BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/PM/PA/2022-23/18117-18124

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

In respect of:

Noticee no.	Name	PAN
1.	D&A Financial Services (P) Limited	AACCK3299G
2.	Sudhir Kumar Jena	AASPS2187G
3.	Ramgopal Lakshmi Ratan	AACPL7593F
4.	Keshav Narayan Kantamneni	AMKPK0279R
5.	Parul Satyan Bhatt	AAFPB8439B
6.	Reena Bathwal	AEUPM2065H
7.	Nazeer Azam Sulthan	ALEPN1421F
8.	Narendra Kumar Jain	AAWPJ8716G

In the matter of Uniply Industries Ltd.

*(Noticees 1 to 8 are individually known by their respective name or Noticee no. and collectively referred to as the "**Noticees**")*

A. BACKGROUND

1. Uniply Industries Limited (hereinafter referred to as "**Uniply**") is listed on BSE Limited (hereinafter referred to as "**BSE**") and National Stock Exchange of India Limited (hereinafter referred to as "**NSE**"). Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an examination with respect to a public announcement (hereinafter referred to as "**PA**") made for acquisition of 4,94,66,068 equity shares constituting 26% share capital of Uniply *vide* letter dated July 03, 2019 by Merchant Bankers D&A Financial Services (P) Limited under the relevant provisions of SEBI (Substantial

Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as “**Takeover Regulations**”).

2. D&A Financial Services (P) Limited was appointed as manager to the open offer by M/s Markab Capital WLL (hereinafter referred to as “**Acquirer 1”**) and M/s Markab India SPV Private Limited (hereinafter referred to as “**Acquirer 2”)** (Acquirer 1 and 2 are collectively referred to as “**Acquirers**”) for acquiring the aforesaid shares pursuant to the share purchase agreement (“**SPA**”) signed between the Acquirers and Mr.Keshav Kantamneni , M/s KKN Holdings Private Limited & M/s Madras Electronic Solutions Private Limited (hereinafter referred to as “**Sellers**”). Ahmad Mohammad AA Al Omani was the person in control of Acquirer 1. Noticee 7, Uday Narayan Joshi and Komandur Rajgopalan Ravi Kumar were the Directors of Acquirer 2.

3. It was observed that pursuant to the PA, detailed public announcement (hereinafter referred to as “**DPS**”) was not published due to non-deposit of required amount in the escrow account by the Acquirers. Later, the Acquirers failed to complete the open offer process under the Takeover Regulations. In view of the above, it was observed that Noticee 1, as manager to the open offer, had failed to perform the responsibilities casted on it under regulation 27(1) of the Takeover Regulations.

4. Further, it was observed that by appointing Mr. Nazeer Azam Sulthan, Director of Acquirer 2, on the Board of Directors of Uniply, Noticees 2 to 8 had violated regulation 24(1) of the Takeover Regulations.

5. In light of the observations mentioned above, SEBI initiated adjudication proceedings with respect to the Noticees.

B. APPOINTMENT OF ADJUDICATING OFFICER

6. Pursuant to the examination, SEBI initiated adjudication proceedings against the Noticees and appointed the undersigned as the adjudicating officer *vide* order dated February 08, 2021 under section 19 of the Securities and

Exchange Board of India, Act, 1992 (hereinafter referred to as "**SEBI Act**") read with sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") to inquire into and adjudge under section 15HB of the SEBI Act for the aforesaid alleged violations by the Noticees.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

7. A show cause notice (hereinafter referred to as "**SCN**") bearing reference no. SEBI/HO/EAD-8/PM/SM/10752/1/2021 dated May 24, 2021 was served on the Noticees under rule 4 of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held against them in terms of rule 4 of the SEBI Adjudication Rules and penalty should not be imposed for the violation alleged to have been committed by them. In the SCN, the Noticees were asked to indicate whether they would prefer a personal hearing before the adjudicating officer in the matter. I note that the SCN was duly served on the Noticees.

8. The allegations levelled against the Noticees in the SCN are summarized below as follows:

8.1 Acquirer 2 is the wholly owned Indian subsidiary of Acquirer 1. Ahmad Mohammad AA Al Omani is the person in control of the Acquirer 1. Noticee 7 and Uday Narayan Joshi were the Directors of the Acquirer 2.

8.2 A PA for making open offer was received by SEBI through the merchant banker *i.e.,* Noticee 1 on behalf of the Acquirers for acquisition of 4,94,66,068 equity shares constituting 26% equity shares from the shareholders of Uniply on July 03, 2019. The PA was made by the Acquirers pursuant to the SPA signed between the Acquirers and the Sellers. The SPA was executed on July 03, 2019, wherein the Acquirers agreed with the Sellers to acquire 34,22,33,835 equity shares constituting 20.71% of the total existing paid up equity share capital and 32,32,954 warrants of Rs. 10 each upon full conversion into equity share capital resulting into 1,61,64,770 equity shares of face value of Rs. 2 each, constituting 8.50% of the emerging capital of Uniply along with complete control and management of Uniply.

8.3 Noticee 1 *vide* its email sent on July 10, 2019 informed to SEBI that pursuant to the PA, a DPS as prescribed under regulation 13(4) of the Takeover Regulations was required to be published within five working days *i.e.*, on July 10, 2019. However, due to non-deposit of required amount by the Acquirers in the escrow account in terms of regulation 17 of the Takeover Regulations, the DPS could not be published.

8.4 Noticee 1 further *vide* its email sent on July 29, 2019 also informed SEBI that despite various assurances given by the Acquirers, the escrow requirements as specified in regulation 17 of the Takeover Regulations were not complied by the Acquirers so far, therefore the DPS could not be released as per the schedule. Subsequently, Noticee 1, *vide* its letter dated August 23, 2019 informed SEBI about withdrawal of its consent to act as manger to the offer and termination of memorandum of understanding (hereinafter referred to as "**MoU**") entered between the Acquirers and Noticee 1 dated July 03, 2019 due to breach committed by the Acquirers of the conditions of MoU. In this backdrop, several meetings were held with Noticee 1 by SEBI and *vide* letter dated August 26, 2019, Acquirers and Noticee 1 were advised to urgently take necessary steps to conclude the pending open offer and ensure compliance in expeditious manner. Acquirers were also called upon for meeting by SEBI through various emails, however, Acquirers did not attend the said meetings.

8.5 In view of the failure by Acquirers to deposit the escrow amount in terms of Takeover Regulations, it was alleged that Noticee 1, as manager to open offer, defaulted in its duties while making PA on behalf of the Acquirer to ensure that Acquirer is able to complete the open offer and has firm arrangements of funds through verifiable means to meet the payment obligations under the open offer. Therefore, it was alleged that Noticee 1 has violated regulation 27(1) of Takeover Regulations.

8.6 Uniply on August 14, 2019 disclosed to the stock exchanges that it has appointed Noticee 7 as Director in Uniply with effect from August 14, 2019 and further he was to be appointed as Managing Director of Uniply with effect from September 16, 2019. Noticee 7 was the Director and the representative of Acquirer 2 at the time of making PA. It was observed that appointment of Noticee 7 was made without depositing in cash (entire consideration payable under the open offer) by the Acquirers in the escrow account. Therefore, it was alleged that the aforesaid appointment was made in contravention of regulation 24(1) of Takeover Regulations. In this respect, SEBI *vide* email sent on September 06, 2019 sought comment from Uniply. In its response, Uniply *vide* its letter dated September 09, 2019, submitted that on the date of the appointment of Noticee 7 as a Director, he had already resigned from the board of Acquirer 2 and he was neither a Director on the board of Acquirer 2 nor a person acting in concert with the Acquirers. Thus, his appointment was not in contravention of regulation 24(1) of Takeover Regulations. It was observed that Noticee 7 was appointed as a representative of Acquirers on the board of Uniply, due to which Noticee 2 to 8, as Directors of Uniply, had failed to fulfil their obligation and allegedly violated regulation 24(1) of the Takeover Regulations.

9. The details of the replies received and hearing given to each of the Noticees are given below:

9.1 <u>Noticee 1</u>

9.1.1 *Vide* email sent on June 07, 2021, Noticee 1 requested for an extension of 3 months' time to submit its reply due to human resources issues. Pursuant to the aforesaid email, extension was granted till July 10, 2021.

9.1.2 *Vide* email sent on July 08, 2021, Noticee 1 submitted its reply to the SCN. Further, the additional submissions of Noticee 1 were received *vide* letter sent on June 28, 2022. The aforesaid replies have been summarized below for convenience:

(i) Noticee 1 denies that it had violated regulation 27(1) of Takeover Regulations.

(ii) The observations in the SCN do not establish any non-compliance or profit derived by Noticee 1. Non-compliances, if any, pertain to acts of acquirers, while the role of Noticee 1 as manager to the open offer was limited to the verification/diligence of means of finance available with acquirer to complete the offer before making a public announcement and proceeding further with implementation of open offer. Noticee 1 has discharged its obligations as given under Takeover Regulations.

