BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO: ORDER/SBM/VS/2021-22/15658-15665

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

In respect of:

1. **Ardent Impex Pvt. Ltd.,** (PAN No.: AAECA7631G), having address at: 19-B, Shyam Kamal, Agarwal Market, Vile Parle (East), Mumbai-400057 (**Noticee No. 1**)

2. **Orpheus Trading Pvt. Ltd.,** (PAN No.: AAACO7172N), having address at: 402, 4^{TH} Floor, Anmol French House, Opera House, Mumbai-400007 (**Noticee No. 2**)

3. **Nirmal Madhu Family Private Trust Harshita Jain and Mansukhlal Jain (Trustees),** (PAN No.: AACTN7896B), having address at: 601, Shree Shyam Sadan, Plot no 58, Hatkesh CHS, N S Rd no 7, JVPD scheme, Juhu, Vile Parle (West), Mumbai-400049 (**Noticee No. 3**)

4. **Mr Nirmal Bhanwarlal Jain,** (PAN no.: ABRPJ9235G) having address at: 601, Shree Shyam Sadan, Plot no 58, Hatkesh CHS, N S rd no 7, JVPD scheme, Juhu, Vile Parle (West), Mumbai-400049 (**Noticee No. 4**)

5. **Ms Aditi Athavankar,** (PAN No.: AACPA0090J), having address at: Flat no 2001/2002, ERA III, Marathon Next, Gen G K Marg, Lower Parel, Mumbai-400013 (**Noticee No. 5**)

6. **Mr Venkataraman Rajamani,** (PAN No.: ADHPR6633G), having address at: Flat 604, Glen Heights, Hiranandani Garden, Powai, Mumbai-400076 (**Noticee No. 6**)

7. **Madhu N Jain,** (PAN No.: ABEPJ6034E), having address at: 101 / A, Ashok The Guruprasad CHS, 30 Hanuman Road, Vile Parle (East), Mumbai-400057 (**Noticee No. 7**)

8. **Kalki Family Private Trust Aditi Avinash Athavankar (Trustee),** (PAN No.: AADTK0762E), having address at: Flat no 2001/2002, ERA III, Marathon Next, Gen G K Marg, Lower Parel, Mumbai-400013 (**Noticee No. 8**)

In the matter of

IIFL Finance Limited

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') received an email dated June 25, 2020 from the National Stock Exchange ('**NSE'**) wherein it was mentioned that the promoters/promoter group of IIFL Finance Limited (hereinafter referred to as '**IIFL'/ 'Company**') had made the disclosures to NSE under Regulation 29 (2) of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as '**SAST Regulations**') w.r.t the acquisition and disposal of shares of the company made by its promoters on June 24, 2020 and June 25, 2020, respectively. In this regard, NSE had also enclosed the copies of the disclosures dated June 24, 2020 and June 25, 2020 made by the promoters/promoter group of IIFL. It was mentioned by NSE that the acquisition of 4,54,000 equity shares of IIFL from the open market by one of the promoter of IIFL on June 24, 2020 had led to increase in the total shareholding of the promoter/ promoter group of IIFL to 25.06% of the total share capital of IIFL as on the said date i.e June 24, 2020. It was further mentioned by NSE that the sale of 2,50,000 shares of the company by another promoter of IIFL on the very next day i.e June 25, 2020 had led to the decrease in the total shareholding of the promoter/promoter group of IIFL to 24.99% from 25.06% of the total share capital of the company. The scrip of IIFL is listed on the Bombay Stock Exchange ('BSE') and NSE.
2. In view of the above observations, SEBI conducted an examination into the matter for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and the relevant provisions of the SAST Regulations allegedly committed by the promoters/promoter group of IIFL viz., Ardent Impex Pvt. Ltd. (hereinafter referred to as '**Noticee No. 1**'), Orpheus Trading Pvt. Ltd. (hereinafter referred to as '**Noticee No. 2**'), Nirmal Madhu Family Private Trust Harshita Jain and Mansukhlal Jain (Trustees) (hereinafter referred to as '**Noticee No. 3**'), Shri Nirmal Bhanwarlal Jain (hereinafter referred to as '**Noticee No. 4**'), Ms Aditi Athavankar (hereinafter referred to as '**Noticee No. 5**'), Shri Venkataraman Rajamani (hereinafter referred to as '**Noticee No. 6**'), Ms Madhu N Jain (hereinafter referred to as '**Noticee No. 7**') and Kalki Family Private Trust Aditi Avinash Athavankar (Trustee) (hereinafter referred to as '**Noticee No. 8**'). In the context of the present proceedings, Noticee nos. 1 to 8 are also hereinafter collectively referred to as '**Noticees**'.
3. During the course of the examination by SEBI, it was observed that pursuant to the market purchase of 4,54,000 shares of the company by Noticee no. 4 on June 24, 2020, the collective shareholding of the promoters/promoter group of IIFL had crossed the threshold limit of 25% of the total share capital of the company during the relevant period i.e June 24, 2020 and therefore, it is alleged that the Noticees had triggered the provisions of Regulation 3(1) of the SAST Regulations. Further, in terms of Regulations 13(1) r/w 13(2)(a) of the SAST Regulations, the Noticees were required to

