**BEFORE THE ADJUDICATING OFFICER**
**SECURITIES AND EXCHANGE BOARD OF INDIA**
**[ADJUDICATION ORDER NO. AK/AO- 3-13 /2015]**

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**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

**M/s. Karnawat Hire Purchase Pvt. Ltd** (PAN: AABCK2724M); **Mr. Kailash Karnawat** (PAN: AEFPK4838P); **Ms Meena Karnawat** (PAN: ACAPK9411D); **M/s. Nakul Builders & Developers Pvt. Ltd.** (PAN: AAACH4321G); **Mr. Laxman Singh Karnawat** (PAN: ABQPK9090D); **M/s. Circle View Estate Pvt. Ltd.** (PAN: AAACC6559R); **M/s. Vardhaman Fincon Pvt. Ltd.** (PAN: AAACV5726F); **M/s. Kailash Karnawat & Family HUF** (PAN: AAAHK9671D); **Mr. Dungar Singh Karnawat** (PAN Not Available); **Ms. Pushpa Devi Karnawat** (PAN: ABQPK9179F) and **Mr. Dhruva Karnawat** (PAN: BYJPK4946B)

In the matter of

M/s. Dhruva Capital Services Ltd.

**FACTS OF THE CASE**

1. Securities and Exchange Board of India (hearinafter referred to as **'SEBI'**) received a letter dated September 21, 2013 from the company M/s. Dhruva Capital Services Ltd. (hereinafter referred to as **'Dhruva'/ 'the company'**) informing that one of the promoters, viz. M/s. Karnawat Hire Purchase Pvt. Ltd. had acquired 49,000 shares of the company through off market deal on December 01, 2009 at an acquisition price of Rs. 6/- per share.

2. To ascertain the acquisitions made by the promoter and the promoter group within the limit specified in Regulation 11(2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as **'Takeover Regulations'**), the Shareholding pattern of the promoter and promoter group from quarter ended March 2009 to September 2011 were examined by SEBI. Pursuant to the examination of the shareholding pattern as such, SEBI observed that M/s Karnawat Hire Purchase Pvt. Ltd. along with persons acting in concert (PACs) viz., Mr. Kailash Karnawat, Ms Meena Karnawat, M/s. Nakul Builders & Developers Pvt. Ltd., Mr. Laxman Singh Karnawat, M/s. Circle View Estate Pvt. Ltd., M/s. Vardhaman Fincon Pvt. ltd., M/s. Kailash

Karnawat & Family HUF, Mr. Dungar Singh Karnawat, Ms. Pushpa Devi Karnawat and Mr. Dhruva Karnawat, the promoters of the company (hereinafter collectively referred to as **'the Promoters'/ 'Noticees'**) had failed to comply with the provisions of Regulation 11(2) read with 14(1) of the Takeover Regulations by acquiring 49,000 shares (aggregating to 1.50% of the paid-up capital of the company) by way of off-market mode on December 01, 2009. The shares of the Company were listed on Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE'**).

**APPOINTMENT OF ADJUDICATING OFFICER**

3. The undersigned was appointed as the Adjudicating Officer vide Order dated May 6, 2014 under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'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 15H (ii) of the SEBI Act for the alleged violation of Regulations 11(2) read with 14(1) of the Takeover Regulations committed by the Noticees.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

4. A common Show Cause Notice (hereinafter referred to as "**SCNs**") Ref. No. EAD/AK/VG/29189/2014/1 to 11 dated October 10, 2014 was issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of Takeover Regulations as detailed below. A copy of shareholding of the promoter group and the letter dated September 21, 2013 received from the company was also sent along with the SCN. The details of the acquisition made through off-market mode is as given below:

| Name of Acquirer | Date of Acquisition | Number of Shares Acquired | % of shareholding Acquired | Total Promoters Shareholding | |
|---|---|---|---|---|---|
| | | | | Pre-acquisition | Post-acquisition |
| M/s Karnawat Hire Purchase Pvt. Ltd. along with PACs* | December 01, 2009 | 49,000 | 1.50% | 69.79% | 71.30% |

**PACs: Mr. Kailash Karnawat, Ms Meena Karnawat, M/s. Nakul Builders & Developers Pvt. Ltd., Mr. Laxman Singh Karnawat, M/s. Circle View Estate Pvt. Ltd., M/s. Vardhaman Fincon Pvt. ltd., M/s. Kailash Karnawat & Family HUF, Mr. Dungar Singh Karnawat, Ms. Pushpa Devi Karnawat and Mr. Dhruva Karnawat*

