BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. AK/AO- 77 to 88 /2014]

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

In respect of

Shree A J Patel Charitable Trust(AAATA4352P), **Mr Ashok J. Patel**(AADPP5714D), **M/s. Millars Machinery Company Pvt. Limited** (AACCM3891Q), **Ms. Panna S. Patel** (AIVPP5474C), **Ms. Palomita Patel** (AAEPP5659E), **M/s. Skyline Millars Limited** (AAACT2755J), **Mr. Tarak A. Patel** (AADPP5712F), **Ms. Urmi A. Patel** (AADPP5711G), **Ms. Uttara V. Patel** (AADPP5713E), **M/s. Uttarak Enterprises Pvt. Limited** (AACA0979R), **Ms. Pragna S. Patel** (ABPPP2262F) and **Patel HUF** (AAHHP4235R)

In the matter of

M/s. GMM Pfaudler Limited

FACTS OF THE CASE

1. Shree A J Patel Charitable Trust, Mr Ashok J Patel, M/s Millars Machinery Company Pvt. Limited, Mrs Panna Patel, Ms. Palomita Patel, M/s Skyline Millars Limited, Mr Tarak A. Patel, Ms. Urmi A. Patel, Ms. Uttara V. Patel, M/s Uttarak Enterprises Pvt. Limited, Ms. Pragna Patel and Patel HUF (hereinafter referred to as the **"Noticees/ Indian Promoters"**) of M/s. GMM Pfaudler Limited (hereinafter referred to as **"The Company"**) is a company incorporated under the Companies Act. An offer document (letter of offer) was filed by M/s. National Oilwell Varco, Inc. (Acquirer) along with the person acting in concert Pfaudler Inc. (PAC) to acquire upto 38,00,550 shares of face value of Rs. 2/- each representing 26% of the diluted voting equity share capital. The public announcement for the same was made on 22.02.2013 and the shares of the Company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as BSE**)** only.

2. On perusal of the letter of offer**(hereinafter referred to as "LOO"**), SEBI observed that Noticees in the past had not complied/ complied with delay Regulation 8(2) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 **(hereinafter referred to as "Takeover Regulations, 1997"**) during the years 2004 to 2012. Further, Shree A. J. Patel Charitable Trust had additionally not complied Regulation 8(2) of Takeover Regulations, 1997 during the year 2003 as well and Ms. Pragna Patel and Patel HUF had additionally not complied Regulation 30 (2) read with Regulation 30 (3) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 **(hereinafter referred to as "Takeover Regulations, 2011"**). Based on the aforesaid information with respect to the non-compliance of Takeover Regulations, Adjudication proceedings under Chapter VI-A of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) were initiated against the Noticees under Section 15A(b) of SEBI Act to inquire into and adjudicate the alleged violation of the provision of 8(2) of the Takeover Regulations, 1997 and Regulation 30 (2) read with Regulation 30 (3) of Takeover Regulations, 2011.

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as Adjudicating Officer on August 16, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **"SEBI Rules"**) to inquire into and adjudge under Section 15A(b) of the SEBI Act for the alleged violation of Regulation 8(2) of Takeover Regulations, 1997 and Regulation 30 (2) read with Regulation 30 (3) of Takeover Regulations, 2011, as applicable, committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notices (hereinafter referred to as **"SCNs"**) Ref. No. EAD6/AK/VRP/30733/2013/4, EAD6/AK/VRP/30733/2013/5, EAD6/AK/VRP/30733/2013/6, EAD6/AK/VRP/30733/2013/7, EAD6/AK/VRP/30733/2013/8, EAD6/AK/VRP/30733/2013/9,

EAD6/AK/VRP/30733/2013/10, EAD6/AK/VRP/30733/2013/11, EAD6/AK/VRP/30733/2013/12, EAD6/AK/VRP/30733/2013/13, EAD6/AK/VRP/30733/2013/15 & EAD6/AK/VRP/30733/ 2013/16 dated 28.11.2013 were issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violations of Takeover Regulations, 1997 and/ or Takeover Regulations, 2011, as applicable. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15 A(b) of the SEBI Act for the alleged violations. The copies of status of compliance reports of each of the Noticees received from the Manager to the Offer were also sent along with the respective SCNs. The details of such instances of violation in respect of all the 12 Noticees as provided by the Manager to the Offer in the status of compliance document submitted to SEBI at the time of open offer are shown in the consolidated tabular form below:

Non-Compliance/ Delayed Compliance of Regulation 8(2) of Takeover Regulations, 1997													
Sr. No.	Due date of Compliance	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**	**J**	**K**	**L**
1	21.04.2003	NC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
2	23.06.2003	NC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
3	23.09.2003	NC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
4	08.03.2003	NC	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
5	21.04.2004	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
6	12.07.2004	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
7	07.12.2004	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
8	21.04.2005	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
9	10.06.2005	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
10	26.08.2005	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
11	01.12.2005	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
12	01.03.2006	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
13	21.04.2006	NA	NC	NA	NC	NC	NA	NA	NA	NA	NA	NC	NC
14	21.04.2007	3	NC	3	3	3	3	NC	NC	NC	3	3	NC
15	01.06.2007	NC	NC	NC	NC	NC	NC	NC	NC	NC	NA	NA	NC

Non-Compliance/ Delayed Compliance of Regulation 8(2) of Takeover Regulations, 1997													
Sr. No.	Due date of Compliance	**A**	**B**	**C**	**D**	**E**	**F**	**G**	**H**	**I**	**J**	**K**	**L**
16	07.09.2007	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA
17	07.12.2007	4	4	4	4	4	4	4	4	4	4	4	4
18	10.03.2008	NC	NC	NC	NC	NA	NA	NC	NC	NC	NA	NA	NA
19	11.03.2008	NA	NA	NA	NA	NC	NA	NA	NA	NA	NA	NC	NC
20	21.04.2008	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
21	23.05.2008	NA	NA	NA	NC	NA	NA	NA	NA	NA	NA	NC	NA
22	29.08.2008	4	4	4	4	4	4	4	4	4	NC	4	4
23	28.11.2008	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
24	06.03.2009	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
25	21.04.2009	3	3	3	3	3	3	3	3	3	3	NC	3
26	03.06.2009	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
27	03.09.2009	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
28	21.11.2009	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
29	03.03.2010	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
30	21.04.2010	3	3	3	3	3	3	3	3	3	3	NC	3
31	02.06.2010	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
32	03.09.2010	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
33	03.12.2010	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NA
34	04.03.2011	NA	NA	NA	NC	NC	NA	NA	NA	NA	NA	NC	NC
35	21.04.2011	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC	NC
36	03.06.2011	NA	NA	NA	NC	NC	NA	NA	NA	NA	NA	NC	NC
37	07.09.2011	5	5	5	5	5	5	5	5	5	5	5	NA
38	23.09.2011	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC
39	08.12.2011	2	2	2	91	2	2	2	2	2	2	2	NC
40	05.03.2012	2	2	2	NC	2	2	2	2	2	2	2	NC
Non-Compliance of Regulation 30(2) read with 30 (3) of Takeover Regulations, 2011													
42	21.04.2012	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NC	NC

Please see Note 1 and Note 2 below

Note 1

A	Shree A J Patel Charitable Trust	**G**	Mr. Tarak A. Patel
B	Mr. Ashok J Patel	**H**	Ms. Urmi A. Patel
C	M/s. Millar Machinery Co. Pvt. Ltd.	**I**	Ms. Uttara V. Patel
D	Ms. Panna S. Patel	**J**	M/s. Uttarak Enterprises Pvt Ltd.
E	Ms. Pomilata Patel	**K**	Ms. Pragna S. Patel
F	M/s. Skyline Millars Ltd.	**L**	Patel HUF

Note 2

NA denotes 'Not Applicable', NC denotes 'NO EVIDENCE-Not Complied'

Numbers/ figures denotes 'the number of days of delay in compliance'

5. The Company vide letter dated December 10, 2013 submitted that the Noticees, who are the Indian Promoters, have authorized the company to reply to the SCN. The necessary authorizations by the Noticees authorizing Mr. Dara J. Kalyaniwala VP-Investment Banking PL Capital Markets Pvt. Ltd and Ms. Mittal Mehta, Company Secretary of the company to represent them in the matter were filed. In the matter, the company has *inter alia* made the following submissions on behalf of the Noticees in respect of the alleged violation of Regulation 8(2):

5.1 *That the Noticees have complied with Regulation 8(2) and there is no case of violation of Takeover Regulations as alleged in the said Notice;*

5.2 That there has been an inadvertent delay ranging between 2-5 days in a few instances in respect of filing of the stipulated disclosure forms. The Promoters have requested to condone these minor delays as there has been a continuous compliance of the Takeover Regulations and that these delays are a fraction of the 43 disclosures made during the notice period i.e. from 31.03.2003 to 31.03.2012;

