

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER

FINAL ORDER

Under Sections 11 (1) and 11B of the Securities and Exchange Board of India Act, 1992

In the matter of Bhanot Construction and Housing Limited

In re: Substantial Acquisition of Shares and Takeover Norms

In respect of:

S.No.	Name of the Entity	PAN
1.	M/s. Bhanot Leasing Limited (later known as Bhanot Infrastructure and Hospitalities Limited)	Address: 310-311, Bhanot Corner, 1, Pamposh Enclave, Greater Kailash – 1, New Delhi – 110048
2.	RD Bhanot	Deceased
3.	Krishna Kumari Bhanot	Deceased
4.	Rajeev Bhanot	ACSPB5918J
5.	Rekha Bhanot	ACTPB6692A
6.	Eshan Bhanot	PAN Not Available; Address: N-31, Green Park Extn., New Delhi
7.	Poonam Bhanot	PAN Not Available; Address: N-31, Green Park Extn.,New Delhi
8.	Tania Bhanot	AJNPB3948C
9.	Palak Bhanot	PAN Not Available; Address: N-31, Green Park Extn., New Delhi
10.	Aditi Bhanot	AOUPB4442H

11.	Shruti Sharma	BOBPS9628J
12.	Vijay Sharma	ALZPS7243M
13.	Dushyant Sharma	BOHPS2623K
14.	Somia Sharma	BYGPS3685E
15.	Arun Soni	AOGPS8166P
16.	Roma Soni	AQKPS9149Q
17.	Punit Soni	AATPS1307F

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1. M/s. Bhanot Construction and Housing Limited (hereinafter referred to as the “**Target Company**”) is a company having its registered office at 310-311, Bhanot Corner-1, Pamposh Enclave, Greater Kailash-I , New Delhi ,Delhi ,110048, and its securities are listed on the Bombay Stock Exchange (“**BSE**”).
 2. Securities and Exchange Board of India (“SEBI”) observed that the promoters of the Target Company viz., erstwhile Bhanot Leasing Ltd., Eshan Bhanot, Rajeev Bhanot, R.D. Bhanot, Krishna Kumari Bhanot, Rekha Bhanot, Poonam Bhanot, Tania Bhanot, Palak Bhanot, Shruti Sharma, Aditi Bhanot, Vijay Sharma, Dushyant Sharma, Somia Sharma, Arun Soni, Roma Soni and Punit Soni (hereinafter referred to as "**Promoters**") collectively held 25.08% of the paid up equity share capital of the Target Company as on March 31, 2005. Between April 1, 2005 and March 31, 2006, five of the Promoters viz., R. D. Bhanot, Krishna Kumari Bhanot, Rajeev Bhanot, Shruti Sharma and Arun Soni acquired 74,255 (8.85%) shares of the target company. Consequently, the collective shareholding of the promoters had increased to 33.93% of the paid up equity share capital of the Target Company i.e. acquisition of more than the permissible threshold limit of 5% during the financial year 2005-06 prescribed under the regulations 11(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as “**Takeover Regulations, 1997**”).
 3. **SCN and Allegations:** The abovementioned acquisitions had triggered the obligation of
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the promoters to make a public announcement to make an open offer for acquiring shares of the Target Company in terms of regulation 11(1) of Takeovers Regulations, 1997. Since the promoters of the Target Company had allegedly failed to make the requisite public announcement, a Show Cause Notice (“SCN”) dated March 01, 2017 was issued to erstwhile Bhanot Leasing Ltd., Eshan Bhanot, Rajeev Bhanot, RD Bhanot, Krishna Kumari Bhanot, Rekha Bhanot, Poonam Bhanot, Tania Bhanot, Palak Bhanot, Shruti Sharma, Aditi Bhanot, Vijay Sharma, Dushyant Sharma, Somia Sharma, Arun Soni, Roma Soni and Punit Soni (hereinafter referred to as "**the Noticees**") calling upon them to show cause as to why suitable directions under sections 11, and 11B of the SEBI Act, regulations 44 and 45 of the Takeover Regulations, 1997 read with corresponding provisions of regulations 32 and 35 of Takeover Regulations, 2011 should not be issued against them for the alleged violations of regulation 11(1) of the Takeover Regulations, 1997.

4. **Service of SCN:** The SCN sent to the Noticees viz., M/s. Bhanot Leasing Ltd., Eshan Bhanot, Rajeev Bhanot, RD Bhanot, Krishna Kumari Bhanot, Rekha Bhanot, Poonam Bhanot, Tania Bhanot, Palak Bhanot, Shruti Sharma, Bab y Aditi Bhanot, Vijay Sharma, Dushyant Sharma, Somia Sharma, Arun Soni and Roma Soni were returned undelivered. Subsequently, the SCNs were served by way of affixture at their last known addresses. No replies were received from the Noticees.
5. **Hearings and Submissions:** The Noticees were granted an opportunity of personal hearing on September 11, 2017. The hearing notices sent to the Noticees viz., M/s. Bhanot Leasing Ltd., Arun Soni, Roma Soni and Punit Soni were delivered and acknowledgment received. For the remaining Noticees, the hearing Notices were served by way of affixture at their last known addresses as well as by way of publication in the newspapers viz., ‘Hindustan Times’ dated August 14, 2017 and ‘Navbharat Times’ dated August 14, 2017 (Delhi Editions). However, no one appeared for the hearing scheduled on September 11, 2017. In response to the public notice, vide an e-mail dated September 10, 2017, one of the Noticees viz., Rajeev Bhanot sought an adjournment of the hearing. The same was granted on January 29, 2018.