(iii) Noticee 1 has acted professionally and undertook every diligent step required as a responsible merchant banker while dealing with the open offer. Noticee 1 kept SEBI, BSE and NSE informed at every step which is explained in detail in the subsequent paragraphs.

(iv) Post its discussion with the authorized representative of the acquirer, and upon satisfying itself of the transactions and financial capability of the acquirers to complete the transaction which included ensuring the availability of liquid funds with acquirers, Noticee 1 issued a PA regarding the proposed acquisition on July 03, 2019 in compliance with regulation 13 read with regulations 3(1) and 4 of Takeover Regulations to the shareholders of Uniply through BSE and NSE at 7 :26 pm.

(v) As part of Noticee 1's diligence, *inter alia* following records obtained and verified before making PA related to Acquirers:

    (a) Certified copy charter/incorporation documents (both in arabic language and translated english language) of Acquirer 1.

    (b) Certified copy of the balance sheet of Acquirer 1 for year ending December 31, 2018 and December 31, 2017.

(c) Details of Directors of Acquirer 1:

(a) Ahmad Mohammed AA Al Omani.

(b) Spencer John Wilson.

(vi) Declaration from Acquirer 1 regarding the number of subsidiaries and special purpose vehicle. These details were also cross checked/verified with the details disclosed in the audited balance sheet for year ending December 31, 2017 and 2018.

(vii) Copy of net worth certificate dated July 03, 2019 received from statutory auditor M/s Al Mustashar Al Kuwaiti Accounts Auditing (license no 97A CPA) who confirmed that as on July 03, 2019, the net worth of Acquirer 1 is Kuwaiti Dinar 79,010,011 and out of the above, Acquirer 1 has liquid assets of Kuwaiti Dinar 33,065,250. The said certificate further stated that Acquirer 1 has sufficient liquid funds to meet its obligation under the open offer to be made to the shareholders of Uniply. Value of net worth in rupee terms was Rs 1792.10 crores and the liquid assets amounted to Rs 750.00 crores, considering currency rate of 1 Kuwaiti Dinar as Rs 226.82. The total obligation in the open offer to the shareholders was aggregated to Rs. 405.62 crores and the obligations in terms of SPA was aggregated to Rs. 313.85 crores. The liquid assets of Rs. 749.99 crores were considered sufficient to cover the obligations under the open offer and the SPA.

(viii) Copy of net worth certificate dated July 03, 2019 from M/s V.C. Venkatasubramanian & Co. bearing UDIN: 19207809AAA8D2845, who confirmed that as on July 03, 2019, net worth of Acquirer 2 was Rs. 10,00,000.

(ix) Information available in public domain with respect to Acquirer 1 such as presentation of Gulf US Capital US Share Fund of which Acquirer 1 is a part of.

(x) With respect to Acquirer 2, *inter alia* following documents were obtained and verified:

(a) Memorandum of association, articles of association and certificate of incorporation.

(b) Copy of resolution for transfer of shares in the name of Acquirer 1.

(c) Copy of duly executed share transfer deeds and duly certified register of members.

(d) Certified true copy of resolution dated June 17, 2019 passed by Acquirer 1 for acquisition of shares Acquirer 2 and to acquire/invest in companies through Acquirer 2.

(e) Certified true copy of the resolution dated June 20, 2019 authorizing Nazeer Azam Sulthan to acquire business in India by Acquirer 2.

(xi) Noticee 1 also visited registered office of Acquirer 2 which was on leased premises. A copy of the electricity bill and leave and license agreement was taken in this respect.

(xii) Noticee 1 also discussed in detail with the Acquirers and explained to them the requirements of Takeover Regulations, including *inter alia* their obligation with respect to escrow obligations. The Acquirers after understanding the timelines, their duties and obligations and the escrow obligations confirmed to Noticee 1 that as a part of its escrow obligations, they will be giving a bank guarantee of 25% of the offer size in favour to the manager to the open offer together with 1% of the offer size as cash deposit in the escrow account in terms of regulation 17 of Takeover Regulations.

(xiii) After the PA was made, an escrow bank account with Axis Bank Limited in compliance with regulation 17 of Takeover Regulations was opened and the details of the same were shared with the Acquirers through email on July 06, 2019 for deposit of funds along with draft copy of bank guarantee for needful action at their end.

(xiv) Noticee 1 was aware that the DPS was to be published not later than 5 working days from PA date (*i.e,* July 3, 2019), therefore Noticee 1 started following-up with the authorized representatives of the Acquirers rigorously to deposit the amount in escrow accounts.

(xv) Acquirer replied on July 08, 2019 stating that they have initiated the fund transfer to the escrow account and the bank guarantee issuance is also under process. In response to the aforesaid email, Noticee 1 intimated Acquirers on the same day, stating that under regulation 17 of the Takeover Regulations, escrow compliances have to be completed by July 08, 2019, otherwise, Noticee 1 would not be able to proceed with the publication of DPS on July 10, 2019.

(xvi) DPS could not be released as per the timelines, and the same was intimated to SEBI *vide* email sent on July 09, 2019**.** When Noticee 1 noticed that the Acquirers have not deposited the money, though they were assuring Noticee 1 that they are in process of depositing the money, Noticee 1 informed SEBI on July 09, 2019, that in absence of the money deposited in escrow account by Acquirer, Noticee 1 would not be in position to publish DPS.

(xvii) Noticee 1 also had meetings with SEBI, post which, Noticee 1 again started following-up with Acquirers with an intention to complete the open offer announced.

(xviii) Acquirers *inter alia vide* the following letters dated July 11, 2019, July 18, 2019, July 22, 2019 and July 24, 2019 assured Noticee 1 that they would be fulfilling escrow obligations.

(xix) Noticee 1 made telephonic calls to Acquirers regarding their escrow obligations on the following dates: July 01, 2019, July 25, 2019, July 29, 2019, August 05, 2019, August 06, 2019 and August 12, 2019. Further, Noticee 1 also sent whatsapp messages to the Acquirers regarding the above on the following dates: July 08, 2019, July 09, 2019, July 10, 2019, July 12, 2019, July 13, 2019, July 14, 2019, July 15, 2019, July 18, 2019, July 19, 2019, July 21, 2019, July 22, 2019, July 23, 2019, July 26, 2019, July 28, 2019, July 29, 2019, July 30, 2019, July 31, 2019, August 01, 2019, August 07, 2019, and August 09, 2019.

(xx) Noticee 1 also met with SEBI officials seeking guidance on the subject and it advised Noticee 1 to proceed with the transaction as PA was already made.

(xxi) Clause 14 and 15 of the MoU entered between Acquirers and Noticee 1 records the undertaking given by the Acquirer to Noticee 1 with respect to the fulfilment of escrow obligations. Noticee 1 followed up with the Acquirers till August 22, 2019 and then it formally withdrew its MoU.

(xxii) The word “diligence” has not been defined by SEBI under SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 or in the Securities and Exchange Board of India (Merchant Bankers) Regulation, 1992. Diligence means the diligence reasonably expected from and ordinarily exercised by a person who seeks to satisfy a legal requirement or to discharge an obligation. Noticee 1 is a victim of the demeanour and bad deeds of Acquirers.

(xxiii) Notice 1 has relied upon paragraphs 47 and 48 of order of Hon’ble SAT in the matter of Almondz Global Securities Ltd. vs. SEBI, Appeal No. 275 of 2014, decision dated May 13, 2016 which deals with “due diligence”.

9.1.3 *Vide* email sent on June 03, 2022, Noticee 1 was given opportunity of hearing on June 13, 2022, which was delivered. *Vide* email sent on June 06, 2022, Noticee 1 requested for adjournment of the said hearing opportunity. Thereafter, Noticee 1 was given hearing opportunity on June 24, 2022, *vide* email sent on June 10, 2022.

9.1.4 During the hearing on June 24, 2022, the authorized representatives (hereinafter referred to as “**ARs**”) reiterated the contents of the reply summarized in paragraph 9.1.2 above. ARs sought time till June 28, 2022 to make additional submissions, which was acceded to. As provided above, the additional submissions were received *vide* letter sent on June 28, 2022. *Vide* email sent on July 13, 2022, certain clarifications were sought from Noticee 1, which were provided *vide* emails sent on July 15, 2022.

9.2 <u>Noticee 2</u>

9.2.1 After delivery of SCN, a hearing opportunity was given to Noticee 2 on June 13, 2022 *vide* email sent on June 03, 2022.

9.2.2 The Noticee appeared for the aforesaid hearing before me. He was informed that no reply has been received from him till date. Thereafter, he sought time till June 15, 2022 to make submissions, which was acceded to. However, till date, no reply has been received from Noticee 2.

