BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. : ORDER/VKV/HKS/2019-20/5149-5151]

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

Sl. No.	Name of the Entity	PAN
1.	Shri Sanjay Jethalal Soni	[PAN: BVSPS9741N]
2.	Smt. Krupa Sanjay Soni	[PAN: BVSPS9740P]
3.	M/s. J M Soni Consultancy	[PAN: AAGFJ2939P]

IN THE MATTER OF OREGON COMMERCIAL LIMITED (NOW KNOWN AS SAIANAND COMMERCIAL LIMITED).

BACKGROUND

1. The Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) had conducted the Investigation in the matter relating to the trading activity of certain entities, in the scrip of Oregon Commercial Limited (hereinafter referred to as **"OCL or Scrip"**). During the relevant time the shares of OCL was listed on BSE Limited (hereinafter referred to as **"BSE"**).

2. Pursuant to the Investigation the SEBI, initiated adjudication proceedings under Section 15H of the Securities and Exchange Board of India Act, 1992, (hereinafter referred to as **"SEBI Act"**) against Shri Sanjay Jethalal Soni, his wife Smt. Krupa Sanjay Soni and his proprietary concern M/s. J M Soni Consultancy (hereinafter collectively referred to as **"Noticees"**) for the alleged violation of the

provisions of Regulation 10 and Regulation 11 (1) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 read with Regulation 35 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as **"SAST Regulations"**) for the alleged failure to make public announcement to acquire shares of OCL (Target Company)

APPOINTMENT OF ADJUDICATING OFFICER

3. Shri Sahil Malik was appointed as the Adjudicating Officer **(AO)** by SEBI, under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **"Adjudication Rules"**) to conduct adjudication proceedings *inter-alia* in respect of the Noticees, in the manner specified under Rule 4 of the Adjudication Rules read with Section 15-I (1) and (2) of the SEBI Act, and if satisfied that penalty is liable, to impose such penalty deemed fit in terms of Rule 5 of the Adjudication Rules and in terms of Section 15H of the SEBI Act. Subsequently, in the matter the undersigned has been appointed as AO by SEBI, on August 13, 2019, in the place of Shri Sahil Malik to inquire into and adjudge, the violation of Regulation 10 and Regulation 11 (1) of the SAST Regulations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice dated July 24, 2017 read with supplementary Show Cause Notice dated August 28, 2017 (hereinafter collectively referred to as **"SCN"**) was issued to the Noticees in terms of Rule 4 (1) of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be initiated and penalty should not be imposed under Section 15H of the SEBI Act, on the Noticees for the alleged violation of Regulation 10 and Regulation 11 (1) of the SAST Regulations.

5. The Authorised Representative **(AR)** of the Noticees filed reply to the SCN vide letter dated November 05, 2017. The relevant extracts of the aforesaid reply, mainly to the effect the aforesaid allegation against the Noticees, are *inter-alia* reproduced hereunder.

1. *It is stated that, Sanjay Jethalal Soni is the registered Sub-Broker and main line of business is investment, share trading and advisory services.*

2. *As per Regulation 3 of SEBI (SAST) 1997, the provisions of trigger of Open offer doesn't apply to Share Broker for acquisition of Share for their clients. It may be noted that, the total quantity attributed to Sanjay Soni and J M Soni Consultancy was not entirely for self-acquisition.*

3. *Being a registered Sub-Stock broker, SAST 1997 Regulations, categorially provides exemption from applicability of Chapter III provisions, therefore, no trigger of open offer under Regulation 10 of SEBI SAST 1997 can be attributed to Sanjay Soni, J M Soni Consultancy and Krupa Sanjay Soni.*

4. *Further, the categorization of Person Acting in Concert for Krupa Soni and Sanjay Soni u / r 2(1)(e)(1) of Takeover Regulations, 1997 is incorrect as trading of shares by Sanjay Soni was account of its own business dealings in its regular course of business in the capacity of Stock Broker and whereas the share trading by Krupa Soni was under her personal account.*

5. *It is further submitted that, the alleged PAC denied to have acquired 145906 equity shares on 16 August 2010. Further, the alleged PAC also denied to have acquired 145966 equity shares on September 02, 2010. Therefore, the allegation of trigger of open offer under regulation 10 of SEBI Takeover Regulations, 1997 on two occasions do not sustain.*

6. Thereafter, vide letter dated October 29, 2018, AR of the Noticees filed another reply to the SCN. The relevant extracts of the same, are *inter-alia* reproduced hereunder.

