at quarters ending June 2013 and September 2013, the promoter group of BSL comprised of Ms. Sangita Sethi, Sanjay B Sethi HUF, Ms. Soniya Sethi, Sudhir B Sethi HUF, Mr. Sudhir Sethi, Mr. Sohil Sethi, Mr. Babulal Sethi, Tara Sethi (Tara HUF), Babulal Sethi HUF and Mr. Sanjay Sethi (hereinafter collectively referred to as **'Noticees' / 'promoter group'**).

2. OD of SEBI observed from the shareholding pattern for quarters ending June 2013 and September 2013 available on the website of BSE that the shareholding of Noticees (promoter group) increased from 23.24% to 25.09% of the share capital of the Target Company and the Noticees did not made any public announcement for open offer for acquisition of shares, as mandated under Regulation 3(1) read with Regulation 3(3) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **'SEBI (SAST) Regulations'**). In view of this, OD of SEBI initiated adjudication proceedings and the said proceedings has been approved by the Competent Authority.

<u>APPOINTMENT OF ADJUDICATING OFFICER</u>

3. Shri Nagendraa Parakh was appointed as the Adjudicating Officer under Section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**), to inquire into and adjudge under Section 15H(ii) of the SEBI Act, the alleged violation of the provisions of Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations, by the Noticees. Subsequent to the promotion of Shri Nagendraa Parakh, I was appointed as Adjudicating Officer vide order dated July 10, 2017.

<u>SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING</u>

4. A common Show Cause Notice dated June 03, 2016 (hereinafter referred to as **'SCN'**) was issued to the Noticees in terms of Rule 4 of the Adjudication Rules requiring the Noticees to show cause as to why an inquiry should not be held against them for the alleged violations of provisions of Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations.

5. It was inter-alia alleged in the said SCN that the shareholding of the Noticees (promoter group) for the quarter ending June 2013 was 11,77,500 shares of BSL representing 23.24% of the share capital of the Target Company and it increased to 12,71,100 shares of BSL representing 25.09% of the share capital of the Target

Company for the quarter ending September 2013. The shareholding of the promoter group thus exceeded the threshold limit of 25% stipulated in Regulation 3(1) of SEBI (SAST) Regulations. The said increase of 1.85% in shareholding of the Noticees was on account of acquisition of 93,600 shares of BSL by certain Noticees on May 17, 2013. Prior to placing purchase orders to acquire 93,600 shares of the Target Company on May 17, 2013, the Noticees were under an obligation under Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations to make a public announcement of an open offer for acquiring the shares of the Target Company (BSL). It was alleged that the Noticees failed to make public announcement of an open offer for acquiring shares of the Target Company and thereby violated Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations.

6. Upon receipt of the said SCN, the Noticees through their respective letters sought an extension to file reply to the said SCN. The Authorised Representative **(AR)** of Noticees, vide letter dated December 07, 2016 submitted the reply to the said SCN. The summary of the said reply is as under:

   a) *The Noticees were the promoters of the Target Company. The Noticees also promoted another company viz. Beryl Drugs Limited (BDL) which is also listed at BSE, where they are promoters and directors and this position is continuing from the date of listing of shares of the Target Company till date. Also, in the prospectus issued by the Target Company, details of BDL were given as a company owned by the promoters. BDL is the company owned and controlled by the promoters of the Target Company and BDL was holding 6,78,400 shares of the Target Company representing 13.39% stake in the Target Company since inception and even during the quarters ending June, September and December 2013.*
   b) *As per the definition of Persons Acting in Concert (PACs) under Section 2(1)(q)(2) of SEBI (SAST) Regulations, BDL is a part of the promoters of the Target Company, though inadvertently is not shown as promoters in the shareholding pattern submitted by the Target Company with BSE. Any company under the same management or control shall be deemed to be PACs.*
   c) *By inadvertence the Noticees have not shown BDL's shareholding as part of the promoters' shareholding of the Target Company while filing the shareholding pattern with BSE and MP Stock Exchange. However, while filing disclosures under SEBI (SAST) Regulations with MP Stock Exchange and BSE, the shareholding of BDL was shown as promoters' shareholding*

till 2012. In view of this, the promoters of the Target Company were holding more than 25% share capital of the Target Company throughout including quarters ending June, September and December 2013. Thus, the promoters along with PACs were holding 18,55,900 shares representing 36.63% of the share capital of the Target Company and after acquisition of 93,600 shares on May 17, 2013, the promoters shareholding increase to 19,49,400 shares representing 38.48% of the share capital of the Target Company.

