BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/GR/BM/2022-23/22130-22131

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.No.	Name of Noticee	PAN
1.	Surekha Venugopal Rao	CJKPS5789P
2.	K S Venugopala	AAAPV4394G

In the matter of **"Tejassvi Aaharam Limited"**

BACKGROUND

1. Securities and Exchange Board of India ("**SEBI**") conducted an examination of Draft Letter of Offer ("**DLoF**") submitted by Saffron Capital Advisors Private Limited., (hereinafter referred to as "**Merchant Banker/MB**") for acquisition of equity shares of Tejassvi Aaharam Limited., ("**Target Company**"), a company listed on Bombay Stock Exchange Limited ("**BSE**") pertaining to open offer made by the acquirers namely Mr. John Amirtharaj (hereinafter referred as "**Acquirer 1**") and Mr. G. Bhakthavatsalu (hereinafter referred as "**Acquirer 2**"). The examination was to ascertain whether there was any violation of the provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011(hereinafter referred to as "**SAST Regulations**") by certain entities.

2. During the examination of the said DLoF filed by the aforesaid acquirers, it was observed that Ms. Surekha Venugopal Rao (hereinafter referred to as the **Noticee No.1**) had failed to make an open offer to the public shareholders and also failed to make timely disclosure of trades in the nature of off-market transfers. Further, the investigation also revealed that Mr. K S Venugopala (hereinafter referred to as the **Noticee No.2**) had failed to make timely disclosure of the trades in the nature of off-market transfers. Accordingly, it was alleged that Noticee No.1 and 2 (hereinafter together referred to as the **"Noticees"**) have failed to comply with the provisions of aforementioned Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. In this regard, SEBI initiated Adjudication Proceedings against the Noticees and appointed Shri Amit Pradhan as Adjudicating Officer (AO), communicated vide communique dated May 14, 2021. Subsequently, the undersigned was appointed AO in the matter vide communique dated June 18, 2021 under Section 15-I of the SEBI Act, 1992 read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules")** to inquire into and adjudge under:

   a) Section 15H(ii) of the SEBI Act, 1992 and Section 15A(b) of SEBI Act, 1992 for the alleged violations by Noticee No.1 and

   b) Section 15A(b) of the SEBI Act,1992 for the alleged violations by Noticee No.2.

SHOW CAUSE NOTICE, HEARING AND REPLY

4. A common Show Cause Notice dated November 07, 2022 (hereinafter referred to as **SCN**) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 read with Rule 4 of the Adjudication Rules to show cause as to why an inquiry should not be held against them and why penalty, if any, under Section 15H(ii) of the SEBI Act, 1992 and Section 15A(b) of the SEBI Act, 1992 be not imposed upon the Noticees, as applicable.

5. The said SCN and annexures issued to the Noticees were duly delivered through SPAD and email. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Adjudication Rules, an opportunity of personal hearing was granted on December 09, 2022 vide Hearing Notice dated December 01, 2022 served through email on the same day. However, the Noticees vide email dated December 09, 2022 requested for adjournment of the aforesaid hearing and accordingly, another opportunity of hearing was provided to them on December 14, 2022 vide email dated December 09, 2022. The said hearing was attended by the Authorized Representative (AR) of the Noticees. The Noticees submitted their replies vide letter dated November 25, 2022.

6. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs/Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

7. The common reply of the Noticees submitted vide aforementioned letter is reproduced as under:

<u>Reply of Noticee No. 1 and 2</u>

a) *We held 36.16% of the total paid-up capital of the company and there has been no change in the shareholding since more than 10 years.*

b) *With reference to the allegation regarding the transfer of 14.29% of the paid-up capital of the target company, I had transferred the shares in the month of March 2020 from my holding to my daughter-in-law out of love and affection as a gift without any consideration as she did not hold shares in the company.*

c) *As a result of this transfer, the total shareholding of the promoters has not changed and we still continued to be in management control of the company. I was not aware that this transfer requires an open offer to be made. Had I been aware , I would have refrained from such a transfer.*

d) *With regard to your second allegation regarding the delayed disclosure under Regulation 29(2) to the exchange (i.e. BSE) it was out of ignorance that a disclosure had to be made.*

e) *I was under the mistaken impression since there is no change in overall holding of the promoter/promoter group no disclosures would be required. There is no malafide intention in any of the above non compliances.*

A. CONSIDERATION OF ISSUES AND FINDINGS

8. I have carefully perused the charges levelled against the Noticees, reply to the SCN filed by them and the documents available on record and the issues that arise for consideration in the present case are:

Issue I:

(a) Whether Noticee No.1 has violated the provisions of Regulation 3(2) read with Regulation 13, 14, 15, 16, 17 and 18 and Regulation 29(2) read with Regulation 29(3) of SAST Regulations?

