BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/MC/HP/2022-23/17632-17635]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of –

1. **Vimaladevi R Tikmani (PAN: AAUPT2633C)**
   3, Navyug Society, S M Road, Near C N Vidyalaya, Ambavadi, Ahmedabad – 380015, Email: vimaladevitikmani@gmail.com
2. **Pooja R Tikmani (PAN: ABDPT4755B)**
   3, Navyug Society, S M Road, Near C N Vidyalaya, Ambavadi, Ahmedabad – 380015 Email: poojatik@gmail.com
3. **Rishi R Tikmani (PAN: AAAHT3601C)**
   3, Navyug Society, S M Road, Near C N Vidyalaya, Ambavadi, Ahmedabad – 380015 Email: info@alfaica.com
4. **Rajendra Tikmani (HUF) (PAN: AAAHT3601C)**
   3, Navyug Society, S M Road, Near C N Vidyalaya, Ambavadi, Ahmedabad – 380015 Email: info@alfaica.com

In the matter of Alfa ICA India Limited.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has initiated adjudication proceedings under Section 15H(ii) of SEBI Act, 1992 (hereinafter referred to as, '**SEBI Act**') against Vimaladevi R Tikmani (**Noticee 1**), Pooja R Tikmani (**Noticee 2**), Rishi R Tikmani (**Noticee 3**) and Rajendra Tikmani

(HUF) (**Noticee 4**) for alleged violation of Regulation 14(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (hereinafter referred to as, '**Takeover Regulations**'). The Noticees 1 to 4 are collectively referred to as **'Noticees/You'**.

APPOINTMENT OF ADJUDICATING OFFICER

2. The undersigned was appointed as Adjudicating Officer *vide* order dated March 18, 2021 to inquire into and adjudge under Section 15H(ii) of SEBI Act the aforesaid alleged violation against the Noticees. The appointment of the AO was communicated *vide* order dated March 22, 2021**.**

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice No. EAD5/MC/HP/ 16050 /2021 dated July 22, 2021 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of Rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ('SEBI Adjudication Rules') to show cause as to why an inquiry should not be held and penalty not be imposed against Noticee in terms of Section 15H (ii) of the SEBI Act, for the aforesaid alleged violations.

4. The allegations levelled against the Noticee in the SCN are summarized as below:

5. Noticees 1 to 4, being persons acting in concert, made an open offer during the financial year 2016-17 to the shareholders of Alfa ICA India Limited (Company / **Target Company / TC / Alfa**) for acquisition of 10,50,400 equity shares of the target company at Rs. 23/- per share payable in cash under SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011 (hereinafter referred to as, '**SAST Regulations**'). In this regard, D&A Financial Services (P) Limited (**Manager to the open offer / MB**) vide letter dated July 27, 2016 submitted Public Announcement, vide letter dated August 03, 2016 submitted detailed public

announcement and vide letter dated August 08, 2016 submitted the draft letter of offer to SEBI.

6. While examining the draft letter of offer (DLOO), it was observed from the shareholding pattern available on BSE's website that the shareholding of promoter group was increased from 14.33% to 15.99% during September 2003 to December 2003. In this regard, MB had submitted that assuming the said increase to be in violation of Takeover Regulations, 1997, the price of open offer with interest would have been approximately Rs. 21/- per equity share (offer price including interest for delayed open offer), which was less than the current open offer price which was Rs. 25.40 per equity share.

7. On perusal of the shareholding patterns of the target company for the quarters September 2003 and December 2003, available on BSE website, it was observed that there was an increase in the shareholding of promoters from 14.33% to 15.99% during the period of September to December 2003 (copy placed as **Annexure 4**). With respect to the observation regarding increase in shareholding of promoter group from 14.33% to 15.99% during September 2003 to December 2003, Noticees submitted that the shareholding of promoter group as on March 31, 2003 itself was more than 15.67%. However, on perusal of the shareholding patterns from March 2002 to December 2003, it was observed that the shareholding pattern of promoter group was below 15% till September 2003. In this regard, no submissions were made by the Noticees to indicate that the data submitted under shareholding pattern for all these quarters was incorrect.

