

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

In respect of a Show Cause Notice dated October 21,2024 issued under Sections 11, 11(4A), 11B (1) and 11B(2) read with Section 15H and 15HB of the Securities and Exchange Board of India Act, 1992 and Regulation 32 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 to :-

Sr. No.	Name	PAN
1	Sanjiv Narayanbhai Patel	ACNPP1914D
2	Prakash N Patel – HUF	AADHP3766P
3	Patel Narayanbhai Gangaram – HUF	AADHP4322D
4	Shiv Fintrade Private Limited	ADMFS5686D
5	Sanjivkumar Narayanbhai Patel – HUF	AAYHS3991Q
6	Artiben Prakashbhai Patel	ABHPP4353R
7	Jalpa Sanjiv Patel	ALZPP8741M
8	Shivang Prakashchandra Patel	CFSP3624L
9	Therm Flow Engineers Private Limited	AABCT7264M

The abovementioned persons are hereinafter individually referred to by their respective names or the respective Noticee number and collectively as “the Noticees”)

In the matter of M/s Patels Airtemp (India) Limited.

Background:

- Patels Airtemp (India) Limited (hereinafter referred to as ‘the target company’) is a public company having its shares listed on the Bombay Stock Exchange Limited (‘BSE’) since 1994. Securities and Exchange Board of India (‘SEBI’) conducted an examination based on few complaints received from Devidas Chelaram Narumalani (hereinafter also referred to as “the Complainant”), one of the promoter shareholder of the target company.
- The examination report (*hereinafter referred to as the ‘first examination report’*) pointed out that: -
 - Narayanbhai Gangaram Patel alongwith Sanjivkumar Narayanbhai Patel and Shivang Prakashchandra Patel (persons acting in concert with him), members of the promoter group of the target company, had jointly acquired a controlling stake by increasing their shareholding from 50% to 66.67% during the Financial Year 2017-2018 in Therm Flow

Engineers Pvt. Ltd. ('TFEPL'), a private unlisted company. TFEPL held 26.91% shares of the target company as on quarter ending June 2017 and 26.87% shares of the target company as on quarter ending September 2022.

- (b) Hon'ble National Company Law Tribunal ('NCLT'), Ahmedabad vide its Order dated March 15, 2017, in the matter of *Bhavesh D Narumalani v. TFEPL and Ors., inter alia*, directed that certain shares of TFEPL held by Narendrabhai Gopalbhai Patel be re-allocated to the shareholders of TFEPL. This Order of Hon'ble NCLT has subsequently been upheld by Hon'ble National Company Law Appellate Tribunal(NCLAT) and Hon'ble Supreme Court. Thus, the NCLT order dated March 15, 2017 has attained finality.
- (c) Accordingly, on September 01, 2018, Narendra Gopalbhai Patel transferred 833 and 834 shares of TFEPL held by him to Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel, respectively. Before this transfer of shares the shareholding pattern of TFEPL was as under:

Table 1- Shareholding of TFEPL before September 1, 2018

Sr. No.	Name of Shareholder	No. of Shares	% of Holding
1.	Narayanbhai Gangaram Patel	2500	25.00
2.	Prakash Narayanbhai Patel	2500	25.00
3.	Narendrabhai Gopalbhai Patel	2500	25.00
4.	Bhavesh Devidas Narumalani	2500	25.00
	Total	10,000	100

- (d) Consequent to above transfer of shares of TFEPL, there was change in its shareholding pattern as follows:

Table 2- Shareholding of TFEPL on September 01, 2018

Sr. No.	Name of Shareholder	No. of Shares	% of Holding
1.	Narayanbhai Gangaram Patel	3333	33.33
2.	Prakash Naraynbhai Patel	3334	33.34
3.	Narendrabhai Gopalbhai Patel	833	8.33
4.	Bhavesh Devidas Narumalani	2500	25.00
	Total	10,000	100

- (e) Narayanbhai Gangaram Patel is father of Prakash Narayanbhai Patel and Sanjivkumar

Narayanbhai Patel. Shivang Prakashchandra Patel is grandson of Narayanbhai Gangaram Patel (together “Narayanbhai Family”). Narendrabhai Gopalbhai Patel (Narendra Family) is unrelated to other two families and Bhavesh Devidas Narumalani is the son of Devidas Chelaram Narumalani (Narumalani family).

(f) Several members of the abovesaid three families were promoters or members of the promoter group of the target company. The shareholding of the promoter and promoter group in the target company was as under: -

i.	Narayanbhai family 8.24%	
	<i>(including 1.37% shares held by Shiv Fintrade LLP)¹</i>	
ii.	Narendra Family	6.12%
iii.	Narumalani family	5.97%
iv.	TFEPL	26.91%

(g) Pursuant to above transfer of shares on September 01,2018, while the shareholding of Narayanbhai Family in TFEPL increased from 50% to 66.67%, the shareholding of TFEPL in target company remained at 26.91%.

(h) A common filing was made in 2015 by Narayanbhai Gangaram Patel on behalf of members of the Narayanbhai Family and the Narendra Family. Members of all the three families were listed as promoters, promoter group and PACs. However, separate disclosures were made by the three families since 2016.

(i) Before above acquisition of shares of TFEPL, Narayanbhai Family, holding 50% shares in the TFEPL, shared the power to exercise the 26.91% voting rights with Narendra Family and Narumalani Family who held 25% shares each in TFEPL. Narayanbhai Family, thus, did not separately have the power to indirectly acquire and exercise control over TFEPL and as result could not have voting rights with respect to 26.91% shares held by TFEPL in the target company. It was only TFEPL, as separate legal entity, that had power to exercise the 26.91% voting rights in the target company.

¹ Narayanbhai Patel was the designate partner of the Shiv Fintrade LLP and no other member of the two other families have any relationship with said LLP.

- (j) Thus, Narayanbhai Family, acquired control over TFEPL on September 01, 2018 and thereby indirectly acquired 26.91% shares/voting rights in the target company. As on March 31, 2023, Narayanbhai Family was part of management of the target company having 3 out of the 4 of its executive directors. No member of other aforesaid two families were part of management of the target company as on March 31,2023.
- (k) In terms of regulation 5(1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('Takeover Regulations'), acquisition of shares /voting rights in or control over TFEPL which would enable any person and PACs to exercise or direct exercise of 26.91% of voting rights in the target company shall be considered as indirect acquisition of shares/voting rights in the target company. Further, as per Regulation 3(1) of the Takeover Regulations no acquirer shall acquire voting rights in a target company which, taken together with the voting rights of PACs, entitle the acquirer to exercise 25% or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer.
- (l) Thus, the right to exercise 26.91% voting rights of TFEPL in the target company, entitled Narayanbhai Family to exercise total 35.15% (26.91%+8.24%) voting rights in the target company. Due to the said indirect acquisition of shares/voting rights in the target company, Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel were under an obligation to make a public announcement of an open offer as per Regulation 3(1) read with Regulation 5(1) of the Takeover Regulations. However, they had failed to comply with this obligation.
- (m) Having failed to make such open offer, as was obligatory on Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel, the indirect acquisition of the 26.91% shares of TFEPL in the target company is illegal. Thus, the exercise of the voting rights of TFEPL in the shareholders meeting of the target company held on or after September 01, 2018 Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel was therefore illegal.
- (n) Narayanbhai Gangaram Patel and Mr. Prakash Narayanbhai Patel, having acquired control over TFEPL and having failed to provide an open offer for the shares of the target company have illegally used the voting rights of TFEPL in the shareholder meetings of PAIL held on or after September 01, 2018.
- (o) The shareholding of TFEPL had further changed in FY 2018-19 due to

- (i) transfer of 1,000/- equity shares held in the name of Narayanbhai Gangaram Patel to Sanjivkumar Narayanbhai Patel on December 25, 2018;
- (ii) transfer of 1,000/- equity shares held in the name of Prakash Narayanbhai Patel to Shivang Prakashchandra Patel on December 25, 2018, and
- (iii) transmission of 2334 equity shares held in the name of Late Prakash Narayanbhai Patel to Shivang Prakashchandra Patel on March 31, 2019 due to the demise of Prakash Narayanbhai Patel on February 15, 2019.
- (p) The changed shareholding of TFEPL, upon abovesaid transfer of shares during FY 2018-19 was as follows:

Table 3 – Shareholding of TFEPL during FY 2018-19

Sr. No.	Name of Shareholder	No. of Shares	% of Holding
1.	Narayanbhai Gangaram Patel	2333	23.33
2.	Prakash Narayanbhai Patel	2334	23.34
3.	Narendrabhai Gopalbhai Patel	833	8.33
4.	Sanjivkumar Narayanbhai Patel	1000	10
5.	Sivang Prakashchandra Patel	1000	10
6.	Bhavesh Devidas Narumalani	2500	25.00
	Total	10,000	100

- (q) The voting rights of TFEPL were thereafter exercised in the EGM of the target company held on October 08, 2022, wherein a special resolution was passed approving a preferential issue of equity shares to the Narayanbhai Family.