(b) Whether Noticee No 2 has violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations and Regulation 30(2) read with Regulation 30(3)?

Issue II: Does the violation, if any, on the part of the Noticees attract penalty under:

a) Sections 15H (ii) of the SEBI Act, 1992 and Section 15A(b) of SEBI act, 1992 for the alleged violation by Noticee No.1 and

b) *Section 15A(b) of the SEBI Act, 1992 for the alleged violation by Noticee No. 2*?

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

9. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of SAST Regulations alleged to have been violated by the Noticees. The same are reproduced below:

SAST Regulations

3(2) *No acquirer, who together with persons acting in concert with him, has acquired and holds in accordance with these regulations shares or voting rights in a target company entitling them to exercise twenty-five per cent or more of the voting rights in the target company but less than the maximum permissible non-public shareholding, shall acquire within any financial year additional shares or voting rights in such target company entitling them to exercise more than five per cent of the voting rights, unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations:*

Timing. 13.

(1) *The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.*

(2) *Such public announcement,—*

(a) in the case of market purchases, shall be made prior to placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds;

(b) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon converting convertible securities without a fixed date of conversion or upon conversion of depository receipts for the underlying shares of the target company shall be made on the same day as the date of exercise of the option to convert such securities into shares of the target company;

(c) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company upon conversion of convertible securities with a fixed date of conversion shall be made on the second working day preceding the scheduled date of conversion of such securities into shares of the target company;

(d) pursuant to a disinvestment shall be made on the same day as the date of executing the agreement for acquisition of shares or voting rights in or control over the target company;

(e) in the case of indirect acquisition of shares or voting rights in, or control over the target company where none of the parameters referred to in sub-regulation (2) of regulation 5 are met, may be made at any time within four working days from the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(f) in the case of indirect acquisition of shares or voting rights in, or control over the target company where any of the parameters referred to in subregulation (2) of regulation 5 are met shall be made on the earlier of, the date on which the primary acquisition is contracted, and the date on which the intention or the decision to make the primary acquisition is announced in the public domain;

(g) pursuant to an acquirer acquiring shares or voting rights in, or control over the target company, under preferential issue, shall be made on the date on which 62[the board of directors of the target company authorises such preferential issue.];

(h) the public announcement pursuant to an increase in voting rights consequential to a buy-back not qualifying for exemption under regulation 10, shall be made not later than the ninetieth day from the date of [63] *[closure of the buy-back offer by the target company].;*

(i) the public announcement pursuant to any acquisition of shares or voting rights in or control over the target company where the specific date on which title to such shares, voting rights or control is acquired is beyond the control of the acquirer, shall be made not later than two working days from the date of receipt of intimation of having acquired such title.

[64] *[**(2A)** Notwithstanding anything contained in sub-regulation (2), a public announcement referred to in regulation 3 and regulation 4 for a proposed acquisition of shares or voting rights in or control over the target company through a combination of,-*

(i) an agreement and any one or more modes of acquisition referred to in subregulation (2) of regulation 13, or
(ii) any one or more modes of acquisition referred in clause (a) to (i) of sub-regulation (2) of regulation 13,
shall be made on the date of first such acquisition, provided the acquirer discloses in the public announcement the details of the proposed subsequent acquisition.]