5. M/s. Karnawat Hire Purchase Pvt. Ltd., one of the promoter Noticees submitted a reply vide letter dated October 30, 2014 to the SCN. The other promoter Noticees viz. Mr. Kailash Karnawat, Ms. Meena Karnawat, M/s. Nakul Builders and Developers Pvt. Ltd., Mr. Laxman Singh Karnawat, M/s. Circle View Estate Pvt. Ltd., M/s. Vardhaman Fincon Pvt. Ltd., M/s. Kailash Karnawat & Family HUF, Mr. Dungar Singh Karnawat, Ms. Pushpa Devi Karnawat and Mr. Dhruva Karnawat vide letter dated October 31, 2014 stated that they referred and relied upon the detailed reply filed by M/s Karnawat Hire Purchase Pvt. Ltd. as their reply to the SCN. The Noticees while denying the violation of Regulation 11(2) have *inter alia* submitted as follows:

   a. *That during the relevant period, the company had an authorized capital of Rs.3,50,00,000/- divided into 35,00,000 equity shares of Rs.10/- each and a paid up capital of Rs.3,26,17,000/- divided into 32,61,700 equity shares of Rs.10/- each;*
   b. *That the promoters together were holding 69.79% of the equity capital of the company;*
   c. *That at the relevant time, the company was listed at BSE and the scrip was thinly traded;*
   d. *That a number of shareholders of the company had approached the promoters for purchase of their shares as the shareholders were not able to sell their shares in the market due to thin volumes;*
   e. *That the acquisition was made considering the requests of the shareholders and as per the language of the proviso to Regulation 11(2) of the Takeover Regulations inserted on October 31, 2008 read with SEBI circular no. CFD/DCR/TO/CIR-01/2009/06/08 dated October 6, 2009 to interpret that in case of an acquirer who together with PACs holds 55% or more but less than 75% of the shares in the target company, such acquirer could either by himself or through or with PACs acquire additional shares or voting rights entitling upto 5% voting rights in the target company without making a public announcement;*
   f. *That based on the above understanding, as such the promoter Noticee M/s. Karnawat Hire Purchase Pvt. Ltd. along with PACs agreed to purchase 49,000 shares of the company @ Rs.6 per share from four shareholders, viz. Mr. Sharad Agarwal (16,700 shares), Ms. Purnima Agarwal (2,000 shares), Ms. Mehrunnisa Hitawala (8,500 shares) and Mr. Dinesh Chandra*

*Agarwal (21,800 shares) for a consideration of Rs. 2,94,000/-. A copy of their bank statement showing payment of consideration was submitted;*

g. *That consequently the percentage shareholding of the promoter group increased from 69.79% to 71.30%, i.e. an increase of 1.5% and since such increase in the shareholding of the promoter group was less than 2%, they felt that they were not under obligation to report the said acquisition to either SEBI or BSE;*

h. *That in view of the above facts they had not violated Regulation 11(2) of the Takeover Regulations;*

i. *That even if for sake of argument it is admitted that the promoter Noticees had violated Regulation 11(2) of the Takeover Regulations, the same should be considered as technical violation, since on such purchase of 49,000 shares of the company on December 1, 2009 they had neither impacted the volume or price of the shares of the company at the stock exchange, nor, did it result in investors suffering any monetary losses. Also neither did the promoter Noticees make any disproportionate gain, nor, did they take any unfair advantage as a result of the purchase. In fact, their purchase of shares from the said four shareholders had benefitted the sellers as they were unable to sell the shares for a long time;*

j. *That further even if it is considered for argument sake that there was a technical violation, the promoter Noticees were willing to re-sell the said 49,000 shares to the buyers @ Rs.6/- per share so as to bring back the promoters shareholding to the original level.*

