BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. PG/AO/01/2018]

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

i. **Shri Nikhil Mansukhani** (PAN: AACPM2145E)
ii. **Mrs. Anita Mansukhani** (PAN: AAHPM0923H)
iii. **M/s JPA Holdings Pvt. Ltd.** (PAN: AABCJ7151K)

In the matter of

M/s MAN Industries (India) Limited.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (SEBI) had received a complaint dated October 01, 2010 from the Company Secretary of M/s. MAN Industries (India) Limited (hereinafter referred to as '**MIL/the company**') regarding certain irregularities committed by Mr. J C Mansukhani, Vice-Chairman and Managing Director of the company and by JPA Holdings Pvt. Ltd (JPA), a company owned and controlled by J C Mansukhani, while dealing in the shares of the company during the period June 01, 2010 to September 30, 2010, in violation of Securities and

Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'). The shares of the company are listed on the Bombay Stock Exchange and the National Stock Exchange (hereinafter collectively referred as "exchange"). The Global Depository Receipts (GDR) of the company are listed on NASDAQ, Dubai and bonds issued by the company are listed on Singapore Stock Exchange (SSE).

2. Subsequently, SEBI conducted an investigation in the matter and it was observed that pursuant to acquisition of shares by entities of promoter group and allotment of shares pursuant to conversion of 10,00,000 warrants to entities of promoter group on June 19, 2010 has increased the promoter shareholding from 51.29% to 55.18%. It was alleged that since total promoters' shareholding increased to 55.18% thereby crossing the threshold limit of 55% without complying with provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as the '**SAST Regulations'**), Anita Mansukhani (AM), Nikhil Mansukhani (NM) and JPA (hereinafter referred to as the '**Noticees**') had violated Regulation 11 (1) read with 2nd proviso to Regulation 11 (2) of the SAST Regulations.

3. A Show Cause Notice dated May 11, 2011 (SCN) was issued to the Noticees in terms of the provision of Rule 4 (1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as the '**Adjudication Rules**') to show cause as to why an inquiry should not be held against them in respect of the violations alleged to have been committed by them. The SCN alleges that the Noticees failed to

make public announcement to acquire shares in accordance with the SAST Regulations.

4. The Noticees replied to the SCN on July 19, 2011 (by NM) & June 20, 2011 (by AM and JPA) and also appeared for hearing through their representatives. Considering the submissions of the Noticee and the material available on record, an adjudication order dated September 30, 2011 was passed whereby a penalty of Rupees Ten Crore was imposed on the Noticees.

5. The above mentioned adjudication order no. PG/AO-99-101/2011 dated September 30, 2011 was challenged in Appeal no. 196 of 2011 and 8 of 2012, before the Hon'ble Securities Appellate Tribunal, Mumbai (SAT). The Hon'ble SAT vide its order dated May 11, 2012, set aside the adjudication order and remanded the matter to the Adjudicating Officer (AO) for dealing with submissions of the Noticees and the principles laid down in the matters of *K. K. Modi vs. Securities Appellate Tribunal* and *Daiichi Sankyo Co. Ltd. vs. Jayaram Chigurupati & Ors.*.

6. The undersigned was appointed as AO in the matter on June 21, 2012. A hearing was conducted on April 23, 2013. Subsequently, due to the transfer of undersigned the matter was allocated to another AO on August 29, 2013 who conducted a hearing on December 3, 2013. The matter was again transferred to the undersigned on November 13, 2014. During the said proceedings the Noticees have made their submissions. However, the matter could not be disposed off due to pending appeal in the matter of Roofit Industries which was resolved by amendment to SEBI Act w.e.f. April 26, 2017.

HEARING AND REPLY

7. The Noticees were given an opportunity of personal hearing vide letter dated August 31, 2018 on September 19, 2018. In response to the Hearing Notice, JPA and AM vide letters dated September 11, 2018 sought a copy of appointment order of the AO. NM vide e-mail dated September 14, 2018 sought an adjournment of hearing. The copy of the first appointment order as sought by JPA and AM was provided to them vide email dated September 17, 2018. Further, the Noticees were informed that the hearing has been rescheduled on October 10, 2018. JPA and AM sought another adjournment vide e-mail dated October 4, 2018. JPA and AM were informed vide e-mail dated October 9, 2018 that the hearing has been rescheduled on October 25, 2018.