9.3 <u>Noticee 3, 4, 5 and 6</u>

9.3.1 Post delivery of SCN, a hearing opportunity was provided to Noticee 3, 4, 5 and 6 on June 13, 2022 *vide* separate emails sent on June 03, 2022, which were not availed by them.

9.3.2 Noticee 5 submitted her reply *vide* letter dated June 10, 2021, the relevant extract of the said letter is reproduced below verbatim:

"1.I was only an independent director on the board of the said company. I was appointed on Nov 2018 for satisfying the condition of women director in the board.

2. I was nominated into the Sexual Harassment Committee for women. I was not part of any other committees.

3.I was not part of the day to day affairs of the said company nor I was part of the decision making body.

4.As regards the appointment of the said director (which is under issue) in August 2019 meeting and subsequent elevation to Managing director, I was only informed orally and I was not part of the board which appointed him.

5.I have nothing to do with the said appointment nor I have signed any documents in relation to his appointment.

6.I have already resigned from the directorship held with the company on 14th day of February 2020.

I request that in view of the above facts, the notice issued against me may be withdrawn."

9.3.3 Subsequently, another hearing opportunity was granted to Noticee 3, 4, 5 and 6 on June 24, 2022 *vide* separate emails sent on June 16, 2022.

9.3.4 Noticee 4 along with his letter dated June 18, 2021 wherein he had asked for adjournment of 30 days, had attached a letter dated June 22, 2021 addressed by Uniply and signed by its Managing Director. The relevant extract of the said letter is reproduced below:

"Your notice states that the aforesaid Regulation is violated by appointing Mr. Nazeer Azam Sulthan (DIN: 08072833) as a Director with effect from 14th August 2019 and as Managing Director with effect from 16th September 2019. In this connection, we wish to state as under:

1) Our Company appointed Mr. Mr. Nazeer Azam Sulthan (DIN: 08072833) after detailed review of applicable laws especially Regulation 24 of the SEBI (SAST) Regulations. On the date of appointment, he was not a director on the Board of Markab India SPV Prviate Limited (Acquirer 2) nor he was a person acting in concert with the Acquirer 2. He has resigned from the Directorship of the Markab India SPV Pvt. Ltd. He was appointed based on his credentials and past record which will be of immense use to our Company. For your ready reference, we are enclosing the Master Data downloaded from the website of Ministry of Corporate Affairs of both the Target Company- Uniply Industries Limited (Mr. Sulthan's name found as Director) and Acquirer 2 Company- Markab India SPV Private Limited (Mr. Sulthan's name not found as Director)

2) Further, the Takeover Process itself could not be continued due to the failure of the Acquirer to comply with the Regulations, including failure to deposit of funds into escrow account and publication of Detailed Public Statement (DPS). Since the DPS was not published on the stipulated date 10th July 2019, the entire process came to a grinding halt. No further steps were taken by the Acquirer to proceed with the offer and the takeover process can be termed as withdrawn. So no DPS was made and offer terms (including offer period) were not finalised, the question of compliance by the target company during the offer period does not arise. On the date of his appointment, no offer was in existence which required us to comply with the Regulation 24.

3) In view of the above, we submit that there were no defaults or non-compliances from our side which warrants levy of penalty or institution of an enquiry and request you to withdraw the notice. "

9.3.5 On June 24, 2022, Noticee 4 appeared for himself and on behalf of Noticee 3, 5, and 6. Noticee 4 was informed that no reply has been received so far from Noticee 3 and 6. In this regard, Noticee 4 sought time till June 27, 2022 to make submissions/additional submissions which was acceded to.

9.3.6 Thereafter, *vide* email sent on July 06, 2022, a reply was sent by Noticee 4 on behalf of himself, Noticee 3, Noticee 5 and Noticee 6. The relevant extract of which is reproduced below verbatim:

"M/s Markab Capital WLL, Kuwait and M/s Markab India SPV Private Limited (collectively called "Acquirers") had made a Public Announcement to the shareholders of Uniply Industries Limited ("Target Company") for acquisition of 49,466,068 Equity Shares on July 03, 2019 pursuant to a Share Purchase Agreement ("SPA") signed between the Acquirers and Mr. Keshav Kantamneni, M/s KKN Holdings Private Limited & M/s Madras Electronic Solutions Private Limited (collectively called "Sellers").

In complete violation and total disregard to the terms of the signed Share Purchase Agreement, the Acquirers did not pay the sellers any part of the sale consideration, and further did not deposit the requisite funds in the escrow account with the merchant bankers for the mandatory open offer as required under the SEBI SAST (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Further, a Detailed Public Statement ("DPS") was not published due to the failure of the Acquirers to deposit the requisite money in the escrow account with the merchant banker.

The Company had appointed Mr. Nazeer Azam Sulthan as Additional Director on the Board of the Uniply Industries Limited w.e.f 14.08.2019 and further appointed as Managing Director of the Company w.e.f. 16.09.2019 which was confirmed by the shareholders in the Annual General Meeting held on 30.09.2019.

At the time of Appointment of Mr. Nazeer Azam Sulthan as Director of the Company, he was neither representing the Acquirers nor he was acting in concert with the Acquirers. He was appointed as a Director of the Company in his individual capacity.

However, Mr. Nazeer Azam Sulthan neither reported for duty on 16.09.2019 or thereafter at any point in time. Mr. Nazeer Azam Sulthan, without joining the office of the Company, resigned from the position of Director and Managing Director of the Company, which was accepted by the Board of Directors of the Company effective 07.11.2019.

Therefore, there is no violation of Regulation 24 (1) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. As there is no violation, we humbly pray that we be exempted from any inquiry in terms of *rule 4 of the Adjudication Rules, 1995 and no penalty be imposed under section 15HB of the SEBI Act, 1992."*

9.4 Notice 7

9.4.1 *Vide* email sent on June 03, 2022, Noticee 7 was given opportunity of hearing on June 13, 2022, which was delivered. Noticee 7 *vide* email on June 09, 2022 sought extension, which was granted, and the hearing was rescheduled to June 24, 2022. Thereafter, on June 23, 2022, Noticee 7 requested for rescheduling the hearing to a later time on the same day and also submitted his reply to the SCN. The reply has been summarized below for convenience:

(i) Noticee 7 denies the allegations made in the SCN.

(ii) Noticee 7 was not representing Acquirers when he took appointment as an Additional Director in Uniply. Noticee 7 was a Director in Acquirer 2 from June 10, 2019 to August 14, 2019. His resignation from Acquirer 2 establishes that at the time of his appointment on the board of Uniply, he was no longer representing the interest of Acquirer 2. *Vide* letter dated September 09, 2019, Uniply had already communicated to SEBI that on the date of his appointment in Uniply he had resigned from Acquirer 2 and was no longer a person acting in concert with Acquirer 1. Acquirer 2 is the wholly owned Indian subsidiary of Acquirer 1. The total shares that were proposed to be acquired by Acquirer 2 in Uniply were 4,000 equity shares constituting 0.00% of the existing paid up share capital of Uniply under the SPA, which shows that Acquirer 2 was only acting as a facilitator for the entire transaction and it had no interest in the takeover. Noticee 7 was only a signatory without having any control over the transactions.

(iii) The PA was made on July 03, 2019, when the price of Uniply shares was Rs 63, and when Noticee 7 resigned from Uniply, price of shares fell to Rs 44.25, which shows that there was no price rise pursuant to the PA, or Noticee 7's resignation.

(iv) Notice 7 resigned from Acquirer 2 on August 14, 2019 and he was appointed on the board of Directors of Uniply on the same day. He was hired to be the Managing Director with effect from September 16, 2019. Noticee 7's resignation on August 14, 2019 from Acquirer 2 shows that he was not appointed as an acquirer on the board of Uniply. Noticee 7 cannot be held liable for facilitating his own appointment as he was not on the Board of Directors of Uniply before August 14, 2019.

(v) At the time of appointment of Noticee 7 on the board of Uniply, he had resigned from the board of Acquirer 2 and was not sharing common objective with other acquirers in terms of regulation 2(1)(a) of Takeover Regulations. In support of the above, Noticee 7 has relied on the decision of Hon'ble Supreme Court in the case of Daiichi Sankyo Company Limited vs. Jayaram Chigurupati and Ors. civil appeal no. 7148 of 2009, decision dated July 08, 2010 and decision of Hon'ble Bombay High Court in the matter of K.K. Modi vs. Securities Appellate Tribunal, SEBI appeal no. 09 of 2001, decision dated November 05, 2001, which was reiterated by the Hon'ble Securities Appellate Tribunal in the matter of Nikhil Mansukhani vs. SEBI (Appeal No. 96 of 2019) decided on July 26, 2021.