8 Thereafter, 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 February 2, 2015 vide hearing notice dated January 6, 2015. On the scheduled date, Shri Kamal Agarwal, Authorized Representative (AR) of the Noticees appeared for the personal hearing and reiterated the submissions made by the Noticees in the reply dated October 30, 2014. The AR also sought time to file additional written submissions and was granted time till February 10, 2015. The AR was *inter alia* also advised to submit details such as when the shares were received by the Noticees, when the cheque was given by them to the sellers etc. Accordingly, further written submissions were filed by the AR vide letter dated February 9, 2015. The Noticees vide the said letter *inter alia* made the following submissions:

a. *That the purpose of purchase of the shares was to help the transferors to liquidate their holdings for funding needs and was not an attempt to consolidate the shareholding of the promoters in violation of law;*

b. *That in view of the amendment to Regulation 11(2) of the Takeover Regulations as on October 31, 2008, they were entitled to acquire additional 5% shares as the promoters pre-acquisition holding was 69.79% i.e. between the threshold limit of 55-75%;*

c. *That since there was some confusion on the interpretation of the amended portion of Regulation 11(2) of the Takeover Regulations, SEBI had issued circular no. CFD/DCR/TO/CIR-01/2009/06/08 dated October 6, 2009 and clarified the applicability of Regulation 11(2). As per para 3 of the said circular, there is no restriction about acquisition of shares whether through secondary market or through private deal, though Regulation 11(2) only provides for secondary market transactions;*

d. *That hence acquisition by the promoter Noticees of 49,000 shares through off-market transactions was a bonafide interpretation of clause 3 of SEBI circular dated October 06, 2009 and atleast not an attempt to acquire shares in violation of law;*

e. *That even if it is admitted for argument sake that off-market acquisition of 49,000 shares is in violation of Regulation 11(2) of the Takeover Regulations, then also the provisions of Regulation 44(g) of the Takeover Regulations should be followed wherein the promoter Noticees should be permitted to sell the said 49,000 shares in market in a time bound manner so the profit, if any, can be deposited with the Investor Service Cell of SEBI or BSE;*

f. *Also that if it is admitted for argument sake that off-market acquisition of 49,000 shares is in violation of Regulation 11(2) of the Takeover Regulations, then the Adjudicating Officer should consider the provisions of Section 15J of the SEBI Act while quantifying the penalty to be imposed for the alleged violation.*

**CONSIDERATION OF ISSUES**

9 I have carefully perused the written submissions of the Noticees and the submissions made at the hearing by the AR on behalf of the Noticees. I observe that the allegation against the Noticees is that they have violated Regulation 11(2) read with regulation 14(1) of Takeover Regulations as stated above during the year 2009.

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

10.1 Whether the Noticees violated Regulation 11(2) read with 14(1) of the Takeover Regulations during the year 2009?

10.2 Does the violation, if any, attract monetary penalty under Section 15 H (ii) of SEBI Act?

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

**FINDINGS**

11 Before moving forward, it is pertinent to refer to the provisions of Regulations 11(2) read with regulation 14(1) of the Takeover Regulations as it was prevailing at the time of acquisition, which reads as under:

> ***Consolidation of holdings.***
> ***11.*** *(1)…*
> *[1][ (2)No acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, shall acquire either by himself or through [2][or with] persons acting in concert with him any additional shares [3][entitling him to exercise voting rights] or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:*
>
> *Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures seventy-five per cent (75%) the words and figures ninety per cent (90%) were substituted. ]*

[1] Substituted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2006, w.e.f. 26-5-2006. Prior to its substitution, sub-regulation (2), as amended by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2005, w.e.f. 3-1-2005 and SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 1998, w.e.f. 28-10-1998, read as under: —(2) An acquirer, who together with persons acting in concert with him has acquired, in accordance with the provisions of law, fifty five per cent (55%) or more but less than seventy five per cent (75%) of the shares or voting rights in a target company, may acquire either by himself or through persons acting in concert with him any additional share or voting right, only if he makes a public announcement to acquire shares or voting rights in accordance with these regulations:

[2] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

[3] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, w.e.f. 31-10-2008.