***(3)** The public announcement made under regulation 6 shall be made on the same day as the date on which the acquirer takes the decision to voluntarily make a public announcement of an open offer for acquiring shares of the target company.*

***(4)** Pursuant to the public announcement made under sub-regulation (1) and sub-regulation (3), a detailed public statement shall be published by the acquirer through the manager to the open offer in accordance with regulation 14 and regulation 15, not later than five working days of the public announcement: Provided that the detailed public statement pursuant to a public announcement made under clause (e) of sub-regulation (2) shall be made not later than five working days of the completion of the primary acquisition of shares or voting rights in, or control over the company or entity holding shares or voting rights in, or control over the target company. Explanation.— It is clarified that in the event the acquirer does not succeed in acquiring the ability to exercise* *or direct the exercise of voting rights in, or control over the target company, the acquirer shall not be required to make a detailed public statement of an open offer for acquiring shares under these regulations.*

Publication.

14. (1) *The public announcement shall be sent to all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public.*

(2) *A copy of the public announcement shall be sent to the Board and to the target company at its registered office within one working day of the date of the public announcement.*

(3) *The detailed public statement pursuant to the public announcement referred to in sub-regulation (4) of regulation 13 shall be published in all editions of any one English national daily with wide circulation, any one Hindi national daily with wide circulation, and any one regional language daily with wide circulation at the place where the registered office of the target company is situated and one regional language daily at the place of the stock exchange where the maximum volume of trading in the shares of the target company are recorded during the sixty trading days preceding the date of the public announcement.*

(4) *Simultaneously with publication of such detailed public statement in the newspapers, a copy of the same shall be sent to,—*

(i) *the Board through the manager to the open offer,*
(ii) *all the stock exchanges on which the shares of the target company are listed, and the stock exchanges shall forthwith disseminate such information to the public,*
(iii) *the target company at its registered office, and the target company shall forthwith circulate it to the members of its board.*

Contents. 15.

(1) *The public announcement shall contain such information as may be specified, including the following,—*

(a) *name and identity of the acquirer and persons acting in concert with him;*
(b) *name and identity of the sellers, if any;*
(c) *nature of the proposed acquisition such as purchase of shares or allotment of shares, or any other means of acquisition of shares or voting rights in, or control over the target company;*
(d) *the consideration for the proposed acquisition that attracted the obligation to make an open offer for acquiring shares, and the price per share, if any;*
(e) *the offer price, and mode of payment of consideration;* [65] *[***]*
(f) *offer size, and conditions as to minimum level of acceptances,* [66] *[if any; and]* [67] *[(g) intention of the acquirer to either delist the target company or retain the listing of the target company. In case of proposed delisting under regulation 5A, the proposed open offer price and indicative price as required under regulation 5A shall be disclosed along with an explanation setting out the rationale and basis for justifying the indicative price.]*

(2) *The detailed public statement pursuant to the public announcement shall contain such information as may be specified in order to enable shareholders to make an informed decision with reference to the open offer.*

(3) The public announcement of the open offer, the detailed public statement, and any other statement, advertisement, circular, brochure, publicity material or letter of offer issued in relation to the acquisition of shares under these regulations shall not omit any relevant information, or contain any misleading information.

Filing of letter of offer with the Board.

16. (1) *Within five working days from the date of the detailed public statement made under sub-regulation (4) of regulation 13, the acquirer shall, through the manager to the open offer, file with the Board, a draft of the letter of offer containing such information as may be specified along with a non-refundable fee, as per the following scale, [68] [by way of direct credit in the bank account through NEFT/RTGS/IMPS or any other mode allowed by RBI or] by way of a banker's cheque or demand draft payable in Mumbai in favour of the Board,—*

(2) *The consideration payable under the open offer shall be calculated at the offer price, assuming full acceptance of the open offer, and in the event the open offer is subject to differential pricing, shall be computed at the highest offer price, irrespective of manner of payment of the consideration: Provided that in the event of consideration payable under the open offer being enhanced owing to a revision to the offer price or offer size the fees payable shall stand revised accordingly, and shall be paid within five working days from the date of such revision.*

(3) *The manager to the open offer shall provide soft copies of the public announcement, the detailed public statement and the draft letter of offer in accordance with such specifications as may be specified, and the Board shall upload the same on its website.*

(4) *The Board shall give its comments on the draft letter of offer as expeditiously as possible but not later than fifteen working days of the receipt of the draft letter of offer and in the event of no comments being issued by the Board within such period, it shall be deemed that the Board does not have comments to offer:*