(vi) Noticee 7 had joined Uniply to obtain insights. He noticed certain issues in Uniply which required immediate attention from the management, and the said issues were personally communicated to Mr. M.K. Doogar who was the then Managing Director of Noticee 1, the merchant banker to the Acquirers. *Vide* his emails dated October 17, 2019 and October 30, 2019, Noticee 7 had brought to the notice of Uniply certain discrepancies which he came across in audited balance sheets of Uniply and its associates in carrying out the due diligence before the acquisition. Noticee 7 was required to report to duty as a Director of Uniply on September 15, 2019, however, he did not join as the queries raised by him were resolved by Uniply. The same was communicated by Uniply to BSE *vide* letter dated November 07, 2019. Thereafter, he resigned from the directorship of Uniply *vide* letter dated October 30, 2019 which was accepted by Uniply on November 07, 2019. Noticee 7's resignation is evidenced by a copy of form DIR-12 which shows that Noticee 7 had resigned from Acquirer 2 on August 14, 2019.

(vii) Noticee 7 has not made any gains or gained any unfair advantage. The SCN has not quantified profit made or loss averted by Noticee 7. Further, no harm or loss has been caused to any investor. The violation is not repetitive for imposition of penalty.

9.4.2 The hearing took place on July 04, 2022, wherein the ARs of Noticee 7 sought time till July 07, 2022 to make additional submissions, if any, which was acceded to. However, till date, no additional submissions have been received by or on behalf of Noticee 7.

9.5 <u>Noticee 8</u>

9.5.1 Noticee 8 submitted his reply *vide* emails sent on June 04, 2021, June 07, 2022 and June 13, 2022. The relevant extract from the aforesaid emails are reproduced below verbatim:

(i) June 04, 2021

"This is with reference to your captioned notice and as alleged that Directors of Target company UIL, ie., Noticee 2 to 8 failed to fulfil its statutory obligations, kindly note that, I, Noticee no 8, was never a Board member or a Director of the Target company."

(ii) June 07, 2022

"Sir, I have already submitted on 4/06/2021 that neither I was a Board member nor a Director of Uniply Industries Ltd, and therefore requested to modify your SCN and drop my name from the proceedings."

(iii) June 13, 2022

"As desired PFA communication by the company about my resignation as CFO of Uniply Industries Ltd. Further, kindly note that I had never obtained Din no in my life so the question of becoming a Director of a company doesn't arise.

As I was working as CFO only in Uniply, and not as a Director, kindly drop the proceedings against me and oblige."

9.5.2 Hearing opportunity was given to Noticee 8 on June 13, 2022 *vide* email sent on June 03, 2022, which was delivered. The Noticee appeared before me on the said date and reiterated the contents of the emails reproduced above. In the said hearing, Noticee 8 stated that he had no additional submissions to make.

D. CONSIDERATION OF ISSUES AND FINDINGS

10. I have taken into consideration the material available on record. The issues that arise for consideration in the present case are as follows:

I. Whether Noticee 1 has violated regulation 27(1) of Takeover Regulations?

II. Whether Noticee 2 to 8 have violated regulation 24(1) of Takeover Regulations?

III. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?

IV. If the answer to Issue No. III is in affirmative, then what should be the quantum of monetary penalty?

I. Whether Noticee 1 has violated regulation 27(1) of Takeover Regulations?

11. Before moving forward, it is pertinent to refer to regulation 27(1) of Takeover Regulations, which has been provided below for facility:

CHAPTER - IV OTHER OBLIGATIONS

Obligations of the manager to the open offer.

27.(1) Prior to public announcement being made, the manager to the open offer shall ensure that,—

(a) the acquirer is able to implement the open offer; and

(b) firm arrangements for funds through verifiable means have been made by the acquirer to meet the payment obligations under the open offer.

12. It has been alleged in the SCN that Noticee 1, as manager to open offer, defaulted in ensuring that the Acquirers were able to implement the open offer and that firm arrangements for funds were made by the Acquirers to meet the payment obligations. Noticee 1, in its reply as summarized in paragraph 9.1.2 above, has submitted that before making the PA, Noticee 1 had *inter alia* examined (i) audited balance sheet of Acquirer 1 for the year ending on December 31, 2017 and 2018; and (ii) copy of net worth certificate dated July 03, 2019 received from auditor of Acquirer 1, which confirmed that that as on July 03, 2019, the net worth of Acquirer 1 was Kuwaiti Dinar 79,010,011 and out of the above, Acquirer 1 had liquid assets of Kuwaiti Dinar 33,065,250. The said net worth certificate also stated that Acquirer 1 had sufficient liquid funds to meet its obligation under the open offer to be made to the shareholders of Uniply. Noticee 1 has further submitted that value of net worth in rupee terms was Rs 1792.10 crores and the liquid assets amounted to Rs 750 crores, respectively considering currency rate of 1 Kuwaiti Dinar as Rs 226.82. The total obligation in the open offer to the shareholders was aggregated to Rs. 405.62 crores and the obligations in terms of SPA was

aggregated to Rs. 313.85 crores. The liquid assets of Rs. 749.99 crores were considered sufficient to cover the obligations under the open offer and the SPA. As evidence, Noticee 1 has provided copies of the aforesaid balance sheets and the net worth certificate. I have perused the contents of the aforesaid documents. The said net worth certificate explicitly states that the net worth of Acquirer 1 as on July 03, 2019 is Kuwaiti Dinar 79, 010, 011 and it has liquid assets aggregating to Kuwaiti Dinar 33, 065, 250. It further states that Acquirer 1 has sufficient liquid funds to meet open offer obligations. Thus, this submission of Noticee 1 is aligned with the evidence it has submitted. Further, Noticee 1 has submitted that it made independent inquiries such as visiting office of Acquirer 2, obtaining information through public search, doing a specific search on companies of Acquirer 1 for litigation, *etc* which did not raise any red flags. Noticee 1 also had meetings with Acquirers where they were explained in detail their obligations with respect to escrow under the Takeover Obligations.

13. I note from the MoU entered between the Acquirers and Noticee 1 that compliance with Takeover Regulations and fulfilment of escrow obligations on the part of Acquirers was specifically mentioned. Relevant portions of the MoU endorsing the above are reproduced below:

"Clause 2

The Acquirers hereby declare that they have complied with or agree to comply with all the statutory formalities under the Companies Act, Guidelines for SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 issued by the Securities and Exchange Board of India (hereinafter referred to as "Board") and other relevant Statutes to enable it to make the offer and in particular in respect of the matters described in Annexure I to this Agreement

Annexure I (A)

14. Compliance with SEBI Guidelines, etc

c) Deposit of Specified Sum in an Escrow Account on or before the Detailed Public Statement in the form of Cash Deposit or Bank Guarantee in favour of the Manager

Clause 3

The Acquirers agree to make minimum public offer as per SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 and agree to strictly follow the regulations on takeover issued by SEBI from time to time

Clause 14

The Acquirers undertake to take such steps and to empower the Manager to the offer to deposit the required amount in the Escrow account and release the amount in the manner as specified in the subregulation 10(b) of Regulation 17 and for the payment of consideration as provided in the guidelines issued by the Board.

Clause 15

The Acquirers shall empower and authorize the manager to the offer to instruct the escrow banker, wherein escrow account under Regulation 17 and special account under Regulation 21 to be opened for the purpose of this Regulation for the purpose of issuing a banker cheque or demand draft or electronic mode of payment for the amount lying to the credit of the escrow account and special account as provided in the regulation.

Clause 27

In case of breach for complying with any of the above covenants, the Manager reserves the right to withdraw the consent given to act as Manager, before filing of the Letter of Offer with SEBI…."

From the above, I find that Acquirers were informed from the date the MoU was entered that it is required to fulfil escrow obligations in a timely manner.

14. I note from the material available on record that Axis Bank had sent an email *inter alia* to Uday Narayan Joshi and Noticee 1 on July 06, 2019 providing the details of open offer escrow account. Further, on the same day, Noticee 1 intimated Noticee 7 along with Uday Narayan Joshi and Ahmad AA Al Omani regarding the escrow account opened with Axis Bank for compliance with

regulation 17 of Takeover Regulations. It was reiterated in the email that the Acquirers need to either deposit 25% of total consideration aggregating to Rs 102 crores or arrange bank guarantee for 25% of total consideration aggregating to Rs 102 crores along with 1% of total consideration in cash aggregating to Rs. 4.06 crores. It was also stated in the email that if the Acquirers are not able to comply with the aforesaid obligation, the Acquirers would be in default of Takeover Regulations. In addition to the above, I find that Noticee 1 has furnished copies of other communications with Acquirers wherein Noticee 1 has time and again communicated to the Acquirers regarding the urgency of complying with the escrow obligation and the Acquirers have on one pretext or the other delayed compliance. A timeline of their communications has been tabulated below. Subsequently, *vide* letter dated August 22, 2019, Noticee 1 intimated Acquirers that it is withdrawing its consent to act as manager to open offer.