make a public announcement of open offer prior to the placement of the purchase order with the stock broker by Noticee no. 4 to acquire the shares of the company from the open market. From the findings of the examination report, it is alleged that the Noticees have failed to comply with the requirements of Regulations 13(1) r/w 13 (2) (a) of the SAST Regulations. In view of the same, it is alleged that Noticees have violated the provisions of Regulation 3 (1) r/w Regulations 13(1) and 13 (2) (a) of the SAST Regulations. Therefore, adjudication proceedings have been initiated against the Noticees under the provisions of section 15H (ii) of the SEBI Act.

4. During the relevant period, the Noticees were shown as the promoters/members of the promoter group of IIFL and therefore, they were also the 'persons acting in concert' ('PACs') within the meaning of Regulation 2 (1) (q) of the SAST Regulations. In this context, the Hon'ble SAT vide order dated June 1, 2012 in the matter of Rajesh Toshniwal vs SEBI and Ors (Appeal no. 139 of 2011) had held that it is the basic principle of corporate law that the promoter group is a homogenous class and it is the normal practice to club the entire promoter group into one class unless otherwise proved by the acquirers. Further, the fact that the Noticees belonged to the promoter group of IIFL and were the PACs were also observed in the various shareholding filings /submissions made by the company to the stock exchanges from time to time.

APPOINTMENT OF ADJUDICATING OFFICER

5. Ms Anitha Anoop was appointed as the Adjudicating Officer ('AO') in the matter vide Order dated September 14, 2020. Pursuant to the transfer of Ms. Anitha Anoop to another department of SEBI, the undersigned was appointed as the AO in the matter, vide *communique* dated November 03, 2020, under the provisions of section 19 read with section 15-I of the SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') to inquire into and adjudge under the provisions of section 15H(ii) of the SEBI Act the aforementioned alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice ref. SEBI/EAD-1/SBM/ASR/20731/1-8/2020 dated December 02, 2020 (hereinafter referred to as '**SCN**') was issued to the Noticees in terms of rule 4 of the Adjudication Rules requiring the Noticees to show cause as to why an inquiry should not be held against the Noticees and why penalty, if any, should not be imposed on them under the provisions of section 15H(ii) of the SEBI Act. The SCN issued to the Noticees, *inter alia*, mentioned/alleged the following-
   a. *SEBI received an email dated June 25, 2020 (Annexure 3) from National Stock Exchange of India Limited (NSE) regarding acquisition of shares of IIFL on June 24, 2020 and subsequent sale of shares*

on June 25, 2020 by the Noticees who were the promoters of IIFL. Vide the aforesaid email, NSE also informed about the shareholding of the Noticees / promoters of IIFL, as per the shareholding pattern submitted by the Company for the quarter ended March 31, 2020. The details of the same are given in table below:

Name of the promoter / noticee	Total nos. of shares held	Percentage (%)
Ardent Impex Pvt Ltd	35,18,904	0.93
Orpheus Trading Pvt Ltd	13,00,000	0.34
Harshita Jain and Mansukhlal Jain (in their capacity as Trustee of Nirmal Madhu Family Private Trust)	1,00,00,000	2.64
Nirmal Bhanwarlal Jain	4,72,65,154	12.49
Aditi Athavankar	2,00,000	0.05
Venkataraman Rajamani	1,09,84,432	2.9
Madhu N Jain	1,20,75,000	3.19
Aditi Avinash Athavankar (in her capacity as Trustee of Kalki Family Private Trust)	90,00,000	2.38
Total	**9,43,43,490**	**24.94**

b. *It is observed that on June 24, 2020, after the market hours, a disclosure under regulation 29(2) of the SAST Regulations was made by Noticee No. 4 to the stock exchanges, for acquisition of additional 4,54,000 equity shares of IIFL from the open market. This led to an increase in the total shareholding of the promoter group from 24.94% to 25.06% of the total share capital of the company.*

c. *On June 25, 2020, Noticee No. 1 submitted a disclosure to the stock exchanges under regulation 29(2) of the SAST Regulations, informing about the sale of 2,50,000 shares (0.07% of the total shareholding) by it, therefore bringing the promoter group holding to 24.99%. It is observed that in the aforesaid disclosure, an additional note for pre-holding (25.06%) was given which read as following:*