6. Subsequently, vide letter dated January 15, 2018, Rajeev Bhanot submitted that R. D. Bhanot, and Krishna Kumari Bhanot have passed away (Copy of Death Certificates enclosed). Further, R.D.Bhanot being the Chairman and Managing Director was handling all affairs of the Company and was aware of all the transactions executed as mentioned in the SCN. Since the transactions mentioned in the SCN pertains to the year 2005 and 2006, Noticees (Rajeev Bhanot for and on behalf of Co-Noticees) sought time to collate the data/information/documents and adjournment of the hearing for four weeks.
- 6.1 Bhanot Leasing Limited vide letter dated January 20, 2018 submitted that the name of the Company was changed to Bhanot Infrastructure and Hospitalities Limited in 2006. Subsequently, in the year 2009, Bhanot Infrastructure and Hospitalities Limited was amalgamated with Bhanot Construction and Housing Limited. Since Bhanot Leasing Limited got amalgamated with Bhanot Construction and Housing Limited, Rajeev Bhanot has been authorised to file reply and to do all such acts and deeds required in the present proceedings. A Copy of the Board Resolution to this effect was also enclosed.
- 6.2 Further, vide letters dated January 17, 2018, Roma Soni, Punit Soni, Arun Soni, Tania Bhanot, Rekha Bhanot, Aditi Bhanot, Vijay Sharma, Shruti Sharma, Dushyant Sharma and Somia Sharma intimated SEBI that they have appointed Rajeev Bhanot as their authorised representative to file reply and to do all such acts and deeds required in the present proceedings. Further, they have also submitted their present contact details.
- 6.3 No reply or representations was received from Eshan Bhanot, Poonam Bhanot and Palak Bhanot.
7. In view of the same, vide hearing Notice dated February 23, 2018, another opportunity of hearing was granted to the Noticees on April 03, 2018. Mr. Rajeev Bhanot vide e-mail dated March 30, 2018 sought an adjournment of hearing on similar grounds mentioned earlier vide his letter dated January 15, 2018. Since the Noticees were taking the same grounds from January and till date they did not file any reply on merit, I was not inclined

to grant another adjournment. However, the Noticees were granted the liberty to file additional written submissions along with supporting documents if any, within 3 weeks.

8. In response, Bhanot Construction and Housing Limited vide letter dated April 23, 2018 submitted as under:

- i. *“This has reference to the SCN dated 1.3.2017 issued in the names of Late Mr.R.D. Bhanot, Late Mrs. Krishna Kumari Bhanot and others in the matter of acquisition of shares of Bhanot Construction during the year 2005-2006.*
- ii. *Mr.R.D. Bhanot was the founder Chairman and Director of Bhanot Construction. He started the construction business in the year 1982 after having served in Escorts as Divisional Manager in production planning and control.*
- iii. *Mrs. Krishna Kumari Bhanot was wife of Mr. R.D. Bhanot and a founder director of Bhanot Construction. Mrs. Krishna Kumari Bhanot assisted Mr.R.D. Bhanot in all his efforts and endeavors.*
- iv. *Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot had expired on August 6, 2015 and November 30, 2006 respectively.*
- v. *Further, on perusal of the SCN, we understand that acquisition of 26,925 (03.21%) and 33,230 (03.96%) shares of Bhanot Construction by Late Mr.R.D. Bhanot and Late Mrs. Krishna Kumari Bhanot respectively in the year 2005-2006 have triggered alleged violation of Regulation 11(1) of SAST Regulations. As the persons whose transactions have triggered the aforesaid violation have already expired and proceedings against them are bound to get abated, we request your kind selves to withdraw and abate the proceedings initiated vide SCN dated 1.3.2017 against all the Noticees”.*

9. Vide separate letters dated April 23, 2018, Punit Soni and Roma Soni and vide letters dated April 24, 2018, erstwhile Bhanot Leasing Limited, Aditi Bhanot, Rekha Bhanot, Tania Bhanot, Dushyant Sharma, Vijay Sharma and Somia Sharma submitted that they have not acquired shares of Bhanot Construction during the year 2005-2006. The proceedings have been erroneously initiated against them when acquisition of shares of

Bhanot Construction is by 5 Promoters of the Company. Further, it is also stated that they had no common objective with the persons who acquired shares of Bhanot Construction and unaware of any acquisition of shares of Bhanot Construction by the said Promoters. Also they were not involved in the day to day functioning of the Company. Thus it is submitted that they cannot be said to be persons acting in concert and liable for alleged violations of Regulation 11(1) of SAST Regulations. Alternatively, they sought another opportunity of hearing in the matter.

10. As regards the request for opportunity of hearing sought as an alternative to their written submissions, I note that first hearing in the matter was scheduled on September 11, 2017 and the hearing notices were served through hand delivery, affixture and newspaper publication. Considering the request of Mr. Rajeev Bhanot, the same was adjourned to January 29, 2018. However, the Noticees sought another adjournment in the matter and a final opportunity on the grounds mentioned therein. In view of the same, a final opportunity was granted to the Noticees on April 03, 2018. None of them appeared before me instead they sought another opportunity of hearing. Since the Noticees had already taken similar grounds for adjournment earlier, I was not inclined to grant another opportunity of hearing. However, the Noticees were granted the liberty to file additional written submissions along with supporting documents if any, within 3 weeks. Considering the fact that the Noticees have filed their written submissions in the matter, I am of the view that a fair opportunity of hearing/representation was granted to the Noticees in the matter.

11. I have considered the allegations in the SCN, replies and submissions made by the Noticees and other material available on record. On perusal of the same, the following issues arise for consideration in the matter. Each question is dealt with separately under different headings.

- i. Whether the Noticees having a collective shareholding of 25.08% as on April 1, 2005 acquired additional shares of 7.50% shares on December 22, 2005 and 8.85% in the financial year 2005-2006 thereby increased their collective shareholding from***

25.08% to 33.93% of the paid up equity share capital as on March 31, 2006.

