BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: Order/PM/SM/2020-21/10090-10093)

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

In respect of

S.N.	Name of the Entity	PAN No.
1	Jagdishbhai Dahyalal Thakkar	ABIPT2969A
2	Bhavnaben Jagdishkumar Thakkar	ACVPT1929N
3	Dhaval Jagdishkumar Thakkar	AFWPT1426J
4	Thakkar Jagdishchandra Dahyalal HUF	AABHT2152H

In the matter of Alora Trading Company Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **SEBI**) had conducted an examination in the dealings in the scrip of Alora Trading Company Limited (hereinafter referred to as **ATCL**/**Company**) for the period of January 01, 2017 to September 30, 2017 (hereinafter referred to as **relevant period**) to examine the violation, if any, of the provisions of Securities and Exchange Board of India (Substantial Acquisition of Shares

and Takeovers) Regulations, 2011 (hereinafter referred to as the **SAST Regulations, 2011**). The shares of ATCL are listed on the Bombay Stock Exchange Limited (hereinafter referred to as **BSE**). It was observed by SEBI that Mr. Jagdishbhai Dahyalal Thakkar (hereinafter referred to as **Noticee 1**), Bhavnaben Jagdishkumar Thakkar (hereinafter referred to as **Noticee 2**), Dhaval Jagdishkumar Thakkar (hereinafter referred to as **Noticee 3**) and Thakkar Jagdishchandra Dahyalal HUF (hereinafter referred to as **Noticee 4** and hereinafter collectively referred to as **Noticees**) had made transactions in the scrip of ATCL in the relevant period. However, it has been alleged that no disclosure was made by the Noticees under the provisions of regulations 29(1) and 29(2) read with (r/w) regulation 29(3) of the SAST Regulations, 2011. In view of the same, SEBI initiated adjudication proceedings against the Noticees under the provisions of section 15A(b) of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act, 1992**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide communique dated October 09, 2020, the undersigned was appointed as the Adjudicating Officer under section 15-I of the SEBI Act, 1992 r/w rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **Adjudication Rules**, **1995**) to inquire and adjudge under section 15A(b) of the SEBI Act, 1992 for the alleged failure on the part of the Noticees to comply with the provisions of regulations 29(1) and 29(2) r/w regulation 29(3) of the SAST Regulations, 2011.

SHO CAUSE NOTICE, REPLY AND PERSONAL HEARING:

3. A common Show Cause Notice having reference no. SEBI/HO/EAD-8/PM/VC/19284/1-4/2020 dated November 10, 2020 (hereinafter referred to as **SCN**) was issued to the Noticees under rule 4(1) of the Adjudication Rules, 1995 to show cause as to why an inquiry should not be initiated against the Noticees and why penalty, if any, should not be imposed on the Noticees under section 15A(b) of the SEBI Act, 1992, for the alleged violations of regulations 29(1) and 29(2) r/w regulation 29(3) of the SAST Regulations, 2011 by the Noticees. The allegations against the Noticees are as follows:

   a) It has been alleged in the SCN that Noticees had traded in the scrip of ATCL during the period of January 01, 2017 to September 30, 2017. Further, it is observed from the Demat Statements of the Noticees that the Noticees were collectively holding a total of 12.06% shares of ATCL as on March 01, 2017. Noticees had collectively executed the following sale transactions in the scrip of ATCL during the relevant period:

Date of sale	No. of shares sold	Holding post transaction	Due date of disclosure	Actual date of Disclosure	Delay in making disclosures (Number of days)
Initial Holding of 15,00,000 shares (12.06%)					
03.03.2017	50,000	11.65%	NA	NA	NA
07.03.2017	70,000	11.09%	NA	NA	NA
08.03.2017	2,00,000	9.48%	10.03.2017	06.05.2019	787
09.03.2017	2,50,000	7.47%	14.03.2017	06.05.2019	783
10.03.2017	1,95,000	5.91%	NA	NA	NA
14.03.2017	2,25,000	4.10%	16.03.2017	06.05.2019	781
Subsequent sale of shares did not require disclosures and the shareholding became NIL as on 22.03.2017.					