> *"This percentage voting rights had been computed on the basis of an expected delivery of shares which is yet to take place. Prior to delivery and acquisition of the voting rights, the sale of shares covered by this intimation has been effected and the shares have been delivered. As such, the 25% threshold was never actually crossed."*

d. *Further, on June 25, 2020, a clarification was also issued by the Company informing that, "This is to clarify that the Promoter Group's voting rights in the Company has not exceeded 25% and Promoter Group has no intent to acquire more than 25% voting rights in the Company or make any public offer."*

e. From the facts mentioned above, it was alleged that the acquisition of shares on June 24, 2020 by the Noticee No. 4 resulted in the shareholding of promoters of the Company increasing to 25.06%, which is also mentioned in the disclosure made by the promoters of IIFL on June 24, 2020.

f. In this regard, the term Acquisition has been defined under regulation 2(1)(b) of the SAST Regulations, as follows:

> *"acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company.*

g. Thus it is observed from the definition of the term Acquisition mentioned above that even an agreement to acquire the shares of a listed company is construed as Acquisition of shares of that company, under SAST Regulations.

h. Further, with regard to making public announcement under SAST Regulations, it has been stipulated under regulation 13(2)(a) of the SAST Regulations that "such public announcements - in the case of market purchases, shall be made prior to the placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds". Therefore, it was observed from the aforesaid provisions of the SAST Regulations that in respect of the acquisition of the shares through open market, an acquirer is required to make a public announcement prior to placement of purchase order that would take the shareholding of the concerned group of entities beyond 25% (i.e. at the stage where acquirer has agreed to acquire shares through market).

*i. Therefore, in view of the acquisition of 4,54,000 shares (0.12%) on June 24, 2020 by one of the promoters of the Company (Noticee No. 4), 'without making a public announcement of an open offer for acquiring shares of the Company', it was alleged that the promoters of IIFL / the Noticees No. 1 to 8 have violated the provisions of regulation 3(1) read with regulations 13(1) and 13(2) (a) of the SAST Regulations. In view of the above reasons, adjudication proceedings have been initiated against the Noticees under the provisions of section 15H(ii) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**').*

7. Vide common letter dated December 19, 2020, Noticees submitted their reply to the SCN and, *inter alia,* mentioned the following: -

a. The central theme of the Takeover Regulations is the entitlement to exercise voting rights. Be it charging provisions or the exemption provisions, definitional provision or the operational provisions, the only threshold for consideration is the entitlement to exercise voting rights.

b. There was no intention or agreement to acquire an entitlement to voting rights of 25% or more. A computational error led to the instruction to the broker for purchase of share. No sooner than the error *was discovered, it was ensured that the entitlement to exercise voting rights of 325% or more never came about, by timely selling of existing shares.*

c. *The shareholding of the promoter and promoter group as on March31, 2020 was 9,43,43,490 shares (24.94% of the shareholdings).*

d. *They intended to acquire up to 24.99% therefore, on June 24, 2020, the promoter and prompter group decided to purchase from the open market such number of share that would not attract an open offer obligation.*

e. *On June 24, 2020 a buy order of 4,54,000 share was placed on behalf of Mr. Nirmal Jain. The number of shares computed was erroneous.*

f. *On June 25, 2020, the transaction to sell 2,50,000 shares by Ardent Impex Pvt. Ltd. was executed and the shares to be sold were delivered to the broker towards margin for the sale.*

g. *Therefore, by the time the 4,54,000 shares acquired on behalf of Mr. Nirmal Jain got delivered from the clearing and settlement system of the stock exchange, thereby, giving the promoter group the entitlement to exercise the voting rights attached thereto, the promoter group had already lost the entitlement to exercise voting rights attached to 2,50,000 shares with the transfer of the 2,50,000 shares by Ardent Impex Pvt. Ltd.*

h. *The Noticee also provided the day-wise entitlement to exercise voting rights of the promoter group:*

Sr. No.	***Date***	***Total Promoter Holding***
1	*June 24, 2020*	*24.94%*
2	*June 25, 2020*	*24.8%*
3	*June 26, 2020*	*24.99%*

i. *Therefore, in view of the above, the promoter group's entitlement to exercise voting rights never crossed the threshold stipulated in regulation 3(1) - of 25% or more- at any point in time, whether on June 24, 2020, June 25, 2020 or June 26, 2020. It will be seen that at no point of time, either during a day or at the close of the register of beneficial ownership of shares on any day, did the promoter group ever cross the threshold limit of 25%.*

8. In terms of the Adjudication Rules, Noticees were provided with an opportunity of personal hearing in the matter on August 17, 2021, through the online webex platform. Mr. Somasekhar Sundaresan, Advocate appeared as the Authorized Representative ('**AR**') on behalf of the Noticees on the stipulated date of hearing. During the course of hearing, the AR reiterated the submissions made by the Noticees in their reply dated December 19, 2020 and also made a request to file additional submissions in the matter. Vide email dated September 3, 2021, the Noticees filed additional

submissions and mainly reiterated their earlier submissions made vide letter dated December 19, 2020. Further, the Noticees also drew reference to various judgments of the Hon'ble SAT and Hon'ble SC in support of their submissions.