#	**Communication**	**Contents of communication**
1.	Email sent by Noticee 1 to Noticee 7 on July 04, 2019	The email includes an attachment with respect to timelines to be adhered to before publication of DPS. The receipt of the said email was acknowledged by Noticee 7 by a return email on July 05, 2019. The attachment to the email states that opening of escrow account with scheduled commercial bank and depositing 25% of the offer size under regulation 17(1) of Takeover Regulations needs to be undertaken by July 06, 2019.
2.	Email sent by Noticee 1 to Noticee 7 which was also marked to Uday Narayan Joshi on July 06, 2019	The email states that details with respect to escrow account was discussed with Noticee 7 prior to giving PA. It was agreed by Noticee 7 that a bank guarantee of 25% of offer size will be given in favour of merchant banker and 1% of offer size would be deposited in cash in terms of regulation 17 of Takeover Regulations. It further states that Acquirers are

#	Communication	Contents of communication
		required to expedite getting the bank guarantee and that the documents pertaining to escrow account have already been shared by Axis Bank directly.
3.	Email sent by Noticee 7 to Noticee 1 which was also marked to Uday Narayan Joshi on July 08, 2019	The email states that Acquirers have initiated the transfer to escrow account and it should reflect in the account in few hours. The bank guarantee is in process and would be available soon. The Acquirers are regularly following up with their bank.
4.	Emails sent by Noticee 1 to Noticee 7, Uday Narayan Joshi and Ahmad AA Al Omani on July 08, 2019	The email states that no confirmation of credit of funds in escrow account or bank guarantee has been received by Noticee 1. It further states that regulation 17 of Takeover Regulations needs to be complied with by end of day, otherwise Noticee 1 would not be able to proceed with the publication of DPS. *Vide* a separate email on the same day, Noticee 1 requested for UTR no. for remittance of Rs 4.06 crores deposited in the escrow account. *Vide* another email sent on the same day, Noticee 1 drew attention of Acquirers to clause 14 and 15 of MoU as well as regulation 17 of Takeover Regulations. It explicitly records that even though escrow account has been opened on July 06, 2019, the escrow amount has not been received and if the said escrow obligations are not fulfilled, it will on July 09, 2019, withdraw as manager to open offer and intimate SEBI.
5.	Email sent by Noticee 7 to	The email states that escrow obligation by Acquirers would be fulfilled by submitting 1% cash and 25%

#	Communication	Contents of communication
	Noticee 1 which was also marked to Uday Narayan Joshi on July 09, 2019	bank guarantee, and that they are in the process of obtaining the said bank guarantee. However, due to holidays falling in between, after issuance of PA, Acquirers were able to utilize the time starting from June 08, 2019.
6.	Letter sent by Acquirer 1 signed by Noticee 7 to Noticee 1 dated July 11, 2019	The letter *inter alia* states that due to international banking norms, the process of complying with escrow obligations on Acquirer's end was delayed and that they are reinitiating the transaction for completion of escrow obligation.
7.	Letter sent by Acquirer 1 signed by Noticee 7 to Noticee 1 dated July 18, 2019	The letter *inter alia* states that from July 11, 2019 onwards there were meetings with the Acquirers and the Sellers, and that Acquirers are confirming now that they will initiate escrow formalities from their end.
8.	Letter sent by Acquirer 1 signed by Noticee 7 to Noticee 1 dated July 22, 2019	The letter *inter alia* states that escrow formalities have been initiated and a letter from its correspondent bank in India is expected to be sent by the bank in 48 hours. It further states that cash margin money will be transmitted into the account once the letter from its correspondent bank has been received.
9.	Email sent by Noticee 1 to Noticee 7 which was also marked to Anand Kumar, Ahmad AA Al Omani, and Uday Narayan	The attachment to the email states that through various communications/emails, dated July 09, 2019, July 11, 2019, July 18, 2019, July 22, 2019, July 24, 2019 and July 25, 2019, Noticee 1 was informed that the aforesaid deposit is being made, however, as on the date of the said email, the escrow account has not been funded. It further states that BSE, NSE and SEBI have been intimated regarding failure of

#	Communication	Contents of communication
	Joshi on July 29, 2019	Acquirers in complying with regulation 13 and 17 of Takeover Regulations.

15. At this juncture, I find it necessary to refer to regulation 27(5) of the Takeover Regulations which reads as follows: *“The manager to the open offer shall exercise diligence, care and professional judgment to ensure compliance with these regulations.”.* It is pertinent to note that terms such as “firm arrangements” under regulation 27(1) and “diligence” under regulation 27(5) have not been defined under the Takeover Regulations. In my view, a definition for the aforesaid terms has deliberately not been provided, as is not possible to set out in a fixed manner how “firm arrangements” have to be ensured or “diligence” is to be performed. Therefore, it is befitting that it should be examined what “diligence” generally means. Hon’ble Supreme Court in Chander Kanta Bansal vs. Rajinder Singh Anand (civil appeal no. 1893 of 2008), decision dated March 11, 2008, although in context of interpretation of rule 17 of Code of Civil Procedure, 1908, with respect to “due diligence”, *inter alia* laid down the following:

“The words "due diligence" has not been defined in the Code. According to Oxford Dictionary (Edition 2006), the word "diligence" means careful and persistent application or effort. "Diligent" means careful and steady in application to one's work and duties, showing care and effort. As per Black's Law Dictionary (Eighth Edition), "diligence" means a continual effort to accomplish something, care; caution; the attention and care required from a person in a given situation. "Due diligence" means the diligence reasonably expected from, and ordinarily exercised by, a person who seeks to satisfy a legal requirement or to discharge an obligation. According to Words and Phrases by Drain Dyspnea (Permanent Edition 13A) "due diligence", in law, means doing everything reasonable, not everything possible. "Due diligence" means reasonable diligence; it means such diligence as a prudent man would exercise in the conduct of his own affairs.”

16. Thus, from the above, the standard to judge Noticee 1 as manager to open offer, is whether it took measures as any reasonable person would take under the particular circumstances. I have discussed above how before making the PA, Noticee 1 *inter alia* reviewed the audited balance sheet for year ending on 2017 and 2018 and the net worth certificate given by auditor of Acquirer 1. I have also discussed how after the PA was made, an escrow account was opened and Noticee 1 was continuously corresponding with Acquirers in order for the escrow amount to be deposited in time. I find that a manager to open offer is expected to exercise reasonable diligence, not mechanically rely on whatever is given by Acquirers before making PA, at the same time, the manger to open offer cannot be expected to look at each and every statement with suspicion unless the facts so warrant. Copies of audited balance sheet of financial years 2017 and 2018 and net worth certificate provided with respect to Acquirer 1 sufficiently establishes that Acquirers were in a position to fulfil their escrow obligation, if for any reason they chose not to, does not automatically fasten liability on manager to open offer. After examining all the material place on record, I find that Noticee 1 took efforts to ensure that Acquirers had enough funds to discharge its obligation, thus it cannot be held responsible for failure of open offer obligations by Acquirers. In conclusion, I find that benefit of doubt can be afforded to Noticee 1 given the facts of the case, thus, I am of the view that Noticee 1 has not violated regulation 27(1) of Takeover Regulations.

II. Whether Noticee 2 to 8 have violated regulation 24(1) of Takeover Regulations?

17. Text of regulation 24(1) of Takeover Regulations is provided below for convenience:

CHAPTER - IV OTHER OBLIGATIONS

Directors of the target company.

24.(1) During the offer period, no person representing the acquirer or any person acting in concert with him shall be appointed as director on the board *of directors of the target company, whether as an additional director or in a casual vacancy:*

*Provided that after an initial period of fifteen working days from the date of detailed public statement, appointment of persons representing the acquirer or persons acting in concert with him on the board of directors may be effected in the event the acquirer deposits in cash in the escrow account referred to in regulation 17, *[the entire] consideration payable under the open offer:*

Provided further that where the acquirer has specified conditions to which the open offer is subject in terms of clause (c) of sub-regulation (1) of regulation 23, no director representing the acquirer may be appointed to the board of directors of the target company during the offer period unless the acquirer has waived or attained such conditions and complies with the requirement of depositing cash in the escrow account.

**Substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Second Amendment) Regulations, 2018, w.e.f. 11-09-2018. Prior to this, it read as "one hundred per cent of the".*

18. I note that the SCN alleges that Noticee 2 to 8 have violated regulation 24(1) of Takeover Regulations, as Noticee 7, who was representing the acquirer was appointed as an Additional Director on the board of Uniply during the open offer process. In this regard, is pertinent to refer to the definition of "offer period" under Takeover Regulations. Regulation 2(1)(p) states that:

"offer period" means the period between the date of entering into an agreement, formal or informal, to acquire shares, voting rights in, or control over a target company requiring a public announcement, or the date of the public announcement, as the case may be, and the date on which the payment of consideration to shareholders who have accepted the open offer is made, or the date on which open offer is withdrawn, as the case may be;

Thus, in the present case, the offer period began from the date the SPA was executed *i.e,* July 03, 2019. I note from material available on record that *vide* email sent on September 24, 2020, NSE stated that no shares have been acquired by the acquirers pursuant to the PA of open offer from the existing promoters and company. Thus, till date, neither have shareholders of Uniply been paid consideration nor there has been a formal withdrawal of open offer.