8. Further, it was also disclosed in letter of offer of the Target Company at clause 5.2 that *"there is a violation of open offer obligation in terms of provisions of Regulation 10 and 11(1) of Chapter Ill of SEBI (SAST) Regulations, 1997 due to breach of threshold limit of 15% by the Promoter and Promoter Group of target company during quarter ended September 2003 to December 2003 as per data available at the website of BSE Limited for such period and….."*

9. Thus, it is alleged that there was a delay of 12 years and 7 months in making public announcement / open offer pursuant to the increase in shareholding of promoters from 14.33% to 15.99% during September to December 2003, in violation of Regulation 14(1) of Takeover Regulations, 1997.

10. During the period 2010-11 there was an increase of 21.47% in shareholding of Noticee 4 from 2.36% to 23.83%. The said increase was beyond the threshold stated under the erstwhile Takeover Regulations, 1997. In this regard, Noticees submitted that the said increase was pursuant to an *inter-se* transfer within the promoter group and Noticees submitted a report to SEBI on August 08, 2016 under regulation 3(4) of Takeover Regulations, 1997.

11. On examination of the aforesaid report submitted under regulation 3(4) of Takeover Regulations, 1997, following observation were made with regard to compliance of the said transaction with Takeover Regulations, 1997.

Sr. No.	**Item**	**Factual details**	
i.	Date of report	August 02, 2016	
ii.	Date of receipt of report in SEBI	August 08, 2016	
iii.	Name of the target company	Alfa Ica (India) Ltd	
iv.	Total paid up capital of target company	40,40,000	
v.	Listed on stock exchange(s)	BSE	
vi.	Shareholding pattern of the TC as per the report dated August 02, 2016	Before acquisition	After acquisition
	(A) In case the acquirer is a promoter **PROMOTER HOLDING** Acquirer / transferee - Rajendra Tikmani HUF (promoter of TC) Mr. Rishi Tikmani, Karta (promoter of TC)	95,445 (2.36%)	9,62,818 (23.83%)
	Seller / transferor - Mr. Rajendra Tikmani	10,75,128 (26.61%)	2,07,755 (5.14%)
	Other promoters / promoter group	3,46,100 (8.57%)	3,46,100 (8.57%)
	(A) Total promoters' holding	**15,16,673 (37.54%)**	**15,16,673 (37.54%)**
	(B) Non-Promoter Holding		
	Public	21,09,129 (52.21%)	21,09,129 (52.21%)
	Financial Institutions	4,14,198 (10.25%)	4,14,198 (10.25%)
	(B) Total	**25,23,327 (62.46%)**	**25,23,327 (62.46%)**

	TOTAL (A) + (B)	**40,40,000 (100%)**	**40,40,000 (100%)**
vii.	Total number of shares acquired	8,67,373 (21.47%)	
viii.	Date of inter se transfer	March 23, 2011	
ix.	Acquisition price per share	Without any consideration	
x.	Regulation which would have been triggered off, had the report not been filed under regulation 3(4)	Reg. 11(1) of Takeover Regulations, 1997	
xi.	Whether information about the proposed acquisition was given to all stock exchanges where the shares of TC are listed at least 4 working days in advance of the proposed acquisition – Reg. 3(3)	No information was given to stock exchange.	
xii.	Transferor as well as the transferee have been holding shares in the TC for a period of at least three years prior to the proposed acquisition.	Transferor is compliant, however transferee is non-compliant, as transferee has been holding shares in the TC for less than one year.	
xiii.	Whether the transaction is eligible for exemption under Reg. 3(1)(e) of Takeover Regulations, 1997	Not eligible for exemption. Reg. 3(1)(e) of Takeover Regulations, 1997 provides that the benefit of availing exemption from applicability of Regulations for increasing shareholding or *inter se* transfer of shareholding shall be subject to the condition that transferor(s) as well as transferee(s) have been holding shares in the TC for a period of at least three years, prior to the proposed acquisition. In the instant transaction, the transferee has been holding shares in the TC for less than one year, hence the instant transaction does not meet eligibility criteria stipulated in the Regulations.	
xiv.	Delay in submission report to SEBI	2,028 days, however, it may not hold relevance as the transaction is not meeting the condition for exemption.	

12. As per regulation 11(1) of Takeover Regulations, a public announcement was required to be made by an acquirer who, together with persons acting in concert with him holding 15% of shares / voting rights in a company, to acquire additional shares or voting rights entitling him to exercise more than 5% of the voting rights, not exceeding fifty-five per cent either by himself or through or with persons acting in concert with him, in any financial year ending on 31st March.