Provided *that in the event the Board has sought clarifications or additional information from the manager to the open offer, the period for issuance of comments shall be extended to the fifth working day from the date of receipt of satisfactory reply to the clarification or additional information sought.*

Provided *further that in the event the Board specifies any changes, the manager to the open offer and the acquirer shall carry out such changes in the letter of offer before it is dispatched to the shareholders.*

(5) *In the case of competing offers, the Board shall provide its comments on the draft letter of offer in respect of each competing offer on the same day.*

(6) *In the event the disclosures in the draft letter of offer are inadequate the Board may call for a revised letter of offer and shall deal with the revised letter of offer in accordance with sub-regulation (4).*

Provision of escrow

17. (1) *Not later than two working days prior to the date of the detailed public statement of the open offer for acquiring shares, the acquirer shall create an escrow account towards security for performance of his obligations under these regulations, and deposit in escrow account such aggregate amount as per the following scale:*

SI.No.	*Consideration payable under the open offer*	*Escrow Amount*
a.	*On the first five hundred crore rupees*	*an amount equal to twenty-five per cent of the consideration*
b.	*On the balance consideration*	*an additional amount equal to ten per cent of the balance consideration*

Provided *that where an open offer is made conditional upon minimum level of acceptance, hundred percent of the consideration payable in respect of minimum level of acceptance or fifty per cent of the consideration payable under the open offer, whichever is higher, shall be deposited in cash in the escrow account.*

[70][**Provided** *further that in case of indirect acquisitions where public announcement has been made in terms of clause (e) of sub-regulation (2) of regulation 13 of these regulations, an amount equivalent to hundred per cent of the consideration payable in the open offer shall be deposited in the escrow account.]*

(2) *The consideration payable under the open offer shall be computed as provided for in sub-regulation (2) of regulation 16 and in the event of an upward revision of the offer price or of the offer size, the value of the escrow amount shall be computed on the revised consideration calculated at such revised offer price, and the additional amount shall be brought into the escrow account prior to effecting such revision.*

(3) *The escrow account referred to in sub-regulation (1) may be in the form of,—*

(a) *cash deposited with any scheduled commercial bank;*

(b) *bank guarantee issued in favour of the manager to the open offer by any scheduled commercial bank; or*

(c) *deposit of frequently traded and freely transferable equity shares or other freely transferable securities with appropriate margin:*

Provided *that securities sought to be provided towards escrow account under clause (c) shall be required to conform to the requirements set out in sub-regulation (2) of regulation 9.*

[71][**Provided further** *that the deposit of securities shall not be permitted in respect of indirect acquisitions where public announcement has been made in terms of clause (e) of sub-regulation (2) of regulation 13 of these regulations]*

[72][*Explanation: The cash component of the escrow account as referred to in clause*

(a) above may be maintained in an interest bearing account, subject to the merchant banker ensuring that the funds are available at the time of making payment to the shareholders.]

(4) *In the event of the escrow account being created by way of a bank guarantee or by deposit of securities, the acquirer shall also ensure that at least one per cent of the total consideration payable is deposited in cash with a scheduled commercial bank as a part of the escrow account.*

(5) *For such part of the escrow account as is in the form of a cash deposit with a scheduled commercial bank, the acquirer shall while opening the account, empower the manager to the open offer to instruct the bank to issue a banker's cheque or demand draft or to make payment of the amounts lying to the credit of the escrow account, in accordance with requirements under these regulations.*

(6) *For such part of the escrow account as is in the form of a bank guarantee, such bank guarantee shall be in favour of the manager to the open offer and shall be kept valid throughout the offer period and for an additional period of thirty days after completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer.*

(7) *For such part of the escrow account as is in the form of securities, the acquirer shall empower the manager to the open offer to realise the value of such escrow account by sale or otherwise, and in the event there is any shortfall in the amount required to be maintained in the escrow account, the manager to the open offer shall be liable to make good such shortfall.*

(8) *The manager to the open offer shall not release the escrow account until the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, save and except for transfer of funds to the special escrow account as required under regulation 21.*

(9) *In the event of non-fulfillment of obligations under these regulations by the acquirer the Board may direct the manager to the open offer to forfeit the escrow account or any amounts lying in the special escrow account, either in full or in part.*