*[4][Provided further that such acquirer may, [5][notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement under these Regulations, acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent. (5%) voting rights in the target company subject to the following:-*

*(i) the acquisition is made through open market purchase in normal segment on the stock exchange but not through bulk deal /block deal/ negotiated deal/ preferential allotment; or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company;*

*(ii) the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent.(75%).]*

***Timing of the public announcement of offer.***

***14**.(1) The public announcement referred to in regulation 10 or regulation 11 shall be made by the merchant banker not later than four working days of entering into an agreement for acquisition of shares or voting rights or deciding to acquire shares or voting rights exceeding the respective percentage specified therein*

12 Now, the first issue for consideration is whether the Noticees violated Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations. I find from the replies of the Noticees as well as the Shareholding Pattern of the Promoters and Promoter Group as available on the BSE website that the Noticees formed a part of the Promoter group. I also note that ***the Hon'ble Securities Appellate Tribunal (SAT) in its judgment dated June 01, 2012 in Appeal No.139 of 2011 in the matter of Mr. Rajesh Toshniwal vs. SEBI*** has held that it is the basic principle of corporate law that the promoter group is a homogeneous class and it is the normal practice to club the entire promoter group into one class unless otherwise proved by the acquirer. Hence, there appears no doubt about the fact that the acquisition of 49,000 shares of the company on December 01, 2009 by M/s Karnawat Hire Purchase Pvt. Ltd. as the acquirer was in concert with the other promoters of the company viz. Mr. Kailash Karnawat, Ms Meena Karnawat, M/s Nakul Builders & Developers Pvt. Ltd., Mr. Laxman Singh Karnawat, M/s. Circle View Estate Pvt. Ltd., M/s. Vardhaman Fincon Pvt. ltd., M/s. Kailash Karnawat & Family HUF, Mr. Dungar Singh Karnawat, Ms. Pushpa Devi

[4] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Amendment) Regulations, 2008, w.e.f. 31-10-2008.

[5] Inserted by the SEBI (Substantial Acquisition of Shares and Takeovers) (Third Amendment) Regulations, 2009, w.e.f. 6-11-2009.

Karnawat and Mr. Dhruva Karnawat. I also note that the same has not been disputed by the promoter Noticees in the submissions made.

13 I, thus, note here that M/s. Karnawat Hire Purchase Pvt. Ltd. along with the PACs as aforesaid acquired 49,000 shares of the company through off market mode on December 01, 2009 at an acquisition price of Rs. 6/- per share, pursuant to which the shareholding of the promoter group of the company increased from 69.79% to 71.30%. I note that the Noticees have not disputed the said facts as well.

14 As per Regulation 11(2) of the Takeover regulations no acquirer, who together with persons acting in concert with him holds, fifty-five per cent (55%) or more but less than seventy-five per cent (75%) of the shares or voting rights in a target company, can acquire either by himself or through or with persons acting in concert with him any additional shares entitling him to exercise voting rights or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations. Further, the second proviso to Regulation 11(2) as inserted by amendment of the Takeover Regulations with effect from October 31, 2008 states that an acquirer may, notwithstanding the acquisition made under regulation 10 or sub-regulation (1) of regulation 11, without making a public announcement, acquire either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him upto five per cent (5%) voting rights in the target company so long as the acquisition is made through open market purchase in normal segment on the stock exchange, but, not through bulk deal /block deal/ negotiated deal/ preferential allotment, or the increase in the shareholding or voting rights of the acquirer is pursuant to a buyback of shares by the target company; and that the post acquisition shareholding of the acquirer together with persons acting in concert with him shall not increase beyond seventy five per cent (75%).

15 In the extant matter, I, thus, find that the promoter Noticees acting in concert could have acquired up to 5% shares or voting rights without making an open offer under the second proviso to Regulation 11(2) of the Takeover Regulations, provided they satisfied all the conditions therein, including that such acquisition should be through open market purchase in normal segment on the stock exchange. However, I note that the acquisition made by M/s. Karnawat Hire Purchase Pvt. Ltd. along with the PACs was through off-market mode and not by way of open market purchase

on the stock exchange. This fact has not been disputed by the promoter Noticees. In view of the same, I find that the Noticees violated Regulation 11(2) read with 14(1) of the Takeover Regulations by not making a public announcement to acquire shares in accordance with the Takeover Regulations.

16 In this regard, I note that the promoter Noticees have cited SEBI's Circular CFD/DCR/TO/Cir-01/2009/06/08 dated August 06, 2009 (hereinafter referred to as **'the Circular'**) to support its argument that there is no restriction about the manner in which 5% could be acquired under the second proviso to Regulation 11(2) without making an open offer. The promoter Noticees have *inter alia* stated that para 3 of the said circular clarifies that there is no restriction about acquisition of shares whether through secondary market or through private deal, though Regulation 11(2) only provides for secondary market transactions.

17 I find that the Circular at para 2 states that subject to the conditions as specified in the newly inserted proviso, an acquirer together with PACs holding 55% or more but less than 75% of shares or voting rights in the target company may acquire additional shares either by himself or through or with PACs entitling him upto 5% voting rights in the target company without making a public announcement under the Takeover Regulations. Thus, I note here that para 2 of the circular clearly states that conditions specified in the newly inserted proviso need to be satisfied to acquire additional 5% shares without making public announcement. And one of the conditions as brought out above is that such acquisition should be through open market purchase in normal segment on the stock exchange. Hence, I find that the circular is in consonance with the Regulation and not inconsistent with the Regulation as brought out by the Noticees.

18 Moving ahead at para 3 of the circular, I find that since SEBI had been receiving representations from market participants/ listed companies with respect to the interpretation of the proviso inserted by the amendment dated October 31, 2008, hence SEBI had vide the said circular clarified that:

a) *the acquisition, within the limit of five per cent (5%) under the second proviso to sub-regulation (2) of regulation 11, may be made by an acquirer who, together with persons acting in concert with him, holds fifty five percent (55 %) or more but less than seventy five per cent (75 %) of the shares or voting rights in the target company;*

b) *the acquirer together with persons acting in concert with him, holding shares or voting rights as specified at (a) above, may acquire additional shares or voting rights upto a maximum of five per cent (5%) voting rights in the target company in one or more tranches, without any restriction on the time-frame within which the same can be acquired;*

c) *the aforesaid acquisition of five per cent (5%) shall be calculated by aggregating all purchases, without netting the sales;*

d) *consequent to such acquisition, the percentage of shareholding / voting rights of the acquirer, together with persons acting in concert with him, in the target company, shall not increase beyond seventy five per cent (75%). This limit is applicable irrespective of the level of minimum public shareholding required to be maintained by the target company in terms of clause 40A of the Listing Agreement.*

19 The para 3 of the clarification issued vide circular dated August 03, 2009 as aforesaid, I find, in no terms gave any impression that there is no longer any restriction on acquisition of additional 5% shares through open market and that such acquisition can now be made through secondary market or through private deal, though Regulation 11(2) only provides for secondary market transactions. Hence, I find no discrepancy between the Circular and Regulation 11(2) of the Takeover Regulations as amended with effect from October 31, 2008 by inserting the new proviso. Further, it is pertinent to note here that a circular cannot be inconsistent with the Regulations and cannot override them. The circular cannot have overriding effect and cannot supersede the Regulations which are statutory in nature. Besides, I note that the aforesaid cited circular dated August 06, 2009 at para 4 has also clarified that the circular is issued under Regulation 5 of the Takeover Regulations read with Section 11 of the SEBI Act for removal of difficulties in the interpretation of the second proviso to sub-regulation (2) of Regulation 11 of the Takeover Regulations. Thus, I do not find any merit in the said argument put forth by the Noticees.

20 The Noticees, I find, have also submitted that even if SEBI finds violation of Regulation 11(2) of the Takeover Regulations, then also the provisions of Regulation 44(g) of the Takeover Regulations should be followed wherein the promoter Noticees should be permitted to sell the said 49,000 shares in market in a time bound manner so the profit, if any, can be deposited with the Investor Service Cell of SEBI or BSE.

21 I find here that Regulation 44 (g) of the Takeover Regulations states as follows:

*44.Without prejudice to its right to initiate action under Chapter VIA and section 24 of the Act, the Board may, in the interest of securities market or for protection of interest of investors, issue such directions as it deems fit including: -*

…

*(g) directing disinvestment of such shares as are in excess of the percentage of the shareholding or voting rights specified for disclosure requirement under the regulations 6,7 or 8;* (emphasis added)

22 From the same, I note that Regulation 44 of the Takeover Regulation firstly clearly states that the directions stipulated thereunder are without prejudice to Board's right to initiate action under Chapter VIA and section 24 of the SEBI Act. And the present proceedings are, in fact, covered under Chapter VI of the SEBI Act. As recorded earlier, I have been appointed as the Adjudicating Officer by an Order dated May 06, 2014 under section 15-I of SEBI Act to inquire into and adjudge under Section 15H(ii) of the SEBI Act for the alleged violation of regulation 11(2) read with Regulation 14(1) of the Takeover Regulations committed by the Noticees. Both, Section 15-I as well as Section 15H (ii) are part of Chapter VIA of the SEBI Act. Besides, I further note that the provisions of Regulation 44(g) of the Takeover Regulations become applicable only in case of violation of Regulations 6, 7 or 8 of the Takeover Regulations and not in case of violation of Regulation 11 of the Takeover Regulations under which the extant violation falls. Thus, I do not find any merit also in the said argument put forth by the Noticees.