8. Meanwhile, hearing for NM was conducted on October 10, 2018 which was attended by Mr. Shashank Belkhede and Mr. Nikesh Kabani as his representatives. The Representatives reiterated the submissions made earlier by NM and also submitted a written submission dated October 10, 2018 during the course of hearing. The Representatives also admitted the fact that the issue and conversion of warrants was with a common objective. However, the trigger happened due to acquisitions done by Shri J.C. Mansukhani. The Representatives were advised to provide a chorological list of events along with the documentary proofs and also the minutes of the board meeting in which the conversion of warrants was approved. Certain additional submissions were made by NM vide e-mail dated October 24, 2018 which were not very clear and further details were sought from NM vide e-mail dated October 24, 2018. Further submissions were made by NM vide e-mail dated October 25, 2018.

9. Further, the hearing of AM and JPA was conducted on October 25, 2018 which was attended by their representatives Shri Ankit Lohia, Shri Jagdish Chandra Mansukhani and briefed by M/s Mindspright Legal. The Representatives reiterated the submissions made earlier by AM and JPA. The Authorized Representatives were provided with copies of e-mails dated June 15, 2010 and June 17, 2010 sent by Ms. Shalini Sanjay, Assistant Company Secretary, MIL and minutes of the Board meetings of MIL held on June 15, 2010 and June 19, 2010 which were submitted by NM. These documents were shown to the AM and JPA to assess whether Shri J.C. Mansukhani was informed about the threshold or not. The representatives were granted time till November 14, 2018 to file further submissions. Further, it was orally clarified to the Representatives that considering the age of the matter, it would not be possible to grant any adjournment or cross examination in the matter.

10. However, in the letter dated November 14, 2018 filed by M/s Mindspright Legal on behalf of AM and JPA, contentions were made seeking various documents such as emails from NM, copy of proceeding sheets, cross examination of Ms. Shalini Sanjay and NM, etc.

11. I see no merit in the additional requests of AM and JPA as the documents stated above only implied that Shri J.C. Mansukhani was aware of the threshold limit of promoter holding. Even in absence of the said e-mails, the promoters were supposed to be aware of their shareholding as well as threshold limits. Further, the Board minutes indicated that Shri J.C. Mansukhani was present in the meetings and the same hasn't been denied. Thus, at this stage, the submissions made by AM and JPA are not adding any merit to their submissions. As part of their submissions, AM and JPA have also provided their earlier

submissions dated June 20, 2011, the same are being considered in the order. The crux of various submissions made by the Noticees is to show that there were serious disputes often leading to legal proceedings between the two groups.

CONSIDERATION OF ISSUES AND FINDINGS

12. The issues that arise for consideration in the present case are :

a. Whether the Noticees were acting as Acquirers/Person Acting in Concert ("**PAC**") while acquiring shares of MIL?
b. If the Noticees were acting in concert, have they crossed the limits mentioned in Reg. 11(2) of the SAST Regulations?
c. Do the violations if any, attract monetary penalty under section 15H of SEBI Act?
d. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15J of SEBI Act?

13. Before moving forward, it is pertinent to refer to various provisions of the SAST Regulations which read as under:-

Definitions

"2 (1) In these Regulations, unless the context otherwise requires:-

> *(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;*
>
> *(c) "control" shall include the right to appoint majority of the directors or to control the management or policy decisions exercisable by a person or persons acting individually or in concert, directly or indirectly, including by virtue of their shareholding or management rights or*

shareholders agreements or voting agreements or in any other manner;

…

(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.

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established :

(i) a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;

(ii) a company with any of its directors, or any person entrusted with the management of the funds of the company;

(iii) directors of companies referred to in sub-clause(i) of clause (2) and their associates;

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, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

(2)…

Provided further that such acquirer may, 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%).”