b) BSE, vide Email dated January 27, 2020, informed that the Noticees had made disclosures on May 06, 2019 for both their acquisition and sale of shares of ATCL. It is however observed that the Noticees have categorized themselves as PACs in the said disclosures. In view of the same, it has been alleged that the Noticees were PACs at the time of the transactions mentioned in table above.

c) In view of the transactions mentioned in the table above, it has been alleged that the Noticees were required to make disclosures under regulations 29(2) r/w 29(3) of SAST Regulations for their transactions dated March 08, 2017, March 09, 2014 and March 14, 2014 when the collective shareholding of the Noticees reduced by more than two percent. The said disclosures were required to be made within 2 trading days of the transactions. However, the Noticees, by making the said disclosures on May 06, 2019 had allegedly made a delay of 781-787 days, as mentioned in the above table. It is therefore alleged that the Noticees, by making disclosure after a delay of 781-787 days on three separate occasions, have violated the provisions of Regulation 29(2) r/w 29(3) of the SAST Regulation.

d) Further, from the disclosures dated May 06, 2019, it is also observed that the Noticees had acquired 15,00,000 shares of ATCL on November 16, 2014 by way of preferential allotment, amounting to 12.06% of total shareholding of ATCL. Further, as per the requirement of regulation 29(1) r/w 29(3) of SAST Regulations, any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, is required to disclose their aggregate shareholding and voting rights in such target company within 2 trading day in such form as may be specified.

e) Further, vide their Email dated February 18, 2020, the Noticees confirmed that they had not made any disclosure for their acquisition of 12.06% of total shareholding of ATCL in 2014 at Calcutta Stock Exchange which was the only exchange where ATCL was listed at that point of time. It further submitted by the Noticees that the said allotment was made at a price of Rs. 10 per share. The above acquisition was disclosed on May 06, 2019 with a delay of more than 4 years. Therefore, it is alleged that the Noticees, by making a delay of 4 years in making a disclosure under regulation 29(1) of SAST Regulations, have violated the provisions of regulation 29(1) r/w 29(3) of SAST Regulations.

4. The SCN was sent through speed post acknowledgement due and the same were delivered to the Noticees at their addresses as available on record. Noticees were advised to reply within 15 days of the receipt of the SCN. However, no reply received from the Noticees. Vide e-mail dated December 01, 2020, Noticees were advised to reply to the SCN by December 07, 2020 and an opportunity of hearing was granted to the Noticees on December 11, 2020. Noticee 1 on behalf of all the Noticees requested for postponement of hearing and accordingly, opportunity of

hearing was granted on December 30, 2020. Vide letter dated December 26, 2020, Noticee 1 forwarded a combined reply to the SCN vide letter dated December 26, 2020. The authorized representative on behalf of the Noticees attended the hearing scheduled on December 30, 2020 and reiterated the submissions made by the Noticees vide their letter dated December 26, 2020. Hearing minutes are on record.

5. Reply of the Noticees vide letter dated December 26, 2020 are summarized below:

a) Noticees had made an application to ATCL for preferential allotment of equity shares of ATCL on 01st September, 2014. On 15th November, 2014, all 4 of were cumulatively allotted 15,00,000 equity shares of Rs. 10/- each on preferential basis by ATCL. On 16th November, 2014, Noticees were intimated of such allotment by ATCL. Noticees sold their complete shareholding in the scrip of ATCL between the periods 03rd March, 2017 to 22nd March, 2017. Later, Noticees became aware about the requirement to make the disclosure under SAST Regulations 2011 for the said transactions. Thereafter, vide letter dated 16th April, 2019 filed the necessary disclosures under regulations 29(1) and 29(2) of SAST Regulations 2011 with BSE Ltd. and to the Company.

b) The delay in making these disclosure was unintentional and simply due to inadvertence on their part. There was no mala fide behind not disclosing the transactions to stock exchange and the Company. At the relevant time, Noticees were not aware about the requirement to make the disclosure and had no professional help or guidance about the same. Noticees have not made any disproportionate gain or unfair advantage by such non-disclosure. If their intention was to gain from such nondisclosure, then they would have not made the disclosure at such belated stage. The moment Noticees became aware about the requirement to make disclosure under SAST Regulations 2011, they made the relevant disclosures. Also, no loss has been caused to any investor or a group of investor by such failure to disclose to the stock exchange by them.