> *1. It is submitted that, Sanjay Soni is registered Sub-Broker of Prabhudas Lilladher Pvt Ltd and other Stock Broker. The shares of OCL were acquired or traded on behalf of clients on many occasions. It is matter of record the status of Sanjay Soni as sub-broker and it is also finding of the AO that, the Sanjay Soni is registered as Sub-Broker.*
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> *2. The allegation of person acting in concert is denied as the AO has considered Krupa Soni as PAC in terms of regulation 2(1) (e) of SEBI SAST Regulations. Being relatives, the AO has considered them as deemed PAC. However, the burden of proof is hereby discharged with submission that, there were no intention to acquire more than 15% of the paid up capital of OCL, and being sub-broker, the shares of OCL were acquired in regular course of business, which is exempted under regulation 3 of SEBI SAST Regulations.*
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> *3. It is submitted that, without clubbing holding of PAC with Sanjay Soni, no threshold of 15% has been triggered ever, and therefore, the allegation of trigger of Open Offer be dropped.*
>
> *4. It is submitted that, Sanjay Soni being Sub-Broker and trading in shares is in the regular course of business, the benefit of exemption as contemplated in regulation 3 of SEBI SAST Regulations, 1997 be accorded to Sanjay Soni.*

5. Vide Hearing Notice dated April 15, 2019 the Noticees were granted opportunity of personal Hearing on June 04, 2019, by the erstwhile AO. On the request of the Noticees, the said hearing was adjourned to June 11, 2019. However, the

Noticees vide their email dated June 11, 2019 requested again to adjourn the Hearing in the month of July. Therefore, the Noticees were provided another opportunity of personal hearing on July 22, 2019. Consequently, the Authorised Representative of the Noticees appeared for personal Hearing on July 22, 2019 and sought time to file additional submissions in the matter on or before August 05, 2019. However, no additional submissions were made by the Noticees in the instant matter.

6. Subsequent to my appointment as the Adjudicating Officer in the matter, vide Hearing Notice dated August 19, 2019, the Noticees were provided an opportunity of personal hearing on August 29, 2019. However, vide email dated August 29, 2019, AR of the Noticees sought adjournment of the said hearing and requested for another opportunity of personal hearing. Therefore, in the interest of natural justice vide Hearing Notice dated August 29, 2019, the Noticees were provided one more opportunity of hearing on September 11, 2019. However, the Noticees have failed to attend the said hearing scheduled on September 11, 2019.

7. Thereafter, vide email dated September 12, 2019 the Noticees requested for time to file written submissions without availing opportunity of personal hearing. Considering the said request, the Noticees have been provided additional time to file written submissions in the matter. However, the Noticees did not make additional submissions in the matter.

8. I note that the Noticees have submitted their replies to the SCN and also appeared for personal hearing before the erstwhile AO. Subsequent to my appointment as AO in the matter, the Noticees have been provided two more opportunities for personal hearing and also opportunities for submission of additional documents, if any. However, the Noticees neither availed the opportunities nor filed any additional submissions in the matter. Thus, it is noted

that in the interest of natural justice the Noticees have been provided ample opportunities of personal hearing. Therefore, I am inclined to proceed with the matter on the basis of the material available on record and the submissions made by the Noticees before the erstwhile AO.

ISSUES FOR CONSIDERATION AND FINDINGS

9. I have carefully perused the SCN, the documents / material available on record and submissions of the Noticees. The issues that arise for consideration in the present case are:

    1) Whether the Noticees violated the provisions of Regulation 10 and Regulation 11 (1) of the SAST Regulations?