13. It was observed from the annual report of the target company for the financial year 2015-16 (page no. 14) that Mr. Rajendra Tikmani, Managing Director of the target company died during the FY 2015-16. Mr. Rajendra Tikmani was the karta of Noticee 4. However, pursuant to the demise of Mr. Rajendra Tikmani, Noticee 3 was acting as Karta of Noticee 4. As per the shareholding pattern for the quarter ending December 2020 said HUF is continuing as a promoter of the target company.

14. Though the said transaction was between the promoters of the Company, the transferee, Noticee 3, was holding shares in the Company for less than three years. As per the criteria stipulated under Regulation 3(1)(e) of Takeover Regulations the said transaction i.e., acquisition of 21.47% by Noticee 4 (whose Karta is Noticee 3) from another promoter Mr. Rajendra Tikmani is not eligible for exemption from regulation 11(1) of Takeover Regulations. Further, the acquirers, Noticees 3 and 4, along with other promoters / PACs were together holding 37.54% of shares of the Company. Therefore, obligation to make an open offer was triggered pursuant to aforesaid inter-se transfer of shares to Noticee 4.

15. Acquirers, Noticees 3 and 4, vide letter dated September 30, 2016 submitted an undertaking and confirmed that they were ready to make payment of interest to shareholders @ 10%, on the offer price as determined Rs. 16.35 per share with respect to acquisition of shares by Noticee 4 by way of inter se transfer, which triggered off the erstwhile Regulation 11(1) of Takeover Regulations, 1997.

16. Further, Merchant Banker vide email dated October 05, 2016 (**copy placed as Annexure 7**) had confirmed that *"the interest shall be paid on the offer price calculated as Rs. 16.35 per share w.r.t acquisition of shares by M/s Rajendra Tikmani (HUF) through inter se transfer on 23.03.2011, which triggered off the Regulation 11(1) of SEBI (SAST) Regulations, 1997, for the period since 21.06.2011 till the date of making final payment to the shareholders under this offer. The total amount of interest calculated @ 10% will approximately come to*

Rs. 8.85 per share and the total offer price payable to the public shareholders in view of the above shall be Rs. 25.20 per share under the offer".

17. The acquirers disclosed in the letter of offer of the Company at clause 5.2 stating that *"…………………………………… and acquisition of 867373 equity shares by the Rajendra Tikmani (HUF) representing 21.47% of the total paid up share capital of target company by way of inter se transfer of shares respectively. SEBI may initiate suitable action for the above said violations"* and at clause 7.1.1 (page no. 11) it was mentioned that *"Justification of Offer price for the open offer to be made for acquisition of shares by way of inter se transfer under Regulation 11(1) of SEBI (SAST) Regulations, 1997 o 23.03.2011"* and also mentioned that *"the fair value per share is Rs. 16.35 per share and after calculating interest @ 10% p.a on the offer price, the interest amount will be Rs. 9.02 per share and accordingly the offer price for the above said acquisition including interest comes to Rs. 25.37 per share".*

18. Though interest was included in the offer price for delay in making open offer, there was a delay of 4 years and 7 months in making public announcement by Noticee 4 (whose Karta is Noticee 3).

19. In view of the above, it was alleged that Noticees 1 to 4 have violated the Regulation 14(1) of Takeover Regulations, 1997.

20. The text of the aforesaid provisions is reproduced as under:

<u>Takeover Regulations 1997 and SEBI Act</u>

Regulation 3(1)

Nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:

(a) …..

(b) …..

(c) …..

(d) ……

(e) inter se transfer of shares amongst—

- *(i) group coming within the definition of group as defined in the Monopolies and Restrictive Trade Practices Act, 1969 (54 of 1969) where persons constituting such group have been shown as group in the last published Annual Report of the target company;*
- *(ii) relatives within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);*

  (a) Qualifying Indian promoters and foreign collaborators who are shareholders;

  (b) qualifying promoters:

  Provided that the transferor(s) as well as the transferee(s) have been holding shares in the target company for a period of at least three years prior to the proposed acquisition.