14. Further, it is observed that as per the shareholding disclosed by the company on the exchange the promoters of the Company held 51.29% of paid up capital as on March 31, 2010. Subsequently, as on June 30, 2010 the shareholding of Promoters increased to 55.18% i.e. an increase of 3.89% due to acquisition of shares in open market by promoters as well as by conversion of warrants. Further, as per the shareholding disclosed by the Company on the exchange website all the promoters are shown together without any groups being formed.

15. Now, it has to be seen that whether the promoters were acting in concert while acquiring shares of the Company. As per the submissions made by the Noticees, the Company has been promoted by two brothers i) Shri R.C. Mansukhani (who was the chairman of the Company during the relevant period) and ii) Shri J.C. Mansukhani (who was the vice-chairman and Managing director of the Company during the relevant period). It has been submitted that sometime during 2009, disputes happened between both the brothers and they were not at very good terms with each other. NM is part of R.C. Mansukhani group while AM and JPA are part of J.C. Mansukhani group.

16. As per submissions of NM, although both the groups were acting in concert with each other for issue and conversion of warrants, the threshold was breached because of undisclosed acquisition of shares by J.C. Mansukhani on June 17 and 18, 2010. It was known to J.C. Mansukhani that there is a very narrow scope in breaching the threshold as he was present in the board meeting held on June 15, 2010 wherein 2,50,000 warrants were converted and NM was allotted equal number of shares. Further, the assistant company secretary of the company vide e-mail dated June 15, 2010 and June 17, 2010 informed about the small margin available with promoters on breaching the threshold and all promoters were required to take pre-clearance. However, J.C. Mansukhani acquired the shares without informing anyone and when warrants were converted on June 19, 2010 wherein NM was allotted 5,00,000 shares and JPA and AM were allotted 2,50,000 shares, the threshold was breached. It was also submitted that Shri J.C. Mansukhani attended the said board meeting but did not inform anyone. If the information about the acquisition would have been given the Company would have never passed a resolution which would breach the threshold.

17. AM and JPA on the other hand claim that intimation of acquisition of shares was given by J.C. Mansukhani as per law and it was the responsibility of the Board to see the threshold. Further, it has been submitted that there was no commonality of intention between the two groups and hence the acquisitions cannot be clubbed to allege that the threshold has been breached. In support of its contentions they have relied on various judgments such as *Modipon Ltd vs SEBI*, *K.K. Modi vs. SAT* and *Daiichi Sankyo Company Ltd vs Jayaram Chigurupati and Others*.

18. Before proceeding further, I note that the Hon'ble SAT in appeal No. 195/2011 decided on June 26, 2012 that Shri J.C. Mansukhani failed to inform the company as well exchange about acquisition of shares done on June 17 and 18, 2010 and hence the said fact is established that Shri J.C. Mansukhani hasn't informed the Company about the acquisitions done immediately prior to conversion of warrants on June 19, 2010.

19. I have also perused the information available on the exchange website regarding the announcements made by the company and the important announcements relating to the relationship between promoters are as follows:

S. No.	Date of Event	Details
1	27/09/2010	The Board of Directors of the Company have withdrawn with immediate effect the powers of management exercisable by Mr. J C Mansukhani as the Managing Director of the Company. Further the Board of Directors of the Company has also decided to suspend Mr.J.C.Mansukhani with immediate effect, from holding the position of the Managing Director of the Company, pending an inquiry by a Committee to enquire into acquisition of equity shares of the Company by Mr. J.C.Mansukhani and associates controlled by him.
2	16/10/2010	The Board of Directors have revoked the suspension of Mr. J.C. Mansukhani as the Managing Director of the Company.
3	22/04/2011	The company filed a letter stating that within the promoters there are 2 groups which are not acting in concert with each other. These two groups were R.C. Mansukhani Group and J.C. Mansukhani group. The names of entities belonging to each group was also disclosed.
4	19/05/2011	The Board of Directors of the Company have withdrawn with immediate effect the powers of management exercisable by Mr. J. C. Mansukhani as the Managing Director of the Company.
5	23/05/2011	Clarification given by company w.r.t. withdrawal of power of Shri J.C. Mansukhani detailing the report of E&Y.