5.3 That there have been no changes in the shareholding of each promoter during the period 31.03.2003 and 31.03.2012, except sale of 0.14% of the shareholding by the Noticees to comply with Clause 40A of the Listing Agreement entered into with BSE. In view of the fact that no "commercial" trading by the Promoters has taken place over last 10 years, it has been requested to condone the few instances of minor delays;

5.4 That the due diligence exercise was conducted by Citigroup Global Markets India Pvt. Ltd. (hereinafter referred to as ***'Citigroup'****) over two days at the company's Mumbai Corporate & Sales Office and no advance information was provided by Citigroup regarding the nature of due diligence or the records that would be required by them for inspection. All non-current records of the Company, over one year old, are stored at a warehouse in Karamsad, Gujarat where the Company's registered office is situated. Therefore all the non-current files, including the files containing the records of SEBI Takeover Regulations, could not be produced during the due diligence exercise, however, the copies of the disclosure of Promoters under the Takeover Regulations as per the list contained in the SCNs are available and can be provided for inspection, if required.*

6. In the interest of natural justice and in terms of rule 4(3) of the SEBI Rules, the Noticees were granted an opportunity of hearing on January 15, 2014 vide notice dated January 03, 2014. The said notice was duly acknowledged by the Noticees. Accordingly, Mr. Dara J. Kalyaniwala VP-Investment Banking PL Capital Markets Pvt. Ltd and Ms. Mittal Mehta, Company Secretary of the company (hereinafter referred to as **"ARs"**), appeared on January 15, 2015 on behalf of the Noticees and reiterated the submissions made vide reply dated December 10, 2013. At the time of hearing, they further submitted letter dated January 15, 2014 *inter alia* stating that the Indian Promoters (Noticees) had complied with regulation 8(2) of SAST Regulations and there is no case of violation of Takeover Regulation. The ARs submitted copies of disclosures, forms etc. filed by the Noticees with the company in support of their claim. It was, however, noted and recorded in the Minutes that there was no acknowledgement of receipt of the said documents by the company.

7. During the hearing, the ARs further informed that wherever SCN's indicated "*No Evidence-Not Complied*" for a particular year against the Noticees name, each of the Noticees were able to provide evidence regarding filing made by them with the company during the relevant years. The ARs also submitted that in respect of Noticee Promoter Ms. Panna S. Patel, the actual date of compliance 08.03.2012 was erroneously put by the Manager to the Offer against due date 08.12.2011, instead of putting against 05.03.2012, as such for due date 05.03.2012, the delay is of 3 days as against "*No Evidence*" claimed in the SCN issued. The ARs submitted that the company had given the correct data to the Manager to the Offer, however, there appears to be a typographical error at the end of Manager to the Offer while submitting the information to SEBI. It was further submitted that as regards due date 08.12.2011, the disclosure was made with delay of 2 days, instead of 91 days. The ARs also informed that company had been regularly declaring interim dividend every quarter for three quarters and final dividend at year end, hence there were four dividend declarations every year, which together with the disclosures as of March 31, meant that promoters were required to make five

disclosures every year. The ARs, hence, requested for leniency in considering delays of submissions by the Promoters.

8. Vide letter dated January 15, 2014 submitted at the time of hearing, the company has reiterated the submissions earlier made vide letter dated December 10, 2013 and provided the copies of the disclosures/ forms made by the Noticees to the company under Takeover Regulations, 1997/ 2011 with respect to the alleged violations.

9. The Noticees vide letter dated January 23, 2014, pursuant to hearing, submitted the following statements:

9.1 Statements reflecting updated Noticee-wise status of compliance of Regulation 8(2) of Takeover Regulations, 1997 by the Noticees as per the Company's records;

9.2 Statements of Noticee-wise changes in shareholding, including inter-se transfer amongst promoters along with the copy of the supporting documents submitted to BSE;

9.3 Statements of quarterly shareholding pattern of the Company from 2003 to 2013 downloaded from BSE website.

10. The said letter dated January 23, 2014 further *inter alia* submitted as follows:

10.1 that no action has been taken against any of the Noticees/ Indian Promoters by SEBI;

10.2 that the company was paying three quarterly dividends and a final dividend every year since 2003, hence there was a requirement of making a total of 5 disclosures per year under Regulation 8(2) of Takeover Regulations, 1997 and for a total of 12 Noticees/ Indian Promoters, it was 540 disclosures over a period of 9 years;