    2) Whether the Noticees is liable for imposition of monetary penalty under Section 15H of the SEBI Act?

    3) If yes, then what should be the quantum of monetary penalty?

10. It is pertinent to mention here that a common SCN dated July 24, 2017 was issued against the Noticees along with other 21 entities, pertaining to the violations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, certain Disclosure violations under SAST Regulation as well as Disclosure violations under SEBI (Prohibition of Insider Trading) Regulations, 1992. In addition to the above, in the same SCN it was also alleged that the Noticees have failed to make public announcement to acquire shares of OCL in terms of Regulation 10 of SAST Regulations. Subsequently, a supplementary SCN dated August 28, 2017, was issued to the Noticees. In the said supplementary SCN it was further alleged that the Noticees have failed to make public announcement to acquire shares of OCL in terms of Regulation 11 (1) of SAST Regulations.

11. It is noted from the records available to me that the separate Adjudication Orders were passed against the Noticees and other 21 entities in respect of violations of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003, certain Disclosure violations under SAST Regulation as well as Disclosure violations under SEBI (Prohibition of Insider Trading) Regulations, 1992.

12. The extant Order is dealing with the allegations against the Noticees mainly to the effect that the Noticees have failed to make public announcement to acquire shares of OCL in terms of Regulation 10 and Regulation 11 (1) of SAST Regulations, as alleged in the SCN dated July 24, 2017 read with supplementary SCN dated August 28, 2017.

13. It is pertinent to mention here the relevant provisions of Regulation 10 and Regulation 11 (1) of SAST Regulations, allegedly violated by the Noticees:-

Regulation 10. Acquisition of fifteen per cent or more of the shares or voting rights of any company.

"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 2[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. Consolidation of holdings.

"(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.

14. I note that the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 have been repealed by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. In terms of Regulation 35 of the SAST Regulations, 2011, specifically, Regulation 35(2) (a) and (b), any obligation or liability acquired, accrued or incurred under SAST Regulations, 1997 or any legal proceedings initiated under the SAST Regulations, 1997 shall remain unaffected and proceeded with as if the SAST Regulations, 1997 have not been repealed.

15. In the instant matter the allegations against the Noticees mainly to the effect that they have altogether traded in the shares of OCL (Target Company) during the investigation period. The collective shareholding of the Noticees in the Target Company as on August 13, 2010 was 14.36% (1,37,870 shares) of the paid up equity share capital. However, on August 16, 2010 the Noticees increased their collective shareholding to 15.20% of the paid up equity share capital of OCL. As the collective shareholding/voting rights of the Noticees in the Target Company crossed the threshold of 15% prescribed under Regulation 10 of SAST Regulations the Noticees were required to make public announcement to acquire shares of OCL in terms of the said Regulation. The Noticees did not make any public announcement to acquire shares of OCL and continued to trade in the scrip of the Target Company, which resulted in further increasing their shareholding in the Target Company to 20.63% on August 19, 2010. Since the additional creeping acquisition was more than 5% within a financial year, in terms of regulation 11 (1) of the SAST Regulations, hence the Noticees were required to make public announcement to acquire shares of OCL in terms of Regulation 11 (1) of the Takeover Regulations. However, the Noticees did not make any public announcement to acquire shares of OCL. The Noticees continued to trade

in the scrip and resultantly, by August 31, 2010 their shareholding in the Target Company fell to 11.85%. However, once again their combined shareholding crossed 15.00% on September 02, 2010 and subsequently reached to the extent of 20.63% on September 06, 2010. These acquisitions again triggered the requirement to make public announcement to acquire shares of OCL in terms of Regulation 10 and Regulation 11(1) of the SAST Regulations. However the Noticees did not make any public announcement to acquire shares of OCL as mandated under these Regulations. Thus, the Noticees were alleged to have repeatedly breached the provisions of SAST Regulations on the aforesaid dates during the financial year 2010-11.