6	23/11/2011	The Board has approved the appointment of Mr. J C Mansukhani as the Vice Chairman and Managing Director of the Company w.e.f. November 24, 2011, subject to the approval of the Shareholders.
7	08/09/2012	The Board has revoked with immediate effect all the powers of Mr. J. C. Mansukhani as Vice Chairman and Managing Director of the Company.
8	30/05/2013	CLB upheld removal of Shri J.C. Mansukhani
9	15/09/2013	Board took note of family settlement between the two groups and Shri J.C. Mansukhani resigned from the directorship of the company.

20. It can be seen from the events above that both the groups had a tumultuous relationship wherein Mr. J.C. Mansukhani was kept in and out of his executive role of the company. However, he continued to be the director of the company. It is also to be noted that prior to September 27, 2010 nothing is available on exchange website which shows any formation of groups or any family friction.

21. I have considered the judgments cited by the Noticees and note the following extracts from these cases are relevant to the current fact situation:

In the order of *Modipon Ltd. v. SEBI,* the Hon'ble SAT stated:

"*It may be noted that the promoter as such need not be an acquirer automatically. Any person and shareholder including the promoter will become an acquirer or a person acting in concert with the acquirer only if he falls within the definition of these expressions provided in regulation 2 (b) and 2 (e). It is the*

conduct of the party that decides the identity. A dormant promoter or a promoter simpliciter who neither acquires or agrees to acquire shares or voting rights or control over the target company is not an acquirer and his share holding in the target company cannot be considered as the share holding of the acquirer warranting exclusion from the public shareholding. Similarly if the characteristics of a person acting in concert stated in the definition are found missing in the case of a person, it may not be proper to consider him as a person acting in concert with the acquirer."

In the present matter, acquisition of shares has been done by all the Noticees and only these Noticees amongst the promoters are charged since it is by virtue of their acquisition that the threshold has been triggered. It is nobody's case that these Noticees have not participated in acquisition of shares. As regards the promoters acting as PACs, before examining the fact, it is pertinent to quote the extracts from the matter of *Rajesh Toshniwal v. SEBI & Ors* (Appeal No. 139 of 2011 decided on June 01, 2012), wherein the Hon'ble SAT observed "*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.....*".

22. As stated above, both the groups had acquired shares and on June 19, 2010 when the warrants were converted all the 3 noticees were allotted shares which led to breach of threshold.

Thus, in the present factual situation, the entities belonging to both the groups have acquired shares in the Company and would satisfy the definition of acquirer.

23. However, the important issue to be considered is the commonality of objective which has been subject matter of argument by AM and JPA. As regards the issue of PAC, that Hon'ble Supreme Court in the case of Daiichi Sankyo Co. Ltd. observed that

"*The idea of "person acting in concert" is not about a fortuitous relationship coming into existence by accident or chance. The relationship can come into being only by design, by meeting of minds between two or more persons leading to the shared common objective or purpose of acquisition or substantial acquisition of shares, etc. of the target company. It is another matter that the common objective or purpose may be in pursuance of an agreement or an understanding, formal or informal; the acquisition of shares, etc. may be direct or indirect or the persons acting in concert may cooperate in actual acquisition of shares, etc. or they may agree to cooperate in such acquisition. Nonetheless, the element of the shared common objective or purpose is the sine qua non for the relationship of "person acting in concert" to come into being*."

"…A fortiori, a person deemed to be acting in concert with others is also a person acting in concert. In other words, persons who are deemed to be acting in concert must have the intention or the aim of acquisition of shares of a target company. It is the conduct of the parties that determines their identity. Whether a person is or is not acting in concert with the acquirer would depend upon the facts of each case. In order to hold that a person is acting in concert with the acquirer or with another person it must be established that the two share the common intention of acquisition of shares of some target company….."