  Explanation.– For the purpose of the exemption under sub-clause (iii) the term qualifying promoter means—

  - *(i) any person who is directly or indirectly in control of the company; or*
  - *(ii) any person named as promoter in any document for offer of securities to the public or existing shareholders or in the shareholding pattern disclosed by the company under the provisions of the Listing Agreement, whichever is later;*

    and includes,

    (a) where the qualifying promoter is an individual,—

    (1) a relative of the qualifying promoter within the meaning of section 6 of the Companies Act, 1956 (1 of 1956);

    (2) any firm or company, directly or indirectly, controlled by the qualifying promoter or a relative of the qualifying promoter or a firm or Hindu undivided family in which the qualifying promoter or his relative is a partner or a coparcener or a combination thereof :

Provided that, in case of a partnership firm, the share of the qualifying promoter or his relative, as the case may be, in such firm should not be less than fifty per cent (50%);

(b) where the qualifying promoter is a body corporate,—

(1) a subsidiary or holding company of that body; or

(2) any firm or company, directly or indirectly, controlled by the qualifying promoter of that body corporate or by his relative or a firm or Hindu undivided family in which the qualifying promoter or his relative is a partner or coparcener or a combination thereof:

Provided that, in case of a partnership firm, the share of such qualifying promoter or his relative, as the case may be, in such firm should not be less than fifty per cent (50%);

(iv) the acquirer and persons acting in concert with him, where such transfer of shares takes place three years after the date of closure of the public offer made by them under these regulations.

Explanation.—(1) The exemption under sub-clauses (iii) and (iv) shall not be available if inter se transfer of shares is at a price exceeding 25% of the price as determined in terms of sub-regulations (4) and (5) of regulation 20.

(2) The benefit of availing exemption under this clause, from applicability of the regulations for increasing shareholding or inter se transfer of shareholding shall be subject to such transferor(s) and transferee(s) having complied with regulation 6, regulation 7 and regulation 8;]

Regulation 10

No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen per cent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the regulations.

Regulation 11(1)

No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent 55% of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, with post acquisition shareholding or voting rights not exceeding fifty five per cent, in any financial year ending on 31st March unless such acquirer makes a public announcement to acquire shares in accordance with the regulations.

Regulation 14(1)

The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein.

21. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under section 15H(ii) of SEBI Act.

22. The SCN was duly served on the Noticees by email on July 22, 2021. Noticees submitted reply to the SCN vide letter dated August 05, 2021. Opportunity of hearing was provided to the Noticee through video conferencing on June 10, 2022. Authorised Representatives (AR) of the Noticee, Mr. Paritosh Gupta, Advocate, attended the hearing on behalf of the Noticees and reiterated the submissions made in the reply.

23. The key submissions of the Noticee are summarized as below:

24. Noticees submitted that the present notice has been issued in relation to two violations purportedly committed during the period September to December, 2003

and during the period 2010-11 respectively. During this period, the company was actively managed and operated by Late Shri Rajendra Tikmani and both the purported infractions have been concerning transactions with him. However, due to illness, Late Shri Rajendra Tikmani has passed away on 22.10.2015. It is only subsequent thereto that Shri Rishi Tikmani and Smt. Pooja Tikmani, children of Late Shri Rajendra Tikmani have taken over the operations of the company in an active manner. Moreover, Shri Rishi Tikmani has also subsequently become the Karta of Rajendra Tikmani (HUF). As regards Smt. Vimaladevi Tikmani, she has been a house wife and has never actively participated in the conduct of business either during the lifetime of Late Shri Rajendra Tikmani or thereafter. While considering the submissions made hereinbelow, it may be noted and appreciated that transactions were pertaining to Late Shri Rajendra Tikmani and not the present noticees. It may also be noted that transactions in question are concerning purported infractions committed way back in 2003 and 2010-11 when Late Shri Rajendra Tikmani was active; however, on account of demise of Late Shri Rajendra Tikmani, it is difficult for the present noticees to explain the circumstances surrounding the said transactions. Therefore, the present submission may be appreciated keeping in mind that the same is tendered by persons who were not directly concerned with the said transactions at the relevant point of time.