ISSUES FOR CONSIDERATION AND FINDINGS

9. I have carefully perused the allegations levelled against the Noticees in the SCN and also the replies of the Noticees. I have also perused the examination report along with the enclosures to the said report. Before moving forward, the relevant provisions of law allegedly violated by the Noticees and as mentioned in the SCN are mentioned as under:

> ***SAST* Regulations**
>
> ***Substantial acquisition of shares or voting rights.***
>
> ***3. (1)*** *No acquirer shall acquire shares or voting rights in a target company which taken together with shares or voting rights, if any, held by him and by persons acting in concert with him in such target company, entitle them to exercise twenty-five percent or more of the voting rights in such target company unless the acquirer makes a public announcement of an open offer for acquiring shares of such target company in accordance with these regulations.*
>
> ***Timing***
>
> ***13. (1)*** *The public announcement referred to in regulation 3 and regulation 4 shall be made in accordance with regulation 14 and regulation 15, on the date of agreeing to acquire shares or voting rights in, or control over the target company.*
>
> ***(2)*** *Such public announcement, —*
>
> ***(a)*** *in the case of market purchases, shall be made prior to placement of the purchase order with the stock broker to acquire the shares, that would take the entitlement to voting rights beyond the stipulated thresholds;*

10. In the instant matter, it is not in dispute that the Noticees were the promoters/persons coming under the promoter group of IIFL during the relevant period and were therefore the PACs within the meaning of the SAST Regulations. As per the examination report, as on March 31, 2020, the Noticees were collectively holding 9,43,43,490 shares of IIFL, which represented 24.94% of the total share capital of the company. The total paid up capital of the company as on March 31, 2020 was Rs 75,66,81,844 (which is represented by 37,83,40,922 equity shares of Rs 2 each). As per the details submitted by NSE, the shareholding of the promoters/promoter group of IIFL for the quarter ended March 31, 2020 is as follows:

<u>Table</u>

Name of the promoter / Noticee	*Total no. of shares held*	*Percentage (%)*
Ardent Impex Pvt Ltd (Noticee no 1)	*35,18,904*	*0.93*
Orpheus Trading Pvt Ltd (Noticee no. 2)	*13,00,000*	*0.34*
Harshita Jain and Mansukhlal Jain (in their capacity as Trustee of Nirmal Madhu Family Private Trust) (Noticee no. 3)	*1,00,00,000*	*2.64*
Nirmal Bhanwarlal Jain (Noticee no. 4)	*4,72,65,154*	*12.49*
Aditi Athavankar (Noticee no. 5)	*2,00,000*	*0.05*
Venkataraman Rajamani (Noticee no. 6)	*1,09,84,432*	*2.9*
Madhu N Jain (Noticee no. 7)	*1,20,75,000*	*3.19*
Aditi Avinash Athavankar (in her capacity as Trustee of Kalki Family Private Trust) (Noticee no. 8)	*90,00,000*	*2.38*
Total	***9,43,43,490***	***24.94***

11. On June 24, 2020, it is observed that Noticee no. 4 placed a buy order for purchase of 4,54,000 shares of IIFL (representing 0.12% of the total share capital of the company) with his stock broker, which also got executed as a trade on the NSE trading system. The above market transaction placed by Noticee no. 4 resulted in the collective shareholding of the Noticees in IIFL crossing the prescribed threshold of 25% of the total share capital of the company, which is specified under the provisions of Regulation 3 (1) of the SAST Regulations. The post-acquisition shareholding of the promoters/promoter group of IIFL i.e the Noticees increased to 25.06% of the total share capital of the company as a result of the above mentioned purchase order placed by Noticee no. 4 in the scrip of IIFL on June 24, 2020. In view of the above transaction executed by Noticee no. 4 and in terms of Regulation 3 (1) r/w Regulation 13 (1) of the SAST Regulations, as the collective shareholding of the Noticees in IIFL crossed the stipulated threshold limit of 25% on June 24, 2020, the Noticees were under obligation to make a public announcement of open offer in accordance with the provisions of the aforementioned Regulations. Further, in terms of Regulation 13 (2) (a) of the SAST Regulations, as the said acquisition of shares by Noticee no. 4 i.e purchase of 4,54,000 shares of IIFL on June 24, 2020 was a market transaction, the Noticees were obligated to make a public announcement of open offer prior to the placement of the said purchase order by Noticee no. 4 with his stock broker. The public announcement of open offer was required to be made by the Noticees as PACs in view of the fact that the collective shareholding of the Noticees in IIFL crossed the prescribed threshold limit of 25% of the total share capital of the company as a result of the said

purchase order placed by Noticee no. 4 on June 24, 2020. Upon examination of the records made available, including the submissions made by the Noticees, it is observed that the Noticees have failed to make the public announcement of open offer prior to the placement of the said purchase order by Noticee no. 4. Therefore, the Noticees have failed to comply with the provisions of Regulation 13 (2) (a) of the SAST Regulations.