10.3 that under the Takeover Regulations, 2011, the disclosure of shareholdings by Promoters is required to be made only on an annual basis and not as on record date for dividend. In view of the fact that the new Regulations have also recognized that disclosures by promoters on an annual basis is sufficient, and most of the delays by the Noticee Indian Promoters in the past were related to the various record dates for interim dividends, the company on behalf of the Noticee Indian Promoters has inter alia requested that delays *in the past for disclosures as on record date for four interim dividends per year declared since 2003 should be looked at leniently;*

10.4 *that further in case of one of the promoters Ms. Panna S. Patel, for the due date of 05.03.02012, the actual date of compliance was 08.03.2012 and not 08.12.2011 as marked by Citigroup during the due diligence examination for the open offer, as such the actual delay is only of 3 days and not 91 days, which can be independently confirmed by Citigroup.*

CONSIDERATION OF ISSUES

11. I have carefully perused the written submissions of the Noticees and the documents available on record. It is observed that the allegation against the Noticees is that they have failed to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the years 2004 to 2012, as applicable, within the stipulated time. Further, Shree A. J. Patel Charitable Trust had in addition not complied Regulation 8(2) of Takeover Regulations, 1997 during the year 2003. Also, Ms. Pragna Patel and Patel HUF, in addition to having failed to make the relevant disclosure under the provisions of Regulation 8(2) of the Takeover Regulations for the years 2004 to 2012, as applicable, within the stipulated time, had not complied with Regulation 30 (2) read with Regulation 30 (3) of Takeover Regulations, 2011 in the year 2012.

12. The issues that, therefore, arises for consideration in the present case are:

12.1 Whether the Noticees had violated the provision of Regulation 8(2) of the Takeover Regulations, 1997 during the years 2004 to 2012, as applicable? In case of Noticee Indian Promoter Shree A J Patel Charitable Trust, whether it had additionally violated regulation 8(2) of the Takeover Regulations, 1997 during the year 2003? Similarly whether Noticee Indian Promoters viz. Ms. Pragna Patel and Patel HUF, in addition to violating the provision of Regulation 8(2) of the Takeover Regulations, 1997 during the years 2004 to 2012, as applicable, had also not complied with Regulation 30 (2) read with Regulation 30 (3) of Takeover Regulations, 2011 during the year 2012?

12.2 Does the violation, if any, as aforesaid, attract monetary penalty under Section 15 A(b) of SEBI Act?

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

FINDINGS

13. Before moving forward, it is pertinent to refer to the provisions of Regulation 8(2) of Takeover Regulations, which reads as under:

Regulation 8 (2) of Takeover Regulation 1997:

Continual disclosures.

8. (2) *A promoter or every person having control over a company shall, within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by him and by persons acting in concert with him, in that company to the company.*

Regulation 30 (2) read with 30 (3) of Takeover Regulation 2011:

Continual disclosures.

30(1).....

(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.

(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.

14. The first issue for consideration is whether the Noticees were required to make the relevant disclosures under the provisions of Regulations 8(2) of the Takeover

Regulations. I find from the Letter of Offer filed by the Acquirer along with the PAC before SEBI that the Noticees were the Promoters of the company. Besides, I find that the Noticees have also not disputed the said fact and have admitted that they represented the Indian Promoter Group. Thus, it follows that the Noticees being promoters of the company were required to make the relevant disclosures under the provisions of Regulation 8(2) of the Takeover Regulations, 1997 and under Regulation 30(2) read with 30(3) of Takeover Regulations, 2011, as applicable.

15. The next issue for consideration is whether the Noticees have violated the provisions of Regulations 8(2) of the Takeover Regulations, 1997 for the years 2004 to 2012, as applicable, whether the Noticee Indian Promoter viz. Shree A J Patel Charitable Trust has additionally violated regulation 8(2) of the Takeover Regulations, 1997 for the year 2003 as well, and, whether Noticee Indian Promoters viz. Ms. Pragna Patel and Patel HUF, in addition to violation of the provisions of Regulations 8(2) of the Takeover Regulations, 1997 for the years 2004 to 2012, as applicable, have also not complied with Regulation 30 (2) read with Regulation 30 (3) of Takeover Regulations, 2011 in the year 2012.

16. In respect of the alleged non-compliance of regulation 8(2) of Takeover Regulations, 1997 by the Noticees, the Noticees being the promoters of the company were required within 21 days from the financial year ending March 31, as well as the record date of the company for the purposes of declaration of dividend, disclose the number and percentage of shares or voting rights held by them and by persons acting in concert with them, in that company to the company. Further, in respect of the alleged non-compliance of regulation 30(2) read with Regulation 30(3) of Takeover Regulations, 2011, the Noticee Indian Promoters viz. Ms. Pragna Patel and Patel HUF were required to disclose together with persons acting in concert with them, their aggregate shareholding and voting rights as of the thirty-first day of March, in such target company, to the target company and the stock Exchanges where the shares were listed, in such form as may be specified.

17. I note from the reply submitted by the company on behalf of the Noticees/ Indian Promoters that the company was paying three quarterly dividends and a final dividend every year since 2003. Hence, under Regulation 8(2) of the Takeover Regulations, 1997, the Noticees, I find, were required to file disclosures for each of the four record dates every year for the dividends declared, in addition to the disclosure for year ending March 31 every year. Hence, I note that there was a requirement for making in all five disclosures per year under Regulation 8(2) of Takeover Regulations, 1997.

18. The status of compliance as submitted by the Manager to the offer in respect of all the 12 Noticees/ Indian Promoters is stated in the table at Para (4) above. In the said table, where the Noticees had not provided the disclosure copies to the Manager to the Offer, in those cases it has been mentioned as 'NC'. 'NC' specifies *"No Evidence-Not Complied"*. The company on behalf of these Noticees vide its replies dated January 15, 2014 and January 23, 2014 as well as at the time of hearing have claimed that wherever SCNs indicated "No Evidence-Not Complied" for a particular year against the Noticees name, each of the Noticees were able to provide evidence regarding filing made by them with the company during the relevant years, as such, the Noticees/ Indian promoter group have complied with Regulation 8(2) and there is no case of violation of Takeover Regulations, 1997/2011, as applicable and alleged in the SCNs. The copies of the disclosures made by the 12 Noticees to the company under Regulation 8(2) of the Takeover Regulations, 1997/ 30(2) read with 30(3) of Takeover Regulations, 2011, as applicable, with respect to instances of non/ delayed compliances, have been submitted by the ARs at the time of the hearing. On perusing the said set that was handed over at the time of hearing by the ARs on behalf of the Noticees along with letter dated January 15, 2014, it was observed that the copies showing submissions made by each of the Noticees with respect to instances of non-compliances, did not bear any stamp or acknowledgement of receipt of the documents by the company. Thus, it was noted in the minutes of the hearing that there was no acknowledgement of receipt of the said documents by the company.

19. Subsequent to the same, vide letter dated January 23, 2014, I find that the company on behalf of the Noticees has submitted a statement reflecting updated Noticee promoter-wise status of compliance of Regulation 8(2) of Takeover Regulations, 1997 by the Noticees/ Indian Promoters as per the company's records. From a perusal of the said statement, it is observed that the statements indicate for each of the 12 Noticees/ Indian Promoters, the due date of compliance, the actual date of compliance and the status of compliance such as '*Complied/ Delayed Comp*liance' in respect of Regulation 8(2) of Takeover Regulations, 1997 and/ or Regulation 30(1) & (2) of Takeover Regulations, 2011, as applicable, for the periods ranging from 2003 to 2012, as applicable. I further note that each of the statements submitted as aforesaid along with the company's letter dated January 23, 2014 have been stamped by the company and initialled without the date, name and designation of the person initialling the same.

20. The statements submitted as aforesaid by the company along with the company's letter dated January 23, 2014 on behalf of the 12 Noticees/ Indian Promoters pertains to the years from 2003 to 2012. For the applicable due dates under Regulation 8(2), wherever the SCNs on behalf of the 12 Noticees had alleged "*No Evidence-Not Complied*", the company in the statement submitted along with letter dated January 23, 2014 has indicated as "*Complied*" in most of the instances. In a few instances, the same have been updated from "*No Evidence-Not Complied*" to indicate delayed compliance. However, I find that such compliance statement submitted by the company is not accompanied by any supporting evidence that could confirm that the disclosures were indeed received by the company from the Noticees within the stipulated time or with delay as indicated in the said statement. It is pertinent to note here that the copies of actual submissions made by each of the Noticees to the company with respect to instances of alleged violation of Regulation 8(2) of Takeover Regulations, 1997, as provided at the time of hearing, also do not bear any stamp or acknowledgement of receipt of the documents by the company at the relevant point of time.