19. Before proceeding, it is relevant to examine the roles of Noticee 2 to 8 in Uniply. As per annual report of Uniply for the financial year 2019-2020, Noticee 2 to 8 were occupying the positions as tabulated below:

Noticee no.	**Name**	**Designation**
2	Sudhir Kumar Jena	Non Executive Independent Director
3	Ramgopal Lakshmi Ratan	Non Executive Independent Director
4	Keshav Narayan Kantamneni	Chairman and Managing Director - Executive
5	Parul Satyan Bhatt	Non Executive Independent Director (till May 30, 2020)
6	Reena Bathwal	Non Executive Independent Director (till May 30, 2020)
7	Nazeer Azam Sulthan	Additional Director with effect from August 14, 2019, and Managing Director with effect from September 16, 2019
8	Narendra Kumar Jain	Chief Financial Officer

20. Thus, for establishing that Directors of Uniply were in violation of regulation 24(1) of Takeover Regulations, it is important to establish that a person representing the acquirer or acting in concert with the acquirer was appointed on the board of Uniply. I note that *vide* resolution dated June 20, 2019, Noticee 7 was appointed by Acquirer 2 to acquire business in India. Noticee 7 was a Director of Acquirer 2 on the date of PA *i.e,* on July 03, 2019. As brought out in paragraph 13 above, Noticee 1 as manager to open offer was frequently sending emails to Noticee 7 to ensure compliance of escrow account obligations. A common defence taken by Noticees 2 to 8 is that at the time of appointment of Noticee 7 on the board of Uniply, *i.e,* on August 14, 2019,

Noticee 7 was not a Director of Acquirer 2. Thus, I find that there is no doubt that atleast until August 14, 2019, Noticee 7 was representing the Acquirers.

21. As to whether Noticee 7 was representing Acquirers after August 14, 2019, I find that even though DIR-12 furnished by Noticee 7 and the annual return of Acquirer 2 records that Noticee 7 stopped being a Director of Acquirer 2 from August 14, 2019 onwards, there are communications available on record after August 14, 2019, wherein emails have been addressed to Acquirers and Noticee 7 has responded. For example, on August 26, 2019, SEBI sent an email to Noticee 7, Ahmad AA Al Omani and Uday Narayan Joshi, wherein it was stated that considerable time has elapsed since the date of PA by Acquirers and DPS has not been made by the merchant banker due to non-deposit of funds in the escrow account. In view of the above, Acquirers and merchant banker are advised to immediately take necessary steps to conclude the pending open offer and ensure compliance in expeditious manner. Further, on the same day, a separate email was sent to Noticee 1 and Acquirers advising them to attend a meeting to discuss the pending open offer. In response to the said email, Noticee 7 responded on the same day. The relevant extract of the said response of Noticee is reproduced below verbatim:

"<u>We</u> are in receipt of your email regarding the proposed meeting on 28th August 2019 at your office.

<u>We</u> bring to your kind notice that, since we are residing outside India, <u>we are unable to attend the meeting</u> at your good office as scheduled please.

We humbly request your good self <u>to provide us an additional 10 days time to plan and come out for the meeting</u> or to send our representative fro the meeting at your office. We sincerely regret the inconvenience caused due to this postponement of the meeting. " (emphasis supplied).

22. I am of the view that if Noticee 7 had ceased to be a representative of Acquirers post August 14, 2019 (*i.e,* after he was appointed on the board of Uniply), then he would not have responded to the aforesaid emails which are clearly addressed to the Acquirers, which indicates that even after his formal cessation from the board of Acquirer 2, he was representing Acquirers. The

aforesaid email is not the sole example. Pursuant to the request for rescheduling the meeting received from Noticee 7 on behalf of Acquirers on August 26, 2019, SEBI sent an email to Ahmad AA Al Omani and Uday Narayan Joshi on August 28, 2019 stating that:

“meeting has been postponed and reschedule on Sep 06, 2019 at 3:00 PM and the same <u>shall be attended by the MD/CEO of the Acquirers</u>.” (emphasis supplied)

23. In response to the aforesaid email, on September 04, 2019, Noticee 7 sent the following email to SEBI which was also marked to Ahmad AA Al Omani and Uday Narayan Joshi and Noticee 1:

“Further in reference to our email reply dated 26th Aug 2019 regarding the subject, <u>we are awaiting your advise</u> on the revised schedule for the meeting your good self at your office.

<u>We humbly request</u> you to provide us at least a week advance notification, so that we can plan and come out for the meeting or to arrange our representative for the participation in the meeting at your office.”

From the aforesaid email thread, it is clear that on August 28, 2019 email was not sent to Noticee 7 and it was only addressed to “MD/CEO of Acquirers”, despite that, Noticee 7 responded to the aforesaid email *vide* its email on September 04, 2019, requesting for revised schedule of meeting. The aforesaid behaviour of Noticee 7 shows that Noticee 7 had access to the documents/emails of Acquirers which informed him that a meeting for Acquirers was scheduled. The said email also shows that Noticee 7 was acting on behalf of Acquirers while responding to SEBI as the email was explicitly addressed to the Acquirers. In view of the above, I find that there is adequate material available to show that Noticee 7 was representing Acquirers even after his appointment on the board of Uniply. Thus, the contention of Noticee 2 to 7, that Noticee 7 had resigned from being a Director of Acquirer 2 when he had joined Uniply, and was acting in his individual capacity, deserves rejection.

24. Notice 7 has contended that he was not sharing common objective with other acquirers in terms of regulation 2(1)(a) of Takeover Regulations. I note that regulation 2(1)(a) of the Takeover Regulations defines “acquirer”. In the present case, the violation alleged against Noticee 2 to 8, is that a person *“representing the acquirer or a person acting in concert with him”* was appointed as Director on the board of Uniply. It is not alleged that Noticee 7 was an “acquirer”. The term “representing” has not been defined under the Takeover Regulations. In Wharton’s Law Lexicon, 15th edition, 2009, “representation” has been defined as *“a presentation of fact-either by words or conduct-made to induce some one to act especially to enter into a contract”*. Herein, as noted before, atleast until August 14, 2019, Noticee 7 was representing the Acquirers, which is evidenced by a resolution passed to that effect. Noticee 2 to 7 have contended that Noticee 7 was not representing the Acquirer after August 14, 2019, *i.e*, after he was appointed on the board of Uniply. In this regard, I have already discussed in paragraphs above how Noticee 7 continued to engage with SEBI on behalf of Acquirers, thus, by his conduct Noticee 7 was representing the Acquirers. Such conduct need not be supported by a formal agreement. Noticee 7 has also cited few cases, *namely*, Daiichi Sankyo *(supra)* decided by Hon’ble SC, K.K Modi *(supra)* decided by Hon’ble Bombay High Court and Nikhil Mansukhani *(supra)* decided by Hon’ble SAT. I shall deal with each of the cases in *seriatim*.

24.1. In Daiichi Sankyo *(supra)*, the question before the Hon’ble SC was to determine the offer price at which M/s Daiichi Sankyo Company Ltd. would buy the shares of Zenotech. For context, in January 2008, Ranbaxy Laboratories acquired shareholding of Zenotech at Rs 160. Thereafter, in June 2008, Daiichi entered into a share purchase and share subscription agreement for acquisition of shares of Ranbaxy. Thus, due to indirect acquisition, Daiichi was required to make an open offer to the shareholders of Zenotech. Daiichi made a public offer for Rs 113. With this background, Hon’ble SC held that unless it is shown that Daiichi and Ranbaxy entered into an agreement for the common objective or purpose of substantial acquisition of shares or voting rights or control over Zenotech they cannot be said to have come in the relationship of “persons acting in concert”.

24.2. In K.K Modi *(supra)*, the question before the Hon’ble Bombay HC was whether a promoter of the target company, by reason it being a promoter, would be deemed to be an acquirer or a person acting in concert with the acquirer, even when it does not wish to acquire. In the said case, Modipon Ltd., a promoter of the target company, instead of acquiring, wanted to divest its stake in the target company. In this context, the Hon’ble Bombay HC held that a promoter acting in concert with the acquirer is a question of fact, and that merely being a co-promoter does not mean a person is acting in concert unless evidence establishes that the promoter shares the common objective or purpose of substantial acquisition of shares or voting rights for gaining control over the target company, with the acquirer.