- ii. If the Issue No.1 is determined in the affirmative whether the said acquisition attracts the provisions of regulation 11 (1) of the Takeover Regulations, if so the requirements specified under regulation 11(1) of the Takeover Regulations have been complied with by the Noticees?***
- iii. If issue No. (ii) is determined in the negative whether the Noticees are liable for any directions envisaged under regulations 44 and 45 of the Takeover Regulations, 1997 read with corresponding provisions of regulations 32 and 35 of Takeover Regulations, 2011 for the said violation?***

Consideration and Findings:

Issue No.1: Whether the Noticees having a collective shareholding of 25.08% as on April 1, 2005 acquired additional shares of 7.50% shares on December 22, 2005 and 8.85% in the financial year 2005-2006 thereby increased their collective shareholding from 25.08% to 33.93% of the paid up equity share capital as on March 31, 2006.

- 12. The allegation in SCN is that between April 1, 2005 and March 31, 2006, the promoters acquired 74,255 (8.85%) shares of the target company and increased their shareholding from 25.08% as on April 1, 2005 to 33.93% of the paid up equity share capital as on March 31, 2006.
- 13. Vide separate letters dated April 23, 2018, Punit Soni and Roma Soni and vide letters dated April 24, 2018, erstwhile Bhanot Leasing Limited, Aditi Bhanot, Rekha Bhanot, Tania Bhanot, Dushyant Sharma, Vijay Sharma and Somia Sharma submitted that they have not acquired shares of Bhanot Construction during the year 2005-2006.
- 14. I further note that SEBI had vide letter dated July 16, 2014, sought information from the Target Company regarding the date of acquisition of shares by the promoters in the Target Company during the financial year 2005-06.
- 15. In response, vide letter dated August 11, 2014, the Target Company provided partial

information regarding acquisition of shares by 4 promoter viz., Rajeev Bhanot, R. D. Bhanot, Krishna Kumari Bhanot and Shruti Sharma. The date of acquisition of shares by Arun Soni was not provided. Further, the Target Company also requested for grant of more time for submission of remaining information. Thereafter, SEBI vide letter dated September 16, 2014 and reminder dated October 14, 2014 sought the same from the Target Company. However, no further information was received from the Target Company.

16. I have perused the letter dated August 11, 2014 of the Company detailing the acquisition made by Rajeev Bhanot, R.D.Bhanot, Krishna Kumari Bhanot, Shruti Bhanot and Arun Soni during the financial year 2005-2006. Perusal of the letter of the Company along with the information given by the Company secretary of the Target Company clearly provides the details of the acquisition. The said details of the acquisition by the following promoters during the financial year 2005-2006 is brought out below:

Promoters	Holding as on April 1, 2005		Shares acquired during 2005-06		Holding as on March 31, 2006	
	No. of shares	% of shares	No. of shares	% of shares	No. of shares	% of shares
Rajeev Bhanot	16,950	2.02	6,150	0.73	23,100	2.75
R. D. Bhanot	15,950	1.90	26,925	3.21	42,875	5.11
Krishna Kumari Bhanot	15,410	1.84	33,230	3.96	48,640	5.80
Shruti Sharma	2,725	0.32	7,550	0.90	10,275	1.22
Arun Soni	3,200	0.38	400	0.05	3,600	0.43
Other promoters	1,56,215	18.62	-	-	1,56,215	18.62
Total	2,10,450	25.08	74,255	8.85	2,84,705	33.93

17. The table above show that the acquisition of the shares of the target company by the above said promoters. The analysis of the information provided by the Company on the basis of various dates of acquisition of target company's shares further evidences that the shareholding of the promoters increased from 25.08% as on April 1, 2005 to 28.26% till December 21, 2005 and on December 22, 2005 due to acquisition of shares by 5 promoters of the Target Company to the tune of 7.50%, the total shareholding of the Target Company

increased from 28.26% to 32.58%. The details of the same are as shown below:

Promoters	Shareholding as on April 1, 2005	Shareholding (%) before the trigger date-Dec 22, 2005	Cumulative shareholding (%) as on Dec 22, 2005 (trigger date)	% change in Shareholding since April 1, 2005
Rajeev Bhanot	2.02	2.51	3.13	0.61
R. D. Bhanot	1.90	2.60	4.92	2.23
Krishna Kumari Bhanot	1.84	2.92	6.59	3.66
Shruti Sharma	0.32	1.21	2.11	0.90
Arun Soni	0.38	0.38	0.38	0
Other promoters	18.62	18.62	18.62	0
Total	25.08	28.26	32.58	7.50

The date wise acquisition of the Promoters which triggered the Takeover Regulations are as under:

Date of Acquisition	Rajeev Bhanot	R. D. Bhanot	Krishna Kumari Bhanot	Shruti Sharma	Grand Total	Cumulative Shares	Cumulative %
04/06/2005			100		100	100	0.01%
07/07/2005			200		200	300	0.04%
24/10/2005			100		100	400	0.05%
19/11/2005			100		100	500	0.06%
23/11/2005		2,700			2,700	3,200	0.38%
26/11/2005		500	5,500	4,800	10,800	14,000	1.67%
28/11/2005		1,600	50		1,650	15,650	1.87%
01/12/2005			1,550	600	2,150	17,800	2.12%
08/12/2005	1,600	200			1,800	19,600	2.34%
12/12/2005	1,100	200		800	2,100	21,700	2.59%
16/12/2005	1,450	700	1,500	1,300	4,950	26,650	3.18%
22/12/2005	1,000	13,580	21,630	50	36,260	62,910	7.50%

N.B. Date of acquisition by Arun Soni was not provided by the Company, hence the same is not included in the above table.

Therefore, admittedly between April 1, 2005 and March 31, 2006, the promoters Rajeev

Bhanot, R. D. Bhanot, Krishna Kumari Bhanot, Shruti Sharma and Arun Soni acquired 74,255 (8.85%) shares of the target company and increased the collective shareholding of promoters from 25.08% as on April 1, 2005 to 33.93% of the paid up equity share capital as on March 31, 2006. Needless to say, the acquisition by Rajeev Bhanot, R. D. Bhanot, Krishna Kumari Bhanot, Shruti Sharma and Arun Soni increases the collective shareholding of the promoters by more than 5% during the financial year 2005-06.