(10) *The escrow account deposited with the bank in cash shall be released only in the following manner,—*

(a) *the entire amount to the acquirer upon withdrawal of offer in terms of regulation 23 as certified by the manager to the open offer: Provided that in the event the withdrawal is pursuant to clause (c) of sub-regulation (1) of regulation 23, the manager to the open offer shall release the escrow account upon receipt of confirmation of such release from the Board;*

(b) *for transfer of an amount not exceeding ninety per cent of the escrow account, to the special escrow account in accordance with regulation 21;*

(c) *to the acquirer, the balance of the escrow account after transfer of cash to the special escrow account, on the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, as certified by the manager to the open offer;*

(d) *the entire amount to the acquirer upon the expiry of thirty days from the completion of payment of consideration to shareholders who have tendered their shares in acceptance of the open offer, upon certification by the manager to the open offer, where the open offer is for exchange of shares or other secured instruments;*

(e) *the entire amount to the manager to the open offer, in the event of forfeiture for non-fulfillment of any of the obligations under these regulations, for distribution in the following manner, after deduction of expenses, if any, of registered market intermediaries associated with the open offer,—*

(i) *one third of the escrow account to the target company;*

(ii) one third of the escrow account to the Investor Protection and Education Fund established under the Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009; and

(iii) *one third of the escrow account to be distributed pro-rata among the shareholders who have accepted the open offer.*

<u>Other procedures</u>

18. (1) *Simultaneously with the filing of the draft letter of offer with the Board under sub-regulation (1) of regulation 16, the acquirer shall send a copy of the draft letter of offer to the target company at its registered office address and to all stock exchanges where the shares of the target company are listed.*

(2) *The letter of offer shall be dispatched to the shareholders whose names appear on the register of members of the target company as of the identified date, not later than seven working days from the receipt of comments from the Board or where no comments are offered by the Board, within seven working days from the expiry of the period stipulated in sub-regulation (4) of regulation 16:*

[73][*Explanation: (i) Letter of offer may also be dispatched through electronic mode in accordance with the provisions of Companies Act, 2013.*

(ii) *On receipt of a request from any shareholder to receive a copy of the letter of offer in physical format, the same shall be provided.*

(iii) *The aforesaid shall be disclosed in the letter of offer.*]

Provided *that where local laws or regulations of any jurisdiction outside India may expose the acquirer or the target company to material risk of civil, regulatory or criminal liabilities in the event the letter of offer in its final form were to be sent without material amendments or modifications into such jurisdiction, and the shareholders resident in such jurisdiction hold shares entitling them to less than five per cent of the voting rights of the target company, the acquirer may refrain from dispatch of the letter of offer into such jurisdiction*:

Provided further *that every person holding shares, regardless of whether he held shares on the identified date or has not received the letter of offer, shall be entitled to tender such shares in acceptance of the open offer.*

(3) *Simultaneously with the dispatch of the letter of offer in terms of sub-regulation (2), the acquirer shall send the letter of offer to the custodian of shares underlying depository receipts, if any, of the target company.*

(4) *Irrespective of whether a competing offer has been made, an acquirer may make upward revisions to the offer price, and subject to the other provisions of these regulations, to the number of shares sought to be acquired under the open offer, at any time prior to the commencement of the last* [74] *[one working day] before the commencement of the tendering period.*

(5) *In the event of any revision of the open offer, whether by way of an upward revision in offer price, or of the offer size, the acquirer shall,—*

(a) *make corresponding increases to the amount kept in escrow account under regulation 17 prior to such revision;*

(b) *make an announcement in respect of such revisions in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and*

(c) *simultaneously with the issue of such an announcement, inform the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.*

(6) *The acquirer shall disclose during the offer period every acquisition made by the acquirer or persons acting in concert with him of any shares of the target company in such form as may be specified, to each of the stock exchanges on which the shares of the target company are listed and to the target company at its registered office within twenty-four hours of such acquisition, and the stock exchanges shall forthwith disseminate such information to the public:*

Provided *that the acquirer and persons acting in concert with him shall not acquire or sell any shares of the target company during the period between three working days prior to the commencement of the tendering period and until the expiry of the tendering period.*

[75] [(6A) *The acquirer shall facilitate tendering of shares by the shareholders and settlement of the same, through the stock exchange mechanism as specified by the Board*.]