d) *Thus, from the inception of the Target Company, the promoters including BDL were holding more than 25% paid up capital of the Target Company and therefore acquisition of 93,600 shares of the Target Company on May 17, 2013 did not trigger open offer obligation under Regulation 3 of SEBI (SAST) Regulations. Since, there is no violation, the present adjudication proceedings may be dropped. No penalty can be imposed as there is no violation.*

e) *It was further submitted that due to some wrong interpretation and or advise, without considering the shareholding of BDL, the Noticees submitted reply dated September 08, 2015 and only dealt with increase of shareholding for less than 5% and there is no violation of Regulation 3(2) of SEBI (SAST) Regulations.*

7. In the interest of natural justice, an opportunity of personal hearing was granted to the Noticees by the then Adjudicating Officer Shri Nagendraa Parakh. The AR of Noticees attended the hearing on December 16, 2016 and submitted that parallel proceedings under Sections 11 and 11B of SEBI Act (11B Proceedings) are also pending against the Noticees and on December 15, 2016 he attended a personal hearing granted by the Whole Time Member, SEBI in the same matter with respect to the same violations. He requested that the personal hearing by Adjudicating Officer may be adjourned till the outcome of the 11B Proceedings. Acceding to the request of AR, the said personal hearing was adjourned. The AR vide letter dated January 03, 2017 submitted copies of declaration submitted by the Target Company under Regulation 8(3) of SEBI (SAST) Regulations with BSE for the years 2010-2012. On promotion of Shri Nagendraa Parakh, I was appointed as the Adjudicating Officer vide order dated July 10, 2017. The Whole Time Member, SEBI (WTM) passed an order dated August 24, 2017 against the Noticees under sections 11 and 11B of the SEBI Act and Regulations 32 and 35 of SEBI (SAST) Regulations. Accordingly, I granted an opportunity of personal hearing to the Noticees on September 19, 2017 vide hearing notices dated September 01, 2017. The AR of the Noticees vide his email and letter dated

September 14, 2017 sought an adjournment of personal hearing scheduled on September 19, 2017. Thereafter, a final opportunity of personal hearing was granted to the Noticees on October 09, 2017. The AR of the Noticees appeared before me on the said date and he reiterated the submissions made in the reply dated December 07, 2016 and submitted a judgment of the Hon'ble Supreme Court in the case of Siddharth Chaturvedi and Others Versus SEBI for my consideration.

8. The AR of the Noticee vide email dated October 30, 2017 requested me not to pass an order in the instant matter as they have filed an appeal before Securities Appellate Tribunal (SAT) against the Oder dated August 24, 2017 passed by the WTM of SEBI. Further, the AR vide letter dated February 02, 2018 submitted that the Noticees withdrew the appeal filed before SAT and are in the process of appointing a merchant banker to give an open offer for shares of Target Company as directed by the Ld. WTM. Once the said open offer is given, the Noticees will fulfill the obligation for the alleged violations of Takeover Regulations. He therefore, requested me to drop the adjudication proceedings as, by giving open offer the Noticees are complying the provisions of SEBI (SAST) Regulations.

9. After taking into account, the allegations levelled in the SCN, reply of the Noticees and other evidences / materials available on record, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES

10. The issues that arise for consideration in the present case are:
    - **(a) Whether the Noticees have violated Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations?**
    - **(b) Do the violations, if any, on the part of the Noticees attract any monetary penalty under Section 15H(ii) of the SEBI Act?**
    - **(c) If yes, then what would be the monetary penalty that can be imposed upon the Noticees, taking into consideration the factors mentioned in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?**

11. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SEBI (SAST) Regulations which read as under:-

***Substantial acquisition of shares or voting rights**.*

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 percent 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.