25. Noticees submitted that the present notice suffers from gross delay and is required to be withdrawn on the said count itself. The purported infractions in the subject notice relates to the period 2003 and 2010-11; whereas, the show cause notice has been issued only on 26.07.2021 i.e., after a delay of 18 years for the first instance and 10 years for the second instance. No explanation has been given in the show cause notice explaining or giving the justification for such delayed action. During the interregnum period, Late Shri Rajendra Tikmani, who was concerned with such transactions, has also passed away. Thus, not only on account of inordinate delay in initiation of proceeding but also due to demise of Late Shri Rajendra Tikmani, it would be very difficult for Noticees to deal with the allegations

made in the notice. Though the Act or the rules made thereunder do not provide for a specific time limit to initiate proceeding; however, law on the subject is well settled that even in absence of any period of limitation, the authority is required to exercise its powers within a reasonable period, as justified in the facts of the case. The notice does not even suggest a single reason for justifying such delay of more than a decade. Perusal of the show cause notice on the contrary shows that the infraction for the period 2003 has been noted from the website of BSE only. Similarly, data relating to the infraction purportedly committed during the period 2010-11 is also duly reflected on the website of BSE. Thus, the information relating to the purported infractions were very much available in the public domain. In this view of the matter, delay in initiation of the proceeding was clearly unwarranted and unjustified.

26. Noticees further submitted that after the demise of Late Shri Rajendra Tikmani, the promoters came out with an open offer for acquisition of shares. While scrutinizing the records of the company, it was informed by the manager of the offer i.e., the merchant banker, that these two instances may be treated as an infraction by the authority. With complete bonafide and to keep all the shareholders abreast of the facts, the present notices on their own volition declared such facts in the letter of offer at paragraph 5.2. Though not having violated any provisions of the Rules/Regulations and with a view to ensure no prejudice is caused to the shareholders, the noticees also declared the fair value per share after taking into consideration 10% p.a. on the offer price from the last date of making payment to shareholders for the inter-se transfer till the last date of making the payment to shareholders under the said offer. Though it is not the case in the notice that there has been any illegal gain to the promoters or any loss to the shareholders, but the aforesaid facts clearly shows that Noticees, as promoters of the company, have always acted diligently and in a transparent manner.

27. At this stage, it may also be noted that these very transactions were brought to the notice of the Board in the year 2016 while making the said open offer. Despite such specific intimation, no action was taken in respect of the said transactions. It was only after almost 5 years from such date that such an action is now initiated without any justification on the delay thereof. This being the case, there is evident and unexplained inordinate delay of over a decade in initiation of the present proceeding and the proposal to impose penalty should therefore, be withdrawn on this count itself. The mandate of making a public offer, as alleged to be breached, is to bring relief to the shareholders on the creeping acquisition. Action against erring person is therefore, necessarily required to be taken at the earliest opportune moment as otherwise, the entire purpose of taking a step would be nugatory and unnecessary. In the present case also, the alleged violations have taken place way back in 2003 and 2010-11 and therefore, no purpose would be even otherwise served by taking recourse to penal action after more than a decade. The issue of limitation may also be considered keeping in view that the action is not initiated against the acquirer or the person who had purportedly committed breach of the Rules/Regulations, but against promoters who were not involved in the day to day business of the Company at the relevant point of time. As against the noticees, there is not even an iota of justification on record to justify delayed initiation of proceeding. Noticees made reference in this regard to the judgments rendered by the Hon'ble Supreme Court as well Securities Appellate Tribunal in following cases where the reasonable time limit has been read into the provisions despite any specific time limit mentioned therein: -

    i. Adjudicating Officer, SEBI vs. Bhavesh Pabari reported in 2019 SCC Online SC 294
    ii. Government of India vs. Citedal Fine Pharmaceuticals reported in AIR 1989 SC 1771
    iii. Bhavnagar University vs. Palitana Sugar Mill reported in 2004 (12) SCC 670
    iv. State of Punjab vs. Bhatinda District Coop Milk P. Union Ltd. reported in 2007 (11) SCC 363

v. Joinder Collector Ranga Reddy vs. D. Narsing Rao reported in 2015 (3) SCC 695

vi. Ashok Shivlal Rupani vs. SEBI – Order dated 22.08.2019 rendered in Appeal No. 417 of 2018 and appeal against this order has been dismissed by the Hon'ble Supreme Court vide judgment dated 15.11.2019 in Civil Appeal Nos. 8444-8445 of 2019

vii. Rajeev Bhanot vs. SEBI – Order dated 09.07.2021 rendered in Appeal No. 396 of 2018

28. Noticees submitted that there is no violation of Regulation 14 (1) on their part. The said Regulation provides a mandate on the merchant banker to make a public announcement as referred to in Regulation 10 or Regulation 11. The said regulation refers to obligations on part of the merchant banker. The alleged breach of said the Regulation on our part is therefore, clearly misplaced. Perusal of the notice shows that proposal to impose penalty on Noticees is entirely on the basis of alleged violation of Regulation 14 (1) of the said Regulations; the said Regulation not having any relevance to the case at hand, the entire proceeding is required be dropped on the said basis also.