23 I further note that the promoter Noticees have *inter alia* stated that since the increase in the shareholding of the promoter group was less than 2%, they felt that they were not under an obligation to report the said acquisition to either SEBI or BSE. As regards the same, I note that any acquirer who has acquired shares under sub-regulation (1) of Regulation 11 of the Takeover Regulations or under second proviso to sub-regulation (2) of Regulation 11, is under an obligation under Regulation 7(1A) of the Takeover Regulations to disclose to the target company and the stock exchanges where shares of the target company are listed within two days of such purchase or sale, whereas, I find that in the extant case violation/ non-compliance of Regulation 7(1A) has not even been alleged in the first place.

24 Further though I find that the Noticee promoters have *inter alia* stated that the purpose of purchase of the shares was to help the transferors to liquidate their holdings for funding needs and was not an attempt to consolidate the shareholding of the promoters in violation of law, the additional acquisition by the promoter Noticees from public shareholders as aforesaid, in effect resulted in consolidation of the promoter holding without making public announcement, hence, in violation of law.

25 From all of the above, it stands established without doubt that the promoter Noticee M/s. Karnawat Hire Purchase Pvt. Ltd. alongwith PACs viz. Mr. Kailash Karnawat, Ms Meena Karnawat, M/s. Nakul Builders & Developers Pvt. Ltd., Mr. Laxman Singh Karnawat, M/s. Circle View Estate Pvt. Ltd., M/s. Vardhaman Fincon Pvt. ltd., M/s. Kailash Karnawat & Family HUF, Mr. Dungar Singh Karnawat, Ms. Pushpa Devi Karnawat and Mr. Dhruva Karnawat, the promoters of the company had failed to comply with the provision of Regulation 11(2) read with regulation 14(1) of the Takeover Regulations by acquiring 49,000 shares (aggregating 1.50%) of by way of off market mode on December 01, 2009.

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 15H(ii) (b) of the SEBI Act, which reads as under:

***"Penalty for non-disclosure of acquisition of shares and takeovers***

*15H. If any person, who is required under this Act or any rules or regulations made thereunder, fails to-*

*(ii) make a public announcement to acquire shares at a minimum price; or*

*he shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher."*

28 While determining the quantum of monetary penalty under Section 15H(ii) of the SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act which reads as under:

***"15J - Factors to be taken into account by the adjudicating officer***

*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, the quantum of penalty would depend on the factors referred in Section 15-J of SEBI Act and stated as above. The main objective of the Takeover Regulations is to afford fair treatment for shareholders who are affected by the change in control. Section 15 H(ii) of SEBI Act provides for imposition of monetary penalty of twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher, if any person, who is required under the Act or any rules or regulations made there under, fails to make a public announcement to acquire shares at a minimum price. Further, under Section 15-J 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 promoters. 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 promoter Noticees.

30 I note here that the promoter Noticees in their submissions have also prayed that the Adjudicating Officer should consider the provisions of Section 15J of the SEBI Act while quantifying the penalty to be imposed for the alleged violation. In the matter, I note that the Noticees have while

highlighted the fact that neither the acquisition resulted in investors suffering any monetary loss, nor, did the promoter Noticees make any disproportionate gain or take any unfair advantage as a result of the purchase. The Noticees, I find, have *inter alia* further submitted that their purchase of shares from the said four shareholders had in fact benefitted the sellers as they were unable to sell the shares for a long time. In this regard, I note that ***the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Komal Nahata Vs. SEBI (Date of judgment- January 27, 2014)*** has observed that:

*"Argument that no investor has suffered on account of non disclosure and that the AO has not considered the mitigating factors set out under Section 15J of SEBI Act, 1992 is without any merit because firstly penalty for non compliance of Takeover Regulations, 1997 and PIT Regulations, 1992 is not dependent upon the investors actually suffering on account of such non disclosure."*

In view of the same, the argument put forth by the promoter Noticees that their violation/ non-compliance did not result in any monetary loss to the investors is not relevant for the given case.