- In view of the above, SEBI issued a Show Cause Notice ('the first SCN') bearing no. SEBI/HO/CFD/CFD-SEC-4/P/OW/2023/0000041557/1 dated October 13, 2023.
- The first SCN alleged that Narayanbhai Gangaram Patel jointly with Sanjiv Narayanbhai Patel and Shivang Prakashchandra Patel *[the latter two allegedly being persons acting in concert ('PACs') with Narayanbhai Gangaram Patel]* failed to make a public announcement of an open offer to the shareholders of the target company as required under regulation 3(1) read with Regulations 5(1) and 25(5) of the Takeover Regulations. Further, these three promoters of the target company illegally used

the voting rights of TFEPL in the target company pursuant to the aforesaid in contravention of the provisions of Regulation 3(1) read with Regulations 5(1), 25(5) of the Takeover Regulations. However, the said SCN called upon only Narayanbhai Gangaram Patel to show cause as to why suitable directions under the Securities and Exchange Board of India Act, 1992 ('SEBI Act') should not be issued against him for the alleged violations of provisions of Regulation 3(1) read with Regulations 5(1) and 25(5) of the Takeover Regulations.

5. The first SCN came to be disposed of by an order of SEBI bearing number QJA/GR/CFD/CFD-SEC-4/29842/2023-24 dated November 30, 2023 passed by its Quasi-Judicial Authority without going into the merits of the case since said Narayanbhai Gangaram Patel had already passed away on October 03, 2023. It was also opined in the said order that “... *the closure of the above proceedings against the Noticee shall not prohibit SEBI from initiating any other proceeding emanating from the present matter, if warranted.*”
6. Thereafter, SEBI re-examined the case and another examination report (hereinafter referred to as ‘the second examination report’) was drawn giving *inter alia* following additional observations: -
 - (a) Shares held by Late Narayanbhai Gangaram Patel were not transmitted as on the date of preparation of the second examination report.
 - (b) The 9 persons who were deemed to be PACs with Late Narayanbhai Gangaram Patel as per Regulation 2(1)(q)(2) of the Takeover Regulations in the first examination report are listed as following:

Table 4 – Deemed PACs to Late Narayanbhai G Patel

Sr. No.	Name	Category of Deemed PAC
1	Sanjivkumar N Patel	1. Immediate relative: a. Younger son of Narendrabhai Gangaram Patel b. Brother of Prakash Narayanbhai Patel 2. Promoter of the target company
2	Sanjivkumar N Patel HUF	Member of the promoter group of the target company (Sr. no. 1 above is the karta of the HUF)
3	Aarty P Patel	1. Spouse of Prakash Narayanbhai Patel 2. Member of the promoter group of the target company
4	Jalpa Sanjiv Patel	Member of the promoter group of the target company

5	Shivang P Patel	1. Son of Prakash Narayanbhai Patel 2. Member of the promoter group of the target company
6	Shiv Fintrade LLP	Member of the promoter group of the target company (Naraynbhai Gangaram Patel is the Designated Partner)
7	Prakash Narayanbhai Patel – HUF	Member of the promoter group of the target company (Prakash Narayanbhai Patel is the karta of the HUF)
8	Narayanbhai Gangaram Patel – HUF	Member of the promoter group of the target company (Narayanbhai Gangaram Patel is the karta of the HUF)
9	TFEPL	Being <i>under the management</i> of Narayanbhai Family alongwith the PACs

(c) Though only the said two individuals had directly acquired the controlling stake in TFEPL on September 01, 2018 and were the direct acquirers of the indirect acquisition of the shares of the target company, there were multiple PACs with the two of them.

(d) The liability of PACs in making the open offer was not examined by SEBI during the first examination report. Hence, fresh show cause notice should be issued to the remaining acquirer ad deemed PACS as observed above.

7. SEBI issued a fresh SCN dated October 21, 2024 (second SCN) , upon the aforesaid 9 deemed PACs and arrayed them as Noticees in the present proceedings. Vide the second SCN, the Noticees were called upon to show cause as to why suitable directions under Sections 11B(1) read with Section 11, of the SEBI Act read with Regulation 32 of the Takeover Regulations should not be issued against them. They were also called upon to show cause as to why appropriate directions imposing penalty under Sections 11(4A) and 11B (2) read with Sections 15H and 15HB of the SEBI Act should not be issued against them for the same violations as alleged in the first SCN.
8. After service of the second SCN on the Noticees, their common authorised representative inspected the records/documents (which are relevant and relied upon by SEBI while issuing the second SCN) on November 22, 2024. Thereafter, the Noticees filed a common reply dated December 27, 2024 to the second SCN, *inter alia*, requesting for an opportunity of hearing which was availed by the Noticees on April 23, 2025 when Mr. Joby Mathew, advocate, Mr. Aditya Joby advocate, and Mr. Nikhil M. Patel ('ARs') appeared jointly on behalf of all the Noticees and made common submissions and sought for copies of all the complaints mentioned in the second examination report which was provided to them on the same date. Thereafter, the ARs filed a common written submission dated May 5, 2025.

9. Briefly stated , the submissions of the Noticees, are as following:

- (a) That the second SCN has been issued six years after the alleged cause of action and is tainted by delay and laches.
- (b) That SEBI has made the allegation twice in the matter based only on the complaints filed by Devidas Chelaram Narumalani ('Complainant') and has misunderstood the facts emerged after order of NCLT dated March 15,2017.
- (c) That the Complainant has not approached SEBI with clean hands. Admittedly, Bhavesh Devidas Narumalani, is a Director and a promoter shareholder of TFEPL, and his father, Mr. Devidas Chelaram Narumalani along with Pushpa Narumalani holds 2,95,920 shares of the target company. As per the shareholding pattern disclosed to the BSE, Devidas Chelaram Narumalani has been disclosed as promoter and Pushpa Nrumalani has been disclosed as part of the promoter group of the target company. It is pertinent to note that neither of them has applied for reclassification as a promoter in terms of Regulation 31A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ("LODR Regulations").
- (d) That the Complainant has selectively supplied information, leaving out details with respect to the Petitions filed by him against the other promoters of TFEPL and is seeking to misuse the regulatory powers of SEBI to settle scores with other promoters. That the complainant has not made any effort for reclassification of himself as a non-promoter shareholder.
- (e) That the Complainant has also not brought to the notice of SEBI all the petitions filed by him against Late Narayanbhai Gangaram Patel and other promoters of TFEPL and also the winding up petition filed by him against TFEPL. It is evident that the Complainant and his son Bhavesh Devidas Narumalani have wrongfully involved SEBI in a dispute which they have with the other promoters of the target company and TFEPL and have sought to misuse the regulatory powers of SEBI to settle scores, and have resorted to forum shopping.
- (f) The present proceedings are barred by the principles of *res judicata* as the second examination report seeks to reopen a closed/ abated proceeding without valid reasons. The first examination report had already gone into the issue of the families of Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel being PACs and after examination has considered them as PACs. However, while issuing the SCN dated October 13, 2023 action

was only initiated against Late Narayanbhai Gangaram Patel and not against his family members, which was abated vide Order dated November 30, 2023. Thereafter, a second examination report was submitted regarding the same alleged acquisition of shares of TEFPL by erroneously stating that *“the liability of the PACs in making the open offer was inadvertently not examined in the previous examination”*. That the second examination report was made on the basis of the same facts and circumstances which the first examination report was made and no fresh facts or circumstances existed which necessitated the second examination report and the same is barred by the judgement of Hon’ble Supreme Court in *SEBI v. Ram Kishori Gupta (2025 SCC Online SC 748)*.

- (g) That the Complainant and Pushpa Narumalani are part of the promoter group and are PACs. SEBI has erroneously omitted them from the list of Noticees ignoring the provisions of Regulation 2(1)(q)(iv) of the Takeover Regulations. Bhavesh Devidas Narumalani continues to be a director of TFEPL and in that capacity exercises control over this Company. The second SCN is, thus, erroneous in making Noticees and should be withdrawn or be issued to the complainant also.
- (h) The second SCN is based on incorrect and contradictory observations as it attempts to make out a new case against the Noticees on premise that new facts have been found whereas nothing new has been brought out in the second examination report. The second SCN is thus, bad in law being issued after closing the case against the Noticees based on the same fact finding as the first examination report and making same allegation since the case against Narayanbhai Gangaram Patel was abated.
- (i) That there has not been any acquisition of shares or a change in control of the target company as alleged in SCN instead the increase in shareholding of Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel is a result of re-allotment of shares of Late Narendra G Patel in accordance with the Order dated March 15, 2017 passed by Hon’ble National Company Law Tribunal (NCLT) which has been subsequently upheld by Hon’ble National Company Law Appellate Tribunal and the Hon’ble Supreme Court. In compliance of these orders, the re allocation of shares held by Narendrabhai Gopalbhai Patel amongst other shareholders of TFEPL was made as under:
 - (a) 833 shares were allocated to Late Narayanbhai Gangaram Patel on September 01, 2018;
 - (b) 834 shares were allocated to Late Prakash Narayanbhai Patel on September 01, 2018;