24.3. In Nikhil Mansukhani *(supra)*, Hon’ble SAT was concerned with the question whether the promoters were acting in concert while acquiring the shares of M/s MAN Industries (India) Limited. Hon’ble SAT held that the deeming fiction of acting in concert would not apply when there has been a consistent stand taken by the two sets of promoter groups that they had internal disputes between them, hence, they were not “acting in concert” as they did not share a common objective or purpose for substantial acquisition of shares of target company.

I find that the facts of the present case are altogether different from the aforesaid three cases cited by Noticee 7. Regulation 24(1) states that not only a “person acting in concert” but a person “representing the acquirer” also cannot be appointed on the Board of Directors of target company. Thus, I do not find it necessary to go into the question of whether Noticee 7 was a person “acting in concert”, as I have already established in the preceding paragraphs that Noticee 7 was representing the acquirer even after August 14, 2019, which in my view is sufficient to establish violation of regulation 24(1) of Takeover Regulations.

25. Noticee 7 has submitted that he had joined Uniply to obtain insights and that he had found certain discrepancies in the audited balance sheets of Uniply which he had also communicated to Noticee 1 while carrying out due diligence. Admittedly, Noticee 7 had joined Uniply for gaining "insights" and was carrying out due diligence, which only suggests that Noticee 7 was appointed on the board of Uniply to evaluate the target company and report to the Acquirers any fact which may adversely affect their investment. Noticee 7 has also submitted that he did not facilitate his own appointment on the board of Uniply, thus he cannot be held responsible under regulation 24(1) of the Takeover Regulations, I am of the view that regulation 24(1) of the Takeover Regulations cannot be interpreted in a way which excludes responsibility of representative of acquirer, as he also has a say in accepting the appointment as a Director and terms thereof. Lastly, as to the argument of Noticee 7 that price of Uniply did not rise pursuant to the PA or resignation of Noticee 7, I find that there is no relation between price of Uniply and establishing violation of regulation 24(1) of Takeover Regulations, therefore, I do not find it necessary to indulge in this argument.

26. Moving on to Noticee 4 who is the Chairman and Managing Director of Uniply, Noticee 4 has argued that Noticee 7 was appointed on the board of Uniply for his credentials. I note that annual report of Uniply for financial year 2018-2019 with respect to Noticee 7 *inter alia* records that:

"Mr. Azam joins the Company with a wealth of experience in handling both domestic and international organizations. He started his career in and had a 21 years stint with a Japanese Automation Major, Yakogawa. He was heading the Middle East and African operations of a large MARKAB associate contracting company."

I am not convinced that Noticee 7 was appointed in Uniply for his past record, as I do not find any relation between the work experience of Noticee 7 as provided in the extract of annual report reproduced above and the business of Uniply. The aforesaid extract states that Noticee 7 has worked for 21 years with a Japanese automation company, whereas Uniply's website states the following:

"Our product offerings include – plywood, laminates, veneers, adhesives, wooden flooring, panel products and a myriad of auxiliaries

Joining hands with Vector Projects (I) Pvt Ltd – a premium brand in integrated turnkey interior solutions for both, commercial and residential spaces, in 2017, and with its foray into the world of construction - Uniply has started its journey towards becoming a one-stop shop for all your infrastructure needs."

Thus, I find that this contention of Noticee 4 is hard to believe. With respect to the individual role of Noticee 4 in appointing Noticee 7, I find that since Noticee 4 held the position of Chairman and Managing Director it is not possible that Noticee 7 was appointed without his consent, and the same has not even been pleaded by Noticee 4. Thus, I find that Noticee 4 was fully cognizant at the time of appointment of Noticee 7 on the board of Uniply that he was representing the Acquirers.

27. Noticee 4 has further argued that on the date of appointment of Noticee 7, no offer was in existence which required Uniply to comply with regulation 24 of Takeover Regulations, as the DPS was not published within the stipulated time, therefore the takeover process can be considered as withdrawn. I find the aforesaid contention is based on incorrect understanding of the Takeover Regulations. An open offer cannot be withdrawn on the basis of whims of any acquirer or target company. Regulation 23 of Takeover Regulations specifies certain circumstances in which open offer can be withdrawn. If the open offer can be "considered withdrawn", then any company can potentially make a PA to acquire shares of another company, which may lead to price rise of the target company, which may eventually benefit promoters/sellers of target company. To prevent such misuse, this regulation specifies certain circumstances in which open offer may be withdrawn. Thus, I find that this argument of Noticee 4 lacks merit.

28. Noticee 5, in her reply, has submitted that she was an Independent Director on the board of Uniply and she was not involved in its day to day affairs.

Further, she has stated that she was informed orally of appointment of Noticee, thus she has not signed any documents in relation to his appointment. I note from the annual report of Uniply for the financial years 2018-2019 and 2019-2020, that she was appointed as an Independent Director from November 14, 2018 and held her position until May 30, 20120. I note that Noticee 7 was appointed *vide* board resolution passed on August 14, 2019. I note from the annual report for the financial year 2019-2020 that the said meeting was attended by 6 Directors out of total strength of 8 Directors. Thus, it does not give us insight into whether the said meeting was attended by Noticee 5. I also note that during the financial year 2019-2020, Noticee 5 has only attended 3 board meetings. However, notably, since Uniply is a listed company, the appointment of Noticee 7 was disclosed to the stock exchanges on the same day Noticee 7 was appointed *i.e,* on August 14, 2019. The outcome of the board meeting held on August 14, 2019, reflected on the stock exchanges website reads as follows:

"The Board was updated on the status of the ongoing transaction between the promoters of M/s Uniply Industries Limited and M/s Markab Capital WLL, Kuwait.

Markab stands committed to the acquisition of majority stake in Uniply, and is currently in the process of securing a line of Credit with a Scheduled Commercial Indian Bank for bank guarantee to the open offer, as against their original plan to establish a guarantee from an International Bank.

The synergies from the ongoing Markab transaction are already visible with a large global order pipeline being developed by Markab for Uniply Industries Limited. This pipeline of orders, backed by working capital from a mezzanine fund of theirs, is expected to start post closure of the open offer and get executed over various timelines, extending up to 27 months from their start date.

<u>*Appointment of Mr. Nazeer Azam Sulthan (DIN: 08072833) (Aged About 52 years) (Bsc, B.Tech, MBA), Director of Markab India SPV Pvt Ltd as Director*</u>

on the Board of the Company w.e.f 14.08.2019 and further appointment as Managing Director of the Company w.e.f 16.09.2019. Mr. Azam joins the Company with a wealth of experience in handling both domestic and international organisations. He started his career in and had a 21 years stint with a Japanese Automation Major, Yakogawa. Mr. Azam is currently heads the Middle East and African operations of a large MARKAB associate contracting company." (emphasis supplied)

29. I find that since the aforesaid outcome was in public domain, despite not being involved in day to day affairs of the Company, Noticee 5 on basis of the aforesaid, could have objected to the appointment of Noticee 7 on the board of Uniply. It is not necessary that independent directors can acquire knowledge only through board processes. I find that Noticee 5 had another opportunity to raise her concerns over the appointment of Noticee 7, when she was served with the annual general meeting notice of Uniply. I note that the annual general meeting of Uniply for the financial year 2019-2020 was held on September 30, 2019, and the notice disseminated on the stock exchanges website dated September 05, 2019 at point 5 records that Noticee 7 is to be appointed as the Director of Uniply. Further, I note from the annual report for the financial year 2019-2020 that Noticee 5 had attended the annual general meeting where this specific item was discussed. An extract of board meetings attendance and attendance of Directors at annual general meeting from the annual report of Uniply financial year 2019-2020 is placed below. Thus, I find that Noticee 5 cannot take shelter under the garb of lack of knowledge with respect to appointment of Noticee 7 leading to violation of regulation 24(1) of the Takeover Regulations.

Sl. No.	Date	Board strength	No. of Directors present
1	30-May-2019	08	06
2	14-Aug-2019	08	06
3	07-Nov-2019	07	05
4	14-Nov-2019	05	05
5	31-Jan-2020	05	03

Attendance at Board Meeting and Annual General Meeting during the financial year

Director	No. of Board Meetings attended	Attendance at last AGM
Mr. Keshav Narayan Kantamneni	04	Yes
Mr.Srinivasan Sethuraman	02	No
Mr. B V M Sarma	01	Yes
Mr. Umesh Prabhakar Rao	01	Yes
Mr. Sudhir Kumar jena	05	Yes
Mrs. Reena Bathwal	04	Yes
Mr. Ramgopal Lakshmi Ratan	05	Yes
Mrs Parul Satyan Bhatt	03	Yes
Mr. Nazeer Azham Sulthan	-	Yes

30. Similar to Noticee 5, I find that Noticee 2, 3, and 6 were also Independent Directors of Uniply. As evident from the extract reproduced in paragraph above, out of the 5 board meetings of Uniply held during the financial year 2019-2020, Noticee 2 and Noticee 3 had attended all 5 meetings of the board of Uniply. Thus, there is no doubt that Noticee 2 and Noticee 3 have attended the board meeting held on August 14, 2019, wherein Noticee 7 was appointed.