21. The company, on behalf of the Noticees, cannot by merely filing at the adjudication stage statements giving the actual dates of compliance, claim that the Noticees had complied with Regulation 8(2) and that there is no case of violation of Takeover Regulations, 1997 as alleged, except inadvertent delay ranging between 2-5 days in a few instances. The corroborative evidence required to support the claim made by the company on behalf of the Noticees that the disclosures were indeed made by the Noticees to the company within the stipulated time, must have a high degree of probative value to elevate that claim and evidence to the level of credibility reflected by a record made within the stipulated time of disclosure, supported by sufficient documentary evidence. The same assumes significance due to the fact that such disclosures under Regulation 8(2) of Takeover Regulations, 1997 were not required to be submitted by the Noticees to the concerned stock Exchange(s)/ SEBI, but, only to the company. Further, I note that in respect of Noticee Indian Promoters viz. Ms. Pragna Patel and Patel HUF, wherein alleged violation was Regulation 30 (2) read with 30 (3) of Takeover Regulations, 2011 for the year 2012, the same was required to be filed both with the company and the Exchange. Though the company in the updated promoter Noticee-wise statements submitted along with the company's letter dated January 23, 2014 has indicated as "*Complied*" for the year 2012, it has neither provided any supporting evidence that could confirm that the disclosures were indeed received by the company from the said two Noticees within the stipulated time, nor, provided any documentary evidence regarding BSE having received the said disclosure within the stipulated time.

22. Hence, in determining where the preponderance of evidence on the issue lies, in respect of documents which were required to be submitted solely to the company by the promoters, it is necessary to consider all the facts and circumstances of the case. In the instant case, I understand from the company's reply that all non-current records of the company, over one year old, are stored at a warehouse in Karamsad, Gujarat where the company's registered office is situated. Therefore all the non-current files, including the

files containing the records of SEBI Takeover Regulations, could not be produced during the due diligence exercise conducted by the Manager to the Offer. However, I find that the same could have been called for and produced subsequently. I note that the Public Announcement with respect to the Offer by the Acquirer along with PAC was made on February 22, 2013, the draft letter of Offer was filed by the Manager to the Offer with SEBI on March 06, 2013, the date of receipt of comments from SEBI on the draft letter of Offer was April 02, 2013, the last date by which the Letter of Offer was to be dispatched to the shareholders was April 12, 2013 and the last date of filing final report with SEBI was May 28, 2013. Thus, I note that there was enough time available on hand with the company to call out the records stored at their warehouse in Karamsad, Gujarat and provide it to the Manager to the Offer atleast before the last date of filing final report with SEBI. However, neither the company nor the Noticees, I find, have provided any evidence to show that they had indeed sought for more time from the Manager to the Offer for carrying out the due diligence to furnish the necessary compliance status. The company failed to produce the records to the Manager to the Offer at the time of due diligence and even subsequently thereof. The company thereafter too neither produced any evidence to the Manager to the Offer nor to SEBI about compliance made, if any, by the Noticees with respect to the alleged violations. It was only at the time of hearing on January 15, 2014, pursuant to issue of SCNs dated November 28, 2013 that the company on behalf of the Noticees for the first time produced unacknowledged copies of submissions made by the Noticees to the company with respect to the alleged violations. It was, hence, recorded in the Minutes that there was no acknowledgement of receipt of the said documents by the company. Subsequent to the same, vide letter dated January 23, 2014, I find, that the company on behalf of the promoter Noticees provided updated compliance statement in respect of each of the 12 promoter Noticees providing the actual date of compliance of Regulation 8(2) of Takeover Regulations, 1997 and/ or Regulation 30(1)/ 30(2) of Takeover Regulations, 2011, as applicable, vis-à-vis the due dates from 2003 to 2012, wherever alleged. However, no supporting documentary evidence based on which the company prepared updated statements, showing that the Noticees had complied with Regulations 8(2) of Takeover Regulations, 1997/ Regulation 30(2) read with 30(3) of Takeover Regulations, 2011, as applicable, has been provided.