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

EVIDENCES AND FINDINGS

12. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

Issue (a): **Whether the Noticees have violated Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations?**

13. I find that there is no dispute with regard to acquisitions of shares of the Target Company on May 17, 2013 by the Noticees viz. Ms. Sangita Sethi, Ms. Soniya Sethi, Sanjay B Sethi HUF and Mr. Sudhir Sethi. They acquired a total 93,600 shares of the Target Company representing 1.85% of the share capital of the Target Company. Further, as per the shareholding pattern of the Target Company for the quarter ending June 2013 as available on BSE website, only the Noticees were shown as the promoters of the Target Company and they were holding 11,77,500 shares of the Target Company representing 23.24% of the share capital of the Target Company. Due to the said acquisition of 93,600 shares of the Target Company, the shareholding of the Noticees increased from 11,77,500 shares representing 23.24% to 12,71,100

shares representing 25.09% of the share capital of the Target Company and the same is reflected in the shareholding pattern of the Target Company for the quarter ending September 2013 as seen from the website of BSE. It is observed from the said shareholding patterns of the Target Company that BDL was not shown as the promoter of the Target Company for the said quarters as seen from disclosures available on the website of BSE.

14. It is also not in dispute that the Noticees did not make a public announcement of an open offer to acquire the shares of the Target Company prior to the placement of the purchase order by some of the Noticees (Ms. Sangita Sethi, Ms. Soniya Sethi, Sanjay B Sethi HUF and Mr. Sudhir Sethi) to acquire said shares of the Target Company on May 17, 2013.

15. The Noticees in short submitted following reasoning for not making an open offer.

(a) BDL is a company promoted and owned by the promoters of the Target Company and also PAC as per the definition of SEBI (SAST) Regulations;

(b) BDL holds 13.39% equity of the Target Company since inception of BSL; In the prospectus issued by the Target Company in 1996, details of BDL were shown as a company owned by the promoter.

(d) While filing disclosures under SEBI (SAST) Regulations, 1997, BDL's shareholding in the Target Company was shown as the promoters' shareholding of the Target Company till 2012.

(e) The shareholding pattern of BDL for the quarters ending June, September and December 2013 reflects that the names of the promoters viz. Mr. Babulal Sethi, Ms. Sangita Sethi, Mr. Sanjay Sethi, Ms. Soniya Sethi and Mr. Sudhir Sethi who are also the promoters of the Target Company.

(f) The Noticees and BDL were holding more than 25% of the share capital of the Target Company and therefore, were not under an obligation to make a public announcement of an open offer.

16. I have gone through page 12 of the IPO prospectus (evidence submitted by the Noticees) dated December 21, 1995 of the Target Company which have been relied on by the Noticees to establish that BDL is owned and controlled by the promoters of

the Target Company. Page 12 of the prospectus shows that BDL is one of the ventures promoted by the promoters of Target Company. However, the prospectus of the Target Company nowhere discloses that BDL is a promoter and that it has a shareholding of 13.39% in the Target Company. I find from the shareholding patterns for the quarters June, September and December 2013 submitted by the Noticees as annexures to the reply to the SCN that in the category named as "promoter and promoter group" of Target Company, there are only ten entities i.e. the Noticees covered in this order and no one else is shown therein. BDL is shown in the category named as "the public and holding more than 5% of the total number of shares".

17. I further observe from the shareholding pattern of the Target Company for the quarter ending March 2001 as available on BSE website that Mr. Sudhir Sethi, Mr. Sanjay Sethi, Baboolal Sethi, Ms. Tara Devi Sethi and Ms. Sangeeta Sethi were shown as the promoters of the Target Company and they together held 15.11% of the share capital of the Target Company. Name of BDL and or its shareholding to the extent of 13.39% is not shown under the promoters' category. Further, from the shareholding pattern for the quarter ending June 2001 as available on BSE website, I observe that the Indian Promoters were holding 8.76% of the share capital of the Target Company and the PACs were holding 6.35% of the share capital of the Target Company thus together holding only 15.11% of share capital of the Target Company. Such percentage of share capital of the Target Company continued to remain even for the quarters ending September 2001 and December 2001. The name of BDL and its shareholding to the extent of 13.39% did not appear to be included either under the category of Indian Promoters' or PACs. Further, for the quarter ending March 2002, the name of BDL appears under the category Non Promoters' holding and its shareholding to the extent of 13.39% of the share capital of the Target Company was shown under the Non-promoters' shareholding. Such position was continued thereafter. I observe that under the shareholding pattern filed by the Target Company with the BSE (as appearing in public domain on the website of BSE), BDL and its shareholding to the extent of 13.39% of the share capital of the Target Company was never included under the category Promoters' Holding. In view of the above, the Noticees submission that BDL is PAC since inception of the target Company and was holding 13.39% of the share capital of the Target Company and therefore the Noticees were not under an obligation

to make an open offer appears only an afterthought of the instant proceedings initiated against the Noticees for not making an open offer.

