

**SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

Under sections 11 and 11B of the Securities and Exchange Board of India Act, 1992 and regulation 32 read with regulation 35 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011

In respect of: -

Sl. No.	Name of the noticees	PAN
1	Sanjay Jethalal Soni	BVSPS9741N
2	Krupa Sanjay Soni	BVSPS9740P
3	M/s. J M Soni Consultancy	AAGFJ2939P

In the matter of Oregon Commercial Limited (now known as Saianand Commercial Ltd.)

1. Securities and Exchange Board of India (SEBI) conducted an investigation into the trading and dealing in the shares of Oregon Commercial Ltd. (hereinafter referred to as “Target Company or OCL”) for the period from January 4, 2010 to January 10, 2011. The shares of OCL are listed on the Bombay Stock Exchange (BSE). The investigation interalia revealed that Shri Sanjay Jethalal Soni, his wife Smt. Krupa Sanjay Soni and his proprietary concern M/s. J M Soni Consultancy (hereinafter collectively referred to as ‘Noticees’) have together traded in the shares of OCL during the period of investigation. The combined shareholding of these entities in the target company as on August 13, 2010 was 14.36% (1,37,870 shares) of the paid up equity share capital. However, on August 16, 2010 the noticees increased their collective shareholding to 15.20% of the paid up equity share capital of OCL. As the combined shareholding/voting rights of the Noticees in the target company (i.e. OCL) crossed the threshold of 15% prescribed under regulation 10 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as ‘Takeover Regulations’) the Noticees were required to make public announcement for open offer in terms of the Regulations. Noticees did not make any public announcement for open offer and continued to trade in the scrip of the Target Company, which resulted

in further increasing their shareholding in the company (OCL) to 20.63% on August 19, 2010. Since the additional creeping acquisition was more than 5% within a financial year, in terms of regulation 11(1) of the Takeover Regulations, the Noticees were required to make public announcement for open offer in terms of regulation 11(1) of the Takeover Regulations. However, the Noticees did not make any public announcement for open offer. The noticees continued to trade in the scrip and resultantly, by August 31, 2010 their shareholding in the Target Company fell to 11.85%. However, once again their combined shareholding crossed 15.00% on September 02, 2010 and subsequently reached to the extent of 20.63% on September 06, 2010. These acquisitions again triggered the requirement to make public announcement for open offer in terms of regulation 10 and 11(1) of the Takeover Regulations. However the Noticees did not make any public announcement for open offer as mandated under these regulations. Thus, the noticees were observed to have repeatedly breached the provisions of Takeover Regulations, 1997 on the aforesaid dates during the financial year 2010-11.

2. The Takeover Regulations, 1997 has since been repealed and replaced by SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (published in the Official Gazette on September 23, 2011). Regulation 35 of the Takeover Regulations, 2011 provides for repeal and savings. Regulation 35(2)(b) provides that notwithstanding such repeal any right, obligation or liability accrued or any remedy in respect of such right, obligation or liability under the old regulations shall remain unaffected.
3. As stated above, the three noticees are related/connected with each other and have, acting in concert, acquired shares of OCL exceeding the threshold of 15% on two occasions, i.e. August 16, 2010 and September 2, 2010, without making public announcement for open offer in terms of regulation 10 of the Takeover Regulations. Moreover, they have acquired additional shares beyond the prescribed threshold limit of 5% within a financial year without complying with the provisions of regulation 11(1) of the Takeover Regulations on

two occasions, i.e. August 19, 2010 and September 6, 2010. Under the circumstances, a Notice dated August 24, 2017 was issued to the Noticees alleging that they have failed to make public announcement for open offer in terms of regulation 10 and 11(1) of the Takeover Regulations hence, are required to show cause as to why suitable directions under sections 11(4)(b) and 11B of the Securities and Exchange Board of India Act, 1992 should not be issued against them.