(7) *The acquirer shall issue an advertisement in such form as may be specified, one working day before the commencement of the tendering period, announcing the schedule of activities for the open offer, the status of statutory and other approvals, if any, whether for the acquisition attracting the obligation to make an open offer under these regulations or for the open offer, unfulfilled conditions, if any, and their status, the procedure for tendering acceptances and such other material detail as may be specified:*

Provided *that such advertisement shall be,—*

(a) *published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and*

(b) *simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office.*

(8) *The tendering period shall start not later than twelve working days from date of receipt of comments from the Board under sub-regulation (4) of regulation 16 and shall remain open for ten working days.*

(9) *Shareholders who have tendered shares in acceptance of the open offer shall not be entitled to withdraw such acceptance during the tendering period.*

(10) *The acquirer shall, within ten working days from the last date of the tendering period, complete all requirements under these regulations and other applicable law relating to the open offer including payment of consideration to the shareholders who have accepted the open offer.*

(11) *The acquirer shall be responsible to pursue all statutory approvals required by the acquirer in order to complete the open offer without any default, neglect or delay:*

Provided *that where the acquirer is unable to make the payment to the shareholders who have accepted the open offer within such period owing to non-Sreceipt of statutory approvals required by the acquirer, the Board may, where it is satisfied that such non-receipt was not attributable to any willful default, failure or neglect on the part of the acquirer to diligently pursue such approvals, grant extension of time for making payments, subject to the acquirer agreeing to pay interest to the shareholders for the delay at such rate as may be specified:*

Provided further *that where the statutory approval extends to some but not all shareholders, the acquirer shall have the option to make payment to such shareholders in respect of whom no statutory approvals are required in order to complete the open offer.*

[76][(11A) *Without prejudice to sub-regulation 11, in case the acquirer is unable to make payment to the shareholders who have accepted the open offer within such period, the acquirer shall pay interest for the period of delay to all such shareholders whose shares have been accepted in the open offer, at the rate of ten per cent per annum:*

Provided *that in case the delay was not attributable to any act of omission or commission of the acquirer, or due to the reasons or circumstances beyond the control of acquirer, the Board may grant waiver from the payment of interest.*

Provided further *that the payment of interest would be without prejudice to the Board taking any action under regulation 32 of these regulation or under the Act.]*

(***12) (a)*** *The acquirer shall issue a post offer advertisement in such form as may be specified within five working days after the offer period, giving details including aggregate number of shares tendered, accepted, date of payment of consideration.*

(b) *Such advertisement shall be,—*

(i) published in all the newspapers in which the detailed public statement pursuant to the public announcement was made; and
(ii) simultaneously sent to the Board, all the stock exchanges on which the shares of the target company are listed, and the target company at its registered office

29. (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*

29(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:*
(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office."

30(2) *The promoter of every target company shall together with persons acting in concert with him, disclose their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company in such form as may be specified.*

30(3) *The disclosures required under sub-regulation (1) and sub-regulation (2) shall be made within seven working days from the end of each financial year to,—*
(a) every stock exchange where the shares of the target company are listed; and
(b) the target company at its registered office.

Issue I:

(a) Whether Noticee No.1 has violated the provisions of Regulation 3(2) read with Regulation 13, 14, 15, 16, 17 and 18 and Regulation 29(2) read with Regulation 29(3) of SAST Regulations?

(b) Whether Noticee No 2 has violated the provisions of Regulation 29(2) read with Regulation 29(3) of SAST Regulations and Regulation 30(2) read with Regulation 30(3) of SAST Regulations?

a) <u>Delayed disclosure by Noticee No.1 and 2</u>

10. In respect of the aforesaid alleged violation against the Noticee No.1 and 2 , I note from the Examination Report (ER) that while examination of DLoF by SEBI, filed by the MB on behalf of Acquirers on November 11, 2020 to acquire 24% of the shares of the Target Company, certain non-compliances by the aforesaid Noticees were observed by SEBI with respect to provisions of SAST Regulations.