18. The AR of the Noticees submitted certain Annexures to the reply dated December 07, 2016 and letter dated January 03, 2017 to show that while filing annual disclosures under SEBI (SAST) Regulations, 1997, the name of the BDL and its shareholding to the extent of 13.39% of the share capital of the Target Company is shown under the category Promoters or PACs. From the said Annexures, it is observed that the same are yearly disclosures made by the Target Company under SEBI (SAST) Regulations, 1997 for the years 2001 to 2011 and the said yearly disclosures do not appear to be in public domain as seen from the website of BSE. I also find from the said yearly disclosures submitted by Noticees that BDL has been shown as part of promoters or person having control over the company and persons acting in concert with them for all the years until 2011. However, that the subject acquisition took place in May 2013 and the Noticees have failed to produce any disclosure which evidences BDL as part of the promoter group or PAC of the Target Company during any of the quarters in the year 2013 particularly June 2013 and September 2013. Besides this, I notice that BDL has been shown in the category of public shareholder of the Target Company not only in the shareholding patterns filed for the quarters ending June, September and December 2013 but also for the recent quarters ending December 2016, March, June & September 2017 i.e. even after submitting replies to SEBI in the instant and parallel proceedings that the non disclosure of BDL in promoters' group was inadvertent.

19. For the sake of argument, even if it is considered that BDL was promoter or part of the promoter group or PAC of the Target Company since inception, later on it appears to have become non-promoter and that's probably why the Target Company may have not shown BDL as part of promoter group even after initiation of instant and parallel proceedings and an order dated August 24, 2017 under sections 11 and 11B of SEBI Act and Regulations 32 and 35 of SEBI (SAST) Regulations passed against the Noticees.

20. I note that none of the disclosures of shareholding pattern of the Target Company on website of BSE (available in public viewing) show BDL as part of promoter or promoter group or PAC prior to or post 2013. I also note that in the shareholding patterns on website of BSE for the quarter ending December 2017, the Target Company do not show BDL as part of promoter or promoter group of Target Company. BDL was never shown as promoter or part of promoter group or PAC in any of the disclosures available in public domain i.e. on BSE website, BSE being the nation-wide stock exchange where Target Company is listed. So, I am of the view that BDL could not be considered as part of Promoter group or PAC, merely based on submissions of the Noticees. In view of the above, I do not accede to the submissions of the Noticees that they were not required to make public announcement of an open offer under Regulation 3(1) of SEBI (SAST) Regulations.

21. The Target Company having consistently shown BDL as part of “public shareholder” to the stock exchange cannot be now heard to contend that BDL belongs to the category of “deemed PAC” by virtue of the definition clause in SEBI (SAST) Regulations. It appears that the Noticees are attempting to convert the adjudication proceedings initiated for non-compliance with the mandatory open offer requirement into a minor matter of non-disclosure, which is an afterthought and if accepted would defeat the purpose of the said provisions of the SEBI (SAST) Regulations. Public disclosures of share holding pattern are manifestations of dynamics that exist between promoters and non-promoters having substantial stake, hence, plea of inadvertent error does not hold good in case of such ownership disclosures. In view of this, I am of the view that even though the definition of “Acquirer” in the SEBI (SAST) Regulations, 2011 includes the persons acting along with Acquirer, which in turn would include promoter group entities and in that sense BDL may qualify to be a promoter group entity, the conduct of the Noticees (promoters) and BDL, as reflected in the offer document and the public disclosures of their shareholding pattern are to the contrary. Further, there is no proof to show that BDL acted in concert with Noticees for the acquisition of 93,600 shares of the Target Company. Hence, for the purpose of the subject acquisition, BDL cannot be treated as a person acting in concert with the Target Company. The acquisition of 1.85 % on May 17, 2013 has taken the total shareholding of the Noticees (promoters) to

25.09% of the share capital of Target Company. Further, the increase in shareholding of the promoters from 23.24% of the share capital of the Target Company to 25.09% of the share capital of the Target Company should have been disclosed and reflected in the quarter June 2013 instead of quarter September 2017 as the acquisitions of 93,600 shares of the Target Company took place on May 17, 2013.