4. The records produced before me show that the Show Cause Notices (SCNs) were first sent to the Noticees through speed post but the same returned undelivered. Thereafter, the SCNs were hand delivered to the noticees through Western Regional Office of SEBI at Ahmedabad. The SCNs were received on behalf of the noticees on October 26, 2017. The noticees have not filed any reply to the SCN. In order to proceed further in the matter, an opportunity of hearing was granted to the Noticees on October 9, 2018. Though the date of hearing was intimated to the Noticees vide notice of hearing dated August 23, 2018, none appeared for hearing. In the interest of complying with principles of natural justice, one more opportunity of personal hearing was granted to the Noticees on November 19, 2018 vide letter dated October 11, 2018. This time also, despite having the notice served on them no one appeared for hearing for and on behalf of the Noticees. Neither any reply/request nor any intimation is on record on behalf of the Noticees. Thus, I can observe that the Noticees have been granted sufficient opportunity to present their case by filing reply and appearing for personal hearing, however, they have chosen not to avail the same. The continuous non-compliance by the noticees suggests that they have no explanation to offer in response to the SCN served on them and it will be of no avail to wait further to get their response. Therefore, I am proceeding to decide the matter on the basis of materials available on record.

Issues for consideration:

5. I have considered the contents of the SCN and documents available on record. The issues that arise for consideration in the present case are as follows:

- i. Whether the Noticees were 'acting in concert' for the acquisition of shares of OCL?
- ii. If yes, whether the noticees acquired shares in the target company exceeding 15% without making any public announcement for open offer in terms of regulation 10 of the Takeover Regulations on two occasions, i.e. August 16, 2010 and September 2, 2010?
- iii. Whether the Noticees, while holding more than 15% shares of OCL, acquired additional shares beyond the limit of 5% within a financial year without making any public announcement for open offer in terms of regulation 11(1) of the Takeover Regulations on two occasions, i.e. August 19, 2010 and September 6, 2010?

Consideration:

- 6. With regard to the issue as to whether the noticees were 'persons acting in concert' for the alleged acquisition, it is observed from the nomination details furnished by Shri Sanjay Jethalal Soni and Smt. Krupa Sanjay Soni in the application form for opening of trading account with Centrum Broking Pvt. Ltd. that they are husband and wife. It is also noted from the information furnished by Shri Sanjay Jethalal Soni with Centrum Broking Pvt. Ltd. in the Know Your Client form that M/s. J M Soni Consultancy is his proprietorship firm. Thus, M/s. J M Soni Consultancy, being proprietorship firm, is for all practical purpose another name used by Shri Sanjay Jethalal Soni for his personal investment in the shares of OCL. Smt. Krupa Sanjay Soni is wife of Shri Sanjay Jethalal Soni. Therefore, it leaves no doubt to conclude that the three Noticees are closely related and connected with each other in a manner bound by a common objective and purpose with respect to their trading activities in the shares of OCL. The relation/connection amongst the noticees imply that all of them have acted in unison in acquiring the shares and voting rights of OCL during the investigation period. Thus, the three Noticees can be said to be the persons who have acted in concert for acquiring shares of OCL, within the meaning and import assigned to phrase 'persons acting in concert' in the Takeover Regulations.

7. With regard to the allegation of acquisition of shares of the target company by the Noticees in contravention of regulation 10 of the Takeover Regulations, 1997, it is pertinent to refer to the relevant provision, which reads as under:

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

8. A plain reading of the regulation makes it clear that the regulation obligates an acquirer to make public announcement of open offer if the acquisition of shares/voting rights by such an acquirer taken together with shareholding of persons who are acting in concert with him touches 15% or exceeds this limit. The details of the trading done by the Noticees in the shares of OCL on the trading platform of BSE, as observed during the investigation, and the consequent acquisition of shares/voting rights of OCL by the Noticees that led to the issuance of SCN are reproduced below:

Date	Buy	Sell	Cumulative shareholding	Percentage shareholding
28-Jul-10	27,284	20,106	96,525	10.05
29-Jul-10	44,178	52,648	88,055	9.17
30-Jul-10	1,33,244	1,11,942	1,09,357	11.39
02-Aug-10	15,634	18,704	1,06,287	11.07
03-Aug-10	34,610	19,707	1,21,190	12.62
04-Aug-10	12,547	19,726	1,14,011	11.88
05-Aug-10	46,531	47,228	1,13,314	11.80
06-Aug-10	33,692	28,437	1,18,569	12.35
09-Aug-10	21,855	23,717	1,16,707	12.16
10-Aug-10	16,066	22,191	1,10,582	11.52
11-Aug-10	12,116	22,023	1,00,675	10.49
12-Aug-10	6,216	12,573	94,318	9.82
13-Aug-10	62,956	19,404	1,37,870	14.36
16-Aug-10	24,732	16,696	1,45,906	15.20
17-Aug-10	12,309	12,927	1,45,288	15.13
18-Aug-10	21,963	4,752	1,62,499	16.93