24. The Hon'ble Bombay High Court in the case of *K. K. Modi vs. Securities Appellate Tribunal* [(2003) 113 COM. Cases 148 Bom.] had observed that:

"*a co-promoter of the target company, by reason of his being a co-promoter cannot be said to be a person acting in concert with the acquirer who also happens to be one of the promoters of the target company, unless the evidence on record clearly establishes that the promoters share the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company with the acquirer.*"

25. It can thus be seen that the ratio laid by the courts in all these judgments is that there has to be a common objective between the PACs and whether the persons are acting as PACs would depend on facts of each case.

26. In order to delve on the issue of whether these 2 groups were acting in concert or not, the intent of the SAST Regulations needs to be understood first. When SAST Regulations were framed, they were not framed with the sole purpose of protecting the existing management or promoters. One of the objectives of the Regulations was that information should be available to investors and public at large. In a disclosure based regime, various triggers were set so that everyone should be aware if a person(s) is/are acquiring huge chunk of shares of a company. Further, thresholds were set so that in case a group of persons acting in concert exceeds the prescribed limit, the investors should get an exit option by way of open offer. Thus, disclosures and information are cornerstones of SAST Regulations.

27. In the instant case following facts are noted:

a. There is no disclosure on any stock exchange regarding any friction between the two groups prior to September 28, 2010.

Formal declaration of formation of 2 groups has been done only on April 25, 2011.

b. Even though there were frequent changes in executive powers or position of Shri J.C. Mansukhani, his frequent reinstatement gives a view that there had been a reconciliation between the two groups and they were acting together. The same is also supported by the fact that, even after the formal announcement of formation of two groups on April 25, 2011, Shri J.C. Mansukhani was reinstated as Vice Chairman and Managing Director of MIL. The same indicates that both the groups were acting in concert inspite of their differences.

c. The acquisition may have been done by both the groups for the purpose of consolidation of holdings, which was a common objective. For promoters the consolidation of holdings ensures that the company remains under the control of promoters. Further, the fact that the positions of Chairman and Vice-Chairman & MD were occupied by persons belonging to both the groups implies that they could have done so only by virtue of their combined holdings.

d. If the Noticees contention that both the groups should be treated as separate is accepted, then it would imply that a change in control had happened in the company from one group to another. Even such a situation is sufficient to trigger an open offer under SAST Regulations.

e. Mere presence of any disagreement or dispute doesn't necessarily mean absence of commonality of intention to exert control over a company. The frequent reconciliation between the 2 groups infact indicates that inspite of their differences the promoters were still acting in concert.

f. Further, the repeated disclosures of shareholding pattern on the exchange have shown all promoters under one group even during the period of acquisition which gave an impression to public that they were acting in concert. SEBI in a recent matter of Beryl Securities (decided on August 24, 2017) held that the

disclosures made by company/promoters are paramount and if a promoter is wrongly declared as public, subsequent benefit cannot be taken about the same.

28. The Hon'ble Supreme Court has also given an illustration in the matter of Daiichi Sankyo Co. Ltd. wherein it was stated that:
"*The true meaning of the idea of "persons acting in concert", as explained above will also clear all the doubts sought to be created by Mr. Divan's illustration as noted above. In that illustration, persons A, B and C earlier purchased shares of company X separately and as strangers. Those purchases were, therefore naturally not by "persons acting in concert". But later on, all the three persons came together. They agreed to pool the benefits of their share with one another and to takeover company X, and they further agreed that they would vote together going forward. Thus the earlier purchases were brought within the concept subsequently by an express agreement between the three persons even though at the time of purchase the purchasers were not acting in concert. Hence, the earlier purchases too would fully attract the regulatory provisions of the Takeover Code.*"

29. In the instant case, there were no groups disclosed at the time of acquisition although there might have been disagreements between the groups. Further, even if there was no common purpose, the reinstatement of Shri J.C. Mansukhani after suspending him actually indicated that the differences between the two groups have been resolved. In such a case, an analogy can be drawn from illustration given above and it can be said that they were acting in concert.