- (c) 833 shares were allocated to Bhavesh Devidas Narumalani on September 7, 2019.
- (j) There has not been any acquisition of shares or a change in control of the target company during the period FY 2017-18 to 2018-19 as falsely alleged or otherwise. In effect, the transfer of shares by Narendrabhai Patel to Late Narayanbhai Gangaram Patel and late Prakash Narayanbhai Patel was nothing but an *inter se* transfer among promoters and PACs.
- (k) The increase in shareholding of Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel as a result of the re-allotment of shares of Late Narendrabhai Patel to them in accordance with the order of the NCLT has not and cannot be considered as an indirect acquisition of shares of the target company. It is pertinent to note that there was no change in the percentage of voting rights of TFEPL or the extent of control that TFEPL exercised over the target company as a result of the NCLT mandated re-allotment of shares of TFEPL. In the absence of the same, the provisions of Regulation 5(1) of the SAST Regulations cannot be said to have been triggered.
- (l) The said NCLT order dated March 15, 2017 mandated re-allotment of shares did not change the controlling stake that Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel and their families/ PACs had in TFEPL. SEBI has erroneously considered the percentage of holding of Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel and their families and PACs prior to the NCLT mandated re-allotment as 50%. While Bhavesh Devidas Narumalani had a dispute with other promoters and filed petitions before the Hon'ble NCLT and ceased to be a person acting in concert with other promoters of the target company, Late Narendrabhai Patel never ceased to be a PAC with Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel and in July 2015 also transferred his shares of TFEPL to Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel.
- (m) In fact, along with the shareholding of Late Narendrabhai Ganeshbhai Patel, who was the associate and PAC of Late Narayanbhai Gangaram Patel, the shareholding of the families of Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel was around 75%.
- (n) The transfer of shareholding, *inter se*, between them and to Bhavesh Devidas Narumalani reduced the effective shareholding from 75% to 66.67% in TFEPL and as a result of such change in shareholding, TFEPL did not exercise more votes or control than it already had. As such there was no obligation on Late Narayanbhai Gangaram Patel, Late Prakash

Narayanbhai Patel or their PACs to make a public announcement or open offer to the public shareholders of the target company.

- (o) It is also pertinent to mention that Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel were always in the control of TEFPL as well as the target company since inception. Therefore, the allegation that there was an increase in the controlling stake of the families of Late Narayanbhai Gangaram Patel and late Prakash Narayanbhai Patel and their PACs is not only erroneous, but also contrary to the record available with SEBI. Clearly, the complaint by the Complainant is a grievance that his son, Bhavesh Devidas Narumalani was allotted the 8.33% shares of Narendrabhai Gopalbhai Patel in TFEPL only in September 2019, after which Mr. Bhavesh Devidas Narumalani held 33.33% shares of TFEPL.
- (p) Even if the shareholding of Late Narendrabhai Gopalbhai Patel is not counted alongwith the shareholding of Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel in TFEPL and the classification as per SCN is followed, Late Narayanbhai Gangaram Patel was the Chairman of TFEPL during the relevant period and had a casting/ second vote in addition to having 50% shareholding in TFEPL, retaining control over TFEPL during the relevant period. The Noticees have submitted Article 74 of the Table A of the Model Articles of Association (AOA) under Companies Act, 1956 and Article 68 of the Table F on AOA under Companies Act, 2013.
- (q) As per Regulation 2(1)(b) of the Takeover Regulations, an “acquisition” is “*directly or indirectly acquiring or agreeing to acquire shares or voting rights in, or control over, a target company*”. Thus there must either be an “agreement” or “acquisition”. Since, Hon’ble NCLT Ahmedabad had directed that the shares of Late Narendrabhai Patel should be re-allotted to Late Narayanbhai Gangaram Patel, Late Prakash Narayanbhai Patel and Bhavesh Devidas Narumalani, there could not have been any agreement to acquire shares, further, no directions were issued the Noticees although they were also party to the said dispute.
- (r) The first SCN alleged that Narayanbhai Gangaram Patel together with Sanjiv Narayanbhai Patel and Shivang Prakashchandra Patel, had jointly acquired controlling stake in TFEPL and whereas in the second examination report (in para 12), which is the basis of the second SCN, it has been alleged that only Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel acquired controlling stake in TFEPL which held 26.91% shares/voting

rights in the target company. The second SCN is also based on irrelevant concept of “*direct acquirers of indirect acquisition*” under regulation 3(1).

- (s) Based on an internal legal opinion of SEBI the second examination report has made TFEPL as PAC with its promoters. It would be a legal absurdity to hold that TFEPL was a PAC to the acquisition of its own shares or that it was a PAC to acquisition of shares of the target company because of alleged increase in shareholding of Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel in TFEPL.
- (t) The division of shareholding of TFEPL into 3 families ignores the principles of law and precedents relating to the concept of promoters being deemed under law as PAC and no reason has been brought by SEBI for considering the shareholding as separate for the purposes of considering controlling stake. The allegation in the PACs that the 3 family groups were PACs only in respect of their families is erroneous, false, baseless and unsustainable.
- (u) There is non-application of mind as reliance has been placed on the Corporate Governance Report for the quarter ended June 2024 to allege that no member of “Family 2” and “Family 3” were part of the management of the target company whereas the transaction took place on September 1, 2018.
- (v) That TFEPL and other promoters of the target company exercised their votes in a legal and proper manner and till date neither BSE nor any investor other than the Complainant has raised any complaint or dispute regarding the voting rights exercised by TFEPL since Financial Year 2017-18.
- (w) There is complete non application of mind in examination and re-examination which have only narrated the allegations in the complaints filed by the Complainant.
- (x) That the Noticees have not violated the provisions of Regulation 3(1), 5(1) or 25(1) of the Takeover Regulations and are not liable to make a public announcement of an open offer.

10. I have carefully considered the allegations made in the second SCN, the examination reports, the Order dated November 30, 2023, replies and submissions of the Noticees and the documents relied upon in the matter. I deem it appropriate to first deal with the technical objections raised by the Noticees.

Delay in issuance of SCN

11. The first such contention of the Noticees is that the present proceedings are tainted by delay and latches as the SCN has been issued six years after the alleged cause of action. I note that the alleged cause of action arose on September 01, 2018 when the shareholding pattern of TFEPL was found to have changed. However, it was only in September 2022 that the Complaint in this respect was received by SEBI. Subsequently, the first SCN was issued on October 13, 2023. The re-examination was conducted by SEBI after order dated November 30, 2023 came to be passed. The second SCN was issued in October 13, 2024.
12. I find that the impugned transaction is dated September 01, 2018 in an unlisted company and SEBI came into know of this transaction only on receipt of complaint from the Complainant in September 2022 and the time taken by it in issuance of first SCN was 13 Months and in second SCN 11 months. It is noted that the second examination has not brought out any additional information or material except for one correspondence with target company requisitioning same information that was available [*ref. para 11 alongwith letter dated April 10th, 2023 (being Annexure T to the first examination report) and 12 of the first examination report and filings with the stock exchange*) and one correspondence with the depository which did not result in any further examination or conclusion. The delay so caused could though be avoided and I hold it does not create any infirmity in proceedings.

Infirmities relating to the complaints.

13. The Noticees have contended that the allegations have been made based solely on the basis of the complaints of the Complainant who has not come with clean hands and also has concealed the facts as emanated from the NCLT order dated March 15, 2017 which directed the re-allocation of shares of TFEPL based on their own company petition.
14. It is noted that Bhavesh Devidas Narumalani had filed a company petition before NCLT bearing TP No. 106/397-398/AHM/2016 (old CP No 73/397-398/CLB/MB/2015). The sum and substance of his grievance in the said company was ‘oppression’ on the part of Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel alongwith their other family members and related parties (arrayed as respondents in the said company petition). Hon’ble NCLT found the acts of Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel in the management and affairs of TFEPL as “*harsh, burdensome, and detrimental*” to the interests of Bhavesh Devidas Narumalani and

therefore, they committed oppression and mismanagement in the conduct of the affairs and business of TFEPL. Accordingly, the Hon'ble NCLT passed the following order: -

- (1) Increase in share capital from Rs. 1.00 lac to Rs. 2.00 lac of TFEPL that took place on December 21, 2009 and from Rs.2.00 lac to Rs. 3.00 lac on September 28, 2010 was declared illegal and set aside.
- (2) Allotment of 2500 shares of TFEPL to Sanjiv Patel on January 29,2010, allotment of 2500 shares each to Sitaben Patel, Shivang Patel, Arti Patel, N.G. Patel (HUF), Jalpa Patel, Prakash Patel (HUF) [Respondent 5 to 10 in NCLT proceedings] on January 18, 2010 and allotment of 2500 shares to Sanjiv Kumar Patel HUF on July 04,2013 was declared illegal and set aside.
- (3) Transfer of shares from TFEPL to Narayanbhai Gangaram Patel was set aside
- (4) Re- allocation of 2500 shares of Narendrabhai Gopalbhai Patel in TFEPL to the shareholders by duly complying the procedure laid down under the Companies Act and Articles of Association was directed.

15. Thus, the grievance of the Complainant was settled in terms of the abovesaid order of the Hon'ble NCLT. If at all, the Complainant felt aggrieved on account of re- allocation of 2500 shares of Narendrabhai Gopalbhai Patel in TFEPL to the other shareholders including the Complainant after aforesaid order of NCLT, it cannot again raise the same grievance now as the same has been settled by Hon'ble Supreme Court. To this extent, I agree with contentions of Ld Advocate of the Noticees.

16. In this matter, SEBI has not resorted to redress any grievance of the Complainant with regard to the issues he has been agitating before NCLT and the scope of examination by SEBI was limited only to see whether: -

- (a) on September 18, 2018, when Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel acquired 833 shares and 834 shares, respectively in TFEPL from Narayanbhai Gangaram Patel pursuant to the above order dated March 15, 2017 of Hon'ble NCLT they got controlling and management power in TFEPL; and
- (b) there was change in voting power of Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel together with PACs, if any, in the target company on September 18,2018.