23. Here I would like to mention that a document which is submitted by the promoters solely to the company, if not produced by the company within a fairly reasonable period of time when sought by the Manager to the Offer and even subsequently thereof, but, is produced only at the adjudication stage, raises doubt as to whether the document was actually in place at the relevant point of time. Besides, these documents were to be submitted by the promoters solely to the company. Hence, such documents need to be backed by adequate corroboration justifying its existence at the relevant point of time. The copies of actual submissions made by the Noticees, for the period from 2003 to 2012, as produced by the ARs at the time of hearing, did not have any documentary evidence that could reveal when the same was actually received at the company's end within the stipulated time. Neither the company representing on behalf of the Noticees has been able to provide any supporting documentary proof indicating receipt of the Noticees disclosures by the company at the relevant point of time, based on which company could ascertain the actual dates of compliances by all the 12 Noticees for the entire period ranging from 2003 to 2012. The same as per company's own reply involved 540 disclosures over a period of nine years for a total of 12 Noticee promoters. Hence a mere statement by the company submitting the actual dates of compliance by the Noticees as against the allegations in the SCN viz. "*No Evidence-Not Complied*", without any proper supporting documentary proof, cannot be taken on record at face value. Besides, I note that though the company has claimed that all non-current records of the company over one year old, including the files containing the records of SEBI Takeover Regulations, were stored at a warehouse in Karamsad, Gujarat, the status of compliance submitted by the Manager to the Offer to SEBI did indicate some instances of compliance/ delayed compliance by the Noticees during 2003-12. In view of the difficulties expressed by the company in retrieving the past records, it is not possible to

comprehend as to how the company could provide the compliance status to the Manager to the Offer at the time of due diligence in some instances and could not provide in some others.

24. Further, in respect of one of the Noticees viz. Ms. Panna S. Patel, it was alleged in the SCN as "*No Evidence-Not Complied*" for due date 05.03.2012. Also, for the same Noticee, against due date 08.12.2011, the actual date of compliance was stated as 08.03.2012. The company representing on behalf of the Noticees has submitted that for the due date of 05.03.2012, the actual date of compliance was 08.03.2012, thus, the actual delay is only 3 days and the same can be independently verified from the Manager to the Offer. I note here that the Manager to the Offer Citigroup Global Markets India Pvt. Ltd. (hereinafter referred to as '**Citigroup'**) has vide email dated May 22, 2014 confirmed that in respect of due date 05.03.2012, the actual date of compliance was 08.03.2012. I, therefore, accept this contention of the Noticee and take on record that for the Noticee Ms. Panna S. Patel, in respect of due date 05.03.2012, as against "*No Evidence-Not Complied*" alleged in the SCN, there is actually a delayed disclosure of 3 days under the Takeover Regulation, 1997.

25. Thus, on a preponderance of facts and evidence before me, I conclude that except for the aforesaid one instance, the Noticee-wise allegations as enumerated at table under Para 4 above stands established, as the Noticees could not provide documentary evidence proving otherwise. I am, therefore, not inclined to take on record the status reflecting updated promoter Noticee-wise status of compliance of Regulation 8(2) of Takeover Regulations, 1997/ Regulation 30(2) of Takeover Regulations, 2011 submitted by the company on behalf of the Noticees vide letter dated January 23, 2014.

26. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund* [2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such*

violation becomes wholly irrelevant…". Further in the matter of Ranjan Varghese v. SEBI (Appeal No. 177 of 2009 and Order dated April 08, 2010), the Hon'ble SAT had observed *"Once it is established that the mandatory provisions of takeover code was violated the penalty must follow*.

27. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15A(b) of the SEBI Act, which reads as under:

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 therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less.

28. While determining the quantum of monetary penalty under Section 15 A(b), I have considered the factors stipulated in Section 15-J of SEBI Act, 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.

29. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such default by the Noticees. Further from the material available on record, it may not be possible to ascertain the exact monetary loss to the investors on account of default by the Noticees. However, the main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. The Regulation seeks to achieve fair treatment by *inter alia* mandating disclosure of timely and adequate information to enable shareholders to make an informed decision and ensuring that there is a fair and informed market in the shares of companies affected by such change in control. Correct and timely disclosures are also an essential part of the proper functioning of the securities market and failure to do so results in preventing investors from taking well-informed decision. Thus, the cornerstone of the Takeover regulations is investor protection.

30. As per Section 15A (b) of the SEBI Act, the Noticee is liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty. It is noted that no quantifiable figures are available to assess the disproportionate gain or unfair advantage made as a result of such non-compliance by the Noticee. Further from the material available on record, it is not possible to ascertain the exact monetary loss to the investors on account of non-compliance by the Noticee. Also, the Noticee has stated that no action has been taken or proceedings initiated against the Noticee in the past, for any offence with respect to Takeover Regulations or Insider Trading Regulations, except for the present adjudication proceeding contemplated under the subject notice.