31. As to Noticee 6, she had attended 4 board meetings out of total 5 board meetings. I find it apposite to proceed on the same reasoning applied for Noticee 5. Noticee 6 comparable to Noticee 5 had access to the outcome of board meeting held on August 14, 2019, even if she did not attend the said board meeting as the said outcome was published on the website of the stock exchanges. Further, she would have also been served with the notice of annual general meeting which included appointment of Noticee 7 by passing ordinary resolution. I note from the extract provided above that she had also attended annual general meeting where Noticee 7 was appointed as a Director on board of Uniply.

32. Additionally, I find that Noticee 2, Noticee 3 and Noticee 6 were also part of various board committees. The positions held by Noticee 2, Noticee 3, and

Noticee 6 in board committees and details of their attendance is extracted below from the annual report of Uniply for financial year 2019-2020:

32.1. Audit committee

COMPOSITION OF THE AUDIT COMMITTEE:

THE AUDIT COMMITTEE CONSISTS OF THE FOLLOWING MEMBERS:

Sl. No.	Name of the Member	Chairman/member
1	Mr. Sudhir Kumar Jena	Chairman
2	Mr. Ramgopal Lakshmi Ratan	Member
3	Mrs Reena Bathwal	Member

MEETING AND ATTENDANCE

DETAILS OF AUDIT COMMITTEE MEETING DURING THE FINANCIAL YEAR

During the financial year ended 31st March 2020, Four (04) meetings of Audit Committee were held, which are as follows

Sl. No.	Date	Committee strength	No. of members present
1	30-May-2019	03	02
2	14-Aug-2019	03	03
3	14-Nov-2019	03	03
4	31-Jan-2020	03	03

ATTENDANCE OF AUDIT COMMITTEE MEETING DURING THE FINANCIAL YEAR

Sl. No.	Name of the Member	No. of Meetings attended
1	Mr. Sudhir Kumar Jena	04
2	Mr. Ramgopal Lakshmi Ratan	03
3	Mrs Reena Bathwal	04

32.2. Nomination and remuneration committee:

COMPOSITION OF THE NOMINATION & REMUNERATION COMMITTEE:

The Nomination & Remuneration Committee consists of the following members:

Sl. No.	Name of the Member	Chairman/member
1	Mr. Sudhir Kumar Jena	Chairman
2	Mr. Ramgopal Lakshmi Ratan	Member
3	Mrs. Reena Bathwal	Member

DETAILS OF NOMINATION & REMUNERATION COMMITTEE MEETING DURING THE YEAR:

During the financial year ended 31st March 2020, Two (2) meeting of Nomination & Remuneration Committee were held, which are as follows:

Sl. No.	Date	Committee strength	No. of members present
1	14-Aug-2019	03	03
2	7- Nov - 2019	03	03

ATTENDANCE OF COMMITTEE MEETING DURING THE FINANCIAL YEAR

Sl. No.	Name of the Member	No. of Meetings attended
1	Mr. Sudhir Kumar Jena	02
2	Mr. Ramgopal Lakshmi Ratan	02
3	Mrs Reena Bathwal	02

32.3. Stakeholders relationship committee:

THE COMMITTEE CONSISTS OF THE FOLLOWING MEMBERS:

Sl. No.	Name of the Member	Chairman/member
1	Mr. Ramgopal Lakshmi Ratan	Chairman
2	Mrs Reena Bathwal	Member
3	Mr. Sudhir Kumar Jena	Member

During the financial year ended 31st March 2020, Three (3) meeting of Stakeholders Relationship Committee was held, which are as follows:

Sl. No.	Date	Committee strength	No. of members present
1	30- May-2019	03	03
2	14- Aug- 2019	03	03
3	14- Nov- 2019	03	03

ATTENDANCE OF COMMITTEE MEETING DURING THE FINANCIAL YEAR

Sl. No.	Name of the Member	No. of Meetings attended
1	Mr. Sudhir Kumar Jena	03
2	Mr. Ramgopal Lakshmi Ratan	03
3	Mrs Reena Bathwal	03

From the above, although it can be said that Noticees 2, 3, 5 and 6, being independent directors of the Uniply, were aware or through reasonable diligence could have been aware of the appointment of Noticee 7, it cannot be decisively held that they had knowledge that Noticee 7 was representing the Acquirers as Noticee 7 had formally ceased his employment with Acquirer 2 and had officially joined Uniply. Further, the emails detailed in paragraphs 21 to 23 above which is one piece of evidence relied upon to arrive at the finding that Noticee 7 was representing the Acquirers, were exchanged between SEBI and Acquirers, thus, the said emails do not show culpability of the independent directors. Therefore, I am inclined to extend benefit of doubt to Noticees 2, 3, 5 and 6.

33. With respect to Noticee 8, I note that he has contended that the SCN contains allegations against the Directors of Uniply and that he was not appointed as a Director of Uniply. He has further submitted that his position in Unify was of a chief financial officer. In support of his submission, he has submitted a copy of outcome of board meeting of Uniply held on October 16, 2020, which records that Noticee 8 resigned as a chief financial officer of Uniply. To verify

the above, I have perused the annual reports of Uniply for the financial years 2016-2017, 2017-2018, 2018-2019 and 2019-2020, I note that the aforesaid annual reports explicitly record that Noticee 8 was working as a chief financial officer of Uniply. Thus, I find that Noticee 8 cannot be held responsible for violation of regulation 24(1) of Takeover Regulations as neither did he attend the board meetings wherein Noticee 7 was appointed on the board of Uniply nor he was representing the Acquirers.

III. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?

IV. If the answer to Issue No. III is in affirmative, then what should be the quantum of monetary penalty?

34. I note that the Apex Court in the case of The Chairman, SEBI vs. Shriram Mutual Fund and Ors. (civil appeal nos. 9523-9524 of 2003), decided on May 23, 2006 has 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."*

35. As discussed in Issue no. I above, I have afforded benefit of doubt to Noticee 1 and held that Noticee 1 had not violated regulation 27(1) of the Takeover Regulations. Further, in Issue no. II above, I have taken a lenient view and held that Noticees 2, 3, 5, and 6 had not violated regulation 24(1) of the Takeover Regulations and as regards to Noticee 8, due to his position in the Company, it is clear that he has not violated the aforesaid regulation. However, with respect to Noticee 4 and Noticee 7, it has been established that they have violated regulation 24(1) of the Takeover Regulations in Issue no. II, therefore, I am of the view that a monetary penalty needs to be imposed upon them under section 15HB of the SEBI Act, which reads as under:

Penalty for contravention where no separate penalty has been provided.

*15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be ***[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

**** Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

36. While determining the quantum of monetary penalty under the aforesaid section of the SEBI Act, I have considered the factors stipulated in section 15J of the SEBI Act, which reads as under:

Factors to be taken into account while adjudging quantum of penalty

While adjudging quantum of penalty under [1][15-I or section 11 or section 11B, the Board or 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.

[2][Explanation: For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]

[1] Substituted for the words "section 15-I, the adjudicating officer" by the Finance Act 2018.

[2]Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.

37. In the present matter, the facts of the case clearly establish that the Noticee 4 and Noticee 7 have violated regulation 24(1) of the Takeover Regulations. Accordingly, I consider it necessary to impose a monetary penalty which would act as a deterrent to them in future. It is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage made due to the default. It is also not possible to assess the consequent loss caused to investors. With respect to the repetitive nature of the default, I find that no prior action has been taken in the past against Noticee 4 and Noticee 7. Lastly, I have considered the mitigating factors submitted by Noticee 7 as summarized in paragraph 9.4.1(vii) above.

E. ORDER

After taking into consideration the nature and gravity of the violation established in the preceding paragraphs 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, I hereby impose penalties on Noticee 4 and Noticee 7 as tabulated below under section 15HB of the SEBI Act. I am of the view that the penalty imposed is commensurate with the violation committed by them. With respect to Noticee 1, Noticee 2, Noticee 3, Noticee 5 and Noticee 6, in light of the reasons provided above, the SCN stands disposed of.

Noticee no.	**Name**	**Penalty (in Rs)**
4.	Keshav Narayan Kantamneni	5,00,000 (Rupees Five Lakhs Only)
7.	Nazeer Azam Sulthan	2,00,000 (Rupees Two Lakhs Only)

38. Noticee 4 and Notice 7 shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the SEBI website **www.sebi.gov.in** on the following path by clicking on the payment link.

ENFORCEMENT→ ORDERS→ORDERS OF AO → PAY NOW

39. Noticee 4 and Noticee 7 shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-IV, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

40. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticees and SEBI.

Date: July 28, 2022
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER