BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-2/ AO/DSR/ BKM/657-674/2017]

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

In respect of:

1. **Ms. Jonaki A. Bakeri (PAN: AHYPB8148D)**
2. **Ms. Hirva A. Bakeri (PAN: AJPPB5533K)**
3. **Achal Anil Bakeri (PAN: AAWPB5727B)**
4. **Achal Anil Bakeri (HUF) (PAN: AABHA6839A)**
5. **Rupa Achal Bakeri (PAN:AGWPP8435A)**
6. **Pavan Bakeri (PAN: AENPB5730M)**
7. **Hansa Bakeri (PAN: ACJPB0653P)**
8. **Oras Investments Pvt.Ltd. (PAN: AAACO2282M)**
9. **Paratam Investments Pvt. Ltd. (PAN: AABCP1560G)**

In the matter of Symphony Limited

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1. Based on the shareholding pattern filed by certain companies with the Bombay Stock Exchange (BSE) along with certain observations made by it, Securities and Exchange Board of India (hereinafter referred to as 'SEBI') had conducted an examination in the scrip of Symphony Limited (hereinafter referred to as "**Symphony / Target Company")** and into the possible violations of the provisions of

Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the 'Act') and various Rules and Regulations made thereunder.

2. Upon examination, it was, inter alia, observed that Ms. Jonaki A. Bakeri along with Persons Acting in Concert (PACs) viz. Ms. Hirva A. Bakeri, Achal Anil bakeri, Achal Anil Bakeri HUF, Rupa Achal Bakeri, Pavan Bakeri, Hansa Bakeri, Oras Investments Pvt. Ltd. and Paratam Investments Pvt. Ltd. (Collectively referred to as Noticees), the promoter and promoter group of Symphony, on May 06,2009 acquired 50,000 shares constituting 0.715% shares and on May 07, 2009 acquired 43,161 shares constituting 0.62% shares of Symphony and further Ms. Hirva A.Bakeri along with PACs viz. Ms. Jonaki A.Bakeri, Achal Anil Bakeri, Achal Anil Bakeri HUF, Rupa Achal Bakeri, Pavan Bakeri, Hansa Bakeri, Oras Investments Pvt. Ltd. and Paratam Investments Pvt. Ltd. on May 6, 2009 acquired 75000 shares constituting 1.072% of Symphony through bulk deal. However, it was observed that no public announcement was made for the said acquisitions by the Noticees as required under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the 'SAST Regulations'). SEBI has, therefore, initiated adjudication proceedings against the Noticees for the alleged violation of the provisions of Regulation 11 (2) of SAST Regulations.

Appointment of Adjudicating Officer:

3. I have been appointed as Adjudicating Officer (AO), vide order dated March 26, 2014, under Section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the 'Rules') to inquire into and adjudge under Section 15H (ii) of the Act against the Noticees for the alleged violation of the provision of law.

Show Cause Notice, Reply and Personal Hearing

4. Show Cause Notices dated July 14, 2014 (hereinafter referred to as SCNs) were issued to the Noticees in terms of Rule 4 of the said Rules requiring them to show cause as to why an inquiry should not be held against them for the alleged violation of provisions of law. Noticees vide their individual letters all dated August 05-09, 2014 submitted their replies and also sought the documents which were relied upon for the allegation in the aforesaid show cause notices in the matter. Noticees had also requested for inspection of all documents and records in possession of SEBI in connection with the matter. Accordingly, the opportunity of inspection of documents was granted to the Noticees to be availed on or before October 12, 2015. However, vide individual letters dated September 28 & 30, 2015, the Noticees had requested for copies of all the documents first as mentioned in their letters dated August 05-09, 2014. Thereafter, another opportunity of inspection of documents was granted to the Noticees to be availed on or before November 20, 2015. Further, vide

individual letters all dated October 29, 2015, the Noticees claimed that they had not received the copies of the documents as sought by them vide letters dated August 05-09, 2014 and were waiting for the same. The Noticees sought an adjournment of the inspection . SEBI vide letter dated December 15, 2015 provided all the documents relied upon for the adjudication proceedings and the same has also been acknowledged by Ms. Jonaki A Bakeri vide her letter dated February 02, 2016 .Vide the said letter dated February 02, 2016, Ms. Jonaki A Bakeri has acknowledged the receipt of the following documents:

Date	**Ref. No.**	**Particulars**	**Originate**
01-Sept-13	CFD/DCR/OW/22872/2013	Letter from SEBI to furnish details	SEBI
04-Oct-13		Inward to SEBI dated 07/10/13 reply from Symphony Ltd.	Company
26-Nov-13		Inward to SEBI dated 28/11/13 reply from Symphony Ltd - Para wise Reply with Annexures	Company
02-Jan-14		**BSE web- for Bulk Deal & Block Deal**	**SEBI**
28-Jan-14		**BSE Web** - Shareholding Pattern - quarterly	
	30-Jun-09	Statement of Shareholding of Promoters	BSE
	30-Jun-10	Shareholding Pattern - quarterly	BSE
	30-Sep-10	Shareholding Pattern - quarterly	BSE
	31-Dec-10	Shareholding Pattern - quarterly	BSE
	31-Mar-11	Shareholding Pattern - quarterly	BSE
	30-Jun-11	Shareholding Pattern - quarterly	BSE
	30-Sep-11	Shareholding Pattern - quarterly	BSE
30-Apr-14		Communication by Mr. S. Ravindran, ED appointing Adjudicating Officer	SEBI
		Annexure A	SEBI
		Annexure B	SEBI
15-Dec-15	CFD/DCR/OW/34690/2015/2	Adjudication proceedings in the matter of acquisition of shares of Symphony Ltd (Case I and II) through bulk deal by the noticees	SEBI

5. Since the relevant documents have already been provided , in the interest of natural justice and in order to conduct an inquiry as per Rule 4 (3) of the said Rules, an opportunity of personal hearing was granted to the Noticees on May 26, 2017. However, the Noticees failed to attend the hearing. Ms. Jonaki A. Bakeri, and Ms Hirva A. Bakeri vide their letters dated May 23, 2017 inter-alia submitted as under:

"………..after being made available copies of the aforesaid documents and consequent inspection, I may satisfy that no other or further documents are required and on satisfied, I shall put my objections against the said impugned Show Cause Notice within a reasonable time which may be given to me….."

6. I note that the list of documents as mentioned herein above at para no. 4 have already been provided to the Noticees. I also note that ample opportunities have been granted to the Noticees for conducting inspection of documents. Since the detailed replies of the Noticees are available on record, I proceed further with the case on the basis of material available on record.

Consideration of Issues, Evidence and Findings:

7. I have carefully perused the charges levelled against the Noticees as per the SCNs, written submissions made by the Noticees and the material available on record. The issues that arise for consideration in the present case are:

a. **Whether the Noticees have violated Regulations 11 (2) of the SAST Regulations?**
b. **Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15 H (ii) of the Act?**
c. **If so, what would be the quantum of monetary penalty that can be imposed on the Noticees taking into consideration the factors mentioned under Section 15J of the Act?**

8. Before proceeding further, it will be appropriate to refer to the relevant provisions of the SAST regulations which read as under:-

11(2) No acquirer, who together with persons acting in concert with him holds, fifty-five per cent 55% or more but less than seventy-five per cent 75% of the shares or voting rights in a target company, shall acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations: Provided that .... Provided further that such acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. 5% voting rights in the target company subject to the following:-

(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buy back of shares by the target company;

(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.75%.

9. I note that Ms. Jonaki A.Bakeri along with PACs acquired 50,000 shares constituting 0.715% shares on May 06, 2009 and 43,161 shares constituting 0.62% shares on May 07, 2009 and Ms. Hirva A. Bakeri along with PACs acquired 75000 shares on May 6, 2009 constituting 1.072% of Symphony through bulk deals. However, no public announcement was made by them for the said acquisitions as required under the SAST Regulations. It was, therefore, alleged in the SCNs that the Noticees had violated the provisions of Regulations 11 (2) of the SAST Regulations.

Submissions made by the Noticees:

10. Ms. Jonaki A.Bakeri vide letters dated August 08, 2014, September 28, 2015, October 29, 2015, February 02, 2016 and May 23, 2017, Ms. Hirva A. Bakeri vide letters dated August 09, 2014, September 30, 2015, October 29, 2015 and May 23, 2017, Achal Anil bakeri, Achal Anil Bakeri HUF and Rupa Achal Bakeri vide their identical letters dated

August 05, 2014, September 28, 2015, and October 29, 2015, Pavan Bakeri vide his letters dated August 07, 2014, September 28, 2015 and October 29, 2015 and Hansa Bakeri, Oras Investments Pvt. Ltd. and Paratam Investments Pvt. Ltd. vide their identical letters dated August 06, 2014, September 28, 2015 and October 29, 2015 denied all the charges leveled against them in the SCNs.

11. I note that Ms. Jonaki A. Bakeri and Ms. Hirva A. Bakeri vide their letters dated August 08, 2014 and August 09, 2014 submitted as under:

- They have traded on public platform and purchased shares at a price at which seller was willing to sell the shares, they have failed to understand as to how they failed to make public announcement to acquire shares at a minimum price.
- The acquisitions that took place were well within the limit of 5%. No violation in that respect has been found to have been observed and alleged against them.
- They sought all the documents, records, circulars and other materials of SEBI and BSE relied upon to form the view in respect of alleged trades of May 06, 2009 and May 07, 2009 as “bulk trades”.

Findings:

12. From the BSE's shareholding pattern of Symphony, I note that Ms. Jonaki A.Bakeri along with PACs as mentioned in Para 2 above acquired 50,000 shares on May 06, 2009 constituting 0.715% shares and further acquired 43,161 shares on May 07, 2009 constituting

0.62% shares and Ms. Hirva A. Bakeri along with PACs acquired 75000 shares on May 6, 2009 constituting 1.072% of Symphony through bulk deal.