In view of the same, I find that the Noticees having a collective shareholding of 25.08% as on April 1, 2005 acquired additional shares of 7.50% on December 22, 2005 and cumulatively 8.85% in the financial year 2005-2006 thereby increased their collective shareholding from 25.08% to 33.93% of the paid up equity share capital as on March 31, 2006.

Issue No. ii: If the Issue No.1 is determined in the affirmative whether the said acquisition attracts the provisions of regulation 11 (1) of the Takeover Regulations, if so the requirements specified under regulation 11(1) of the Takeover Regulations have been complied with by the Noticees?

18. In this context, the Regulation 11(1) of Takeover Regulation 1997, is reproduced hereunder for reference:

Consolidation of holdings.

“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.”

- i. Before the determination of the issue whether the regulation 11(1) is attracted in the instant case, reference may be made to the definition of acquirer and persons acting in concert as mentioned in Takeover Regulations, 1997.

- ii. Regulation 2(1)(b)—‘acquirer’ means any person who, directly or indirectly, acquires or agrees to acquire shares or voting rights in the target company, or acquires or agrees to acquire control over the target company, either by himself or with any person acting in concert with the acquirer;
- iii. 2(1) (e) — ‘person acting in concert’ comprises,— (1) 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.
- iv. As found in the first issue, Rajeev Bhanot, R. D. Bhanot, Krishna Kumari Bhanot, Shruti Sharma and Arun Soni have acquired shares of the target company. Therefore they fall within the definition of ‘acquirer’ as defined in Reg. 2(1) (b) of Takeover Regulations, 1997
- v. Though Punit Soni, Roma Soni, erstwhile Bhanot Leasing Limited, Aditi Bhanot, Rekha Bhanot, Tania Bhanot, Dushyant Sharma, Vijay Sharma and Somia Sharma disputed the acquisition of target company’s shares and their status as ‘persons acting in concert’ they have not disputed their status as promoters. As per Regulation 2(h) of the Takeover Regulations, 1997 *"Promoter", unless otherwise provided elsewhere, means- ... (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;..."* As per the shareholding pattern disclosed by the Target Company as on quarter ending March 2005 and March 2006, the Promoter Group of the Target Company included erstwhile Bhanot Leasing Ltd., Eshan Bhanot, Rajeev Bhanot, RD Bhanot, Krishna Kumari Bhanot, Rekha Bhanot, Poonam Bhanot, Tania Bhanot, Palak Bhanot, Shruti Sharma, Aditi Bhanot, Vijay Sharma, Dushyant Sharma, Somia Sharma, Arun Soni, Roma Soni and Punit Soni. Therefore, there is evidence to show that above mentioned persons are promoters.

- vi. In the said disclosures the target company has admittedly declared all the Noticees as 'persons acting in concert'. At this juncture, it is relevant to reproduce the observations made by the Hon'ble Securities Appellate Tribunal in *Rajesh Toshniwal Vs. SEBI* (Appeal No. 139 of 2011 decided on 1.6.2012) in the context of the homogenous promoters being considered as persons acting in concert.

"13. The next issue to be considered is whether the entire promoter group has to be considered as a homogenous unit and, therefore, acting in concert in the acquisition of shares. It is the basic principle of corporate law that promoter group is a homogenous class. It is the normal practice to club the entire promoter group into one class unless otherwise proved by the acquirer. The acquirers have always filed their shareholding as belonging to the promoter group. In the disclosures made to the stock exchanges and the Board, the promoters' shareholding consisted of the group as a whole. Even though there is a mention in the offer document that the acquirers by themselves are responsible to the offer to the exclusion of other promoter group the conduct of the promoters as a whole suggests that their behaviour was always united. The appellant's learned counsel made a pointed reference to para 1.2 of the second public announcement (Page 49 of the appeal paper book) and stated that there is an unequivocal mention therein that there is no person acting in concert with the acquirers and all purchase in the public offer will be made by the acquirers. He also referred to a few other conditions laid down in the public announcement to highlight his contention and support his view. It is interesting to note that an identical statement is made in the same terminology in the first public announcement also. Merely because a statement is made in the public announcement document the statutory position cannot be altered. The statement contained in the public announcement relates to only the formalities 11 connected with the purchase of shares in the instant case. It cannot govern the general statutory position of the promoters. The promoters, as a rule, belong to a homogenous group unless otherwise proved by attendant

circumstances to be otherwise. In the present case, except the statement contained in the public announcement no circumstance is pointed out which would prove that a set of promoters are a class apart. It is a matter of record that the shareholding of the entire promoter group was always disclosed as a group holding to the regulators. In the public announcement document also the shareholding of the entire promoters group is specifically grouped together. The objective of the open offer was consolidation of shareholding and this could be achieved only by grouping the acquirers and other promoters together. When the shares got pledged with the merchant banker towards escrow obligation in the open offer all the promoters had given their consent. The other promoters also participated by giving their shares as pledge or security. The decision of the Supreme Court in Daiichi case relied on by the appellant may not be of any assistance to him since it deals with a different set of facts relating to common object underlying the acquisition of shares. In the 22 case of K.K. Modi, again relied upon by the appellant, the shareholders were admittedly a divided house. In the present case the various statements furnished by the promoter group and the conduct of the parties show that they acted together. Perhaps the appellant has introduced the above argument with a view to diluting the percentage of shareholding which is reckoned in the acquisition of shares and consideration for public announcement. We cannot appreciate the stand taken by the appellant in this regard.”