12. From the SCN and the examination report, I find that Noticee no. 1 (another promoter entity of IIFL) sold 2,50,000 shares of the company on June 25, 2020 (i.e the very next day of the purchase of 4,54,000 shares of IIFL by Noticee no. 4) and as a result of the said sale transaction by Noticee no. 1, the collective shareholding of the Noticees in IIFL got reduced to 24.99% from 25.06% as on June 25, 2020. In this regard, the Noticees submitted that they made the disclosures to the stock exchanges u/r 29(2) of the SAST Regulations in respect of the transactions executed by them in the scrip of IIFL on June 24, 2020 and June 25, 2020. In the disclosure format submitted by the Noticees to the stock exchange on June 25, 2020 i.e. pursuant to the sale transaction of 2,50,000 shares of IIFL executed by Noticee no. 1, the following observations were made by the Noticees :-

    "This percentage of voting rights had been computed on the basis of an expected delivery of shares which is yet to take place. Prior to delivery and acquisition of the voting rights, the sale of shares covered by this intimation has been effected and the shares have been delivered. As such, the 25% threshold was never actually crossed."

13. In the context of the present proceedings, the Noticees have vehemently contended that the central theme of the SAST Regulations is the entitlement to exercise the voting rights beyond the threshold limit, which is prescribed under these Regulations. It was mentioned by the Noticees that the threshold limit as stipulated in the SAST Regulations has to be considered in the context of the entitlement to exercise the voting rights only and if the entitlement to exercise the voting rights is acquired or agreed to be acquired beyond the threshold limit, as stipulated under the SAST Regulations, then the relevant provisions of the SAST Regulations and the charging provisions/sections would get attracted. The Noticees reiterated their stand that the obligation on their part to make the public announcement of open offer is triggered only when their entitlement to exercise the voting rights goes beyond the prescribed threshold limit mentioned in the SAST Regulations. It was specifically pointed out by the Noticees that the impugned acquisition of shares of IIFL by Noticee no. 4 on June 24, 2020 from the market i.e purchase of 4,54,000 shares (0.12% of the total share capital of IIFL) did not trigger the requirements of Regulation 3 (1) of the SAST Regulations as even before the entitlement to exercise 0.12% voting rights attached to these shares which were subject of the erroneous impugned acquisition (4,54,000 shares) was credited into the demat account of Noticee no. 4, it was the case of the Noticees that they had lost the entitlement to exercise the voting rights in respect of 0.07% shares of IIFL i.e 2,50,000 shares of IIFL, which were

sold by another promoter i.e Noticee no. 1 on June 25, 2020. In view of the same, the Noticees contended that as on June 26, 2020 i.e the day when 4,54,000 shares of IIFL were credited into the demat account of Noticee no. 4, the collective shareholding of the Noticees in IIFL was maintained at 24.99 % of the total share capital of IIFL, which was below the stipulated threshold limit of 25% for the purpose of the entitlement of voting rights beyond the threshold prescribed under the provisions of Regulation 3 (1) of the SAST Regulations. Thus, according to the Noticees, in the absence of acquiring the entitlement to vote of 25% or more of the voting rights in the company as on June 26, 2020, the question of the Noticees triggering the provisions of Regulation 3 (1) of the SAST Regulations and requirement of making the public announcement did not arise.

14. The Noticees have further contended that, in the facts and circumstances of the present case, there was no intention on their part to acquire an entitlement to voting rights of 25% or more and therefore, it was mentioned by the Noticees that there was no requirement on their part to make a public announcement of open offer in respect of the 4,54,000 shares of IIFL purchased by Noticee no. 4 from the market on June 24, 2020. In this regard, I have perused the various submissions made by the Noticees during the course of the instant proceedings. In my assessment, the above interpretation of the provisions of the SAST Regulations placed by the Noticees is factually incorrect. It is on record that Noticee No. 4 had placed a purchase order to acquire 4,54,000 shares of IIFL from the open market and the same was placed with his stock broker on June 24, 2020, which also got executed as trade on the NSE trading system on the said date. The stock broker also issued the contract note to Noticee no. 4 confirming the execution of the above transaction on the said date. Further, in the context of the term 'acquisition' which has been defined under the provisions of the SAST Regulations, even an agreement to acquire the shares is covered under the scope and ambit of the SAST Regulations. Also, as the said transaction w.r.t purchase of 4,54,000 shares of IIFL was a market transaction and the collective shareholding of the Noticees in IIFL had crossed the stipulated threshold limit of 25% of the total share capital of the company as a result of the above purchase transaction of Noticee no 4, the Noticees were under obligation to make a public announcement of open offer prior to the placement of the order w.r.t the said purchase transaction by Noticee no. 4 from the market, in terms of Regulation 13 (2) (a) of the SAST Regulations. I find that the Noticees failed to make the public announcement of open offer and therefore, they have violated the provisions of Regulation 13 (2) (a) of the SAST Regulations.

15. In this regard, it is also pertinent to draw reference to the term 'acquisition' as defined in the SAST Regulations (Regulation 2 (1) (b)) wherein it is mentioned that "*acquisition" means, directly or indirectly, acquiring or agreeing to acquire shares or voting rights in, or control over, a target company*". Similarly, when the provisions of both Regulation 3 (1) and Regulation 13 (1) of the SAST Regulations are read together, the term 'acquire shares or voting rights' have been consistently mentioned at all places in the context

of the terms 'acquirer' and 'acquisition', which have been defined under the provisions of the SAST Regulations. A bare reading of the aforementioned Regulations and the language used therein, which when read along with the term 'acquisition', as defined under the SAST Regulations makes it clear that even an agreement to acquire the shares is covered under the scope of the SAST Regulations. Further, in the present matter, since the said acquisition of 4,54,000 shares of IIFL on June 24, 2020 was a market transaction (market purchase), in terms of regulation 13 (2) (a) of the SAST Regulations, a public announcement of open offer was required to be made by the Noticees prior to the placement of the said purchase order by Noticee no. 4 with the stock broker, that would take the entitlement to voting rights beyond the stipulated threshold limit. Therefore, it is amply clear from the above that under the provisions of the SAST Regulations, the acquirer along with the PACs i.e the Noticees were under obligation to make a public announcement of open offer prior to the placement of the purchase order in the scrip of IIFL by Noticee no. 4 with his stock broker on June 24, 2020 that would take the shareholding of the Noticees beyond 25% of the total share capital of the company (i.e at the stage where acquirer has agreed to acquire shares through open market).

16. From the above observations and specifically on the contentions of the Noticees regarding the issue of voting rights not triggered in the instant matter, I am of the view that the Noticees instead of adopting a hair-splitting interpretation of the language contained in the SAST Regulations should endeavor to make an attempt to decipher out the true intent and purpose behind these Regulations. As already mentioned, the Noticees were collectively holding 24.94% stake in IIFL before the placement of the purchase order by Noticee no. 4 to acquire 4,54,000 shares of IIFL (0.12% of the share capital) from the market. As per the requirements specified under the SAST Regulations (Regulation 13 (2) (a)), the Noticees were under obligation to make a public announcement of open offer prior to the placement of the purchase order by Noticee no.4 with his stock broker. It is on record that Noticees failed to comply with the same. Thus, the interpretation of the language contained in the SAST Regulations by the Noticees w.r.t voting rights not triggered etc is totally misplaced. In this context, I find it relevant to mention that the Hon'ble Supreme Court of India in K.P.Verghese Vs Income Tax Officer, Ernakulam & another {1981} 3 SCC 173 had held the following while dealing with interpretation of the statutory provisions of law : … "*The task of interpretation of a statutory enactment is not a mechanical task. It is more than a mere reading of mathematical symbols. It is an attempt to discover the intent of the legislature from the language used by it and it must always be remembered that language is at best an imperfect instrument for the expression of human thought and as pointed by Lord Denning, it would be idle to expect every statutory provision to be drafted with prescience and perfect clarity. We can do no better than to repeat the famous words of Judge Learned Hand when he said: "… " it is true that the words used, in another literal sense, are the primary and ordinarily less reliable source of interpreting and meaning of any writing ; be it statute, a contract or anything else. But it is one of the surest indexes of a mature and developed*

jurisprudence not to make a fortress out of the dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning"

17. As already mentioned in the Table above, the Noticees were collectively holding 24.94 % of the total share capital of IIFL prior to the transaction involving purchase of 4,54,000 shares of the company by Noticee no. 4. The said market transaction w.r.t purchase of 4,54,000 shares of IIFL by Noticee no. 4 on June 24, 2020 resulted in the collective shareholding of the Noticees in IIFL crossing the stipulated threshold limit of 25 % as on June 24, 2020. The collective shareholding of the Noticees in IIFL, as on June 24, 2020, increased to 25.06 % of the total share capital of the company as a result of the above mentioned purchase transaction executed by Noticee no 4 from the market. It is an admitted fact that the Noticees failed to make the public announcement of open offer prior to the aforementioned purchase transaction by Noticee no. 4, which was required to be made in terms of Regulation 13 (2) (a) of the SAST Regulations. Thus, in the facts and circumstances of the case, I hold that the Noticees have violated the provisions of regulation 13 (2) (a) of SAST Regulations r/w the provisions of Regulations 3 (1) r/w 13 (1) of the SAST Regulations.