13. The shareholding details of the promoter and promoter group (acquirers) from quarter ended March 2009 to September 2011 are as under:

Sr. No.	**Scrip name**	**Symphony Limited**	
	Quarter ending	**% promoter group holding during the quarter ending.**	**Increase (%)**
	Mar 09	70.36	
	Jun 09	75.00	**4.64%**
	Sept 09	75.00	
	Dec 09	75.00	
	Mar 10	75.00	
	Jun 10	75.00	
	Sept 10	75.00	
	Dec 10	75.00	
	Mar 11	75.00	
	Jun 11	75.00	
	Sept 11	75.00	

14. The Noticees submitted that the acquisitions were well within the limit of 5% and denied having violated the provisions of SAST Regulations, 1997.

15. I have carefully perused the material available on record and the submissions made by the Noticees. I note that, Regulation 11(2) of the SAST Regulations clearly states that, any acquirer along with PACs, holding 55% but less than 75% of the shares or voting rights in any company, acquires any additional shares or voting rights together with PACs in that company, has to make a public announcement. However, the second proviso to Regulation 11(2) of the SAST Regulations makes an exception to the said Regulations. It states that an acquirer along with PACs can acquire up to 5% additional shares or voting rights subject to that the said acquisition is made through open market purchase in normal segment on the stock exchange but, not through bulk deal /block deal/negotiated deal/ preferential allotment.

16. SEBI, vide Circular bearing No. SEBI/MRD/SE/Cir-7/2004 dated January 14, 2004, had explained in Para 1.1 of the said Circular that a 'bulk deal' constituted of "all transactions in a scrip (on the exchange) where the total quantity of shares bought /sold is more than 0.5% of the number of equity shares of the company listed on the exchange".

17. I find that in the present case the Noticees had acquired shares of Symphony during the relevant period. I find that the said acquisitions of 0.715% shares on May 06, 2009 and further 0.62% shares on May 07, 2009 by Ms. Jonaki A.Bakeri along with PACs and 1.072% shares by Ms.

Hirva A. Bakeri along with PACs on May 6, 2009 did exceed the quantitative limit of 0.5% of the number of equity shares of the company listed on the exchange which resulted in bulk transactions. As bulk deal transactions/acquisitions are not exempt from the obligation of making an open offer, the Noticees were required to make public announcements upon acquiring the said shares.

18. At this juncture, I would like to cite the order passed by the Hon„ble Supreme Court of India in the case of *Swedish Match AB & Anr. Vs SEBI*, dated August 25, 2004, wherein, it was held as follows: "..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. In view of the above, I conclude that the Noticees namely, Ms. Jonaki A.Bakeri, Ms.Hirva A.Bakeri, Achal Anil bakeri, Achal Anil Bakeri HUF, Rupa Achal Bakeri, Pavan Bakeri, Hansa Bakeri, Oras Investments Pvt.Ltd. and Paratam Investments Pvt. Ltd. have violated the provisions of Regulation 11(2) of the SAST Regulations by failing to make public announcement and thus liable for monetary penalties under Section 15H(ii) of the Act which reads as under:

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 of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

20. At this juncture, I would like to refer to the observations of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) wherein it was observed 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…".

21. While determining the quantum of penalty under Section 15H(ii) of the Act, it is important to consider the factors stipulated in Section 15J of SEBI Act, which read as under:-

***15J - <u>Factors to be taken into account by the adjudicating officer</u>** :*

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.

22. With regard to the above factors, it may be noted that the examination report has not quantified the profit/loss for the violations committed by the Noticee. Further, the default is repetitive in nature. It is not possible from the material available on record to ascertain the disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to an investor or group of investors as a result of the default. However, the Noticees by not making public announcement, on acquiring shares of Symphony on May 6, 2009 and May 7, 2009,by way of bulk deals, have not only failed to comply with the provisions of SAST Regulations but have also deprived the shareholders of the exit opportunity at the relevant time which has to be viewed seriously.

ORDER

23. In view of the above, after considering all the facts and circumstances of the case and exercising the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules, I hereby impose a monetary penalty of ₹ 50,00,000 (Rupees Fifty Lakh Only) on the Noticees viz. Ms. Jonaki A.Bakeri, Ms.Hirva A.Bakeri, Achal Anil bakeri, Achal Anil Bakeri HUF, Rupa Achal Bakeri, Pavan Bakeri, Hansa Bakeri, Oras Investments Pvt.Ltd. and Paratam Investments Pvt. Ltd. under Section 15H (ii) of the Act. The penalty is payable jointly and severally by the Noticees. In my view, the penalty imposed is commensurate with the defaults committed by the Noticees.

24. The amount of penalty shall be paid either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI - Penalties Remittable to Government of India ", A/c No. 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payment made in the format as given in table below should be forwarded to " The Division Chief (Corporate Finance Department, Division of Corporate Restructring-1), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 052.

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)	

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

Date: July 20, 2017

Place: Mumbai

D. SURA REDDY
GENERAL MANAGER &
ADJUDICATING OFFICER