- vii. I also place reliance on the observations of Hon’ble Securities Appellate Tribunal (“SAT”) in the matter of Bikramjit Ahluwalia Vs. SEBI (Appeal No. 485 of 2015 decided on 20.11.2017)

“It is, thus, pertinent to note that an "Acquirer" defined under Section 2(1)(b) includes a person acting in concert with the acquirer where the acquirer is a promoter and persons acting in concert with him are also promoters. There is a presumption in law that they are all acting in concert with each other unless the contrary is proved and this was what was held by this Tribunal in its order

in Rajesh Toshniwal's case after considering the judgment of the Hon'ble Supreme Court in Daiichi and K. K. Modi's case.”

“In this connection, it is pertinent to note that the Adjudicating Officer has categorically mentioned in the impugned order that the appellants are part of the promoter group and have all along been making disclosures before the Stock Exchanges and SEBI as common promoter group. The appellants have not brought on record anything either before the Learned Adjudicating Officer or this Tribunal to point out that there were differences among the promoters in acquiring more than 5% shares either by Mr. Bikramjit Ahluwalia or by any other Promoter. Therefore, the contention of the appellant as regards non-meeting of minds in the acquisition of shares in violation of SAST Regulation cannot be countenanced”

- viii. It is a matter of record that in the present proceedings there is no material available on record to point out that there were differences among the promoters in acquiring more than 5% shares by Rajeev Bhanot, R. D. Bhanot, Krishna Kumari Bhanot, Shruti Sharma and Arun Soni or by any other Promoters.
- ix. On the contrary, the following facts evidences that they are still acting in concert:
- During the proceedings, vide letter dated January 20, 2018, Bhanot Leasing Limited and vide separate and identical letters dated January 17, 2018, Roma Soni, Punit Soni, Arun Soni, Tania Bhanot, Rekha Bhanot, Aditi Bhanot, Vijay Sharma, Shruti Sharma, Dushyant Sharma and Somia Sharma appointed Rajeev Bhanot as their authorized representative to file reply and do all such acts and deeds required in the present proceedings.
 - Further, the replies filed by the Noticees viz., Mr. Punit Soni, Ms. Roma Soni, erstwhile Bhanot Leasing Limited, Aditi Bhanot, Rekha Bhanot, Tania Bhanot, Dushyant Sharma, Vijay Sharma and Somia Sharma are identical in nature and content. These facts clearly shows that these promoters are still acting in concert.
 - The above mentioned facts and circumstances of this case is squarely covered by

the decision of the Hon'ble SAT in the matter of Bikramjit Ahluwalia Vs. SEBI (*Supra*) wherein Hon'ble SAT distinguished various cases and held "*We find that the facts of the case in Modipan, K. K. Modi and Nikhil Mansukhani (supra) are similar to each other inasmuch as there were disputes, differences and litigations between two promoter groups and, therefore, the two group of promoters, though they continued to be promoters could not be said to be acting in concert with each other. Whereas, in the present case, the appellant has not brought on record any evidence of dispute between the promoters. In fact, the Appellant replied to the SCN on behalf of himself as promoter and part of the Promoter Group and on behalf of other promoters who were persons acting in concert as per said regulations and has admitted that the acquisition in issue had been made only with a view to consolidate the total promoter shareholding. In the circumstances, the aforesaid three judgments are distinguishable and do not support the case of the Appellant.*"

In the present case, admittedly, the appellants, as promoters, had from time to time purchased shares of the target company only with a view to consolidate the total promoter holding. The consolidation of the promoter holding is the admitted common objective and purpose of the appellants and consequently, the appellants, in the facts of the present case, are persons acting in concert."

- x. In view of the above factual and legal position, I find that the Noticees are promoters and persons acting with concert. In this context, though Rajeev Bhanot, R. D. Bhanot, Krishna Kumari Bhanot, Shruti Sharma and Arun Soni being promoters have acquired shares in the target company and thus found to be 'acquirers' in the Issue No.1 and the other Noticees who are homogenous mixture of promoters also have acted in concert with the acquirer promoters for the impugned acquisitions.
- xi. Perusal of Regulation 11 (1) of Takeover Regulations, 1997 further states that where the shareholding of the acquirer along with persons acting in concert is already within the limits prescribed under the said Regulations i.e. 15% or more but less than 55%, then such an acquirer on purchase of additional shareholding amounting to more than

5% in a financial year, must mandatorily make a public announcement.

- xii. I note that the acquirers viz., Bhanot, R. D. Bhanot, Krishna Kumari Bhanot, Shruti Sharma and Arun Soni along with other Noticees as PACs holding 25.08% (which is less than 55% as stated under Regulation 11(1) of Takeover Regulations, 1997) as on April 1, 2005 have made additional acquisition of 8.85 percentage of shares of target company in financial year 2005-2006 thereby resulting into 33.93% of the paid up equity share capital as on March 31, 2006. The post-acquisition shareholding of the acquirers and PACs has not exceeded fifty five percentage. Therefore, I hold that the impugned acquisition falls within the purview of reg. 11(1) of the Takeover Regulations, 1997. However, as mandated under regulation 11(1) of the Takeover Regulations, 1997, the acquirers along with PACs have not made any public announcement to acquire shares.
- xiii. In this regard, it is pertinent to mention the observations of the Hon'ble Supreme Court of India in the matter of *Swedish Match AB & Anr. Vs SEBI* (C.A. 2361 of 2003 decided on 25.08.2004) wherein Court held “*..Indisputably, the purport and object of which a regulation is made must be duly fulfilled. Public announcement is at the base of Regulations 10, 11 and 12. Except in a situation which would bring the case within one or the other 'exception clause', the requirement of complying with the mandatory requirements to make public announcement cannot be dispensed with...*”.
19. I also place reliance on the observations of Hon'ble Securities Appellate Tribunal (“SAT”) in the matter of *Bikramjit Ahluwalia Vs. SEBI* (Appeal No. 485 of 2015 decided on 20.11.2017) wherein Court held “*It is worthwhile to note that the participants in the securities market are allowed to actively indulge in trading and other related activities because SEBI, as the market regulator, is given assurances by these market players that they understand the law and regulations as laid down by the Legislature and the SEBI respectively. If the Legislature and SEBI, acting on such assurances, give companies and other market participants the right to execute their decisions in the manner these entities deem fit, it goes without saying that there is a corresponding duty placed on the market*

participants to ensure that such mistakes as acquiring more than the acquisition limit of 5% without making the necessary public announcement are not committed.”

20. I have perused the material available on record and submissions of the Noticees. I note that the Noticees did not place any documentary evidence to show that they had made a public announcement as envisaged in Regulation 11 of the Takeover Regulations when the same was triggered on December 22, 2005 pursuant to the acquisitions of shares by four promoters. In view of the foregoing, I find that the Noticees failed to make any public announcement in terms of Regulation 11(1) and the charges in the SCN against the Noticees stand established.

Issue 3: whether the Noticees are liable for directions envisaged under regulations 44 and 45 of the Takeover Regulations, 1997 read with corresponding provisions of regulations 32 and 35 of Takeover Regulations, 2011 for the aforesaid violation?

21. Before dealing with the issue of liability of the Noticees for the violation of Regulation 11(1), I would like to deal with the submissions/contentions of the Noticees.

21.1 I note that Bhanot Construction and Housing Limited has submitted that Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot were deceased. I have perused the Death Certificates issued by the Municipal Corporation of Delhi and I find that Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot were deceased on August 6, 2015 and November 30, 2006 respectively. The Company contended that the ‘*personal action dies with the death of the person*’ hence, requested for abating the proceedings against the deceased Noticees. The issue for consideration here is that whether the present proceedings will continue against Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot on account of their death. In this regard, I place reliance on the following observations of Hon'ble Supreme Court in the matter of *Melepurath Sankunni Ezhuthassan Vs Thekittil Gopalankutty Nair*, (1986 AIR 411):

“.....So far as this country is concerned, which causes of action survive and which abate is laid down in section 306 of the Indian Succession Act, 1925,

which provides as follows :

306. Demands and rights of action of or against deceased survive to and against executor or administrator. -

All demands whatsoever and all rights to prosecute or defend any action or special processing existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators; except causes of action for defamation, assault as defined in the Indian Penal Code, or other personal injuries not causing the death of the party; and except also cases where, after the death of the party, the relief sought could not be enjoyed or granting it would be nugatory.....

.....Section 306 further speaks only of executors and administrators but on principle the same position must necessarily prevail in the case of other legal representatives, for such legal representatives cannot in law be in better or worse position than executors and administrators and what applies to executors and administrators will apply to other legal representatives also.”

The observations of the Hon’ble Supreme Court in the matter of Smt. Yallawwa Vs. Smt. Shantavva on October 08, 1996, (MANU/SC/0016/1997) is also noteworthy: “.....Save and except the personal cause of action which dies with the deceased on the principal of ‘actio personal is moritur cum persona,’ i.e. a personal cause of action dies with the person, all the rest of causes of action which have impact on proprietary rights and socio legal status of the parties cannot be said to have died with such a person.....”

I also note that the Hon’ble Supreme Court in the matter Prabhakara Adiga Vs. Gowri and others (Civil Appeal Nos. 3007-3008 of 2017, decided on February 20, 2017) has reiterated their stand taken in an earlier judgment in the matter of Girijanandini Devi v. Bijendra Narain Choudhary (AIR 1967 SC 1124) and observed that “Normally personal action dies with person but this

principle has application to limited kinds of causes of actions. In Girijanandini Devi v. Bijendra Narain Choudhary AIR 1967 SC 1124, this Court while considering the question whether the decree for account can be passed against the estates, also considered the maxim “actio personalis moritur cum persona” and observed that the postulation that personal action dies with the person, has a limited application. It operates in a limited class of actions, such as actions for damages, assault or other personal injuries not causing the death of the party and in other actions where after the death of the party the relief granted could not be enjoyed or granting it would be nugatory. Death of the person liable to render the account for property received by him does not therefore affect the liability of his estate”.

21.2 I note that the present proceedings are initiated against the deceased Noticees who acquired shares to the tune of 5.89% and thereby triggered Regulation 11(1) of the Takeover Regulations and failed to make public announcement to make open offer along with the other Acquirers and PACs. In my opinion the obligation to make an open offer is neither personal in nature nor the relief of directing an open offer is in the nature of the relief that cannot be enjoyed by the investors. On the contrary, the investors who otherwise would have got an exit opportunity at the price fixed by the Takeover Regulations, can get this opportunity by way of direction to make an open offer. Therefore, the relief of direction to make open offer does not get nugatory in this sense. I proceed to examine whether this general proposition of law relating to succession of the obligation to make open offer is inconsistent with any of the specific provisions of Takeover Regulations. In this regard, attention may be drawn to two different provisions contained in Takeover Regulations viz., Regulation 3(1) (g) and 27(c) of Takeover Regulations, 1997.

21.3 Regulation 3(1) (g) reads as follows:-

“ 3. (1) nothing contained in regulations 10, 11 and 12 of these regulations shall apply to:

...

(g) acquisition of shares by way of transmission on succession or inheritance;

...”

Regulation 27(c) reads as follows:-

“27. (1) No public offer, once made, shall be withdrawn except under the following circumstances:—

...

(c) the sole acquirer, being a natural person, has died;

...”