Date	Buy	Sell	Cumulative shareholding	Percentage shareholding
19-Aug-10	1,17,635	82,114	1,98,020	20.63
20-Aug-10	28,383	61,902	1,64,501	17.14
23-Aug-10	1,777	0	1,66,278	17.32
24-Aug-10	0	1	1,66,277	17.32
26-Aug-10	79	0	1,66,356	17.33
27-Aug-10	158	30,241	1,36,273	14.20
30-Aug-10	2	0	1,36,275	14.20
31-Aug-10	46,865	69,347	1,13,793	11.85
01-Sep-10	31,268	4,518	1,40,543	14.64
02-Sep-10	38,723	33,300	1,45,966	15.20
03-Sep-10	20,535	7,215	1,59,286	16.59
06-Sep-10	65,184	26,428	1,98,042	20.63
07-Sep-10	4,884	33,875	1,69,051	17.61
08-Sep-10	4,699	1,576	1,72,174	17.93
13-Sep-10	652	0	1,72,826	18.00
16-Sep-10	14,242	24,122	1,62,946	16.97
17-Sep-10	1,600	25,486	1,39,060	14.49

9. It is noted from the details of trading done by the Noticees as presented in the table above that the three Noticees together cumulatively had acquired 10.05% of paid up equity of OCL on July 28, 2010. Thereafter, the three Noticees acquired and sold shares on various dates and their shareholding in OCL exceeded 15.00% of the paid up equity shares on August 16, 2010. The Noticees could not have acquired shares/voting rights in the company exceeding 15% without making public announcement for open offer. There is nothing on record to show that noticees have made any public announcement for open offer pursuant to the acquisition. It is also noted from the trading details of the Noticees that they have continued to trade in the scrip and by August 31, 2010 their shareholding in the Target Company had fallen to 11.85%. Thereafter, they again started acquiring shares of OCL and their acquisition once again crossed the threshold of 15.00% on September 02, 2010. The Noticees have not made any public announcement for open offer for this breach either. Thus, the Noticees have repeatedly breached the provisions of regulation 10 of the Takeover Regulations on August 16, 2010 and September 2, 2010.

10. With regard to the allegation of contravention of the provisions of regulation 11(1) of the Takeover Regulation, 1997, it is pertinent to refer to the provision as it prevailed during the relevant time. The regulation read as under:

“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.”

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

12. I also note that the issue pertaining to netting of acquisition of shares arising out of continuous sale and purchase of the shares during a financial year so as to trigger the provision of regulation 11(1) of the Takeover Regulations has been deliberated and set at rest by Hon’ble Supreme Court in *Kosha Investments Ltd. vs. Securities and Exchange Board of India* (Civil Appeal No. 3219 of 2006 decided on September 18, 2015). The observations of the

Hon'ble court as mentioned in paragraph 7 of the judgment are as under:

“7. A careful reading of the aforesaid Regulations discloses that the public announcement should not be delayed beyond four working days of the agreement or decision to acquire the requisite number of shares or voting rights. We are in agreement with the finding of the Tribunal on this issue and find no merit in the contentions of the appellant. If the plea of appellant will be accepted then an acquirer can keep on violating Regulation 11(1) with impunity on as many occasions as he/it wants and avoid letting the public have the required knowledge through public announcements by simply making subsequent sale or transfer to another entity so as to reduce the so-called net acquisition in a financial year to within 5%. This interpretation will defeat the purpose of Regulation 11(1) and shall also render Regulation 14(1) otiose. The concept of permitting creeping acquisitions by permitting not more than 5% of the shares or voting rights in a company limits the period for such acquisition to a financial year ending by 31st March. But such concept does not dilute the requirement of making a public announcement within the time mentioned in Regulation 14(1) if the acquisition even if only once made and divested, is of more than 5% of shares or voting rights in the target company. In other words, even if such acquisition is followed by sale in the same financial year, the liability of making the public announcement would remain unaffected and shall attract action, as in this case”.

13. It is noted from the details of trading undertaken by the Noticees in the scrip of OCL as tabulated under para 8 that on August 16, 2010, the noticees had acquired 15.20% shares in the target company and by trading further in the scrip on August 18 and 19, 2010, they have increased their shareholdings in the target company to 20.63% on August 19, 2010. Thus, the acquisition of shares/voting rights on August 19, 2010 crossed the creeping acquisition limit of 5% prescribed under regulation 11(1) of the Takeover Regulations, however, the Noticees did not make any public announcement for open offer. Subsequently, the Noticees continued to trade in the said scrip and their shareholding in the Target Company fell below 15% on August 27, 2010. The shareholding of the Noticees in the Target Company once again crossed 15.00% on September 02, 2010 when they again

reached acquisition of 15.20% shares/voting rights in the Target Company. Further, the noticees acquired additional shares on September 3, 2010 and on September 06, 2010 thereby again breaching the creeping acquisition limit of 5%, as their shareholding in the target company on September 6, 2010 stood at 20.63%. There is nothing on record to show that the Noticees have made any public announcement for open offer in terms of regulation 11(1) of the Takeover Regulations on these occasions. In sum, the noticees have breached the provision of regulation 10 of the Takeover Regulations on August 16, 2010 and September 2, 2010 and provisions of regulation 11(1) of the Takeover Regulations on August 19, 2010 and September 6, 2010.

14. The aforesaid facts make it clear that the Noticees have acquired shares of OCL without making public announcement in terms of regulations 10 and 11(1) of the Takeover Regulations. In connection with the enforcement of the provisions of regulation 10 and 11 of the Takeover Regulation, it is pertinent to note the observations of Hon'ble SAT in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011 decided on September 08, 2011). The relevant paragraph of the aforesaid judgment of Hon'ble SAT is reproduced as under:

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

15. Following the aforesaid view held by Hon'ble SAT, I am inclined to believe that the Noticees have acquired shares of the target company (OCL) on the trading platform of the BSE and their acquisitions of shares of OCL were in breach of regulations 10 & 11(1) of the Takeover Regulations and therefore, triggered the requirement to make public announcement for open offer.
16. If the public announcement would have been made by the noticees in terms of the takeover regulations pursuant to the first trigger date i.e. August 16, 2010, the determination of offer price would have, amongst other things, taken into account the average of the weekly high and low of the closing price of the shares of the target company as quoted on the stock exchange where the shares of the company are most frequently traded during the preceding twenty six weeks. As per information available on BSE website, the lowest closing price of the scrip during the preceding twenty six weeks was Rs. 157.8 on February 19, 2010. It is also noted that at present the shares of the company are suspended from trading due to surveillance measures and the scrip was last traded at Rs.5.85. Therefore, it is certain that the offer price determined under regulation 20(4) of the Takeover Regulations with reference to the time when the requirement to make open offer was triggered, would be higher than the present price of shares of the company. Thus, an open offer would be beneficial for the investors. In the circumstances, if an exit opportunity is provided to the existing shareholders they are likely to tender their shares and exit from the company.. Further, as the public announcement now would provide a delayed exit opportunity to the shareholders of OCL, the acquirers are liable to pay interest on the consideration amount from the date on which the payment would have fallen due, had the acquirers made an open offer for the subject acquisition, till the date of actual payment to those shareholders who were holding shares in the target company on the date of violation and who are eligible for interest as per law.

Directions

17. In view of the above, in exercise of powers conferred upon me under sections 11, 11B read with section 19 of the Securities and Exchange Board of India Act, 1992 and regulation 32 read with regulation 35 of the Takeover Regulations, 2011, in order to protect the interest of investors and the integrity of the securities market, I hereby issue the following directions:

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

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

18. A copy of this order shall be served upon the Noticees and the stock exchange for ensuring compliance with the above direction.

Date: November 30, 2018

Place: Mumbai

**S. K. MOHANTY
WHOLE TIME MEMBER**