31. In addition to the aforesaid, I am also inclined to consider the following mitigating factors while adjudging the quantum of penalty: a) the paid-up capital/ market capitalization of the company at the relevant point of time; b) the trading volumes of the company's shares on BSE, where the shares were listed, during the relevant period; c) the change in the Noticee's shareholding, if any, during the relevant period; and d) the number of occasions in the instant proceeding that the Noticees have violated the relevant provisions of the Takeover Regulations.

32. The market capitalization of the company during the relevant period was in the range of about Rs. 100-140 crore. I note that the average daily traded volume during the relevant period was about 6,000 shares. I further note that the company on behalf of the Noticees has submitted that except for sale of 0.14% of the shareholding by the Noticees to comply with Clause 40A of the Listing Agreement entered into with BSE, there has been no changes in the shareholding of the promoter Noticees during the period 31.03.2003 and 31.03.2012. In view of the reasons explained in the aforesaid paras, it is established that the Noticees have violated regulation 8(2) of the Takeover Regulations, 1997 and/ or Regulation 30(2) read with 30(3) of Takeover Regulations, 2011, as applicable, on the following occasions:

Sr. No.	Names of the Noticees	Takeover Regulations, 1997	Takeover Regulations, 2011
		Number of occasions violated Regulation 8(2)	Number of occasions violated Regulation 30(2) read with 30(3)
1	Shree A J Patel Charitable Trust	24	NA
2	Mr. Ashok M Patel	20	NA
3	M/s Millar Machinery Co. Pvt. Ltd	20	NA
4	Ms. Panna Patel	24	NA
5	Ms. Pomilata Patel	23	NA
6	M/s. Skyline Millars Ltd.	19	NA
7	Mr. Tarak A. Patel	20	NA
8	Ms. Urmi A. Patel	20	NA
9	Ms. Uttara V. Patel	20	NA
10	M/s. Uttarak Enterprises Pvt Ltd.	18	NA
11	Ms. Pragna S. Patel	32	1
12	Patel HUF	23	1

33. Further, I note that the Noticees vide letter dated January 23, 2014 has *inter alia* stated that under the Takeover Regulations, 2011, the disclosure of shareholdings by Promoters is required to be made only on an annual basis and not as on record date for dividend, and, most of the delays by the Noticees in the past were related to the various record dates for interim dividends, hence they should be looked at leniently. I note that the SCNs *inter alia* alleged that each of the 12 Noticees had not complied with Regulation 8(2) of Takeover Regulations, 1997 as on annual basis in the years 2004, 2005, 2008 and 2011. Again, I note that the SCNs alleged that Noticees *inter alia* either did not comply or complied with delay under Regulation 8(2) of Takeover Regulations, 1997 for the years 2007, 2009 and 2010 on an annual basis. With respect to all of these aforesaid years where the SCNs alleged violation of Regulation 8(2) of Takeover Regulations, 1997, I note that the Noticees could not provide documentary evidence proving otherwise. Hence, the contention of the Noticees that most of the delays by the Noticees in the past were related to the various record dates for interim dividend is not factually correct. The Noticees, I find, had violated Regulation 8(2) of Takeover Regulations, 1997 on annual basis as well as on record dates of dividend during the relevant periods. Such non-compliance/ delayed compliance with disclosure requirements by the promoters of a listed company undermines the regulatory objectives and jeopardizes the achievement of the underlying policy goals.

ORDER

34. After taking into consideration all the facts and circumstances of the case, I impose the following penalties on the Noticees under Section 15 A(b) which will be commensurate with the violations committed by the Noticees:

Sr. No.	Names of the Noticees	Penalty Amount (in Rs.)
1	**Shree A J Patel Charitable Trust**	**12,00,000**
2	**Mr. Ashok M Patel**	**10,00,000**
3	**M/s. Millar Machinery Co. Pvt. Ltd**	**10,00,000**
4	**Ms. Panna Patel**	**12,00,000**
5	**Ms. Pomilata Patel**	**11,50,000**
6	**M/s. Skyline Millars Ltd.**	**9,50,000**
7	**Mr. Tarak A. Patel**	**10,00,000**
8	**Ms. Urmi A. Patel**	**10,00,000**
9	**Ms. Uttara V. Patel**	**10,00,000**
10	**M/s. Uttarak Enterprises Pvt Ltd.**	**9,00,000**
11	**Ms. Pragna S. Patel**	**16,00,000**
12	**Patel HUF**	**11,50,000**

35. The Noticees shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Shri V S Sundaresan, Chief General Manager, Corporation Finance Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

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

Date: **May 30, 2014** **Anita Kenkare**
Place: **Mumbai** **Adjudicating Officer**