31 In the matter, I also note that in ***Appeal No. 78 of 2014 of Akriti Global Traders Ltd. Vs. SEBI, the Hon'ble Securities Appellate Tribunal (SAT) vide Order dated September 30, 2014*** *had observed that:*

*"… Argument of appellant that the delay was unintentional and that the appellant has not gained from such delay and therefore penalty ought not to have been imposed is without any merit, because, firstly, penal liability arises as soon as provisions under the regulations are violated and that penal liability is neither dependent upon intention of parties nor gains accrued from such delay."*

In view of the same, the argument put forth by the Noticees that the promoter Noticees had not made any disproportionate gain or taken any unfair advantage as a result of the purchase and, in fact, benefitted the sellers is also not relevant for the given case.

32 I further note that by not making the public announcement, the Noticees had resulted in denying the statutory right of the shareholders of the company to exit through open offer mechanism at

the respective point of time. I believe that investor confidence in the securities market can be sustained largely by ensuring investors protection. It, thus, becomes imperative to impose monetary penalty for violation of the provisions of Takeover Regulations. In this regard, I note from the BSE website that at the relevant point of time, there were about 600 public shareholders holding approx. 30% out of the total shareholding of 32,61,700 shares, and who were deprived of an exit opportunity due to failure of the promoter Noticees to make an public announcement of the open offer disclosing their intention to acquire shares of the company from the existing shareholders**.**

33 I note further that the Noticees have submitted that violation of Regulation 11(2) of the Takeover Regulations by them should be considered as technical violation since on such purchase of 49,000 shares of the company on December 1, 2009 they had neither impacted the volume or price of the shares of the company at the stock exchange, nor, did it result in investors suffering any monetary losses. As has been brought out above the argument that violation/ non-compliance did not result in any monetary loss to the investors is not relevant for the given case. Besides, public announcement as envisaged under Regulation 11(2) of the Takeover Regulations is the announcement of the open offer by the acquirers and the persons acting in concert, primarily disclosing their intention to acquire shares of the target company from the existing shareholders, thereby giving an opportunity of exit to the public shareholders at a specified price during a specified time and not a mere intimation of acquisition to the general public. In fact, I find that the penalty provision under Section 15H (ii) of the SEBI Act also specifically refers to failure to: "*make a public announcement to acquire shares at a minimum price" (Emphasis supplied)*. Thus, I conclude that failure to make public announcement to acquire shares at a minimum price is a serious matter and cannot be considered a mere "technical" lapse, even if the transaction is otherwise in compliance, since the shareholders/ investors were deprived of an exit opportunity at the relevant point of time. And I note that such failure has continued since December 2009.

34 In the matter, I further note that the provisions of penalty for non-compliance of the mandate of the SEBI Act are with an objective to have an effective deterrent to ensure better compliance of the provisions of the SEBI Act and Regulations, which is crucial for SEBI in order to protect the interests of investors in securities.

**ORDER**

35 After taking into consideration all the facts and circumstances of the case, I impose a penalty of **Rs. 8,00,000/- (Rupees Eight Lacs only)** under Section 15H (ii) of the SEBI Act on the promoter Noticees viz. **M/s. Karnawat Hire Purchase Pvt. Ltd.** (Acquirer) and **Mr. Kailash Karnawat, Ms Meena Karnawat, M/s. Nakul Builders & Developers Pvt. Ltd., Mr. Laxman Singh Karnawat, M/s. Circle View Estate Pvt. Ltd., M/s. Vardhaman Fincon Pvt. ltd., M/s. Kailash Karnawat & Family HUF, Mr. Dungar Singh Karnawat, Ms. Pushpa Devi Karnawat and Mr. Dhruva Karnawat**, Person Acting in Concert (PAC) with the Acquirer**,** which will be commensurate with the violations committed by the Noticees for violation of Regulation 11(2) read with Regulation 14(1) of the Takeover Regulations. The promoter Noticees shall be **jointly and severally liable** to pay the said monetary penalty.

36 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.

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

**Date: February 26, 2015** **Anita Kenkare**

**Place: Mumbai** **Adjudicating Officer**