c) In this regard Noticees cited the judgment of the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Vitro Commodities Pvt. Ltd. vs. SEBI dated 04th September, 2013 wherein it was inter alia held as under:

"15. Similarly, no mention of any loss caused to an investor or group of investors as a result of default exists. Hence no cause for any harm to any investors due to non-disclosure has been made. In absence of such mention, it is seen that no such gain or advantage has occurred to appellants or any loss caused to an investor or a group of investors due to acquisition of 5.36% shares or voting rights by appellant in GEE. This is also to be seen from admission of appellant that acquisition of 5.36% of stake by appellant and its non-disclosure was due to their ignorance or non-appreciation of requirement of disclosure, since same occurred mostly by not as active action by appellant but as on result of bonus shares, shares allotted due to amalgamation and again by issue of bonus shares. Respondent have also not contested/refuted the above mode of acquisition of shares by appellant or placed any document on record to show any motive behind such acquisition like creeping acquisition to gain control over GEE etc."

d) Also in the matter of M/S Hindustan Steel Ltd. vs. State of Orissa [1969 (2) SCC 627] it was inter alia held as follows:

"8. Under the Act penalty may be imposed for failure to register as a dealer — Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation.

Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

e) Having referred both the judgments above and the facts of the case it is submitted that it is a fit case to not impose any penalty on us for both the alleged violation. Now specifically dealing with regard to the allegation of violation of regulation 29(2), it is submitted that regulation 29(3) does not contemplate time limit for disclosure relating to sale of shares in excess of limits set out under regulation 29(2) and therefore we cannot be said to have failed to comply with regulations 29(2) r/w 29(3) of SAST Regulations. In this regard Noticees referred the Judgment passed by the Hon'ble SAT in the matter of Ravi Mohan vs. SEBI (Appeal No. 97 of 2014, Date of Decision 16th December, 2015) wherein it was inter alia held as under:

"33(b) Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained.''

f) In the matter of Rakesh Kathotia (supra.), it was inter alia held as under:

"29. However, the appellants cannot be faulted and penalised on this score at this stage. They have a decision in their favour in the case of Ravi Mohan (supra) which is still valid till date and has not been set aside by a superior forum. Further, the respondent SEB/ has accepted the decision of this Tribunal in the case of Ravi Mohan (supra) which can be seen from the fact that a similar provision, namely, Regulation 29 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 was amended after Ravi Mohan's decision was given by this Tribunal in 2015....

Regulation 29 of the Takeover Regulations, 2011 in more or less parimateria with the provision of Regulation 7 of the Takeover Regulations, 1997. The words "or the disposal" were added in Regulation 29(3) by an amendment w.e.f September 11, 2018 after the decision of this Tribunal in Ravi Mohan's case (supra) decided in the year 2015. Thus, even though we do not agree with the ratio of the decision in Ravi Mohan's case, nonetheless, the said decision having been accepted by SEBI, the appellant in the instant case cannot be penalized for violation of Regulation 7(1A) read with Regulation 7(2). The imposition of penalty by the Adjudicating Officer on this score cannot be sustained.''

g) Subsequently, SEBI has amended the relevant regulation on 11th September, 2018 makes it clear that there was no clarity and certainty in this regard at that as noted in the judgment of Rakesh Kathotia (supra.) Therefore in any event no penalty can be imposed for the alleged violation of regulation 29(2) r/w 29(3) of SAST Regulations 2011.

Noticees requested that the captioned show cause notice be disposed off against us without imposition of monetary penalty.

CONSIDERATION OF ISSUES AND FINDINGS:

6. I have taken into consideration the facts and circumstances of the case and the material available on record, the issues that arise for consideration in the present case are:

   (a) Whether the Noticees have violated the provisions of regulations 29(1) r/w 29(3) and 29(2) r/w 29(3) of the SAST Regulations, 2011?

   (b) Does the violations, if any, on the part of the Noticees would attract monetary penalty under section 15A(b) of the SEBI Act, 1992?

   (c) If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

7. Before moving forward, it is pertinent to refer to the relevant provisions of the SAST Regulations, 2011 which read as under:

SAST Regulations, 2011

29(1) *Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.*

(2) *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company* *representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.*

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

(a) every stock exchange where the shares of the target company are listed; and

(b) the target company at its registered office.

8. Now I deal with the issues on merit in the matter.

Issue (a): Whether the Noticees have violated the provisions of regulations 29(1) r/w 29(3) and 29(2) r/w 29(3) of the SAST Regulations, 2011?

(a) It has been alleged that the Noticees are persons acting in concert (PACs) and they made transactions in scrip of ATPL. For the said transactions, Noticees were failed to make the required disclosures to the company and BSE within the time period as prescribed under the provisions of regulations 29(1) r/w 29(3) and 29(2) r/w 29(3) of SAST Regulations, 2011 and hence violated the said provisions of SAST Regulations, 2011.

(b) From the available record, it is noted that the Noicees were PACs and made the transactions in the scrip of ATPL as alleged in the SCN. The same was also admitted by the Noticees. It is observed that Noticees had acquired 15,00,000 shares of ATCL on November 16, 2014 by way of preferential allotment, amounting to 12.06% i.e. more than 5% of total shareholding of ATCL. So, Noticees were collectively holding a total of

12.06% shares of ATCL and hence required to make disclosure to the company and BSE under the provisions of regulations 29(1) r/w 29(3) of SAST Regulations, 2011. As per the requirement of regulations 29(1) r/w 29(3) of SAST Regulations, 2011, any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company, is required to disclose their aggregate shareholding and voting rights in such target company within 2 trading days to the stock exchange and the target company. However, for the said transactions Noticees made disclosure on April 16, 2019, which shows that Noticees failed to make the required disclosures within the prescribed time as specified in the said regulations. In this regard, Noticees replied that they were not aware about the requirement to make the disclosure and had no professional help or guidance about the same. The statement that the Noticees were ignorant of the regulatory provisions is not justified. It is a well-established legal maxim that "Ignorantiajuris non excusat", or "ignorance of the law excuses no one". So, I am of the view that ignorance of law cannot be considered as an excuse.

(c) Further, it is an admitted fact that the Noticees did not make the said disclosures within the prescribed time as specified in the SAST Regulations, 2011. In this context, I would like to rely on observation of Hon'ble SAT in the matter of Coimbatore Flavors & Fragrances Ltd. vs

SEBI (Appeal No. 209 of 2014 order dated August 11, 2014), wherein it was held that *"Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same."* Therefore, I am of the view that Noticees by not making the disclosure within the prescribed time period violated the regulations 29(1) r/w 29(3) of SAST Regulations, 2011.

(d) Further, the Noticees had collectively executed the following sale transactions in the scrip of ATCL during the relevant period:

Date of sale	No. of shares sold	Holding post transaction	Due date of disclosure	Actual date of Disclosure	Delay in making disclosures (Number of days)
Initial Holding of 15,00,000 shares (12.06%)					
03.03.2017	50,000	11.65%	NA	NA	NA
07.03.2017	70,000	11.09%	NA	NA	NA
08.03.2017	2,00,000	9.48%	10.03.2017	06.05.2019	787
09.03.2017	2,50,000	7.47%	14.03.2017	06.05.2019	783
10.03.2017	1,95,000	5.91%	NA	NA	NA
14.03.2017	2,25,000	4.10%	16.03.2017	06.05.2019	781
Subsequent sale of shares did not require disclosures and the shareholding became NIL as on 22.03.2017.					

It is noted that the transactions dated March 08, 2017, March 09, 2017 and March 14, 2017, wherein the collective shareholding of the Noticees reduced by more than two percent, of the total shareholding of the company. For the said transactions, it has been alleged in the SCN that

Noticees did not make the required disclosures within the time limit as specified under the provisions of regulations 29(2) r/w 29(3) of SAST Regulations, 2011. It is observed from the available record that Noticees made the said disclosures to BSE vide letter dated April 16, 2019. With regard to the alleged violation of regulations 29(2) r/w 29(3) of SAST Regulations, 2011, Noticees referred the judgments of SAT in the matter of Ravi Mohan vs. SEBI (Appeal No. 97 of 2014, Date of Decision 16th December, 2015) and Rakesh Kathotia and submitted that regulation 29(3) does not contemplate time limit for disclosure relating to sale of shares in excess of limits set out under regulation 29(2) and therefore they cannot be said to have failed to comply with regulations 29(2) r/w 29(3) of SAST Regulations.