Perusal of Regulation 3(1) (g) shows that person who acquires shares either by way of transmission on succession or inheritance does not mandate the obligation of making open offer on such person which if the said person is required to make otherwise. However, this provision does not envisage a situation when such shares which are subject matter of transmission on succession or inheritance are held by the acquirer who has already incurred an obligation to make open offer. This in my view should envisage a situation where the succession of shares happens when no such pre-existing obligation to make open offer was in existence on the deceased acquirer. *The other provision reg. 27(1) (c) of the Takeover Regulations*, which provides for a situation of withdrawal of open offer in the case of death of sole acquirer who is a natural person because the sole offeror has died. However, Takeover Regulations, 1997 does not specifically provide for whether initial liability of making an open offer is dischargeable by the fresh open offer by the legal representatives as per law. Therefore, in my view there is no express provision in Takeover Regulations which is inconsistent with the general proposition of law ingrained in Section 306 of the Indian Succession Act, 1925. Hence, I observe that the obligation to make open offer survives the death of the acquirer who was wielding an obligation to make open offer at the time of death, to the legal representatives to the extent of the estate inherited from the deceased acquirers.

Therefore, I am of the view that the cause action survives the death of Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot. Hence, I find that the maxim *actio personalis moritur cum persona* has no applicability in the present case. Therefore, I am of the view that the proceedings against the deceased Noticees should not be abated and the liability to comply with the law falls upon the legal representatives of the deceased to the extent of the estate inherited from the deceased acquirers.

21.4 Further, the Target Company contended that the acquisition of shares by Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot had triggered the Regulation 11(1) and since they had expired the proceedings against all Noticees need to be abated. Though the acquisition of Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot triggered the threshold limit envisaged in Regulation 11(1) of the Takeover Code, I note that the law fastens liability on the entire Acquirers and PACs who are jointly and severally responsible to make a public announcement in this respect. In view of the same I am not inclined to accept the said contention.

21.5 It is noted from the letter dated January 20, 2018 of Bhanot Construction and Housing Limited that during the year 2006, Bhanot Leasing Limited has changed its name to Bhanot Infrastructure and Hospitalities Limited and subsequently in the year 2009, the Bhanot Infrastructure and Hospitalities Limited was amalgamated with Bhanot Construction and Housing Limited. In view of the said amalgamation, the consequences of the violation of Regulation 11(1) of the Takeover Code have resulted in the liability to make an open offer by Bhanot Leasing Limited as a PAC falling upon the Target Company which will result in buy back of its own shares. On the purposive interpretation of Takeover Regulations, it is considered that such a consequential direction is not in the interest of the shareholders of the Target Company. Therefore, it needs to be considered whether this is the fit case for lifting the corporate veil of erstwhile Bhanot Leasing Limited. In this regard, I place reliance on the decision of Hon'ble Supreme Court (Larger Bench) in the matter of *LIC Vs.*

Escorts Limited (1986 AIR 1370) , wherein while discussing the doctrine of corporate veil, the Court had observed:

“90. ... the corporate veil may be lifted where a statute itself contemplates lifting the veil, or fraud or improper conduct is intended to be prevented, or a taxing statute or a beneficent statute is sought to be evaded or where associated companies are inextricably connected as to be, in reality, part of one concern. It is neither necessary nor desirable to enumerate the classes of cases where lifting the veil is permissible, since that must necessarily depend on the relevant statutory or other provisions, the object sought to be achieved, the impugned conduct, the involvement of the element of the public interest, the effect on parties who may be affected, etc.”

Reliance can also be made on another judgment of the Hon’ble SAT in the matter of *Sahara Asset Management Company P. Ltd. Vs. SEBI (SAT Appeal 428/2018 decided on June 27, 2017)* wherein it was held that *“In the securities market, SEBI Act empowers SEBI to take actions in the interest of protecting the interests of the investors and hence lifting the corporate veil to the extent to identify who controls a regulated entity cannot be faulted. Without such a power SEBI will be a mute spectator to many of the corporate misdeeds which may jeopardize the interests of investors. Given the mandate of SEBI to protect the interests of the investors in the securities market SEBI is statutorily empowered to lift the corporate veil and find out the truth whenever interests of the investors are affected or likely to be affected”*.

In the present facts of the case, as per the details given by the Noticee vide e-mail dated August 01, 2018, I find that 81.46 percentage of shareholding of erstwhile Bhanot Leasing Limited was held by the promoters and promoter group entities as on March 31, 2006. These promoter group entities being promoters of the erstwhile Bhanot Leasing Limited holding the above percentage had absolute control of the said Company. Therefore, though the corporate entity was acting as a PAC, in view of the above facts of absolute control, the promoters should be considered as the *Alter ego* of erstwhile Bhanot Leasing Limited. Having triggered the obligation to make open offer, the corporate entity would go scot-free without discharging the obligation to make open offer unless the corporate veil is lifted. In essence, the promoters being the *Alter ego*, gain the advantage

of not making the open offer. If corporate veil in this scenario is not lifted this would be unjustly enrich the promoters of erstwhile Bhanot Leasing Limited, since the failure to make open offer results in a pecuniary advantage to that Company and to the Alter ego of the Company, the promoters and promoter group. Considering the same, I am of the view that this is a fit case wherein the corporate veil of the Promoter Company shall be lifted to find out the promoters of Bhanot Leasing Limited at the relevant time of acquisition, i.e. December 22, 2005 when erstwhile Bhanot Leasing Limited was acting as PAC.

I find from the details of ‘promoters and promoter group’ during Financial Year 2005-2006 submitted by the Company vide e-mail dated August 01, 2018 that R.D.Bhanot, Krishna Kumari Bhanot, Rajeev Bhanot, Rekha Bhanot, Aditi Bhanot, Tania Bhanot, Shruti Sharma, Arun Soni, Bhavya Bhanot, Santosh Soni, Roma Soni, O.P. Soni and Anushree Soni were the promoters and promoter group entities of erstwhile Bhanot Leasing Limited. (hereinafter referred to as “**promoters and promoter group entities of erstwhile Bhanot Leasing Limited**”). I also note that Bhanot Construction and Housing Limited-Target Company herein is also one of the promoters of the erstwhile Bhanot Leasing Limited. On lifting the corporate veil of the target company, I note that the present Noticees who are in the control of the Target Company are also the promoters of erstwhile Bhanot Leasing Limited. Therefore, the liability on the target company being the promoter of erstwhile Bhanot Leasing Limited needs to be discharged by the present Noticees.

22. Admittedly, the Noticees had not made any public announcement when the Acquires and PACs shareholding went beyond the limit of 5% as prescribed in Regulation 11(1) by virtue of their additional acquisition of shares.
23. I note that regulation 44 read with regulation 45 of the Takeover Regulations, 1997 give flexibility to SEBI to enforce regulations 10 and 11(1) by way of several directions including (a) making public announcement (b) disinvestment of shares acquired in breach of regulations; (c) transfer of any proceeds or securities to the investors protection fund, etc. The guiding principles for the directions as provided in these regulations are the interest of the investors and securities market which are the statutory guiding principles as

inbuilt in the SEBI Act, the Takeover Regulations, 1997 and the Takeover Regulations, 2011. In this context, I note that the Hon'ble Securities Appellate Tribunal ("SAT"), vide order dated September 08, 2011 in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011) observed as follows:

"It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. 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."

24. I note that by virtue of acquisitions of shares by Rajeev Bhanot, R. D. Bhanot, Krishna Kumari Bhanot and Shruti Sharma, the collective shareholding of the Acquires and PACs of target company increased from 25.08% to 33.93% on account of which the Noticees collectively triggered the requirement of making a public announcement of an open offer under regulation 11(1) of the Takeover Regulations, 1997. The Noticees were

therefore required to make a public announcement within 4 days from December 22, 2005 as envisaged under Reg. 14(1) of the Takeover Regulations. In view of the discussion above, appropriate action in accordance with law needs to be initiated against the Noticees. In the facts and circumstances of the present case, I do not find any reason to deviate from the normal rule to direct a public announcement to acquire shares of the target company in accordance with the provisions of Takeover Regulations, 1997, and issue any other direction as envisaged in regulation 44 and 45. Therefore, Rajeev Bhanot, Rekha Bhanot, Eshan Bhanot, Poonam Bhanot, Tania Bhanot, Palak Bhanot, Shruti Sharma, Aditi Bhanot, Vijay Sharma, Dushyant Sharma, Somia Sharma, Arun Soni, Roma Soni, Punit Soni, promoters and promoter group entities of erstwhile Bhanot Leasing Limited and Legal Representatives of Late R.D. Bhanot and Late Krishna Kumari Bhanot are liable to make public announcement as per the provisions of Takeover Regulations. I also note that since the public announcement now would provide a delayed exit opportunity to the shareholders of the target company, the abovesaid entities should pay interest on the consideration amount to the shareholders who tender their shares in the open offer and who are eligible for interest as per law.

25. In view of the aforesaid observations and findings, I, in exercise of the powers conferred under section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11(1) and 11B of the SEBI Act and Regulations 44 and 45 of the Takeover Regulations, 1997 read with Regulations 32 and 35 of the Takeover Regulations, 2011, hereby issue the following directions:

- i. Rajeev Bhanot, Rekha Bhanot, Eshan Bhanot, Poonam Bhanot, Tania Bhanot, Palak Bhanot, Shruti Sharma, Aditi Bhanot, Vijay Sharma, Dushyant Sharma, Somia Sharma, Arun Soni, Roma Soni, Punit Soni, promoters and promoter group entities of erstwhile Bhanot Leasing Limited and Legal Representatives of Late R.D. Bhanot and Late Krishna Kumari Bhanot shall make a public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, 1997 read with the corresponding provisions of Takeover

Regulations, 2011 within a period of 45 days from the date of this order;

- ii. The entities mentioned at paragraph 25(i) shall, alongwith the consideration amount, pay interest at the rate of 10% per annum from December 22, 2005 to 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 open offer, after adjustment of dividend paid, if any.

26. The above directions shall come into force with immediate effect.

27. It is noted from the SCN that one of the Noticee-Aditi Bhanot is mentioned as baby Aditi Bhanot. From the perusal of replies and correspondence of Aditi Bhanot I do not find any material to hold her as a minor. In case, Aditi Bhanot produces any evidence that she is still a minor, it is clarified that guardian of Aditi Bhanot shall comply with the abovementioned directions.

28. It is noted that Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot were deceased and their legal representatives have not been brought on record. Therefore, the directions against legal representatives of Late Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot are made contingent on SEBI serving this order to their legal representatives. Further, it is noted that promoters and promoter group entities of erstwhile Bhanot Leasing Limited viz., Bhavya Bhanot, Santosh Soni, O.P. Soni and Anushree Soni are not Noticees in the present proceedings. Therefore, this order will take effect as final order against Bhavya Bhanot, Santosh Soni, O.P. Soni and Anushree Soni and legal representatives of Late Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot only on the expiry of 60 days from the date of service of this order to Bhavya Bhanot, Santosh Soni, O.P. Soni and Anushree Soni and the legal representatives of Late Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot, unless Bhavya Bhanot, Santosh Soni, O.P. Soni and Anushree Soni and the legal representatives of Late Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot, file reply or written request for personal hearing receivable by SEBI within such period of 60 days from the date of service of this order. If reply/request for personal hearing is filed by Bhavya Bhanot, Santosh Soni, O.P. Soni and Anushree Soni and legal representatives

of Late Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot, the directions passed herein against Bhavya Bhanot, Santosh Soni, O.P. Soni and Anushree Soni and legal representatives of Late Mr.R.D. Bhanot and Mrs. Krishna Kumari Bhanot shall be made applicable subject to the determination on their objections/reply.

29. The SCN dated March 01, 2017 issued to the Noticees is disposed of with the abovementioned directions.

DATE: August 02, 2018

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**