18. The contentions of the Noticees that they made the relevant disclosures to the stock exchanges u/r 29 (2) of the SAST Regulations w.r.t the transactions involving purchase of 4,54,000 shares of IIFL (0.12 % of the total share capital) by Noticee no. 4 on June 24, 2020 and the sale transaction of 2,50,000 shares of IIFL by Noticee no. 1 (0.07% of the total capital) on June 25, 2020 are again without any merit. In my assessment, there was no requirement on the part of the Noticees to make the disclosures u/r 29 (2) of the SAST Regulations in respect of the above transactions in IIFL. I find that both the transactions i.e purchase of 4,54,000 shares of IIFL by Noticee no 4 on June 24, 2020 and the sale transaction of 2,50,000 shares by Noticee no. 1 on June 25, 2020 had not undergone any change in the total shareholding of the Noticees in the company beyond the prescribed threshold limit of 2 % which is specified under the provisions of regulation 29 (2) of the SAST Regulations. The purchase transaction resulted in increase in the shareholding by 0.12 % of the total share capital and the sale transaction resulted in change in total shareholding by only 0.07% of the total share capital of the company. In terms of regulation 29(2) of SAST Regulations, the relevant disclosures are required to be made only when there is change in the shareholding and the change exceeds 2% or more of the total share capital of the company as on a given date. Thus, the above contentions of the Noticees regarding disclosures made by them under the provisions of regulation 29 (2) of SAST Regulations is without any merit as there was no change in shareholding beyond the prescribed limit mentioned under the SAST Regulations in respect of the aforementioned transactions. In my view, the sale of 2,50,000 shares of IIFL by Noticee No. 1 on June 25, 2020 which was made on the

very next day of the purchase transaction made by Noticee no. 4 on June 24, 2020 clearly demonstrates the fact that Noticees became aware of the mistake committed by them w.r.t the purchase order placed by Noticee no. 4 on June 24, 2020 from the open market and in order to camouflage the mistake, they made the disclosures u/r 29 (2) of SAST Regulations to escape the liability from making the public announcement of the open offer.

19. The Noticees have also placed reliance on various judgments of the Hon'ble SAT and Hon'ble SC in the context of the instant proceedings. The Noticees cited the order of C H Kiron Margadarshi Financers Vs Adjudicating Officer, SEBI (appeal no 21/2001 before Hon'ble SAT) which dealt with the effect of shares that were pledged which were held by the appellant without being registered in the pledgee's name wherein it was held that mere receipt of the share certificates along with the transfer deeds will not give the pledgee any right, title or interest in the shares. The Noticees also placed reliance on the judgments of Hon'ble SC in the matter of Siddhart Chaturvedi vs SEBI and Bhavesh Pabari vs SEBI. I have perused the above judgments of Hon'ble SAT and Hon'ble SC and find that the facts and circumstances of the cases leading to the above judgments are entirely different from the facts of the present case. The instant matter pertains to non-compliance with the provisions of Regulation 13 (2) (a) of the SAST Regulations and consequent failure to make public announcement of open offer in terms of Regulations 3 (1) r/w 13 (1) of the SAST Regulations. In these circumstances, the above judgments cited by the Noticees are of no help to them.

20. The SEBI Act, 1992 is a legislation which is intended for the protection of the investors in the securities market and it is the paramount duty to interpret its provisions and to adopt such an interpretation that would further the purposes of law and if possible, abstain the one which frustrates it. Hence, it is necessary to uphold the obligation to make a public announcement of open offer to the investors at large which obligation has not been complied with by the Noticees till date. Acceptance of any argument for not making a public announcement of open offer would tantamount to total disregard to the concerns of the public share-holders as the violation is not one of mere procedural in nature but goes against the very grain of the statute under consideration. It is pertinent to mention that the disclosures requirements/open offer/public announcement under the respective regulations serve very important purposes. The Public Announcement that is required to be made under the SAST Regulations, is the announcement made by the acquirers to make an open offer, primarily disclosing his intention to acquire the 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 period and not a mere intimation of acquisition of shares to the general public. The Public Announcement made by the acquirer contains vital information relating to the open offer like the offer price, the size of the offer, mode of payment of the consideration, conditions as to

minimum level of acceptances, if any, etc. The shareholders may, on the basis of such disclosures made through the Public Announcement, take a decision whether to continue with the target company or decide to exit from it. If the Public Announcement is not made by the acquirer within the time frame prescribed under the SAST Regulations, the shareholders would be deprived of the important information at the relevant point of time. Further, the stock exchanges are informed so that the investing public will come to know of the position enabling them to stick on with or exit from the target company. In this context, it is noted that the Hon'ble Supreme Court in the matter of *Nirma Industries vs SEBI [2013 (8) SCC 20]* has held that *"...the takeover code is meant to ensure fair and equal treatment of all shareholders in relation to substantial acquisition of shares and takeovers and that the process does not take place in a clandestine manner without protecting the interest of the shareholders..."*. In the facts and circumstances of the present case, the failure to make public announcement prior to the acquisition of shares by Noticee no. 4 from the market, as found in this case, would defeat the purpose of the provisions of regulation 3(1) of the SAST Regulations. The statutory timeline and conditions stipulated in regulation 13(2)(a) of the SAST Regulations is mandatory. Therefore, in view of the fact that the Noticees have violated the provisions of regulations 3(1) read with 13(1) and 13(2)(a) of the SAST Regulations, I conclude that the Noticees are liable for monetary penalty under the provisions of section 15H(ii) 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,—*