22. In this matter as the provisions contained in Regulation 3(1),(2),(3) and 4 of SEBI (SAST) Regulations, 2011 are in pari materia with Regulations 10, 11 and 12 of SEBI (SAST) Regulations, 1997, I am refer to and rely upon on the observation of the Hon'ble Securities Appellate Tribunal in its order dated September 08, 2011 in the matter of Nirvana Holdings Private Limited vs. SEBI (Appeal no. 31/2011) which reads as under:

> *"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. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."*

23. In view of the above, I find that the Noticees have violated Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations. Further, with respect to the judgment of the Hon'ble Supreme Court in the case of Siddharth Chaturvedi and Others Versus SEBI is concerned, I find that the said matter was referred by the Hon'ble judges of the Supreme Court to the larger bench of the said Court.

24. Further with respect to the submissions of the Noticee that the Noticees are in the process of appointing merchant banker to give an open offer and requesting me to drop the instant adjudication proceedings as by giving open offer the Noticees are complying with provisions of the SEBI (SAST) Regulations, I note that the said open

offer should have been given by the Noticees before placing buy orders for 93,600 shares of the Target Company. By not giving open offer at the time when required, the Noticees have already violated said provisions of Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations and making an open offer after the WTM of SEBI directs the Noticees to do so, does not vitiate the present adjudication proceedings initiated against the Noticees for violation of Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations. Therefore, the process of making an open offer has commenced only after the WTM passed an order under Section 11 and 11B of SEBI Act and Regulations 32 and 35 of SEBI (SAST) Regulations. If the Noticees do not comply with the order passed by the WTM then SEBI has a right to initiate another adjudication proceedings against the Noticees under Section 15HB of the SEBI Act for non-compliance of the Order passed by SEBI. Therefore, the submissions of the Noticee to drop the instant adjudication proceedings against the Noticee as they are in the process of making an open offer has no merit for consideration.

Issue (b): **Do the violations, if any, on the part of the Noticees attract any monetary penalty under Section 15H(ii) of the SEBI Act?**

25. In respect of imposition of monetary penalty, I cannot ignore the historical case of Hon'ble Supreme Court of India in the matter of The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was 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".*

26. It is relevant to mention here that said case of Shri Ram Mutual Fund(supra) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008 on the issue related to Income Tax Act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation is mandatory and the mens rea is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also specifically observed that the

case of Shri Ram Mutual Fund(supra) has been analysed in the legal position and in the correct perspectives.

27. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, submissions of the Noticees and analysing the aforesaid case law, I am of the view that the said violations of provisions of Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations by the Noticees attracts the imposition of monetary penalty upon the Noticees under Section 15H(ii) of the SEBI Act, which is reproduced below:

SEBI Act

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,-

(i) …; or

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

(iii) …; or

(iv) …,

he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Issue (c) **What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?**

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

SEBI Act

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

While adjudging quantum of penalty under section 23 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."

29. I observe, that the material made available on record, does not quantify any disproportionate gains or unfair advantage, if any, made by the Noticees and the loss, if any, suffered by the investors due to such non making a public announcement of an open offer. In absence of quantification of '*profits made out of such failure',* plain reading of section 15H(ii) of the SEBI Act, reads the penalty amount as rupees twenty five crore, however, I am inclined to take a lenient view in the matter. From the documents available on record, failure does not seem repetitive. However, it would be appropriate to refer to the observations made by the Hon'ble SAT in the matter of Akriti Global Traders Ltd. Vs. SEBI (Appeal No. 78 of 2014) decided on September 30, 2014: *"…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."*

30. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that the Noticees are jointly and severally liable for penalty for violating the Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations.

ORDER

31. In exercise of the powers conferred under section 15 I of the SEBI Act and Rule 5 of the Adjudication Rules, I hereby imposed a penalty of Rs. 25,00,000/- (Rupees Twenty Five Lakh only) on the Noticees under section 15H(ii) of SEBI Act for the violation of the provisions of Regulation 3(1) read with Regulation 3(3) of SEBI (SAST) Regulations. The Noticees are jointly and severally liable to pay the penalty. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

32. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order <u>either by way of Demand Draft</u> in favour of "SEBI – Penalties Remittable to

Government of India", payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below:

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

33. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID : tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

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

Date: February 28, 2018 **SANGEETA RATHOD**

Place: Mumbai **ADJUDICATING OFFICER**