16. It is preliminary contention of the Noticees that the allegation of Person Acting in Concert (PAC) is denied as the AO has considered Krupa Soni as PAC in terms of Regulation 2(1) (e) of SEBI SAST Regulations. Being relatives, the AO has considered them as deemed PAC. However, there were no intention to acquire more than 15% of the paid up capital of OCL. As trading of shares by Sanjay Soni was in account of his own business dealings in regular course of business in the capacity of Sub-Stock Broker whereas the trading by Krupa Soni was under her personal account.

17. In this regard, it is noted from the records available to me that Shri Sanjay Jethalal Soni and Smt. Krupa Sanjay Soni are husband and wife and Shri Sanjay Jethalal Soni is the proprietor of M/s. J M Soni Consultancy. I note that the said relation/connection is not disputed by the Noticees. It is observed that M/s. J M Soni Consultancy, being proprietorship firm, is for all practical purpose another name used by Shri Sanjay Jethalal Soni for his personal investment in the shares of OCL. Therefore, it leaves no doubt to conclude that these three Noticees are closely related and connected with each other in a manner bound by a common objective and purpose with respect to their trading activities in the shares of OCL. The relation/connection amongst the Noticees imply that all of them have acted in unison in acquiring the shares and voting rights of OCL during the investigation

period. Thus, the Noticees can be said to be the persons who have acted in concert for acquiring shares of OCL, within the meaning and import assigned to phrase ‘persons acting in concert’ in terms of Regulation 2 (1) (e) of the SAST Regulations.

18. The Noticees have contended that Sanjay Jethalal Soni is a registered Sub-Broker and the shares of OCL acquired by him and J M Soni Consultancy on behalf of his clients on many occasions. The total quantity attributed to Sanjay Soni and J M Soni Consultancy was not entirely for self-acquisition. Being a registered Sub-Stock broker, SAST 1997 Regulations, categorially provides exemption from applicability of Chapter III provisions, therefore, no trigger of open offer under Regulation 10 of SEBI SAST 1997 can be attributed to the Noticees.

19. I note that, in support of the aforesaid claim the Noticees have not provided any evidence which shows that impugned dealings in the shares of OCL by Sanjay Jethalal Soni and J M Soni Consultancy were done on behalf of his clients. However, in contrary it is observed from the trade log that Sanjay Soni and J M Soni Consultancy have traded in the scrip of OCL and acquired shares in their name and PAN. Therefore, it can not be attributed that being a Sub-Stock Broker Sanjay Jethalal Soni and J M Soni Consultancy have acquired the shares of OCL, on behalf of their clients in the normal course of business. Hence, there is no merit in the said claim of the Noticees, rather I note that the Noticees being PAC have acquired the shares of OCL and crossed the threshold of 15.00% on August 16, 2010 and September 02, 2010, as specified under Regulation 10 of SAST Regulations.

20. The details of the trading done by the Noticees in the shares of OCL on the trading platform of BSE, as observed during the investigation, and the consequent cumulative holding of shares/voting rights of OCL by the Noticees are reproduced hereunder:

Transaction Date	Buy	Sell	Net	Cumulative shareholding	Percentage shareholding
28-Jul-10	27,284	20,106	7,178	96,525	10.05%
29-Jul-10	44,178	52,648	-8,470	88,055	9.17%
30-Jul-10	1,33,244	1,11,942	21,302	1,09,357	11.39%
02-Aug-10	15,634	18,704	-3,070	1,06,287	11.07%
03-Aug-10	34,610	19,707	14,903	1,21,190	12.62%
04-Aug-10	12,547	19,726	-7,179	1,14,011	11.88%
05-Aug-10	46,531	47,228	-697	1,13,314	11.80%
06-Aug-10	33,692	28,437	5,255	1,18,569	12.35%
09-Aug-10	21,855	23,717	-1,862	1,16,707	12.16%
10-Aug-10	16,066	22,191	-6,125	1,10,582	11.52%
11-Aug-10	12,116	22,023	-9,907	1,00,675	10.49%
12-Aug-10	6,216	12,573	-6,357	94,318	9.82%
13-Aug-10	62,956	19,404	43,552	1,37,870	14.36%
16-Aug-10	**24,732**	**16,696**	**8,036**	**1,45,906**	**15.20**%
17-Aug-10	12,309	12,927	-618	1,45,288	15.13%
18-Aug-10	21,963	4,752	17,211	1,62,499	16.93%
19-Aug-10	**1,17,635**	**82,114**	**35,521**	**1,98,020**	**20.63**%
20-Aug-10	28,383	61,902	-33,519	1,64,501	17.14%
23-Aug-10	1,777	0	1,777	1,66,278	17.32%
24-Aug-10	0	1	-1	1,66,277	17.32%
26-Aug-10	79	0	79	1,66,356	17.33%
27-Aug-10	158	30,241	-30,083	1,36,273	14.20%
30-Aug-10	2	0	2	1,36,275	14.20%
31-Aug-10	46,865	69,347	-22,482	1,13,793	11.85%
01-Sep-10	31,268	4,518	26,750	1,40,543	14.64%
02-Sep-10	**38,723**	**33,300**	**5,423**	**1,45,966**	**15.20**%
03-Sep-10	20,535	7,215	13,320	1,59,286	16.59%
06-Sep-10	**65,184**	**26,428**	**38,756**	**1,98,042**	**20.63**%
07-Sep-10	4,884	33,875	-28,991	1,69,051	17.61%
08-Sep-10	4,699	1,576	3,123	1,72,174	17.93%
13-Sep-10	652	0	652	1,72,826	18.00%
16-Sep-10	14,242	24,122	-9,880	1,62,946	16.97%
17-Sep-10	1,600	25,486	-23,886	1,39,060	14.49%

21. With regard to the trading details, the Noticees being PAC denied to acquire 1,45,906 equity shares on August 16, 2010 and 1,45,966 equity shares on September 02, 2010. Therefore, the Noticees have contended that allegation of trigger of open offer under regulation 10 of SEBI Takeover Regulations, 1997 on two occasions do not sustain.

22. In respect of the aforesaid contention of the Noticees, I note that the Noticees have cumulatively acquired 8,036 equity shares of OCL on August 16, 2010 and 5,423 equity shares on September 02, 2010 in the following manner as extracted from the trade log. It is also noted that the acquisition by the Noticees on the said dates are net of their buy and sell of shares after taking into account the effect of self-trades and inter-se transfers.

Details of acquisition by PAC on August 16, 2010			
Name of PAC	Buy	Sell	Net acquisition
Sanjay Jethalal Soni	8290	5393	2897
Krupa Sanjay Soni	16442	11103	5339
J M Soni Consultancy	0	200	(200)
Total	**24732**	**16696**	**8036**
Details of acquisition by PAC on September 02, 2010			
Name of PAC	Buy	Sell	Net acquisition
Sanjay Jethalal Soni	34084	30313	3771
Krupa Sanjay Soni	2639	2987	(348)
J M Soni Consultancy	2000	0	2000
Total	**38723**	**33300**	**5423**

23. It is noted from the details of trading done by the Noticees as presented in the table at para 20 above that being PAC the collective shareholding of the Noticees in the Target Company as on August 13, 2010 was 14.36% (1,37,870 shares) of the paid up equity share capital of OCL. On August 16, 2010 the Noticees have bought and sold shares of OCL which leads to net acquisition of 8,036 shares, thereby their collective shareholding have increased to 15.20% (1,45,906 shares) of the paid up equity share capital of OCL. It is also noted from the trading details of the Noticees that they have continued to trade in the scrip and by August 31, 2010 their shareholding in the Target Company had fallen to 11.85%. Thereafter, they again started acquiring shares of OCL and as on September 01, 2010 the

combined shareholding of the Noticees in OCL was 14.64% (1,40,543 shares). On September 02, 2010 the Noticees have bought and sold shares of OCL which leads to net acquisition of 5,423 share, consequently their combined shareholding once again increased to 15.20% (1,45,966 shares). It is also pertinent to note that the change in collective shareholdings of the Noticees are net of their buy and sell of shares after taking into account the effect of self-trades and inter-se transfers.