(e) Noticees sold shares of the Company on March 08, 2017, March 09, 2017 and March 14, 2017 and for these transactions, the violations of regulations 29(2) r/w 29(3) of SAST Regulations, 2011 are alleged. I note that regulation 29(2) of the SAST Regulations, 2011 casts an obligation on any acquirer who, together with persons acting in concert with him, holds shares or voting rights entitling them (together) to 5% or more of the shares or voting rights in a target company, to make disclosure of every acquisition or disposal of shares of such target company representing 2% or more of the shares or voting rights in such target company. Regulation 29(3) of SAST Regulations, 2011, prescribes that the disclosures required shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to the Stock exchange and the target company. During the relevant period i.e. January 01, 2017 to September 30, 2017, regulations 29(2) r/w 29(3) of SAST Regulations, 2011 is extracted hereunder:

Disclosure of acquisition and disposal

29(1)….

(2) *Any acquirer, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose every acquisition or disposal of shares of such target company representing two per cent or more of the shares or voting rights in such target company in such form as may be specified.*

(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition of shares or voting rights in the target company to,—*

(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

I note that during the relevant period, regulation 29(2) SAST Regulations, 2011 specifically mentions about the disclosure for the acquisition as well as disposal of shares. However, regulation 29(3) of SAST Regulations, 2011 prescribes the time line within which these disclosures are to be made only for the acquisition of shares and does not specify any time frame about the disposal of shares. Thus, the obligation to make disclosure within prescribed time limit under regulations 29(2) r/w 29(3) of SAST Regulations, 2011 was only in relation to acquisition of shares and not for the disposal of shares. Also it is noted that the word "*disposal*" was inserted in regulations 29(3) of SAST

Regulations, 2011 by an amendment with effect from September 11, 2018. In the instant case, the alleged violations are failure to make disclosure within the time limit for the disposal of shares by the Noticees under regulation 29(2) r/w 29(3) of SAST Regulations, 2011 for the transactions made during the period January 01, 2017 to September 30, 2017. Since, regulation 29(3) of SAST Regulations, 2011 does not contemplate any obligation to disclose sale of shares during the relevant period, the question of discharging that obligation arising under regulations 29(2) r/w 29(3) of SAST Regulations, 2011 does not arise at all by the Noticees for the alleged transactions made on March 08, 2017, March 09, 2017 and March 14, 2017.

In this context, I note that Hon'ble SAT in the matter of Mr Ravi Mohan and Ors vs SEBI (Appeal no 97/2014) decided on 16.12.2015 has observed as follows:

> *"………*
> *27. It is relevant to note that while inserting regulation 7(1A), SEBI has deemed it proper to amend regulation 7(2) with effect from 09.09.2002 by providing that the disclosure obligation under regulation 7(1) and 7(1A) shall be discharged within two days of the events specified under regulation 7(2). Thus, as a result of insertion of regulation 7(1A) and amendment of regulation 7(2), the disclosure obligation in relation to purchase or sale of shares referred to in regulation 7(1A) has to be made within two days of the events specified in regulation 7(2). On perusal of regulation 7(2) it is seen that the events enumerated therein relate only to acquisition of shares and do not relate to sale of shares or voting rights in excess of the limits prescribed under regulation 7(1A). As a result, even though regulation 7(1A) contemplates that an acquirer together with persons acting in concert with him when sell shares of the target company in excess of the limits prescribed under regulation 7(1A) must make disclosure within two days of such sale, in view of the amendment to regulation 7(2), the disclosure obligation under regulation 7(1A) has to be discharged within two days of the events specified under regulation 7(2).*

Since regulation 7(2) as amended does not contemplate any obligation to disclose sale of shares by an acquirer covered under regulation 7(1A), the question of discharging that obligation arising under regulation 7(1A) read with regulation 7(2) does not arise at all.