Thus, it is not for SEBI to go into the conduct of the Complainant as sought to be contended.

Proceedings barred by Res Judicata

17. The Noticees have contended that the present proceedings are barred by the principle of *res judicata* as the second examination report seeks to reopen a closed/ abated proceeding without valid reasons. It is noteworthy that the doctrine of *res judicata* refers to a situation when a case, in which there has been a final judgment, the litigation of the same case is barred as provided in section 11 of the Code of Civil Procedure, 1908 (CPC) that embodies the rule of conclusiveness of a judgment. It is settled principle that legal principles of ‘*issue estoppel*’ and *res judicata* are equally applicable in proceedings before administrative and quasi-judicial authorities as they are based on public policy and justice². Whenever a quasi-judicial authority gives a finding on law or fact, its findings cannot be impeached collaterally or in a second round and are binding until reversed in appeal.
18. In the matter of *SEBI v. Ram Kishori Gupta (supra)* it was held that once an order has attained finality and was fully given effect to, passing of a fresh order once again, on the very same cause of action, trampled upon and reversed the finality that had already attached to the said order. Further, the principles of *res judicata*, *constructive res judicata* and other analogous principles and its aspect like ‘*cause of action estoppel*’ and ‘*issue estoppel*’ as enshrined in section 11 of the CPC equally applies to quasi-judicial authorities and also to administrative authorities. Hon’ble Supreme Court reemphasized on applicability of *res judicata* and *constructive res- judicata* and *issue estoppel* on SEBI’s administrative decisions and quasi-judicial proceedings for same cause of action that has attained finality in an earlier proceeding between the same parties and held as under:

“28. In ***Hope Plantations Ltd. vs. Taluk Land Board, Peermade and another***, a 3-Judge Bench of this Court affirmed that the principle of *res judicata* is based on public policy and justice. It was pointed out that the rule of *res judicata* prevents the parties to a judicial determination from litigating the same question over again, even though the determination may be demonstrably wrong. It was held that when proceedings attain finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action, nor can they litigate any issue which was necessary for decision in the earlier litigation. It was pointed out that Section 11 of the Code of Civil Procedure, 1908, contains provisions of *res judicata* but these are not exhaustive of the general doctrine of *res judicata*. It was observed that the principles of *res judicata* would be equally applicable in proceedings before administrative authorities. Further, in ***Amalgamated Coalfields Ltd. and***

² *Ujjam Bai vs. State of U.P.* 1962 SCC OnLine SC 8; *SC in Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Ors.* Civil Appeal No. 540 of 1986 decided On: 03.11.1998 ; *Abdul Kuddus vs. Union of India and others* (2019) 6 SCC 604 and SC judgement in *M/s Faime Makers Pvt. Ltd. Vs. District Deputy Registrar, Co-operative Societies (3), Mumbai & ors* CA NO..../2025@ SLP(C) NO.26654/2023 ETC. decided on April 01,2025

another vs. Janapada Sabha Chhindwara and others, a Constitution Bench observed that constructive res judicata is an artificial form of res judicata and it postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action. Affirming this view in **Devilal Modi vs. State Tax Officer, Ratlam, and others**, a Constitution Bench observed that this view is founded on the same considerations applicable to res judicata, because if the doctrine of constructive res judicata is not applied, it would be open to a party to take one proceeding after another and urge new grounds every time and that, plainly, would be inconsistent with considerations of public policy. Needless to state, these stellar principles would not only apply to the parties to a dispute but would also bind the adjudicating authorities seized of such dispute, be they judicial, quasi-judicial or administrative.”

19. I note that multiplicity of orders on the same charges would clog-up the quasi-judicial and appellate forum with unwarranted litigations and, thus, should be discouraged. By virtues of principles of res judicata. It is not open to SEBI to claim that it could pass multiple final orders on the same cause of action in respect of the same parties as held by Hon’ble Supreme Court in *Ram Kishori Gupta(Supra)*. In *Hope Plantations Ltd. Vs. Taluk Land Board, Peermade and Ors.* Civil Appeal No. 540 of 1986³ it was held by Hon’ble Supreme Court that :-

“26. It is settled law that principles of estoppel and res judicata are based on public policy and justice. Doctrine of res judicata is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of res judicata prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrated wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. These two aspects are ‘cause of action estoppel’ and ‘issue estoppel’. These two terms are of common law origin. Again once an issue has been finally determined, parties cannot subsequently in the same suit advance arguments or adduce further evidence directed to showing that issue was wrongly determined. Their only remedy is to approach the higher forum if available. The determination of the issue between the parties gives rise to, as noted above, an issue estoppel. It operates in any subsequent proceedings in the same

³ decided On: 03.11.1998

suit in which the issue had been determined. It also operates in subsequent suits between the same parties in which the same issue arises. Section 11 of the CPC contains provisions of res judicata but these are not exhaustive of the general doctrine of res judicata. Legal principles of estoppel and res judicata are equally applicable in proceedings before administrative authorities as they are based on public policy and justice.”

20. Hon’ble Supreme Court observed that it is settled law that principles of *estoppel* and *res judicata* are based on public policy and justice. Doctrine of *res judicata* is often treated as a branch of the law of estoppel though these two doctrines differ in some essential particulars. Rule of *res judicata* prevents the parties to a judicial determination from litigating the same question over again even though the determination may even be demonstrated wrong. When the proceedings have attained finality, parties are bound by the judgment and are estopped from questioning it. They cannot litigate again on the same cause of action nor can they litigate any issue which was necessary for decision in the earlier litigation. ***Similarly, if once an issue has been finally determined, parties cannot subsequently in the same proceedings advance arguments or adduce further evidence directed to showing that issue was wrongly determined.*** Their only remedy is to approach the higher forum if available. In order to apply the doctrine of *res judicata* it is an essential requirement that the actual issues in the two proceedings are identical. It operates in any subsequent proceedings between the same parties in which the same issue, that had been decided and closed in earlier same proceedings, arises again.

21. The principle of ‘*issue estoppel*’ operates where *res-judicata* cannot be applied due to issues involved not being identical. The determination of the issue between the parties gives rise to an *issue estoppel* which may arise where a plea of *res judicata* could not be established because the cause of action was not the same. In order to apply the principle of *issue estoppel* it becomes necessary to determine as to whether it was the same issue of fact which was determined in the earlier case arising out of the same transactions as well as the policy of SEBI. Further, whether the violation of the provision of the regulations was also the same and the same law was also taken into consideration in earlier proceedings.

22. Thus, it becomes germane to examine the facts of the case to determine whether the second SCN is on same cause of action, in same proceedings and related to same transaction and between same parties. Obviously, if all the 9 Noticees were PACs with two deceased acquirers they also incur obligation along with the acquirer under regulation 3(1) of the Takeover Regulations. In the instant case, it is noted that the first SCN was issued to only Narayanbhai Gangaram Patel (who had died

before the SCN was issued to him). Thus, parties to the proceedings initiated by the first SCN and those in the instant proceedings are not the same. Further, the issues and allegations raised in the first SCN and again in the second SCN has not been decided by the quasi-judicial authority as the order October 13, 2023 was passed without going into merits of the allegations *qua* only the Noticee in the first SCN. In fact, the quasi-judicial authority while disposing the first SCN by the said order dated October 13, 2023 clearly stated in para 6 of the said order that such disposal of first SCN shall not prohibit SEBI from initiating ‘*any other proceeding*’ in respect of the *same matter* in issue. Thus, the issue has not attained finality in the quasi-judicial proceedings. Further, while the proceedings are same, transactions and facts involving the matter are same and the same law is alleged to have been violated but the parties are different. I, therefore, am of the view that instant proceedings are not barred by principle of *res judicata* as contended by the Noticees.

23. However, in view of several contentions raised by the Noticees about closure of case and reopening the same again based on contradictory findings it becomes important to examine those contentions in light of principle of *issue estoppel*.

Both SCNs having contradictory and incorrect facts and findings

24. On careful perusal of relevant facts in both the SCN as listed above, the only differences are :-

- (i) that the first SCN was issued only to Late Narayanbhai Gangaram Patel whereas the second SCN has been issued to 9 Noticees (8 members of Narayanbhai Family/related parties and TFEPL) who are allegedly deemed PACs with Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel.
- (j) the legal opinion has been relied upon to make TFEPL as PAC with respect to acquisition of its shares and alleged indirect acquisition of voting rights of the target company.

25. I note that both the SCNs, at least the following facts are admitted: -

- a. Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel i.e. two promoters of TFEPL acquired its 833 and 834 shares, respectively from its another promoter;
- b. The complainant Devidas Chelaram Nerumalani also was at the relevant times and is still a promoter of the target company
- c. The allegations and charges are based on above acquisition of shares in TFEPL;

- d. Action proposed to be taken is same.
- e. Prakash Narayanbhai Patel the acquirer of above 834 shares of TFEPL had expired on February 14, 2019 hence he was not made party in either of the SCNs.
- f. The decision based on first examination report was already taken to proceed only against Late Narayanbhai Gangaram Patel.