29. Noticees further submitted that the Regulations of 1997 have been repealed upon introduction of SEBI (Acquisition of Shares & Takeovers) Regulations 2011. Thus, initiation of the proceeding on premise of infraction under the erstwhile Regulations is even otherwise legally unsustainable. Clause 2 to Regulation 35 of the said Regulations of 2011 provides that notwithstanding such repeal – (a) anything done or any action taken or purported to have been done or taken including comments on any letter of offer, exemption granted by the Board, fees collected, any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations, prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations; (b) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired,

accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations has never been repealed. Perusal of the said provision clearly shows that the saving clause applies only to cases where proceeding have already been initiated. Sub-clause (a) to Clause 2 to the said Regulation applies only to adjudication, enquiry or investigation commenced or show cause notice issued under the repealed regulations, prior to such repeal. In the present case, proceeding have been initiated after almost a decade of the provisions having been repealed and therefore, question of the said saving clause provided under sub-clause (a) does not even arise. As regards sub-clause (b) also, it can be seen that the same comes into play only if the right, privilege, obligation or liabilityis acquired, accrued or incurred under the repealed regulation. Therefore, present proceeding having been initiated after the repeal of the erstwhile rules is even otherwise legally unsustainable. The Hon'ble Supreme Court in the case of Rayala Corporation vs. Director of Enforcement reported in 1969 (2) SCC 412 (SC) as also Kohlapur Canesugar Works Ltd. & Anr. Vs. Union of India reported in 2000 (2) SCC 536 has held that omission of rule/regulation would result in its obliteration from the Statute and would consequently, not only result in bar from initiation of any fresh proceeding but also discontinuation of proceedings initiated and pending under the said rule/regulation. The Hon'ble Court has however, also observed that there is an exception to the said proposition in respect of cases specifically covered under Section 6 of the General Clauses Act, 1897 or similar savings provision, if enacted under the new provision by way of which the pertinent rules/regulations have been repealed. In the present case, as highlighted hereinabove, there is no provision under the new regulations permitting initiation of fresh proceeding under the erstwhile Regulations. This being the case, the show cause notice now issued to us is clearly without jurisdiction and is required to be withdrawn at once

30. , the investors prior to acquisition in question were aware that the promoters of the Company were maintaining a substantial holding in the Company. They were also well aware that the promoter had a majority control on the Company. Depending on the said information only they had remained invested in the Company. Post-acquisition also, the scenario did not change drastically. The promoter still maintained the substantial holding and had the majority control on the Company. Moreover, there was no change in the management in the Company as the existing management continued even after the acquisition

31. No instance provided or shown wherein any shareholder had faced any loss or had suffered any detrimental consequences owing to our delayed disclosure under Regulation. Moreover, it would also have to be considered whether any ill-gain or profits on account of such delayed disclosure was made by the promoters. Perusal of the show cause noitce does not disclose that had we been interested in intentionally suppressing any information and avoiding a disclosure or that we have actually gone on to accrue certain profits or would have made certain benefits or gains as a result of suppression of such information. We did not accrue any sort of benefit or gain by delayed disclosure under Takeover Regulation. The above facts clearly shows that delayed disclosure by Late Shri Rajendra Tikmani was only a technical breach and no undue gain or undue advantage was taken either by the management of the target company or by us and it has not caused any undue loss to the investors as well. In this view of the matter, proposal to impose penalty on us is clearly uncalled for and unjustified

32. On matters related to disclosure, Noticees submitted that there was no intention to evade the procedural aspects of the Takeover Regulations. In such a scenario, delayed disclosure amounts to a technical and procedural breach and the same should be seen in a liberal manner. In the present case, therefore, the imposition of penalty, in any event would be unjustified and ought to be set aside for there is an absence of wilful default or deliberate defiance. Invocation of penal provision

requires subjective satisfaction of the factors mentioned in Section 15J of the Act. The notice however, does not disclose any reasoning on the said factors.

33. Noticees referred to several SC judgments to state that case law clearly stipulates that the relevant authority has to justify the imposition of penalty covering the realm of the factors provided under Section 15J of the SEBI Act and therefore no authority can just unilaterally impose penalty on the delinquent. Moreover, a case of levying penalty can only arise in a situation wherein the delinquent has deliberately acted in defiance of law. The findings do not lead to any conclusion that there has been disproportionate gain or unfair advantage to us by the said acquisition of shares without making the relevant disclosure. The notice also does not point out such gain or unfair advantage. Hence, there is no amount of disproportionate gain or unfair advantage, whether quantifiable, made as a result of the alleged default

34. Further, there are no investor complaints filed at any Stock Exchange or with SEBI in respect of the acquisition without disclosure under Regulation 7(1A). There has been no loss caused to any investor/group of investor. In absence of such direct information the allegation of causing loss to other investors is also not applicable. Therefore there is no amount of loss caused to an investor or group of investors as result of delayed disclosure of shareholding pattern to the Company.

35. This is for the first time any proceedings have been initiated against us in the entire securities market. Scrutiny of Noticee's records would show that they have been law abiding citizens and have always acted in a transparent manner in conduct of the target company. No proceedings have ever been initiated against them for any default whatsoever. In this view of the matter, it is clear that even as per the factors mentioned in Section 15J of the Act, no penalty is required to be imposed on Noticees. The matter of penalty is governed by the principles as laid down by the Hon'ble Supreme Court in the land mark case of M/s Hindustan Steel Limited reported in AIR 1970 SC 253 wherein the Hon'ble Supreme Court has held that penalty should not be imposed merely because it was lawful to do so. The Apex

Court has further held that only in cases where it was proved that the person was guilty of conduct contumacious or dishonest and the error committed by the person was not bonafide but was with a knowledge that he was required to act otherwise, penalty might be imposed. It is held by the Hon'ble Supreme Court that in other cases where there were only irregularities or contravention flowing from a bonafide belief, even a token penalty would not be justified. Penalty is a quasi-criminal matter and therefore, it could be resorted to only in cases where malafide intention or guilty conscious of an assessee was established. Since it is required to be established that action of the accused was deliberate in the matter of penalty, this measure is to be resorted to sparingly. In the facts of the present case where no suggestion or allegation is made of any illegal benefit to us or loss caused to the shareholders, there is no justification in the imposition of penalty in law as well as in facts.

36. As the inquiry in the matter is complete, I now proceed to decide the matter on the basis of SCN issued, reply received and material placed on record.

CONSIDERATION OF ISSUES AND FINDINGS

37. The issues that arise for consideration in the instant matter are:

Issue No. I Noticees 1 to 4 have violated the Regulation 14(1) of Takeover Regulations, 1997?

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15H(ii) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

Issue No. I Noticees 1 to 4 have violated the Regulation 14(1) of Takeover Regulations, 1997?

38. Before proceeding with the merits of the case, I will deal with preliminary objections by the Noticees relating to delay in initiating the proceedings. Noticee has submitted that the purported infractions in the subject notice relates to the period 2003 and 2010-11; whereas, the show cause notice has been issued only on 26.07.2021 i.e., after a delay of 18 years for the first instance and 10 years for the second instance. In this regard, I note that the allegations against the Noticee arise from the delay of 4 years and 7 months in making public announcement by Noticee 4. The public announcement was allegedly triggered upon acquisition of 21.47% by Noticee 4 (whose Karta is Noticee 3) from another promoter Mr. Rajendra Tikmani on March 23, 2011. However, the open offer announcement was made only in October 2016. Therefore, I note that the proceedings pertain to obligations which the Noticee was required to fulfill in March 2011, but which were fulfilled by it in October 2016. Thus, I take note that the SCN was issued around 5 years after the open offer announcement made by the Noticee.

39. I take note of the submission by the Noticees that after the demise of Late Shri Rajendra Tikmani, the promoters came out with an open offer for acquisition of shares. While scrutinizing the records of the company, it was informed by the manager of the offer i.e., the merchant banker, that these two instances may be treated as an infraction by the authority. With complete bonafide and to keep all the shareholders abreast of the facts, the present noticees on their own volition declared such facts in the letter of offer and with a view to ensure no prejudice is caused to the shareholders, the noticees also declared the fair value per share after taking into consideration 10% p.a. on the offer price from the last date of making payment to shareholders for the inter-se transfer till the last date of making the payment to shareholders under the said offer.

40. In this context, Noticee has submitted that there is no violation of Regulation 14 (1) on their part. The said Regulation provides a mandate on the merchant banker to make a public announcement as referred to in Regulation 10 or Regulation 11.

The said regulation refers to obligations on part of the merchant banker. This contention by the Noticee is erroneous as the obligation to make an open offer rests on the acquirers under Regulation 10 and 11. Regulation 14(1) refers to the timing of the public announcement which is to be made by the merchant banker on behalf of the acquirers.

41. Noticees has further submitted that the Regulations of 1997 have been repealed upon introduction of SEBI (Acquisition of Shares & Takeovers) Regulations 2011. Thus, initiation of the proceeding on premise of infraction under the erstwhile Regulations is even otherwise legally unsustainable. This submission by the Noticees is also not tenable as Regulation 35(2) of the SAST Regulations 2011 clearly provides that *the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations* …….*shall remain unaffected as if the repealed regulations has never been repealed.* Thus the actions done under the repealed regulations continue to remain unaffected as if the repealed regulations has never been repealed.

42. I note that the allegation against the Noticee pertains only to the delay in making open offer of 4 years and 7 months, and that the Noticees, while making the open offer made payment of interest to shareholders @ 10%, on the offer price as determined Rs. 16.35 per share with respect to acquisition of shares by Noticee 4 by way of inter se transfer, which was triggered off the erstwhile Regulation 11(1) of Takeover Regulations, 1997. After considering the interest component, Merchant Banker on behalf of acquirers vide email dated October 05, 2016 had confirmed offer price payable to the public shareholders of Rs. 25.20 per share after including interest.

43. **Regulation 14(1) of SAST Regulations states as follows:**

The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an *agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein.*

44. It is a fact that the public announcement for open offer was made with a delay of 4 years and 7 months from the trigger of inter-se transfer of shares. This fact is not denied by the Noticees. Regulation 14(1) requires that public announcement be made within 4 days of acquisition of shares. Hence, violation of Regulation 14(1) of SAST Regulations is established.

Issue No. II If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15H(ii) of the SEBI Act?

Issue No. III If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5(2) of the Adjudication Rules?

45. As it is established that the Noticee 1 to 4 violated Regulation 14(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997, as brought out in the foregoing paragraphs, the Noticees 1 to 4 are liable for monetary penalty under Section 15H(ii) of SEBI Act,1992 which states as follows:

SEBI Act

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

(i) ……..

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

(iii) ……..

(iv) …….

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

46. While determining the quantum of penalty under Section 15H(ii) of SEBI Act,1992, the following factors stipulated in Section 15J of the SEBI Act have to be given due regard:

<u>SEBI Act, 1992</u>
<u>Factors to be taken into account by the adjudicating officer</u>

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

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

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

(c) the repetitive nature of the default.

47. I note that the allegation against the Noticees pertains to the delay in making open offer by 4 years and 7 months, and the confirmed offer price payable to the public shareholders by the Noticees in the open offer was Rs. 25.20 per share after including interest @ 10% for the duration the open offer was delayed. I take note that by making payment of interest @10% on the open offer price for the delay, the interest of investors has been preserved. Considering the open offer made and payment of interest @10% on the open offer by the Noticees, I am of the view that a penalty of Rs. 10,00,000/- on Noticee 1 to 4, to be paid jointly and severally under Section 15H(ii) of SEBI Act,1992 will be commensurate with the violations committed by the Noticees.

ORDER

48. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 10,00,000/- (Rupees Ten Lakh only) under Section 15H(ii) of SEBI Act,1992 on Vimaladevi R

Tikmani (Noticee 1), Pooja R Tikmani (Noticee 2), Rishi R Tikmani (Noticee 3) and Rajendra Tikmani (HUF) (Noticee 4) to be paid jointly and severally for violation of Regulation 14(1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997.

49. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link

ENFORCEMENT → Orders → Orders of AO → PAY NOW

50. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – IV of SEBI. The Noticees shall provide the following details while forwarding DD/ payment information:
    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

51. Copy of this Adjudication Order is being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: June 30, 2022	**MANINDER CHEEMA**
PLACE: MUMBAI	**ADJUDICATING OFFICER**