30. If the argument of the Noticees that the disagreement between them is enough to show lack of common purpose is accepted,

then it may lead to a situation where there could be "planned" differences followed by acquisition by promoters and then every promoter can acquire the shares within the permissible limit without giving open offer. It would lead to mischief by entities who wish to escape the rigors of compliance with SAST Regulations. It should not be construed that the SAST Regulations intend to treat all the promoters as PACs even when there are serious differences, but such differences should be visible clearly and in the investors should be well aware of them. In the present matter, although the disputes might have arisen prior to the acquisitions, but the factual circumstances shown above indicate that the promoters were still acting in concert even after disputes had arisen. The attending facts and circumstances play an important role in establishing the common purpose and if mere disputes are considered as benchmark for establishing common purpose, then it would be extremely difficult to prove that people are acting as PACs. This was neither the intention of the SAST Regulations nor would have been the intention of various higher courts as it would defeat the public policy.

31. In the instant case, I am of the view that both the groups were acting in concert and their shareholding has to be taken as a whole and thus the Noticees have breached the threshold of 55% thereby violating Reg. 11(1) r/w Second proviso of Reg. 11(2) of SAST Regulations.

32. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) 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…".*

33. The violation of Reg. 11(1) r/w Second proviso of Reg. 11(2) of SAST Regulations by the Noticees, make it liable for penalty under section 15H of SEBI Act which reads as under:

"***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;

(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 of 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, it is important to consider the factors stipulated in section 15J of 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."

35. In the instant matter, it is difficult to quantify the gains made by the Noticee or the loss caused to investors as a result of the failure of Noticees to give an open offer. The purpose of Reg. 11 of SAST Regulations was to ensure that the public gets an exit opportunity once there is a breach of the threshold. Since promoters hold a special position in the eyes of the shareholders, it is imperative that they should maintain transparency in governance and acquisition of shares in the Company. The shareholding of promoters forms a very important criterion for the public to make their investment decisions. In the present case, the promoters made certain acquisitions keeping public in dark and were liable to give an open offer. By not giving an open offer mandated by Reg. 11 of SAST Regulations, the Noticees have evaded buying of 20% of shareholding (1,09,56,975 shares) from public at the price determined as per SAST Regulations. The actions of the Noticees have severely impaired the integrity of the disclosure system put in place by the regulator. Hence their actions warrant the imposition of a serious penalty. However, as per the records, the violation of the Noticees is not repetitive.

Order

36. After taking into consideration all the facts and circumstances of the case, I come to conclusion that this is a fit case for imposing the monetary penalty on the aforesaid Noticees. As per the then prevailing market price of shares of the Company, 20% shareholding would have been worth Rs. 95 crore approximately. Additionally the Noticees have saved the cost of giving a public offer. Therefore, I, in exercise of the powers conferred upon me under section 15- I (2) of the SEBI Act read with Rule 5 of the Rules, hereby impose a penalty of Rs. 10,00,00,000/- (Rupees Ten Crores only) payable jointly and

severally by the Noticees in terms of section 15H of SEBI Act for the violation of regulation Reg. 11(1) r/w Second proviso of Reg. 11(2) of SAST Regulations. In my view, this penalty will be commensurate with the violations committed by them.

37. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of receipt of this order either by way of Demand Draft (DD) in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai and 1) the said DD should be forwarded to the Division Chief, Enforcement Department (EFD), Division of Regulatory Action - IV **[EFD-DRA-4]** SEBI Bhavan, Plot No.C4-A, 'G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai – 400 051) through e-payment facility into Bank Account, the details whereof are given as below :-

Account No. for remittance of penalty(ies) levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

38. The Noticee shall forward the said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief of the aforesaid Enforcement Department (EFD) of SEBI.

39. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in

SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (including the period for which payment was made e.g Quarterly, annually	
Bank Name and Account Number from which payment is remitted	
UTR No	

40. In terms of Rule 6 of the Rules, copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

Date: **December 21, 2018**
Place: **Mumbai**

Piyoosh Gupta
Adjudicating Officer