26. It is noted that in the first SCN (at para15) it has been acknowledged that members of Narayanbhai Family are PACs to Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel. However, in para 2.1 of the first SCN it has been alleged that only Narayanbhai Gangaram Patel together with Sanjivkumar Narayanbhai Patel and Shivang Prakashchandra Patel, had jointly acquired controlling stake in TFEPL. Further, in para 12, the shareholding of Shiv Findtrade LLP (Noticee no. 4 herein) has been included with the shareholding of Narayanbhai Family. The fact of the alleged indirect acquisition of the target company by increasing the shareholding in TFEPL from 50% to 66.67% was also with SEBI at the time of issuance of the first SCN (para 15).

27. Thus, SEBI was aware that all the 9 PACs / related parties including TFEPL (*its shareholding in target company has been clubbed with shareholding of Narayanbhai Family and Shiv Fintrade LLP*) who are Noticees in the second SCN were PACs with the Late Narayanbhai Gangaram Patel who had acquired shares from another promoter in TFEPL. However, the first SCN was issued only to Late Narayanbhai Gangaram Patel, admittedly, for following two reasons viz;

- a. Only Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel had acquired a controlling stake in TFEPL which held 26.91% shares/ voting rights in the target company and only these “*direct acquirers*” were responsible to comply with obligation under Regulation 3(1) in view of an order of Hon’ble SAT in the matter of *Nirvana Holdings Private Limited V. SEBI*; and
- b. Prakash Narayanbhai Patel had died on February 14, 2019.

28. I note that the SEBI issued the first SCN to said Late Narayanbhai Gangaram Patel when he had already expired on October 03, 2023. The fact about the Noticees being PACs with said Narayanbhai Gangaram Patel was already examined in the first examination report and alleged in the first SCN and SEBI already took an administrative decision to issue the first SCN and proceed only against Late Narayanbhai Gangaram Patel; deliberately and consciously even dropping the

said SCN in respect of Sanjivkumar Narayanbhai Patel and Shivang Prakashchandra Patel, who, as per the SCN itself, had allegedly acquired controlling stake in TFEPL jointly with Late Narayanbhai Gangaram Patel.

29. Apparently, SEBI did not issue the first SCN to other members of Narayanbhai Family (alleged PACs) holding a view that in light of decision of Hon'ble Securities Appellate Tribunal (SAT) in the matter of *Nirvana Holdings Private Limited V. SEBI*⁴ only the acquirer of shares is liable under said Regulation 3(1). Further, since Prakash Narayanbhai Patel had died on February 14, 2019, it was alleged that only Narayanbhai Gangaram Patel was in default of the obligation to make public announcement of an open offer as per Regulation 3(1) read with Regulation 5(1) of the Takeover Regulations and illegally exercising voting rights in the target company. I note that this approach was adopted by incorrectly interpreting above order of Hon'ble SAT in *Nirvana Holdings* case and relying on following observations of Hon'ble SAT:

“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 take over. 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.”

30. I note that the above observations have been relied upon quoting incomplete observation in the abovesaid order of Hon'ble SAT. I note that above portion of observations has been picked from para 5 of Hon'ble SAT order dated September 08, 2011. On perusal of whole para in context of the facts of that case it is noted that the observations in para 5 of the said order was made by Hon'ble SAT in the context of choice and priority of direction that could be issued to an acquirer who is made Noticee in the quasi judicial proceedings. In the *Nirvana Holdings* case, the combined holding of the acquirer/ appellant taken together with shareholding of its PACs (two Naras- Nara

⁴ SAT order dated September 08, 2011

Bhuvaneshwari and Nara Lokesh) has breached the prescribed threshold. SEBI issued two SCNs one to the acquirer *Nirvana Holdings* and the other to its PACs. In the proceedings before the Whole Time Member (WTM for short) SEBI, the acquirer *Nirvana Holdings* contested the case on merits and also made additional submissions on March 25, 2010 stating as under: -

*“Without prejudice to the aforesaid, we submit that **if you are not satisfied with our submissions, that at the relevant time we were not acting in concert with others as alleged and feel that we have violated the provisions of Regulation 11(1), then we submit that we are open to disinvesting the shareholding of 1.17% which is allegedly in excess of 5% permissible creeping acquisition limit available to us for the Financial year 2008-09. The proposed disinvestment by us of the 1.17% shares would be in consonance with the provisions of Regulation 44 of Takeover Regulations, under which, as stated in the Notice, you propose to issue directions against us for the alleged violation of Regulations 11(1) of Takeover Regulations.**”*

31. WTM-SEBI vide order dated November 09, 2010 found both acquirer and PACs liable but directed only the acquirer *Nirvana Holdings* to divest 1.17% of its shareholding which was in excess of permissible creep in limit of 5% in view of its above proposition. However, the said acquirer *Nirvana Holdings* filed an appeal Appeal No. 31 of 2011 before Hon’ble SAT against the said order of the WTM-SEBI. Vide order dated September 8, 2011 (in para 5) passed by Hon’ble SAT in the said Appeal it was held that the shares acquired by the appellant company and the holding of the two Naras (PACs) have to be clubbed for the purposes of Regulation 11(1) of the Takeover Code of 1997 [*pari materia* regulation 3(1) of the Takeover Regulations 2011]. Hon’ble SAT further held that WTM –SEBI has ‘*blindly*’ accepted the plea of the appellant in this regard that was made in the supplementary reply dated May 25, 2010 without recording any reasons why the appellant was directed to disinvest the shares in excess of the permissible limit.
32. When obligation to make public announcement of open offer is triggered as ‘*a normal rule*’ the direction in case of failure should be to issue such public announcement to make open offer as provided in respective Regulation. Any other direction could be issued only if when larger interest of investor protection or that of the securities market demands that the right of exit opportunity could be taken away. Hon’ble SAT further held that SEBI need not give reasons as to why such a direction to make a public announcement to acquire shares of the target company is being issued because that is the mandate of Regulation. However, if the issuance of such a direction is not in

the interest of the securities, the Board may deviate from the normal rule and issue any other direction including disinvestment. In that event, the Board should record reasons for deviation.

33. The above said Order of Hon'ble SAT did not say that only *acquirers* are to be proceeded against if there is breach of threshold limit prescribed in the Regulations taking into account the combined shareholding of the acquirer and PACs with him. Therefore, the above reliance is out of context.

34. It is also pertinent to mention that after pronouncing the aforesaid order dated September 08,2011, Hon'ble SAT stayed its abovesaid order for a period of four weeks to enable *Nirvana Holdings* to file an appeal in the Supreme Court by providing as under: -

"After we pronounced the order in Court, the learned counsel for the appellant has made an oral prayer that the operation of the direction issued by us be stayed for a period of four weeks to enable the appellant to file an appeal in the Supreme Court. The prayer appears to be reasonable. We, therefore, direct that the operation of our order shall remain stayed for a period of four weeks from today."

35. Thereafter, *Nirvana Holdings* filed a Civil Appeal No 8223/2011 before Hon'ble Supreme Court against aforesaid order of Hon'ble SAT. The said Civil Appeal is still pending. In the said Civil Appeal, to date, Hon'ble Supreme Court has passed following orders: -

a. Order dated October 10, 2011-

"Taken on Board.

The civil appeal shall stand over for two weeks in order to enable SEBI to file it's counter affidavit opposing interim stay.

In the meantime, the stay granted by Securities Appellate Tribunal will continue to operate."

b. On October 31, 2011 -

"The civil appeal shall stand over for two weeks in order to enable learned counsel for the respondent to file counter affidavit.

Until further orders, interim order passed by this Court on 10th October, 2011, shall continue to operate."

c. On March 24,2014-

"Learned counsel for the parties are permitted to file Statement of Case within four weeks."

d. **On October 22, 2024 –**

“I.A. No. 123287/2020

Issue notice, returnable in the week commencing 03.02.2025.

Notice will be served by all modes, including dasti.

In the meanwhile, the learned Senior Advocate appearing for the appellant/non-applicant, M/s. Nirvana Holdings P. Ltd., will obtain instructions on the suggestions given.

It will be open to the appellant/non-applicant, M/s. Nirvana Holdings P. Ltd., to approach the Securities and Exchange Board of India to explore the possibility for resolution/settlement. The same would be without prejudice to the rights and contentions of the parties.”

36. It is noted that the stay granted by Hon’ble SAT vide its order dated September 08,2011 is still in operation. Hence, reliance on the said order of Hon’ble SAT is misplaced on this count also.

37. Both the SCNs made same allegation about failure to make a public announcement of an open offer as required under Regulation 3(1) read with Regulations 5(1) and 25(5) of the Takeover Regulations and exercise of the voting rights of TFEPL in contravention of the said Regulations. The said Regulations are reproduced as following: -

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 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.

Indirect acquisition of shares or control

5. (1) For the purposes of regulation 3 and regulation 4, acquisition of shares or voting rights in, or control over, any company or other entity, that would enable any person and persons acting in concert with him to exercise or direct the exercise of such percentage of voting rights in, or control over, a target company, the acquisition of which would otherwise attract the obligation to make a

public announcement of an open offer for acquiring shares under these regulations, shall be considered as an indirect acquisition of shares or voting rights in, or control over the target company.

Obligations of the acquirer.

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

38. Regulation 3(1) provides for obligation of an ‘*acquirer*’ who acquires 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. Regulation 4 of the Takeover Regulations provides for obligation of an ‘*acquirer*’ of ‘*control*’, directly or indirectly, over a target company. While Regulation 4 uses the words, directly or indirectly, regulation 3(1) does not. Regulation 5(1) attempts to define the expression “*indirect acquisition*” for the purposes of Regulation 3 and 4 both although Regulation 3(1) does not use this expression. Thus, there is anomaly in language of both these Regulations.

39. In order to understand scope of Regulation 3(1) in respect of this controversy, it is pertinent to refer to definition of the word “*acquirer*” in regulation 2(1)(a) and “*acquisition*” in regulation 2(1)(b). The term “*acquirer*” as defined in regulation 2(1) (a) means any person who, directly or indirectly, acquires or agrees to acquire whether by himself, or through, or with persons acting in concert with him, shares or voting rights in, or control over a target company. As per regulation 2(1) (b), ‘*acquisition*’ means directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.

40. The concept of PAC under Takeover Regulation is acquisition/transaction specific and has to be determined on factual situations taking into account the commonality of objectives of the parties, etc. to acquires shares or voting rights or control over a target company. The date of acquisition, shareholding of acquirer immediately preceding the acquisition and immediately after the acquisition and percentage of change in shareholding are also important factor to consider the obligation under regulation 3(1). In the instant case, the date of acquisition is September 01, 2018 when pursuant to order of NCLT/NCLAT Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel (both deceased) i.e. two promoters of TFEPL acquired its 833 and 834 shares, respectively from its another promoter Narendrabhai Patel.

41. For the purpose of answering this pivotal question at hand, it needs to refer to Regulation 25(5) of the Takeover Regulations. A bare reading of the provision extracted above indicates that regulation 25 (5) very categorically mandates that the acquirer and persons acting in concert with him shall be jointly and severally responsible for fulfilment of applicable obligations under these regulations. Thus, it is completely misplaced to hold that only the so called “direct” acquirer was responsible under Regulation 3(1) and to issue first SCN only to Late Narayanbhai Gangaram Patel and not to his alleged PACs. In my view, examiners of this case have inappositely and incorrectly understood the provisions of regulations and principles stated in the above decision of Hon’ble SAT.

42. I further note that while enforcing the obligation of making public announcement of open offer under Takeover Regulations, SEBI passes directions to acquirers and their PACs to comply with obligation jointly and severally. For example –

g. Order dated September 17, 2018 directing the acquirer and his PAC to jointly and severally make a public announcement to acquire the shares of *SBEC Sugar*.

h. Order dated July 07, 2020 directing the acquirer and his PAC to make a public announcement of a combined open offer to acquire the shares of *Sungold Capital Limited*.

43. Thus, the consistency as well as Regulations 25(5) demanded SEBI to issue the SCN, at first instance itself, to the alleged acquirers and PACs (the Noticees) if they triggered the obligation under Regulation 3 (1) of the Takeover Regulations. The approach to select only Narayanbhai Gangaram Patel on the basis of wrong premise is inappropriate. Further, the concept of “direct acquirer of an indirect acquisition” as alleged in the second SCN is alien to the Takeover Regulations. Be that as it may, the Takeover Regulation apply in respect of direct as well as indirect acquisition of shares/voting rights or control in a target company i.e. a listed company. The present case is not the one involving any direct acquisition of shares or control in the target company rather it is case of (alleged) indirect acquisition of shares/voting rights in the target company by two deceased acquirers which taken together with their shareholding with shareholding of their PACs allegedly breached the threshold under Regulation 3(1) of the Takeover Regulations.

44. Ld. Advocate of the Noticees referred to both the examination reports and both the SCNs and pointed out the following:

- (a) The first SCN, in para 2.1, alleged that *Narayanbhai Gangaram Patel together with Sanjiv Narayanbhai Patel and Shivang Prakashchandra Patel, had jointly acquired controlling stake in TFEPL* whereas in the second examination report (in para 12), which is the basis of the second SCN, it has been alleged that only *Late Narayanbhai Gangaram Patel and late Prakash Narayanbhai Patel acquired controlling stake in TFEPL* which held 26.91% shares/voting rights in the target company.
- (b) Further, in para 12 of the second examination report it has been stated that only Narayanbhai Gangaram Patel and Prakash N Patel ‘*were previously observed to have failed to make an open offer since only the two had acquired a controlling stake*’ whereas in Para 13 it is stated that the liability of PACs in making the open offer was inadvertently not examined in the first SCN (para15).

45. It is pertinent to mention that while deciding the matter through a quasi-judicial process, it is important to keep in mind that justice is nothing but a manifestation of the truth. It is truth which transcends every other action. Therefore, it is the primary duty of the examiners of the case, to make a single-minded endeavour to unearth the truth hidden beneath the facts. After all, the inquiry into complaints is a search engine of truth, with Regulations as its tools. Such an exercise is warranted in a higher degree, particularly while considering a social welfare legislation like the Takeover Regulations which predominantly aims at investor protection rather than to be used as a mechanism of dispute resolution amongst warring promoters or to add to number of enforcement cases. I find that it was clearly acknowledged and accepted in the first examination report that the members of Narayanbhai Family/related parties, who are Noticees in the second SCN, were PACs with the Late Narayanbhai Gangaram Patel who had acquired shares from another promoter in TFEPL. As held by Hon’ble Supreme Court in *Government of Andhra Pradesh and others v. A. P. Jaiswal and others*, AIR 2001 SC 499 :-

"Consistency is the cornerstone of the administration of justice. It is consistency which creates confidence in the system and this consistency can never be achieved without respect to the rule of finality. It is with a view to achieve consistency in judicial pronouncements, the Courts have evolved the rule of precedents, principle of stare decisis etc. These rules and principle are based on public policy."

46. The Noticees have also disputed the premise of the second SCN contending that: -

- (a) All the facts which are basis of second examination report were already examined the first examination report based on which the first SCN was issued and the statement in the second examination report, that “*the liability of the PACs in making the open offer was inadvertently not examined in the previous examination*” is incorrect.
- (b) In the first examination report (in Para 12.1 and 12.2), after analysis of definition of PAC under regulation 2(1)(q) of the Takeover Regulations, it has been clearly stated (in Para 12.3) that “*Devidas C Narumalani along with his family members (Narumalani Family) had a 5.97% shareholding in PAIL and are listed as promoters of PAIL in the shareholding pattern of PAIL as on September 30, 2018. Members of the Narayanbhai Family are also listed as promoters/ members of promoter group of PAIL*”. Further, Para 12.4 of the report states that “*Prima facie, this would render the Narumalani Family and the Narayanbhai Family to be PACs since Regulation 2(q)(2)(iv) of the Takeover Regulations holds that promoters/ members of the promoter group are deemed to be PACs*”.
- (c) Thus, while examining the matter, at first instance itself, SEBI had all information and all facts about the said 9 Noticee to be deemed as PACs with Late Narayanbhai G Patel with respect to the acquisition, if any, in the target company.

47. I find that it is admitted position that the two acquirers of shares of TEFPL and the 9 Noticees are all part of same family/ related or controlled entity. It is also admitted position that the acquirer of 834 shares of TFEPL, Late Prakash Narayanbhai Patel was not made a Noticee in the first SCN since he had expired on February 14, 2019 and his father Late Narayanbhai Gangaram Patel (who had died on October 03,2023 before the first SCN was issued to him) was only made Noticee in the first SCN as he only was treated as the acquirer and PACs were not responsible to make public announcement. Further, the action against PACs including Shivang Prakashchandra Patel was deliberately dropped but subsequently initiated against them by the second SCN after the proceedings commenced by the first SCN dated October 13, 2023 were found to be abated due to demise of Late Narayanbhai Gangaram Patel on October 03,2023.

48. In view of above recitals in the examination reports/ SCNs and the admitted facts, I find that the status of these 9 Noticees being PACs with Late Narayanbhai Gangaram Patel in respect of their shareholding in the target company was examined and they were held as PACs in the first examination report. Thus, it was consciously and deliberately chosen and decided to make only

Late Narayanbhai Gangaram Patel a Noticee and not his said 9 PACs. It is not a case of *bona fide* defect or mistake in adding right Noticees in the first SCN.

49. In Paragraph 21 of the second SCN, it has been mentioned that the said SCN has been issued against the present Noticees in view of Prakash Narayanbhai Patel and Narayanbhai Gangaram Patel having deceased on February 14, 2019 and October 3, 2023, respectively. I find that there is no new material found in the second examination report. The only new fact in second examination report is about the subsequent details being sought from the depositories on the recipients of shares of TEFPL on transmission due to death of the two deceased acquirers viz; Prakash Narayanbhai Patel and Narayanbhai Gangaram Patel. SEBI came to know that the shares of Prakash Narayanbhai Patel were transmitted to Narayanbhai Gangaram Patel in 2019 (the two were joint holders of the account) and that the shares of Late Narayanbhai Gangaram Patel were not transmitted subsequent to his death. These facts, in no way are relevant as the cause of action was with respect to indirect acquisition on September 1, 2018. It is curious to note that the Noticees No 2 and 3 are HUFs with Prakash Narayanbhai Patel and Narayanbhai Gangaram Patel as their Kartas, respectively. It is unclear as to how these HUFs have continued to be promoters of the target company after demise of these deceased Kartas. Examination has not gone into this vivid fact to find out status of these HUFs and their new Kartas.

50. From the above findings, it clear that the case is reopened against the 9 allged PACs merely because the earlier proceedings could not go into merit so as to take actions as contemplated in the first SCN on deceased Noticees. I, therefore find that initiating the proceedings again by charging the Noticees by second SCN, when it was decided to drop the proceedings *qua* them is barred by principle of *issue estoppel* in view of the above mentioned judicial pronouncements.

Complainant being PAC is not made party in proceedings.

51. The Noticees have further contended that the Complainant and Pushpa Narumalani are part of the promoter group and are PACs with regard to TFEPL and target company both. Bhavesh Devidas Narumalani continues to be a director of TFEPL and in that capacity exercises control over this company. SEBI has, thus, erroneously omitted them from the list of Noticees ignoring the provisions of Regulation 2(1)(q)(iv) of the Takeover Regulations.

52. When seen in light of obligation under regulation 3(1), definition of the word “*acquirer*” in regulation 2(1)(a) and “*acquisition*” in regulation 2(1)(b), it is clear that the concept of PAC under regulation 2(1)(q) of the Takeover Regulations is transaction specific. That is to say that the identity

has to be determined with respect to acquisition, directly or indirectly, of shares or voting rights in or control over a target company on the date of acquisition. The status of a person in the target company is immaterial to be an acquirer or PAC. Further, the Regulations do not contemplate that 'once a PAC is always a PAC'. It depends upon the facts of each case. For the applicability of regulations 3 of the Takeover Regulations the acquirer or the PAC with him need not be a promoter in all cases. Similarly, in each and every case a promoter simpliciter need not be an acquirer or PAC automatically. It is the conduct and objective as enshrined in regulation 2(1) (q) that determines the identity of a person to be PAC.

53. Any person including a promoter will become a PAC with the acquirer only if he falls within the definition of the said expression provided in Regulation 2(1)(q). In terms of Regulation 2 (1) (q) (1), the PACs are the persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company , pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company. Regulation 2 (1) (q) (2) declares certain group of persons/entities as deemed PAC. As per Regulation 2 (1) (q) (2)(iv) promoters and members of the promoter group are deemed PACs. But common objective in the said Regulation 2(1)(q)(2) attaches itself to the acquisition of shares/voting rights in the target company or control over it. In the present, case the complainant being part of promoter group of the target company is a deemed PAC but such deeming fiction is rebuttable. Such rebuttal has to be gleaned through the facts and circumstances taking into account the absence of cooperation of the Complainant in the alleged indirect acquisition of shares /voting rights in the target company. It is the conduct of the Complainant that will determine his identity.

54. A promoter cannot be compelled by virtue of this deeming fiction to always be PAC with another promoter whom he does not support or cooperate with. Contrariwise, in the case of *acquisition* by promoters, the purpose can be elicited at the behest of both the acquirer promoter and other promoters. A dormant promoter or a promoter simpliciter, who neither acquires nor agrees to acquire shares or voting rights in or control over the target company nor does he cooperate in such acquisition, is not an acquirer or PAC with the common objective or purpose. There cannot be a common objective or purpose between a promoter who wishes to acquire further shares in the target company and a promoter who is interested in the disinvestment of his shares or in opposing the acquisition by another promoter.⁵ The idea of "PAC" is not about a fortuitous relationship coming

⁵ Ref:-Hon'ble High Court of Bombay in *K.K. Modi case* and Hon'ble Supreme Court in the *Technip SA case*.

into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective of acquisition of substantial acquisition of shares/voting rights in or control over the target company.

55. In this case, the Complainant has challenged the acts of Narayanbhai Family (including the Noticees) in respect of TFEPL before the NCLT and has also complained to SEBI about alleged contravention of Takeover Regulations in respect of the target company. The conduct of the Complainant, thus, does not show any cooperation or concert in respect of the alleged indirect acquisition of shares/voting rights by two deceased acquirers on September 01, 2018. Merely because one of the 4 directors of TFEPL is Bhavesh Devidas Narumalani is not relevant to treat the Complainant or his family members as PACs with the said two deceased acquirers. I, therefore, do not agree with such contentions of the Noticees.

PACs decided relying upon the Corporate Governance Report for the quarter ended June 2024

56. The Noticees have contended that to allege that no member of “Narendra Family” and “Narumalani Family” were part of the management of the target company whereas the transaction took place on September 1, 2018. I agree that for the instant proceedings the status of PAC has to be taken as on September 01, 2018 and not in June 2024. Similarly, the reference to TFEPL’s shareholding in the target company as on quarter ending June 2017 and as on quarter ending September 2022 in the examination reports is totally irrelevant for determining the obligation on September 01, 2018.

Order dated November 30, 2023 misapplied

57. Another basis of the second SCN is the opinion expressed in order dated November 30, 2023 of the Quasi-Judicial Authority as referred above. *the closure of the above proceedings against the Noticee shall not prohibit SEBI from initiating any other proceeding emanating from the present matter, if warranted.*” In my view, this opinion was not a direction and was not binding particularly when entire facts were acknowledged in the first examination report while choosing the action and the party. This opinion is just an *obiter dictum* and being persuasive not binding. In addition, the said opinion did not express need for re-examination but to initiate “any other proceeding emanating from the present matter.” This opinion was certainly not for re-examination or for reopening the same proceedings against those whose names were earlier deliberately dropped. I hold that, in view of above, the examination/re-examination were a futile exercise. The case did not need approximation of the probability of outcomes of an experiment by running multiple trials

generated by random options. The examination for possible contravention of law has to be based on objective considerations and not on probabilisation like tossing of coins, rolling of dice and shuffling playing cards.

Conclusion based on Technical objections

58. Due to several infirmities in examinations, the SCN is rendered vulnerable on account of its failure to apply the requisite legal and factual standards that must have been independently applied. In my view, the matter is, thus, rendered academic.

59. However, in order to ascertain the veracity of allegations even for academic purpose and since the earlier order did not deal with issues on merits, I am tempted to examine the case and replies of the Noticees on merits also for the benefit of rule of law.

Consideration of case on Merits

60. It is noted that the NCLT order dated March 15, 2017 directed “*re- allotment*” of 2500 shares held by Narendrabhai Patel in TFEPL to its other shareholders. As a result, said 2500 shares of TFEPL held by Narendrabhai Patel, 833 and 834 shares were allocated to Narayanbhai Gangaram Patel and Prakash Narayanbhai Patel, respectively on September 01, 2018 and 833 shares were allocated to Bhavesh Devidas Narumalani on September 07, 2019.

61. The allegation is that due to acquisition on September 01, 2018, the combined shareholding of Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel in TFEPL increased from 50% to 66.67% which resulted in entitling them to exercise control in TFEPL and consequently they became entitled to exercise 26.91% voting rights of TFEPL in the target company and alongwith their PACs the 9 Noticees and in turn all voting power of Narayanbhai Family in the target company.

62. Ld. Advocate argued that there is no acquisition of shares, voting rights or control over the target company in this case. Further, there is no change in control in TFEPL or change in shareholding of promoters in the target company pursuant the said allocation of TFEPL shares and as such there is no indirect acquisition of shares or voting rights in the target company. According to the Noticees, as on September 01, 2018, Late Narayanbhai Gangaram Patel was the Chairman of TFEPL and further, he, together with Late Prakash Narayanbhai Patel exercised 50% voting rights in TFEPL. As Chairman of TFEPL, Late Narayanbhai Gangaram Patel had always a casting or second vote on

any proceedings of the board of TFEPL. Thus, there is no change in control in TFEPL and consequently there is no increase in their voting power in the target company.

63. I note that the basis of whole perceived controversy is alleged acquisition of control of TFEPL by Late Narayanbhai Gangaram Patel and Late Prakash Narayanbhai Patel on September 01, 2018. The shareholding of promoter/ promoter group (including the 9 Noticees) in the target company as on September 01, 2018 is not brought on record. However, such shareholding as on March 31, 2018 and March 31, 2019 as given in the following table may be taken as reference to determine if there was any change in shareholding/ voting rights of these persons in the target company during relevant times: -

Promoter and Promoter Group shareholding in the shares of target company

(Before and After the acquisition)

		As on March 31, 2017		As on March 31, 2018		As on March 31, 2019	
Sr. No.	Name of Shareholder	No. of Shares	% of Holding	No. of Shares	% of Holding	No. of Shares	% of Holding
1	Devidas Chelaram Narumalani	2,90,145	5.72	2,90,145	5.72	2,90,145	5.72
2	Kanayalal Gagandas Narumalani	3,750	0.07	3,750	0.07	3,750	0.07
3	Khushal Gagandas Narumalani	3,750	0.07	3,750	0.07	3,750	0.07
4	Pushpa Narumalani D	5,775	0.11	5,775	0.11	5,775	0.11
5	Prakash N Patel – HUF	5,000	0.1	5,000	0.1	5,000	0.1
6	Patel Prakash Narayanbhai	1,20,000	2.37	1,20,000	2.37	-	-
7	Patel Narayanbhai Gangaram - HUF	17,700	0.35	17,700	0.35	17,700	0.35
8	Sanjivkumar Narayanbhai Patel – HUF	100	0	100	0	100	0
9	Patel Narayanbhai Gangaram	1,20,000	2.37	1,20,000	2.37	1,65,000	3.25
10	Aarty P. Patel	14,000	0.28	14,000	0.28	14,000	0.28

11	Shivang Prakashchandra Patel	100	0	100	0	100	0
12	Patel Sitaben Narayanbhai	55,000	1.08	55,000	1.08	7,000	0.14
13	Jalpa Sanjiv Patel	100	0	100	0	100	0
14	Sanjiv Narayanbhai Patel	16,000	0.32	16,000	0.32	1,39,000	2.74
15	Rashmika Narendra Patel	6,525	0.13	6,525	0.13	6,525	0.13
16	Narendrabhai Gopalbhai Patel	3,03,801	5.99	3,03,801	5.99	3,03,801	5.99
17	TFEPL	13,64,512	26.91	13,64,512	26.91	13,64,512	26.91
18	Shiv Fintrade LLP	69,442	1.37	69,442	1.37	69,442	1.37
	Total	23,95,700	47.25	23,95,700	47.25	23,95,700	47.25

64. It is pertinent to note that there is no change in shareholding/ voting rights of the two deceased acquirers together with 9 Noticees who were all persons acting in concert with each other before September 01, 2018 and even till date. Also there is no change in control in the target company as all PACs were at all relevant times were and are in control of the target company.

65. I note that as per the Companies Act, 1956 (since repealed) read with the Companies Act, 2013, the Articles of Association of a company, being its fundamental document for management of a company limited by shares , the Chairman has second or casting vote in the following manner:

- (a) **Article 54:** During a general meeting of the company, in case of equality of votes, whether on show of hands or on a poll, the Chairman shall have a second or casting vote.
- (b) **Article 74:** During the proceedings of Board, in case of an equality of votes, the chairman of the Board, shall have a second or casting vote.
- (c) **Article 79:** Questions arising at any meeting of a committee shall be determined by a majority of votes of the members present, and in case of an equality of votes, the chairman shall have a second or casting vote.

66. In view of the above, I note that Late Narayanbhai Gangaram Patel, as the chairman of TFEPL having casting vote and having 50% voting power in TFEPL jointly with his son, Late Prakash Narayanbhai Patel, could always control the management of the TFEPL even before the impugned acquisition of shares by them on September 01, 2018. Since they already had controlling power in TFEPL, there was no question of change in control in TFEPL by them on September 01, 2018 as alleged in the SCN. Further, if the basis is that the Narayanbhai Family acquired control in TFEPL on September 01, 2018, then, at the same time, TFEPL cannot be alleged to be PAC for acquisition of its own shares as to be PAC with itself. I agree with the contention of the Noticees in this regard.

67. It is also pertinent to note from the Order of the Hon'ble NCLT that the Complainant (Petitioner before NCLT) himself has admitted that the Narayanbhai Family is in management control of TFEPL and was in turn controlling its voting power (13,64,512 equity shares i.e. 26.91%) in the target company. The relevant text of such admitted fact as mentioned in the said Order dated March 15, 2017 is reproduced as follows:

*“18. respondents 2 and 3 were in possession of all the records **and controlling affairs of the company ...**”*

46. The Narayanbhai Patel Group being in majority in the first respondent company is controlling the first respondent company and in turn control 13th respondent company in which the first respondent company is holding 13, 64, 512 equity shares.”

[Note: - Petitioner -Bhavesh Devidas Narumalani son of Devidas Chelaram Nerumalani; Respondent No 2 – Narayanbhai Gangaram Patel, Respondent 3 = Prakash Narayanbhai Patel, Company – TFEPL, Respondent No 13 – target company]

68. I note that the Complainant has taken shifting stands in his submissions before the NCLT and the complaints before SEBI. I note that before the NCLT he has admitted Narayanbhai Family to be in control of affairs of TFEPL and in turn entitled to control 26.91% votes of TFEPL in the target company even before the acquisition of shares on September 1, 2018, whereas in his Complaints before SEBI he has alleged indirect acquisition of control by the Narayanbhai Family in TFEPL in view of NCLT Order dated March 17, 2017. In the interest of justice taking such shifting stands cannot be permitted. The grievance of the Complainant was addressed in the order of Hon'ble NCLT and he was also given 833 shares of TFEPL held by Narendrabhai Gopalbhai Patel on September 07, 2019 pursuant to said order of Hon'ble NCLT.

69. It is beyond cavil that the basis of making TFEPL as PAC in the SCNs is that it “*being under the management of Narayanbhai Family alongwith the PACs.*” The SCN, thus, assumes TFEPL as PAC with the Narayanbhai family on the premise that TFEPL was always within their management. Thus, it is clear beyond any further inquiry that TFEPL was always under the management control of Narayanbhai Family before the acquisition of shares of TFEPL by the two deceased acquirers on September 01, 2018 and on the date of said acquisition and also thereafter. Hence, it cannot be alleged that Narayanbhai Family acquired control in TFEPL on September 01,2018.
70. Above established facts clearly demonstrate that the Narayanbhai Family including the 8 of the 9 Noticees had management control of the 9th Noticee TFEPL before, on and after September 01,2018. Thus, the question of TFEPL being PAC with itself alongwith other Noticees on September 01,2018 and only due to acquisition of shares of TFEPL by the two deceased acquirers the Noticees got control over it is farfetched. Further, the premise in SCN that before September 01, 2018, TFEPL, as separate legal entity, only had power to exercise the 26.91% voting rights in the target company and the Noticees became entitled to exercise 26.91% voting power in the target company after September 01, 2018 falls foul.

Conclusion on Merits

71. Thus, it is established that TFEPL was in control of Narayanbhai Family including the Noticees before September 1, 2018 and also on the said date when the two of the members of Narayanbhai Family viz; Late Narayanbhai Gangaram Patel, and Late Prakash Narayanbhai Patel acquired 833 and 834 shares, respectively of TFEPL and they continue to be so. Thus, the Narayanbhai Family always was entitled to control the voting power of TFEPL in the target company and there is no indirect acquisition of shares or voting rights by Narayanbhai Family on September 01, 2018.
72. In light of the aforesaid, I find that the Noticees have not violated the provisions of Regulation 3(1) read with Regulation 5(1) and Regulation 25(5) of the Takeover Regulations as alleged in the SCN.
73. Another limb of allegation is that the Noticees illegally used the voting rights of TFEPL in the target company pursuant to the aforesaid in contravention of the provisions of Regulation 3(1) read with Regulations 5(1), 25(5) of the Takeover Regulations. This allegation is without any foundation.
74. Firstly, because there is no change in voting power of Noticees in the target company pursuant to above allocation of shares in TFEPL. Secondly, it is settled position that under the scheme of

Takeover Regulations when delayed open offer can be made even after the trigger of obligation, the acquisition is not illegal or void disentitling voting rights to the acquirer. The premise of SCN is, thus, contrary to the scheme of Takeover Regulations and settled position of law. Even if it is argued that the voting rights acquired, unless making a public announcement, are illegal, then post trigger public announcement of open offer will also be illegal and enforcement of Takeover Regulations would be frustrated. And lastly, any illegal exercise of voting rights is not the domain of Regulation 3(1) of the Takeover Regulations. For the illegal exercise of voting rights, if any, the remedy lies elsewhere but certainly not within the scheme of Regulation 3(1) of the Takeover Regulations.

75. While proceeding as above, I note that the two SCNs issued sequentially invoked penalty both under sections 15H and 15HB of the SEBI Act for the violation of Regulation 3(1) read with Regulation 5(1) and 25(5) of the Takeover Regulations. This approach has perhaps been adopted based on the allegation that the Noticees illegally acquired and used the voting rights of TFEPL in the target company pursuant to the alleged contravention of the provisions of Regulation 3(1) read with Regulations 5(1), 25(5) of the Takeover Regulations. I note that neither of these regulations prohibit exercising voting rights if public announcement as contemplated in Regulation 3(1) is not made by an acquirer. The consequence of trigger of obligation is provided in Regulation 3(1) itself and in case of non-compliance of said statutory obligation, the directions under Regulation 32 read with Sections 11 and 11B of the SEBI Act would follow.
76. In addition, Section 15H of the SEBI Act specifically provides monetary penalty for non-compliance of this obligation under Regulation 3(1) of the Takeover Regulations. Section 15HB is a residuary provision in a sense that it is attracted where contravention of any provisions of the SEBI Act, rules or regulations made or directions issued thereunder is not covered in any charging section prescribing penalty under the Act.
77. In this case, the SCNs have charged contravention of Regulation 3(1) read with Regulations 5(1) and 25(5) of the Takeover Regulations. Regulation 3(1) is specifically covered under Section 15H. Regulation 5(1) provides a rule of construction and does not create any obligation. Regulation 25(5) is enabling provision for SEBI and binds it to enforce against acquirers and their PACs under regulations 3 and 4, jointly and severally. Thus, none of these Regulations are governed pursuant to provisions of Section 15HB of the SEBI Act and such a fanciful approach to invoke Section 15H and Section 15HB both for charging same Regulation is not appropriate.

Disposal of SCN.

78. In view of the above, the Show Cause Notice dated October 21, 2024 in the present matter is disposed of without any direction or monetary penalty as the case is not made out at all.

79. This Order shall come into force with immediate effect.

80. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to all the Noticees and also to SEBI.

Date: July 31, 2025

Place: Mumbai

**SANTOSH SHUKLA
QUASI JUDICIAL AUTHORITY
SECURITIES AND EXCHANGE BOARD OF INDIA**