11. In this regard, I note from ER that in the said DLoF, the MB mentioned the following:

"*Open offer was triggered in the month of March 2020 when Noticee No. 2 (Transferor), one of the promoters of the target company transferred 10,00,000 equity shares representing 14.29% of the paid up capital of the target company to Noticee No. 1 (Transferee), daughter in law of Noticee No. 2. The said transfer was not eligible for exemption under Regulation 10 of the SAST Regulation and thus was in breach of Regulation 3(2) of SAST Regulation. The transferee was under obligation to make an open offer to the public shareholder of the target company pursuant to acquisition of the said equity shares*"

12. With regard to above, following details were observed from ER w.r.t Noticee No.1 and 2 which are tabulated below:

Table 1

VIOLATION OF REGULATION 29 OF SAST REGULATIONS, 2011										
Sl no	**Regulation**	**Name of Acquirer/Seller**	**Acquisition/ Sale**	**No. of Shares /Voting Rights Transacted**	**%**	**Date of Transaction**	**Due date for compliance**	**Actual compliance date**	**Delay in days, if any**	**Status of compliance with Takeover Regulations**
1	29(2)	Surekha Shyam Venugopal	Acquisition – Off Market	10,00,000	14.29%	24-03-2020	27-03-2020	24-10-2020	211	Complied with delay
2	29(2)	K S Venugopala	Sale – Off Market	10,00,000	14.29%	24-03-2020	27-03-2020	24-10-2020	211	Complied with delay

13. It is observed from the transactions mentioned at Table 1 above i.e. for transfer of 10,00,000 shares in off-market representing 14.29% of the paid up capital of Target Company between Noticee No. 1 (Transferee) and Noticee No. 2 (Transferor), that it triggered open offer under Regulation 3(2), as the acquisition was by Noticee No. 1 who being a Person Acting concert (PAC) led to increase in the shareholding of the promoter group by more than 5%. However, it was noticed that the open offer was not made at that point of time. It was further observed that Noticee No. 1 made

a delayed disclosure to the exchanges regarding the aforesaid acquisition on October 24, 2020 (instead of March 27, 2020) under Regulation 29(1) of SAST Regulation.

14. In addition to the above, it was further observed that the Noticee No. 2 being the transferor of 10,00,000 equity shares representing 14.29% of the paid up capital of the Target Company to his daughter- in law i.e. Noticee No.1 and also being one of the promoters of the Target company was required to make disclosure under Regulation 29(2) r/w Regulation 29(3) and Regulation 30(2) r/w Regulation 30(3) of SAST Regulations for the aforesaid transaction but made a delayed disclosure after 211 days under Regulation 29(2) of SAST Regulations.

15. Noticee No.2 has contended that he had transferred shares to his daughter-in-law out of love and affection as a gift without any consideration as she did not hold shares in the company and the total shareholding of the promoters had not changed and they still continued to be in management control of the company. Noticee No. 2 further submitted that he was under the mistaken impression that since there was no change in overall holding of the promoter/promoter group, no disclosures were required. In this regard, I note from the ER that the said transfer of shares was made at a price of Rs.0.10/-. I further note that SAST Regulations clearly stipulates requirement of disclosure when there is change in the shareholding beyond substantial threshold level and it does not grant any relaxation on account of being unaware/ not having knowledge for the facts. It is a settled principle that '*Ignorantia juris neminem excusal'* which means that 'ignorance of law is no excuse for breaking it'. Therefore, it stands established that Noticee No. 1 has violated provisions of the Regulation 3(2) read with Regulation 13, 14, 15, 16, 17 and 18 and Regulation 29(2) read with Regulation 29(3) of SAST Regulations by failing to make an open offer to the public shareholders and timely disclosure of her trades in the nature of off-market transfers and Noticee No. 2 has violated the provisions of Regulation 29(2) read with Regulation 29(3) and

Regulation 30(2) read with Regulation 30(3) of SAST Regulations by having failed to timely disclose the trades in the nature of off-market transfers.

16. The upshot of the above discussion is that the Noticees have violated the relevant provisions of SAST Regulations as alleged in the SCN.

Issue II: Does the violation, if any, on the part of the Noticees attract penalty under Section 15H(ii) of the SEBI Act and Section 15A(b) of the SEBI Act?