(i) …

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

(iii) …

(iv) …

he shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

21. For the purpose of adjudging the quantum of the penalty, it is relevant to mention that under section 15I of the SEBI Act, imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The guidelines in this regard are provided by the legislature in section 15J of the SEBI Act. As per the explanation appended to section 15J, vide Part VIII of Chapter VI of the Finance Act, 2017, which was brought after the Judgment of the Hon'ble Supreme Court in the case of Roofit Industries, while adjudging the quantum of penalty, the adjudicating officer has discretion and such discretion should be exercised having due regard to the factors specified in section 15J of the SEBI Act, which reads as under:-

15J. *While adjudging the 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 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.*

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer 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."

22. Having regard to the factors listed in section 15J, by evading the mandatory obligations by such wilful defiance, as established in this case will definitely be profitable to the Noticees, as they have avoided incurring costs of compliance of open offer obligations, which entail appointment of a SEBI registered merchant banker, making advertisements in newspapers regarding public announcement, making public announcement, payment of consideration to the public shareholders who opt to exit in open offer at the price determined in terms of the SAST Regulations etc. To this extent, it can be said that the Noticees have made disproportionate gain or unfair advantage. At the same time, I note that there is no change in control which had taken place as a result of these transactions. The material made available on record do not bring out the exact amount of disproportionate gain or unfair advantage to the Noticees or amount of loss caused to the shareholders of the target company at the relevant time. However, I cannot lose sight of the fact that the Noticees have violated the statutory provisions of law by their failure to make the public announcement. In this context, reliance is placed in the matter of Ranjan Varghese vs SEBI (Appeal no. 177 of 2009 and order dated April 08, 2010) wherein Hon'ble SAT had observed " *Once it is established that the mandatory provisions of Takeover code was violated, the penalty must follow"*. Further, Hon'ble Supreme Court of India in the matter of *Chairman, SEBI Vs Shriram Mutual Fund* {[2006]5 SCC 361} 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 and hence the intention of the parties committing such violation becomes wholly irrelevant..."*

ORDER

23. Considering all the facts and circumstances of the case and exercising the powers conferred upon me under section 15 I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose monetary penalty of Rs 10,00,000/- (Rupees Ten Lakh only) on the Noticees under the provisions of section 15H(ii) of the SEBI Act for their violations as mentioned in the table below. The penalty shall be paid jointly and severally by the Noticees. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

<table>
<tr><th>Noticee No.</th><th>Name of person/Entity</th><th>Violations</th><th>Penal Provisions</th><th>Penalty</th></tr>
<tr><td>1</td><td>Ardent Impex Pvt Ltd</td><td rowspan="8">Regulations 3(1) read with regulations 13(1) and 13(2)(a) of the SAST Regulations.</td><td rowspan="8">Section 15H(ii) of the SEBI Act</td><td rowspan="8">₹ 10,00,000/-- (Rupees Ten Lakh only)</td></tr>
<tr><td>2</td><td>Orpheus Trading Pvt Ltd</td></tr>
<tr><td>3</td><td>Harshita Jain and Mansukhlal Jain (in their capacity as Trustee of Nirmal Madhu Family Private Trust)</td></tr>
<tr><td>4</td><td>Nirmal Bhanwarlal Jain</td></tr>
<tr><td>5</td><td>Aditi Athavankar</td></tr>
<tr><td>6</td><td>Venkataraman Rajamani</td></tr>
<tr><td>7</td><td>Madhu N Jain</td></tr>
<tr><td>8</td><td>Aditi Avinash Athavankar (in her capacity as Trustee of Kalki Family Private Trust)</td></tr>
</table>

24. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of "SEBI -Penalties Remittable to Government of India", payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department -I (EFD), Division of Regulatory Action -III [EFD1-DRA-3] SEBI Bhavan, Plot No.C4-A,' G' Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following detail

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

25. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

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

27. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees viz. Ardent Impex Pvt. Ltd., Orpheus Trading Pvt. Ltd., Nirmal Madhu Family Private Trust Harshita Jain and

Mansukhlal Jain (Trustees), Nirmal Bhanwarlal Jain, Aditi Athavankar, Venkataraman Rajamani, Madhu N Jain, Kalki Family Private Trust Aditi Avinash Athavankar (Trustee) and also to Securities and Exchange Board of India.

Date: March 28, 2022
Place: Mumbai

SURESH B MENON
ADJUDICATING OFFICER