24. In view of the above, I find that the Noticees have crossed the threshold of 15.00% on August 16, 2010 and September 02, 2010, consequently in terms of Regulation 10 of SAST Regulations the Noticees were required to make public announcement to acquire shares of OCL. Therefore, the said contention of the Noticees that they were not required to make open offer on these two occasions does not hold any merit.

25. Considering the aforesaid findings, I note that in the instant matter the Noticees have repeatedly breached the provisions of Regulation 10 of SAST Regulations on August 16, 2010 and September 02, 2010.

26. Further, as per Regulation 11(1) of the SAST Regulations, an acquirer, whose shareholding in the target company together with the shareholding of persons acting in concert with him is 15% or more but less than 55% can acquire additional voting rights of only up to 5% in the company within a financial year. Therefore, if the aggregate acquisition of shares/voting rights by such acquirers at any point of time within a financial year crosses the limit of five percent, then such acquirers are required to make public announcement to acquire shares of OCL in terms of regulation 11(1) of the SAST Regulations, irrespective of the fact that the shareholding of the acquirer has subsequently declined below the threshold limit due to sale of shares by them.

27. It is noted from the details of trading undertaken by the Noticees in the scrip of OCL as tabulated under para 20 that on August 16, 2010, the Noticees had acquired 15.20% shares in the target company and by trading further in the scrip on August 18 and 19, 2010, they have increased their shareholdings in the target company to 20.63% on August 19, 2010. Thus, the acquisition of shares/voting rights on August 19, 2010 crossed the creeping acquisition limit of 5% prescribed under Regulation 11(1) of the SAST Regulations, however, the Noticees did not make any public announcement to acquire shares of OCL. Subsequently, the Noticees continued to trade in the said scrip and their shareholding in the Target Company fell below 15% on August 27, 2010. The shareholding of the Noticees in the Target Company once again crossed 15.00% on September 02, 2010 when they again reached acquisition of 15.20% shares/voting rights in the Target Company. Further, the Noticees acquired additional shares on September 03, 2010 and on September 06, 2010 thereby again breaching the creeping acquisition limit of 5%, as their shareholding in the Target Company on September 06, 2010 stood at 20.63% which required the Noticees to make public announcement to acquire shares of OCL in terms of regulation 11(1) of the SAST Regulations. Thus, I find that the Noticees have repeatedly breached the provisions of Regulation 11 (1) of the SAST Regulations on August 19, 2010 and September 06, 2010.

28. It is relevant to refer here the observations of Hon'ble SAT in the matter of ***Ranjan Varghese Vs. SEBI (Appeal No.177 of 2009 and Order dated April 08, 2010)***, as under:-

"The fact that the appellants acting in concert with each other had made the acquisitions which triggered the Takeover Code, it was incumbent upon them to make a public announcement which, admittedly, they have failed to do so. This failure has seriously prejudiced the public investors/shareholders of the company who have been deprived of their valuable right to exit by offering their shares to the acquirer. We cannot lose sight of the fact that one of the primary objects of

the Takeover Code is to allow the public shareholders an exit route when the target company is either taken over by an acquirer or an acquirer makes a substantial acquisition therein."

29. In connection with the enforcement of the provisions of Regulation 10 and 11 of the SAST Regulation, it is pertinent to note the observations of Hon'ble SAT in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011 decided on September 08, 2011). The relevant paragraph of the aforesaid judgment of Hon'ble SAT is reproduced as under:

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

30. It is pertinent to mention here that in the same matter an Order was passed by the Hon'ble Whole Time Member, SEBI (**WTM**) on November 30, 2018 in the proceedings under Sections 11 and 11B of the SEBI Act, 1992, read with Regulation 32 of the SAST Regulations in respect of the Noticees and *inter alia* made the following directions against the Noticees :–

“(a) Noticees shall jointly and severally make a public announcement to acquire shares of the target company, in accordance with the provisions of the Takeover Regulations, 2011, within a period of 45 days from the date of this order. The offer price shall be the highest of the price calculated in terms of the takeover regulations with reference to the trigger dates.

(b) Noticees shall along with the consideration amount, pay interest at the rate of 10% per annum from the date on which the payment would have fallen due had the acquirers made an open offer till the date of payment of consideration to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the process, after adjustment of dividend paid, if any.”

31. I note that till date the Noticees have not complied with the obligation to make public announcement to acquire shares of OCL despite the aforesaid directions of the WTM’s Order dated November 30, 2018.

32. In view of the foregoing, I am of the opinion that the Noticees, have failed to make public announcement to acquire shares of OCL on August 16, 2010 and September 02, 2010 in terms of Regulation 10 of SAST Regulations and on August 19, 2010 and September 06, 2010 in terms of Regulation 11 (1) of SAST Regulations. Therefore, it is stablished that the Noticees have violated the provisions of Regulation 10 and Regulation 11 (1) of SAST Regulations.

33. Violation of the aforesaid Regulations of the SAST Regulations by the Noticees attract monetary penalty under Section 15H of the SEBI Act, i.e. at the relevant time *inter-alia* reads as follows:

“Penalty for non-disclosure of acquisition of shares and takeovers.

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

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

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

(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or

(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,]

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

34. While determining the quantum of penalty under Section 15H of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, which reads as under:-

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

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

(a) the amount of disproportionate gain or unfair advantage wherever quantifiable, made as a result of the default
(b) the amount of loss caused to an investor or group of investors as a result of the default
(c) the repetitive nature of the default

***[Explanation –** For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F,15G,15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]"*

35. At this juncture, reliance is placed upon the Order of the Hon'ble Supreme Court in the matter of ***Chairman, SEBI Vs Shriram Mutual Fund {[2006]5 SCC 361}*** – where the Hon'ble Supreme Court of India held that

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

36. In the instant matter, it is difficult to quantify the gains made by the Noticees or the loss caused to investors as a result of the failure of Noticees to make public announcement to acquire shares of OCL. The purpose of Regulation 10 and 11(1) of the SAST Regulations was to ensure that the public gets an exit opportunity once there is a breach of the threshold. It is also noted that at present the shares of the company are suspended from trading due to surveillance measures and the scrip was last traded at Rs.5.85. In the circumstances, it is noted that existing investors lost to avail valuable opportunities to exit from the scrip due to failure by the Noticees to make public announcement at the four occasions, they were required to do so, in terms of the Regulations applicable in this regard. The Noticees have breached the provisions of the aforesaid SAST Regulations on four occasions in the instant matter and it is also observed that the Noticees have breached the SEBI Act and the Regulations made thereunder in various other scrips, thus the contravention by the Noticees are repetitive in nature.

37. Since, the Noticees deprived the public shareholders from their valuable right and the default on the part of the Noticees are repetitive in nature, I am of the view that this is a fit case to impose such penalty that commensurate with the gravity of the violations committed by the Noticees.

ORDER

38. After Taking into consideration the nature and gravity of the charges established in the preceding paragraphs, factors mentioned under Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the Adjudication Rules, I hereby impose penalty of Rs.16,00,000/- (Rupees Sixteen Lakh Only) payable jointly or severally by the Noticees viz. Shri Sanjay Jethalal Soni, his wife Smt. Krupa Sanjay Soni and his proprietary concern M/s. J M Soni Consultancy in terms of Section 15H of the SEBI Act, for their failure to make public announcement to acquire shares of OCL in terms of Regulation 10 and Regulation 11 (1) of SAST Regulations, 1997 read with Regulation 35 (2) of SAST Regulations, 2011.

39. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by online payment through following path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at link https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html

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

1. Case Name :	
2. Name of Payee :	
3. Date of Payment:	
4. Amount Paid :	
5. Transaction No. :	
6. Bank Details in which payment is made :	
7. Payment is made for : (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

41. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, for realization of the said amount of penalty along with interest thereon, *inter alia,* by attachment and sale of movable and immovable properties.

42. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : October 24, 2019
Place : Mumbai

Vijayant Kumar Verma
Adjudicating Officer