17. I note that the Hon'ble Supreme Court of India in the matter of ***SEBI v/s 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………. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary."*

18. I also note that in Appeal No. 66 of 2003 –***Milan Mahendra Securities Pvt. Ltd. Vs. SEBI****–the Hon'ble Securities Appellate Tribunal (SAT)* has observed that*, "the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market".*

19. In the context of disclosure related violations, I observe that Hon'ble SAT has consistently held that the obligation to make disclosure within the stipulated time is a mandatory obligation and penalty is imposed for non-compliance of the mandatory obligation.

20. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15H(ii) of the SEBI Act, 1992 for violation on the part of

Noticee No. 1 and Section 15A(b) of the SEBI Act, 1992 for violation on the part of Noticee No. 2. The relevant provisions read as under:

SEBI Act, 1992

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,—*

(ii) make a public announcement to acquire shares at a minimum price; he shall be liable to a penalty [100] [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher].

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 but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;*

Issue III: If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act, 1992?

21. While determining the quantum of penalty under Section 15H(ii) and Section15A(b) of the SEBI Act, it is important to consider the factors stipulated in Section 15J of the SEBI Act, 1992 read with Rule 5(2) of the Adjudication Rules, 1995 which read as under:

SEBI Act, 1992

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.

22. The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by the Noticees and the loss, if any, and suffered by the investors as a result of their failure. However, I note that securities market is based on free and open access to information, and that protection of the interests of the investors is the prime objective of SEBI. Disclosures in respect of the vital information of any company has been made mandatory for the protection of the investors so as to enable them to take suitable informed investment decisions. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. If any person who is to make such disclosures doesn't make it and are depriving the investing public the statutory rights available to them, then SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. Thus, in the present matter the facts of the case clearly bring out the default made by the Noticees. Hence, I note that the Noticees failed to make disclosures or made delayed disclosure or both as brought out in the preceding paragraphs about the change in shareholding and thereby have violated the relevant provisions of SAST Regulations as mentioned above.

23. I further note that the loss suffered by the investors due to non-disclosure by the Noticees has not been quantified. In this regard, I would like to rely on following

observation of Hon'ble Securities Appellate Tribunal (SAT) in the case of Mrs. Komal Nahata vs. SEBI (Appeal No. 5 of 2014 decided on January 27, 2014) *"Argument that no investor has suffered on account of non-disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non-compliance of SAST Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non-disclosure."*

24. Further, I note from the examination report that there is no indication of any profit made or loss avoided by Noticee No. 1. I also note from the available record that Noticee No. 1 acquired shares from Noticee No. 2 at a price of Rs. 0.10/- on March 24, 2020, on which date she should have made a public announcement at a price of Rs.0.11/- per share i.e. with an interest of 10% (Rs.0.10 + interest of 0.01= Rs.0.11). I further note that subsequently, the Acquirers (Mr. John Amirtharaj and Mr. G. Bhakthavatsalu) made a public announcement on November 06, 2020 at a price of Rs. 0.55/-. In view of the above, I note that if at all Noticee No.1 would have made the open offer, it would have been made at a much lesser price which indicates that she had not avoided any loss by not making the said public announcement for open offer.

ORDER

25. Having considered all these facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, 1995, I hereby impose the following penalties under Section 15H(ii) of the SEBI Act, 1992 and Section 15A(b) of the SEBI Act, 1992 on the Noticees for the violations as specified in this order.

Name of the Noticee	Penal Provisions	Penalty(Rs.)/Violations
Surekha Venugopal Rao	Section 15H(ii) of the SEBI Act,1992 and Section 15A(b) of the SEBI Act, 1992	Rs. 11,00,000/- (Rupees Eleven lakhs only)
K S Venugopala	Section 15A(b) of the SEBI Act, 1992	Rs. 1,00,000/- (Rupees One lakh only)

26. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through 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.

27. The said demand draft or forwarding details and confirmations of e-payments made (in the format as given in table below) should be forwarded to "The Division Chief, Enforcement Department (EFD1 – DRA I), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

28. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings 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.

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

Date: December 16, 2022 **G RAMAR**

Place: Mumbai **ADJUDICATING OFFICER**