28………… Thus, by 2002 amendment it is made clear that although disclosure of purchase or sale referred to under regulation 7(1A) has to discharged within two days of purchase or sale, of shares referred to therein, by amending regulation 7(2) it is provided that two days time to make disclosure under regulation 7(1A) shall commence on the happening of events specified under regulation 7(2). Since regulation 7(2) (as amended) does not set out any event relating to sale of shares specified under regulation 7(1A), the question of complying with regulation 7(1A) within two days of sale of shares does not arise at all.

29……….. Therefore, when the Takeover Regulations, 1997 provides that the disclosure obligation specified under regulation 7(1A) has to be discharged in the manner specified under regulation 7(1A) read with regulation 7(2) and regulation 7(2) does not provide for disclosure in relation to sale of shares in excess of the limits prescribed under regulation 7(1A), SEBI is not justified in holding that the appellants by failing to make disclosure of sales covered under regulation 7(1A) within the stipulated time, have violated regulation 7(1A) read with regulation 7(2) of the Takeover Regulations, 1997. Consequently, SEBI is not justified in imposing penalty on the appellants.
…………

33. For all the aforesaid reasons, the issues raised in these appeals are answered as follows:-
a)…
b) Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained ……..”

Further, I note that Hon'ble SAT in the matter of Mr. Rakesh Kathotia and Ors vs SEBI (Appeal no 7 of 2016) decided on May 27, 2019 has observed as follows:

"……….
27. In view of our interpretation of Regulation 7(1A) read with Regulation 7(2) we differ with the view taken by this Tribunal in the case of Ravi Mohan and Others vs. SEBI in Appeal no.97 of 2014 and other companion appeals decided on 15.2.2015 wherein the Tribunal held :

"Disclosure obligation under regulation 7(1A) has to be discharged in accordance with regulation 7(1A) read with regulation 7(2). Since regulation 7(2) does not contemplate for disclosure relating to sale of shares in excess of the limits set out under regulation 7(1A), appellants herein cannot be said to have failed to comply with regulation 7(1A) within the time stipulated under regulation 7(1A) read with regulation 7(2). Consequently penalty imposed on the appellants cannot be sustained."

28. In our view, the sale made by the appellants which aggregated two percent or more of the share capital of the target Company was required to be disclosed by the acquirer/appellants of the target Company within two days under Regulation 7(1A). Thus, for non-disclosure of the sale of shares the appellants have violated the provisions of Regulation 7(1A).

29. However, the appellants cannot be faulted and penalised on this score at this stage. They have a decision in their favour in the case of Ravi Mohan (supra) which is still valid till date and has not been set aside by a superior forum. Further, the respondent SEBI has accepted the decision of this Tribunal in the case of Ravi Mohan (supra) which can be seen from the fact that a similar provision, namely, Regulation 29 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 was amended after Ravi Mohan's decision was given by this Tribunal in 2015. For facility, Regulation 29 is extracted hereunder:

Disclosure of acquisition and disposal.
"29. (1) Any acquirer who acquires shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, aggregating to five per cent or more of the shares of such target company,

shall disclose their aggregate shareholding and voting rights in such target company in such form as may be specified.

(2) Any person, who together with persons acting in concert with him, holds shares or voting rights entitling them to five per cent or more of the shares or voting rights in a target company, shall disclose the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below five per cent, if there has been change in such holdings from the last disclosure made under sub- regulation (1) or under this sub-regulation; and such change exceeds two per cent of total shareholding or voting rights in the target company, in such form as may be specified.]

(3) The disclosures required under sub regulation (1) and sub-regulation (2) shall be made within two working days of the receipt of intimation of allotment of shares, or the acquisition or the disposal of shares or voting rights in the target company to,—"

30. Regulation 29 of the Takeover Regulations, 2011 in more or less pari materia with the provision of Regulation 7 of the Takeover Regulations, 1997. The words "or the disposal" were added in Regulation 29(3) by an amendment w.e.f. September 11, 2018 after the decision of this Tribunal in Ravi Mohan's case (supra) decided in the year 2015.

31. Thus, even though we do not agree with the ratio of the decision in Ravi Mohan's case, nonetheless, the said decision having been accepted by SEBI, the appellant in the instant case cannot be penalized for violation of Regulation 7(1A) read with Regulation 7(2). The imposition of penalty by the Adjudicating Officer on this score cannot be sustained."

I am convinced that the ratio of the above judgments applies with equal force to the facts of the present case. In view of the para 5(e) as mentioned above and the aforesaid decisions of Hon'ble SAT, the allegation that the Noticees have violated the provisions of regulations 29(2) r/w 29(3) of the SAST Regulations, 2011 is not tenable.

(f) In view of the above, it is concluded that the violations of provisions of regulations 29(2) r/w 29(3) of SAST Regulations, 2011, against the Noticees are not established. However, the violations of provisions of regulations 29(1) r/w 29(3) of the SAST Regulations, 2011, against the Noticees for their failure to make disclosure for the acquisition of shares within the specified time as prescribed under the said provisions of Regulations are established.

Issue (b): Does the violations, if any, on the part of the Noticees would attract monetary penalty under section 15A(b) of the SEBI Act, 1992?

(a) It has been established in the foregoing paragraphs that Noticees have violated the provisions of regulations 29(1) r/w 29(3) of SAST Regulations, 2011 and therefore, the aforesaid violations committed by the Noticees attract monetary penalty under section 15A(b) of the SEBI Act, 1992.

(b) In this regard, reliance is placed upon the order of the Hon'ble Supreme Court of India in the matter of Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 } – wherein the Hon'ble Supreme Court of India held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…………....*"

(c) In view of the above, I conclude that the Noticees are liable for monetary penalty under the provisions of section 15A(b) of the SEBI Act, 1992 which reads as under :

The SEBI Act, 1992

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during such failure continues or one crore rupees, whichever is less:

Issue (c): If so, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors mentioned in section 15J of SEBI Act, 1992?

(a) While determining the quantum of penalty under section 15A(b) of the SEBI Act, 1992, it is important to consider the factors relevantly as stipulated in section 15J of the SEBI Act, 1992 which reads as under:-

Factors to be taken into account by the adjudicating officer.

15J. *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.*

(b) The material available on record also has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the non-compliance committed by the Noticees. Material on record does not show that failure is repetitive in nature. However, I note that the Noticees had failed to make disclosure within the timeframe as prescribed under the provisions of regulations 29(1) r/w 29(3) of SAST Regulations, 2011 during the relevant period.

ORDER

9. After taking into consideration the facts and circumstances of the case, material/facts on record and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under section 15-I of the SEBI Act, 1992 r/w rule 5 of the Adjudication Rules, 1995, hereby impose the following penalty on the Noticees under section 15A(b) of the SEBI Act, 1992, for the failure on their part to comply with the provisions of regulations 29(1) r/w 29(3) of SAST Regulations, 2011:

Name of the Noticee	Penalty Amount
Jagdishbhai Dahyalal Thakkar	Rs. 1,00,000/- (Rupees One Lakh only)
Bhavnaben Jagdishkumar Thakkar	Rs. 1,00,000/- (Rupees One Lakh only)
Dhaval Jagdishkumar Thakkar	Rs. 1,00,000/- (Rupees One Lakh only)
Thakkar Jagdishchandra Dahyalal HUF	Rs. 1,00,000/- (Rupees One Lakh only)

I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticees.

10. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through Demand Draft in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai, or the online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW. In case of any difficulties in payment of penalties, the Noticees may contact the support at portalhelp@sebi.gov.in.

11. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid to the Enforcement Department of SEBI. The Noticees shall provide the following details while forwarding DD/payment information:

    a) Name and PAN of the entity (Noticee)
    b) Name of the case / matter
    c) Purpose of Payment –Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

12. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

13. In terms of the provisions of rule 6 of the Adjudication Rules, 1995, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **PRASANTA MAHAPATRA**

Date: January 12, 2021 **ADJUDICATING OFFICER**